**State of Maine: Notice of Agency Rulemaking – October 5, 2022**

**NOTICE OF STATE RULEMAKING**

**Public Input for Rules**

Notices are published each Wednesday to alert the public regarding state agency rulemaking. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one - the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. **Petitions**: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rulemaking if the petition is signed by 150 or more registered voters, and may begin rulemaking if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone (207) 287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 §11112). **World‑Wide Web**: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: http://www.maine.gov/sos/cec/rules. There is also a list of rulemaking liaisons (http://www.maine.gov/sos/cec/rules/liaisons.html), who are single points of contact for each agency.

**NOTICE**

AGENCY: **94-412 - Saco River Corridor Commission**

CHAPTER NUMBER AND TITLE: Schedule of Fees

TYPE OF RULE: Not a rule.

BRIEF SUMMARY: The Commission proposes additional categories and other changes to the fee schedule based on the current operations of the Land-Use Regulatory Program.

PUBLIC HEARING: Wednesday, October 26th, 2022 - 7:00 pm, Dayton Town Hall, 33 Clark, Drews Mills Road, Dayton, ME 04005

COMMENT DEADLINE: Saturday, November 5th

CONTACT PERSON FOR THIS FILING / SMALL BSINESS IMPACT INFORMATION: Dalyn Houser, Executive Director, PO Box 283, Cornish, Maine 04020. Telephone: (207) 625-8123. Fax: (207) 625-7050. Email: [dalyn@srcc-maine.org](mailto:dalyn@srcc-maine.org).

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: The proposed revisions will not financially impact municipalities or counties as the fee schedule reflects the current cost of land-use regulation in the Saco River Corridor. The proposed revisions will not significantly impact most application fee categories.

STATUTORY AUTHORITY: 38 MRS §954-C

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

COMMISSION WEBSITE: [www.srcc-maine.org](http://www.srcc-maine.org).

**PROPOSALS**

AGENCY: **94-412 - Saco River Corridor Commission**

CHAPTER NUMBER AND TITLE: **Ch. 103**. Standards to Address the Environmental Factors

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P184**

BRIEF SUMMARY: The Commission proposes simple technical changes to this chapter.

PUBLIC HEARING: Wednesday, October 26th, 2022 - 7:00 p.m., Dayton Town Hall; 33 Clark, Drews Mills Road, Dayton, ME 04005

COMMENT DEADLINE: Saturday, November 5th

CONTACT PERSON FOR THIS FILING / SMALL BSINESS IMPACT STATEMENT / RULEMAKING LIAISON: Dalyn Houser, Executive Director, PO Box 283, Cornish, Maine 04020 Telephone: (207) 625-8123. Fax: (207) 625-7050. Email: [Dalyn@srcc-maine.org](mailto:Dalyn@srcc-maine.org).

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None.

STATUTORY AUTHORITY FOR THIS RULE: During the 106th Session of the Maine State Legislature, the Saco River Corridor Commission was given the authority under 38 MRS §954-C, “After notice and public hearing” to adopt such rules and regulations governing its procedures as it deems necessary to carry out the purposes of the *Saco River Corridor Act*.

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

COMMISSION WEBSITE: [www.srcc-maine.org](http://www.srcc-maine.org).

AGENCY: **94-412 - Saco River Corridor Commission**

CHAPTER NUMBER AND TITLE: **Ch. 104-A** (*New)*, Performance Standards for Multi-Unit Uses, including Condominium and Cluster Development within the General Development District

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P185**

BRIEF SUMMARY: This proposed new performance standard is solely for multi-unit uses, which are included but not limited to apartments, condominiums, accessory dwelling units, and cluster developments. The Commission recognizes that in these instances multi-unit uses are appropriate in the Corridor when the use is connected to Municipal sewer, dependent on the design and available land within the General Development District.

PUBLIC HEARING: Wednesday, October 26th, 2022 - 7:00 p.m., Dayton Town Hall; 33 Clark, Drews Mills Road, Dayton, ME 04005

COMMENT DEADLINE: Saturday, November 5th

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT STATEMENT / RULEMAKING LIAISON: Dalyn Houser, Executive Director, PO Box 283, Cornish, Maine 04020 Telephone: (207) 625-8123. Fax: (207) 625-7050. Email: [Dalyn@srcc-maine.org](mailto:Dalyn@srcc-maine.org).

