**State of Maine: Notice of Agency Rulemaking – September 30, 2020**

**PROPOSALS**

AGENCIES:

**02-373 - Board of Licensure in Medicine;**

**02-383 - Board of Osteopathic Licensure**

(*both affiliated with the* **Department of Professional and Financial Regulation** – **PFR**)

CHAPTER NUMBER AND TITLE: **Ch. 2**, Joint Rule Regarding Physician Assistants

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBERS: **2020-P138, P139** *(2nd publication)*

BRIEF SUMMARY: The Board of Licensure in Medicine and the Board of Osteopathic Licensure (“boards”) propose amendments to a joint rule pertaining to the licensure and practice of physician assistants. As originally proposed the amendments: amended the definition of certain terms to eliminate registration and supervision; added definitions for certain terms, including “Health Care Facility,” Health Care Team,” Inactive Status License,” and “Physician Group Practice;” eliminates registration and supervision requirements; established criteria for “Inactive Status Licenses;” established uniform continuing clinical competency requirements; amended the uniform fees; establishes criteria for collaborative agreements and practice agreements; amended the uniform notification requirements to include legal change of name; and amended the continuing medical education (CME) requirements, including 3 hours of CME every 2 years regarding opioid prescribing.

Following receipt and review of written comments to the proposed amendments to the rule, the boards made the following substantive changes to the proposed amendments to the rule: adding a definition for “physician”; amending section 6.8 to add paragraph D establishing criteria for acceptable documentation of clinical practice; amending section 6 to add a new paragraph 9 “Criteria for Reviewing Scope of Practice for Physician Assistants in Collaborative Agreements or Practice Agreements”; and amending section 12 of the rule to require that physician assistants verbally identify themselves as physician assistants whenever greeting patients during an initial encounter and whenever patients incorrectly refer to them as “doctors”.

PUBLIC HEARING: None planned. *Requests to hold a public hearing by any interested person may be submitted in writing to the identified agency contact person.*

COMMENT DEADLINE: Friday, October 30, 2020 at 4:30 p.m.

CONTACT PERSONS FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION:

Dennis E. Smith, Executive Director, Board of Licensure in Medicine, 137 State House Station, Augusta, ME 04333-0137. Telephone: (207) 287-3605. Fax (207) 287-6590. Email: Dennis.E.Smith@Maine.gov .

Susan E. Strout, Executive Secretary; Board of Osteopathic Licensure, 142 State House Station, Augusta, ME 04333-0142. Telephone: (207) 287-2480. Fax: (207) 536-5811. Email: Susan.E.strout@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: Minimal

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 2562 *and* 2594-E(5); 32 MRS §§ 3269(7) *and* 3270-E(5); 10 MRS §8003(5)(C)(4).

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: PL 2020 c. 627

AGENCY WEBSITES: [www.maine.gov/md](http://www.maine.gov/md) (Board of Licensure in Medicine); [www.maine.gov/osteo](http://www.maine.gov/osteo) (Board of Osteopathic Licensure)

AGENCY: **12-179** – Department of Labor (DOL), **Occupational Safety and Health Board (BOSH)**

CHAPTER NUMBER AND TITLE: **Ch. 2**, Occupational Safety and Health Standards for General Industry Employment in the Public Sector

TYPE OF RULE: Routine technical

PROPOSED RULE NUMBER: **2020-P197**

**BRIEF SUMMARY**: To update the rule to incorporate changes to the Federal Occupational Safety and Health Administration regulations, 29 CFR Part 1910, including modifications to silica and beryllium standards:

Compliance date of this final standard for beryllium is September 14, 2020. Latest compliance date for silica is June 23, 2020.

Beryllium: <https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-02-080.pdf> .

Silica: <https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-02-080.pdf> .

**DETAILED SUMMARY:** To update the rule to incorporate changes to the Federal Occupational Safety and Health Administration regulations, 29 CFR Part 1910, including modifications to silica and beryllium standards:

Compliance date of this final standard for beryllium is September 14, 2020. Latest compliance date for silica is June 23, 2020.

Key provisions in the beryllium standard are:

**1.** Set a permissible exposure limit (PEL) for beryllium of 0.2 µg/m3, averaged over 8-hours.

**2.** Set a short-term exposure limit for beryllium of 2.0 µg/m3, over a 15-minute sampling period.

**3.** Require employers to: use engineering and work practice controls (such as ventilation or enclosure) to limit worker exposure to beryllium; provide respirators when controls cannot adequately limit exposure; limit worker access to high-exposure areas; develop a written exposure control plan; and train workers on beryllium hazards.

**4.** Require employers to make available medical exams to monitor exposed workers and provides medical removal protection to workers identified with a beryllium-related disease.

Beryllium: <https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-02-080.pdf> .

Key provisions in the silica standard:

1. Employers are required to comply with all obligations of the standard, with the exception of the action level trigger for medical surveillance.