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None.

STATUTORY AUTHORITY FOR THIS RULE: During the 106th Session of the Maine State Legislature, the Saco River Corridor Commission was given the authority under 38 MRS §954-C, “After notice and public hearing” to adopt such rules and regulations governing its procedures as it deems necessary to carry out the purposes of the *Saco River Corridor Act*.

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

COMMISSION WEBSITE: [www.srcc-maine.org](http://www.srcc-maine.org).

AGENCY: **94-412 - Saco River Corridor Commission**

CHAPTER NUMBER AND TITLE: **Ch. 107**, Performance Standards Governing Expansions of existing Nonconforming Uses, including Structures

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P186**

**BRIEF SUMMARY**: These performance standards provide a more consistent document that is easier for the applicant to comprehend and more effective for the Saco River Corridor Commission to enforce. The primary proposed revisions include changes to the 30% expansion standards for existing nonconforming structures, revegetation requirements, lot coverage standards, and verbiage changes. Importantly, the proposals do not compromise the Commission’s ability to attain its mission of lessening the environmental impacts to the Saco River Corridor.

**DETAILED SUMMARY:** This proposal accomplishes five (5) primary revisions to Ch. 107, resulting in standards that are, in some areas, more restrictive, while in others, less restrictive. This proposal provides a more consistent document that is easier for the applicant to comprehend and more effective for the Saco River Corridor Commission to enforce. Importantly, the proposals do not compromise the Commission’s ability to attain its mission of lessening the environmental impacts to the Saco River Corridor.

**1) 30% Expansion Calculations.** This proposal changes the current calculation method for a 30% expansion from a volume and/or square footage measurement to a simple footprint measurement with height parameters consistent with the Maine Department of Environmental Protection (DEP) calculation methods.

Currently, the terms footprint, floor area, square footage, land area, height (indicating volume), and dimension are used interchangeably. The rule changes include consistent and clear standards that will be easier for applicants to understand and more effective for the Commission to apply and enforce. Additionally, the current expansion standards for basements are complicated by the square footage expansion standards leading to a large amount of time and consideration over how those areas are calculated for an expansion. The use of the building footprint for expansions eliminates the need to consider criteria such as interior floor area or non-living space. Last, the rule changes better define how accessory structures count toward expansions.

Approximately five years ago, the Maine DEP, having experienced the same issues while struggling to provide consistent recommendations across Maine’s communities, simplified their 30% expansion rules to be based on footprint and height exclusively. Thus far, the DEP staff indicates that the new rules are less confusing, provide more consistency, and, importantly, achieve the same goal.

This proposal will enable the Commission to oversee 30% expansion projects more efficiently and consistently. In some cases, this proposal will permit a taller expansion than previously allowed, but height restrictions will still govern these projects.

**2) Height Restrictions.** This proposal establishes clear height restrictions for expansions, reconstructions, and relocations of nonconforming structures within the Saco River Corridor, based on setback measurements from the mean or normal high water lines. Currently, expansions are limited to a 30% increase in height and can be perceived as inconsistent and limiting for the applicant. The new proposed standards are consistent with DEP’s Shoreland Zoning restrictions, resulting in more consistency and easier understanding for the applicant while still accomplishing the Commission’s goal.

**3) Revegetation requirements.** This proposal enhances and clarifies the Commission’s standards to ensure that an adequate vegetation plan is supplied for any expansions, reconstructions, or relocations of structures within the Corridor. The current standards focus on trees, while this proposal addresses all vegetation. These standards will provide more clarity for the applicant and a more effective policy for the Commission.

**4. Lot Coverage.** This proposal increases the maximum percentage of non-vegetated surfaces on lots within the Shoreland Zone from 15% to 20%. Additionally, this proposal clarifies what is considered non-vegetated and provides consistency with DEP’s Shoreland Zoning regulations. Since this proposal includes a broader definition of non-vegetated surfaces, the increase from 15% to 20% will not be a significant change.

**5. Minor grammatical changes.** This proposal includes a few minor grammatical and verbiage changes that enhance the readability and clarity of the document without affecting the document’s intent.

**PUBLIC HEARING**: Wednesday, October 26th, 2022, 7:00 p.m., Dayton Town Hall, 33 Clark, Drews Mills Road, Dayton, ME 04005

COMMENT DEADLINE: Saturday, November 5th

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT STATEMENT / RULEMAKING LIAISON: Dalyn Houser, Executive Director, PO Box 283, Cornish, Maine 04020 Telephone: (207) 625-8123. Fax: (207) 625-7050. Email: [Dalyn@srcc-maine.org](mailto:Dalyn@srcc-maine.org).

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None.

STATUTORY AUTHORITY FOR THIS RULE: During the 106th Session of the Maine State Legislature, the Saco River Corridor Commission was given the authority under 38 MRS §954-C, “After notice and public hearing” to adopt such rules and regulations governing its procedures as it deems necessary to carry out the purposes of the *Saco River Corridor Act*.”

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

COMMISSION WEBSITE: [www.srcc-maine.org](http://www.srcc-maine.org).

AGENCY: **02-477** - Department of Professional and Financial Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Board of Occupational Therapy Practice**

CHAPTER NUMBERS AND TITLES:

**Ch. 4** *(New)*, License Renewal and Continuing Education Requirements; Reinstatement

**Ch. 6-A** *(Repeal)*, License Renewal; Reinstatement

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBERS: **2022-P187, P188**

BRIEF SUMMARY: The proposed rule was developed as a result of the change in the Board’s governing statute requiring continuing education requirements as a condition for renewal of a license. The new law directs the board to prescribe those requirements in rule. The rulemaking would incorporate the existing provisions in rule regarding license renewal and reinstatement that are currently in Ch. 6-A of board rules, and propose to repeal that chapter in its entirety and consolidate all provisions with the Continuing Education Requirements in a newly created Ch. 4. The rule proposes that each occupational therapist shall complete ten (10) hours and every occupational therapy assistant shall complete six (6) hours of continuing education relevant to the practice of occupational therapy or interprofessional practice during each reporting period as a condition of renewal. At least one (1) hour shall be on ethics. There is no requirement for either in-person attendance or a live, remote program during which immediate interaction with the instructor is possible. A minimum of four (4) hours must be completed by participation in a program offered by a recognized sponsor, while the remaining hours may be satisfied through a number of other qualifying activities including (but not limited to; please refer to text of the proposed rule) academic coursework, publications related to occupational therapy, preparation for and presenting at a workshop or seminar, and research.

Copies of the proposed rule and rulemaking documents may be found on the Board’s webpage: <https://www.maine.gov/pfr/professionallicensing/professions/board-occupational-therapy-practice>. Scroll down to “What’s New” and “Rulemaking.”

PUBLIC HEARING: *The hearing will take place on Thursday, October 27, 2022, from 10:30 a.m.-12:30 p.m., at the Maine Department of Marine Resources, East Campus, 32 Blossom Lane, Marquardt Building, Conference Room 118, Augusta, ME 04330. Please visit the Board’s webpage,* [*https://www.maine.gov/pfr/professionallicensing/professions/board-occupational-therapy-practice*](https://www.maine.gov/pfr/professionallicensing/professions/board-occupational-therapy-practice)*, for additional information, including how to access the meeting remotely via a Zoom link. Members of the public may provide comments at the public rulemaking hearing by attending in-person or virtually.*

COMMENT DEADLINE: Friday, December 2, 2022 - 5:00 p.m. Comments may be submitted to Candice Wright, Consumer Assistance and Hearing Coordinator, 35 State House Station, Augusta, ME 04333-0035. Email: [Candice.B.Wright@Maine.gov](mailto:Candice.B.Wright@Maine.gov).

CONTACT PERSON FOR THIS FILING: Candice Wright, Consumer Assistance and Hearing Coordinator, 35 State House Station, Augusta, ME 04333-0035, [Candice.B.Wright@Maine.gov](mailto:Candice.B.Wright@Maine.gov). Telephone: (207) 624-8601. TTY: Maine relay 711.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT: N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 2274(2), 2283(4); 10 MRS §8003(5-A)(D)

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

BOARD WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/board-occupational-therapy-practice>.

AGENCY RULEMAKING LIAISON: [Kristin.Racine@Maine.gov](mailto:Kristin.Racine@Maine.gov).