2. Employers are required to offer medical examinations to employees exposed above the PEL for 30 or more days a year.

3. Employers are required to offer medical examinations to employees exposed at or above the action level for 30 or more days a year.

Silica: <https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-02-080.pdf> .

**PUBLIC HEARING**: None, unless requested pursuant to 5 MRS §8052(1).

COMMENT DEADLINE: November 2, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / DOL RULEMAKING LIAISON: Isaac H. Gingras, Department of Labor, 54 State House Station, Augusta, Maine 04333-0054. Telephone: (207) 626-6232. Email: Isaac.H.Gingras@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*:

STATUTORY AUTHORITY FOR THIS RULE: 26 MRS §565

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

DOL WEBSITE: <http://www.maine.gov/labor> .

AGENCY: **10-144** – Department of Health and Human Services (DHHS), **Maine Center for Disease Control and Prevention (Maine CDC)**

CHAPTER NUMBER AND TITLE: **Ch. 264**, Immunization Requirements for Healthcare Workers

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P198**

BRIEF SUMMARY: The Department is proposing routine technical rule changes to amend 10-144 CMR ch. 264, *Immunization for Healthcare Workers*, to update exemption requirements following recent law changes; update the definition section to add *public health threat* and *extreme public health emergency* and revise *Intermediate Care Facility for the Mentally Retarded (ICF/MR)* to reflect *Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)*, aligning with CMS language; remove H1N1 2009-10 immunization requirements; and add seasonal influenza to the list of vaccine preventable diseases for which designated healthcare facility employees must show proof of immunization or documented immunity, or provide appropriate exemption documentation. Rule changes are proposed to clarify the Department’s authority to impose control measures due to a public health emergency or an extreme public health emergency, including, but not limited to, requiring vaccinations and exclusions from the workplace to protect public health and minimize the impact from the specific notifiable communicable disease by reducing the potential disease spread by healthcare workers.

PUBLIC HEARING: Not scheduled. *(Hearings requested during the State of Emergency will be conducted in accordance with 1 MRS §403-A (PL 2020 c. 617).*

COMMENT DEADLINE: 5:00 p.m. Friday, October 30, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Bridget Bagley, 286 Water Street - 11 State House Station, Augusta, ME 04333-0011. Telephone: (207) 287-4490 or 711 (TTY). Fax: (207) 287-2887. Email: Bridget.Bagley@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §802(3)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

MAINE CDC RULES WEBSITE: <http://www.maine.gov/dhhs/mecdc/rules/> .

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MAINE CDC RULEMAKING LIAISON: .Tera.Pare@Maine.gov

DHHS RULEMAKING LIAISON: Kevin.Wells@Maine.gov .

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office for Family Independence (OFI)**

CHAPTER NUMBER AND TITLE: **Ch. 301**, Maine Food Supplement Manual: **Rule #214P** (FFY 2021 ABAWD), **Section FS 999-2**

PROPOSED RULE NUMBER: **2020-P199**

BRIEF SUMMARY: 7 CFR 273.24 provides that no individual shall be eligible to participate in the Supplemental Nutrition Assistance Program (SNAP) as a member of any household if the individual received program benefits for more than 3 months during any 3-year period in which the individual was subject to but did not comply with the ABAWD work requirement.

PL 116-127 (*Families First Corona Virus Response Act*) §2301 suspended these requirements from April 1, 2020 through the month following the month the public health emergency (PHE) declaration by the Secretary of Health and Human Services, based on an outbreak of COVID-19 is lifted. The PHE declaration has not been lifted, as of the date of this proposed rulemaking.

The proposed rule implements the national suspension of the ABAWD requirements under the *Families First Corona Virus Response Act*, for the period of September 1, 2020 through September 30, 2020.

7 CFR 273.24(f) provides that, upon the request of the State agency, the Secretary may waive the applicability of the 3-month ABAWD time limit for any group of individuals in the State if the Secretary makes a determination that the geographic area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals.

The proposed rule implements the July 15, 2020, ABAWD geographic state-wide waiver approval, pursuant to 7 CFR §273.24(f)(2) and Section 6(o) of the *Food and Nutrition Act of 2008*, for the period October 1, 2020 through September 30, 2021, or until the date at which the new waiver standards become effective, whichever occurs earlier. The Department’s waiver request was approved by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), on July 15, 2020. USDA: Able-Bodied Adults Without Dependents (ABAWD) Waiver Response, Serial Number 2190025.

In the July 15, 2020 FNS Waiver Response, FNS determined that the Department met the waiver requirement by providing a copy of the Department of Labor Trigger Notice No. 2020-17, effective May 10, 2020, showing that, state-wide, Maine qualified for extended unemployment benefits.

This rule change will enhance nutritional stability and consistency for thousands of Maine households at a time of financial and health uncertainty.