AGENCY: **05-071 – Department of Education (DOE)**

CHAPTER NUMBER AND TITLE: **Ch. 117** *(New)*, Duties of School Counselors and School Social Workers

TYPE OF RULE: Major substantive

PROPOSED RULE NUMBER: **2022-P189**

**BRIEF SUMMARY**: This rule outlines the standards for the professional qualifications and duties of school counselors and school social workers; including appropriate roles and use of time.

**DETAILED SUMMARY:** Ch. 117 outlines standards for the professional qualifications and duties of school counselors and school social workers; including appropriate roles, and use of time. This rule was developed over two years of conceptual discussions with various stakeholder groups including school-based counselors, social workers, and the Maine chapter of the National Association of Social Workers and in response to LD 247, an Act to Increase the Amount of Time School Counselors and Social Workers Spend Providing Students Direct and Indirect Counseling. The new rule establishes that each school counselor and each school social worker shall spend at least 80% of their time providing indirect and direct services on behalf of students in accordance with [20-A MRSA §4008-A(2).](https://www.mainelegislature.org/legis/statutes/20-A/title20-Asec4008-A.html)

**PUBLIC HEARING**: October 24, 2022 - 9:00 a.m., Room 500, Burton Cross State Office Building, Augusta (Capitol Complex)

COMMENT DEADLINE: November 14, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / DOE RULEMAKING LIAISON: Laura Cyr, DOE, 23 State House Station, Augusta, ME 04333. Telephone: (207) 446-8791. Email: [Laura.Cyr@Maine.gov](mailto:Laura.Cyr@Maine.gov).

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

DOE WEBSITE: <https://www.maine.gov/doe/home>.

**ADOPTIONS**

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM):

**Ch. II Section 25**, “Dental Services” *(Repeal)*

**Ch. III Section 25**, “Allowances for Dental Services” *(Repeal)*

**Ch. II Section 25**, “Dental Services and Reimbursement Methodology” *(this rule replaces the two repealed rules)*

ADOPTED RULE NUMBERS: **2022-193, 194**

CONCISE SUMMARY: The Department adopts this rule, which repeals Ch. II and Ch. III Section 25, and replaces them with a new Ch. II rule, “Dental Services and Reimbursement Methodology.”

On July 1, 2022, the Department implemented the vast majority of changes in this adopted rule via emergency rulemaking, pursuant to PL 2021 Ch. 398 (eff. July 1, 2021), Sec. A-17 (the “Budget”), Part CCC Sec. CCC-1, Part GGGG, and Section GGGG-1.

Between August 2021 and May 2022, the Department met with the dental subcommittee of the MaineCare Advisory Committee (“MAC”) ten times and with the full MAC once. The Department also held two stakeholder forums to receive input on the benefit design and reimbursement methodology. Stakeholders included MaineCare dental providers and various oral health advocates, including representatives from Maine Equal Justice, Maine Primary Care Association, and Children’s Oral Health Network of Maine. This rule incorporates recommendations from this stakeholder engagement, invests $45 million to increase rates and expand the adult dental benefit, as well as fully integrates the children and adult benefits and rates into a single rule. The adopted rule adds a comprehensive array of dental services for adult members, per 22 MRS §3174-F(1).

Additionally, this adopted rule implements the recommendations from the Department’s Comprehensive Rate System Evaluation, conducted by the firm Myers and Stauffer. The new Section 25 dental reimbursement rates will be posted on a website, and those rates will be set based on either the “Commercial Median Benchmark” or the “All-States Medicaid Average Benchmark,” as defined by the adopted rule. The dental code benchmarks shall undergo updates every two years, per the methodology included in the adopted rule. Since April 11, 2022, the Department has conferred multiple times with providers and the MAC regarding this new reimbursement methodology.

The differences between the adopted rule and the former, now repealed Ch. II and III Section 25, rules include the following:

**1. Section 25.06 (Reimbursement Methodology). The rule replaces specified rates with a reimbursement methodology.** Whereas the former Chapter II Section 25, rule stated rates would be the amounts listed in Chapter III Section 25, the adopted rule implements a reimbursement methodology that increases overall reimbursement consistent with recommendations from the comprehensive rate setting evaluation.

The reimbursement methodology sets rates for diagnostic, endodontic, periodontic, preventive, and limited orthodontic treatment services based on 67% of the Commercial Median Benchmark or 133% of the Medicaid State Average Benchmark, if the Commercial Median Benchmark rate is unavailable or unreliable.

The reimbursement methodology sets rates for adjunctive, oral and maxillofacial surgery, orthodontics (except for limited orthodontic treatment), prosthodontics, and restorative services based on 50% of the Commercial Median Benchmark or 100% of the Medicaid State Average Benchmark if the Commercial Median Benchmark rate is unavailable or unreliable.

**2. In addition, the rule eliminates inconsistent payment for services billed as medical versus dental services**. To ensure that there is not a rate disparity between CDT and CPT codes that represent the same service and to leverage the ‘percent of Medicare methodology’ in Section 90, the adopted rule removes coverage of some oral and maxillofacial surgery and maxillofacial prosthetic services so that they are solely covered under Section 90, Physician Services. The Department removed services from the adopted rule that have a CPT code equivalent, that are medical in nature, and are primarily delivered by oral surgeons who already bill the services under Section 90, Physician Services.

**3. Replaces emergency-only adult dental coverage with comprehensive adult dental coverage**. To implement the new comprehensive adult dental benefit, the adopted rule adds coverage for adults for diagnostic, preventive, restorative, endodontic, periodontic, prosthodontic, oral and maxillofacial surgery, and adjunctive services. To enable this comprehensive adult coverage, the adopted rule removes the Section 25.04 requirement that adult dental care be limited to acute surgical care directly related to an accident; oral medical procedures not involving the dentition and gingiva; extraction of teeth that are severely decayed and pose a serious threat of infection during cardiovascular surgery; or treatment necessary to relive pain, eliminate infection, or prevent imminent tooth loss.

**4. Replaces separate adult and child coverage provisions with a single covered services description generally applicable to all members**. As a result of removing the restrictions on adult dental coverage, the adopted rule contains one “Covered Services” provision, which includes the services, limits, and other requirements for all members, regardless of age, unless otherwise specified. Some services will continue to be age-limited, and they are noted as such in the rule.

**5. In addition to adding broad coverage for adult dental services, the adopted rule adds or increases coverage for many existing services for members under 21, including the following**:

a. Comprehensive periodontal evaluations

b. Counseling for the control and prevention of adverse oral, behavioral, and systemic health effects associated with high-risk substance use

c. Removable unilateral space maintainers

d. Multiple types of crowns

e. Prefabricated crowns

f. Apicoectomies

g. Immediate partial dentures

h. Complete denture repairs

i. Partial denture relines

j. Multiple types of pontics and prosthodontic retainers

k. Re-cement or re-bond and repairs of fixed partial dentures

l. Dental case management

m. Single bitewings

n. Panoramic radiographs

o. Topical fluoride

p. Denture adjustments

q. Nutritional counseling

r. Preventive resin restorations

**6. Aligns limits and prior authorization (PA) requirements with other state Medicaid agencies, commercial payers, and stakeholder recommendations**. Because of the limited scope of the adult dental benefit in the previous rule, the adopted rule makes changes to align the new covered services and limits with typical comprehensive dental coverage. Specifically:

a. The adopted rule removes the requirement that adults have a qualifying medical condition to receive removable prosthodontics (dentures).

b. The adopted rule establishes medically appropriate limits where none previously existed, based on recommendations from clinical consultation and alignment with other comprehensive dental coverage (commercial payers and other Medicaid agencies).

c. The adopted rule adds and removes PAs to align with other payers and based on recommendations from clinical consultation and rule commenters. The emergency rule did not contain PAs for scaling and root planing (SRP), crowns, and sedation, but the proposed rule included PAs for all three to allow for further public comment and Department deliberation. As a result of comments, the Department removed the PA for crowns for members under age 21, removed the PA for the first unit of SRP delivered to each quadrant, and removed the PA for sedation, which only applied to members 21 and over. Also as a result of comments, the Department removed the PAs in the proposed rule for replacement of a lost or broken retainer and for a third prophylaxis treatment.

d. The adopted rule removes the “more than once every 150 days” requirement for detailed and extensive and periodic oral evaluations and prophylaxis treatments.