The Department is proposing to adopt this rule with a retroactive application to September 1, 2020. Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

See <http://www.maine.gov/dhhs/ofi/rules/index.shtml> for rules and related rulemaking documents.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §42(1) and (8); *Families First Coronavirus Response Act*, Pub. L. No. 116-127, §2301; and 7 CFR §273.24.

PUBLIC HEARING: Wednesday, October 21, 2020, at 1:00 p.m. Due to the COVID-19 pandemic, this hearing will be conducted virtually. Anyone wishing to attend should join the Microsoft Teams Meeting accessible at [https://teams.microsoft.com/l/meetup-join/19%3ameeting\_YmVjZTc0YWQtMmZkZS00OWE2LTk1NzgtNjY3NzM1MmYzMDIw%40thread.v2/0?context=%7b%22Tid%22%3a%22413fa8ab-207d-4b62-9bcd-ea1a8f2f864e%22%2c%22Oid%22%3a%22f89346ba-710d-4ff8-8766-4d52c4172faf%22%7d](https://teams.microsoft.com/l/meetup-join/19%3Ameeting_YmVjZTc0YWQtMmZkZS00OWE2LTk1NzgtNjY3NzM1MmYzMDIw%40thread.v2/0?context=%7b%22Tid%22%3a%22413fa8ab-207d-4b62-9bcd-ea1a8f2f864e%22%2c%22Oid%22%3a%22f89346ba-710d-4ff8-8766-4d52c4172faf%22%7d) or by calling (207) 209-4724 and entering Conference ID 219 634 641#. *The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed below before Wednesday, October 14, 2020.*

COMMENT DEADLINE: Monday, November 2, 2020

CONTACT PERSON FOR THIS FILING: Patricia Dushuttle, Special Projects Program Manager, Department of Health and Human Services - Office for Family Independence, 109 Capitol Street – 11 State House Station, Augusta, ME 04330-6841. Telephone: (207) 624-6907. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Email: Patricia.Dushuttle@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

OFI RULES WEBSITE: <http://www.maine.gov/dhhs/ofi/rules/index.shtml> .

OFI WEBSITE: <https://www.maine.gov/dhhs/ofi> .

OFI RULEMAKING LIAISON: Dan.Cohen@Maine.gov .

DHHS RULEMAKING LIAISON: Kevin.Wells@Maine.gov .

**ADOPTIONS**

AGENCY: **10-148** - Department of Health and Human Services (DHHS), **Office of Child and Family Services (OCFS)**

CHAPTER NUMBER AND TITLE: **Ch. 34**, Child Care Provider Background Check Licensing Rule

ADOPTED RULE NUMBER: **2020-210** *(Emergency major substantive)*

CONCISE SUMMARY: Currently, the background check requirements for licensed child care providers are included in the licensing rules for those providers: 10-148 CMR ch. 32 §§ 2.21 and 11.2.3.7 (*Rules for the Licensing of Child Care Facilities*); 10-144 CMR ch. 33 §§ 2(A)(4)(e) and 6(A)-(I) (*Family Child Care Provider Licensing Rule*); 10-148 CMR ch. 36 §§ III(U) and XIII(A)(3)(g); these provisions are repealed through the instant emergency major substantive rulemaking. In the event of conflict between the *Child Care Provider Background Check Licensing Rule* and any other provisions of the licensing rules for child care providers, the terms of this rule supersede such other rules and shall apply.

These provisions add requirements to pre-employment and pre-licensure comprehensive background checks. The policy rationale is to provide greater protection for Maine children receiving child care from licensed child care providers and to comply with statutory requirements set forth in 22 MRS §8302-A 9(1)(J)(2)(K) and 42 USC Section 9858f(b ). New requirements include:

\* Mandatory fingerprinting with search of the Federal Bureau of Investigation (FBI) and State Bureau of Identification (SBI) as well as, the National Crime Information Center (NCIC) National Sex Offender Registry.

\* Searching state criminal repositories, state child abuse and neglect registries/databases and state sex offender registries in each state where the individual has resided in the previous five years.

\* Prescribing specific disqualifying offenses in which an individual is deemed eligible or ineligible.

\* Individuals required to receive a qualifying result pursuant to a comprehensive background check as provided for in the *Child Care Provider Background Check Licensing Rule* now include: all current and prospective staff members, all adult household members in a family child care, and any other individual whose activities involve the care or supervision of children or who has unsupervised access to children.

EFFECTIVE DATE: September 25, 2020

OCFS CONTACT PERSON: Janet Whitten, Program Manager, Office of Child and Family Services, Children's Licensing and Investigation Services, 2 Anthony Avenue - 11 State House Station, Augusta, ME 04333-0011. Telephone: (207) 287-7068. TTY users call Maine relay 711. Email: Janet.Whitten@Maine.gov .

OCFS WEBSITE: <https://www.maine.gov/dhhs/ocfs> .

DHHS RULEMAKING LIAISON: Kevin.Wells@Maine.gov .