**7.** **Removes unnecessary and overly detailed provisions**. The adopted rule removes the following from the rule:

a. Unnecessary and unused definitions.

b. Reference to coverage for members residing in an “Intermediate Care Facility for Persons with Mental Retardation (ICF-IID)” because these members will now receive the services covered for members 21 and over (adults).

c. Requirements that address the covered services certain provider types can provide under their scope of practices because providers’ scope of practices are already defined in 32 MRS Ch. 147.

d. Prescriptive descriptions of services that are overly detailed for the rule.

e. Section 25.03-9, Temporomandibular Joint Services, because these services are covered under Section 90, “Physician Services”, and they are billed for using Common Procedural Terminology (CPT) codes.

f. Section 25.06-1, Member’s Records, because Chapter I Section 1.03-8(M) and Board rule 02-313 CMR Chapter 12 both contain member/patient record requirements.

g. Section 25.06-2, The Division of Program Integrity, because it only refers providers to Chapter I, which already applies to all providers.

h. Requirements and instructions in Section 25.06-3, Prior Authorization of Dental Services, because they either exist in Chapter I of the MBM or in MaineCare’s Prior Authorization Manual on the HealthPAS Portal.

i. Section 25.06-5, Case Management, because it describes standard health care provider practices and because the adopted rule adds coverage for a dental case management service.

j. Sections 25.07-4, Denturist Services, and 25.07-5, Dental Hygienist Services, because it is unnecessary to include the services that these providers can deliver under their scopes of practice, which are defined in 32 MRS Ch. 147. Section 25.07-5 also includes outdated guidance.

k. Section 25.07-6, Independent Practice Dental Hygienist (IPDH) Services, because IPDHs must comply with their scope of practice, as defined in 32 MRS Ch. 143 §18375, and practice requirements outlined in Board rule 02-313 CMR Ch. 12, and it would be redundant to list either in this rule. In addition, the requirement for IPDHs delivering temporary fillings to have a dentist who can treat the member within 60 calendar days is not required in statute or Board rules.

l. The appendix because the forms either exist on the HealthPAS Portal, will no longer be required, or the documents are required by the Board, not the Department.

**The Department shall seek approval** from the Centers for Medicare and Medicaid Services (CMS) of state plan amendments (SPAs) for the changes in this rulemaking. In addition, on June 29, 2022, the Department published a notice of change in reimbursement methodology pursuant to 42 CFR §447.205.

As described in detail in the List of Changes to the Final Rule at the end of the Summary of Comments and Responses document, the Department made the following changes in the adopted rule (compared to the changes that were included in the proposed rule):

1. The Department added coverage for sealants on premolars (bicuspids) for members under age 21 in Section 25.03-2(C).

2. In Section 25.03-2(H), the Department added coverage for preventive resin restorations (PRRs) once per eligible tooth per three years for members with a moderate to high caries risk when an active cavitated lesion in a pit or fissure does not extend into the dentin.

3. The Department clarified in Section 25.03-2(C) that sealants are covered for permanent and primary first and second molars.

4. The Department added coverage for CDT code D1310, nutritional counseling for control of dental disease, in Section 25.03-2(I) with a limit of once per member per year when delivered in addition to another covered service. The Department also added a description of the service.

5. The Department changed the reimbursement methodology used to set rates for limited orthodontic treatment from the 50% of commercial median benchmark methodology described in Section 25.06(B)(2) to the 67% of commercial median benchmark methodology described in Section 25.06(B)(1), to reflect evidence indicating that limited orthodontic treatment is an effective preventive approach to avoid severe malocclusion.

6. The Department updated Section 25.03-5(E) to not require a PA for the first unit of SRP delivered to each quadrant but will require PA for the second unit and any additional units of SRP delivered to each quadrant. For example, SRP delivered for the first time to the first quadrant will not require PA, but a PA is required to deliver SRP again to the first quadrant.

7. The Department will no longer require risk assessment results and a PA that includes those results to authorize a third prophylaxis treatment. Instead, a third prophylaxis treatment per year will be permissible without PA if the member meets the criteria added to Section 25.03-2(A).

8. The Department clarified in Section 25.03-9(F) that behavior management is covered when behavior delays, as well as prevents, a covered service from being delivered, meaning providers may bill behavior management whether a covered service is delivered or not. The Department also increased the limit from three times per member per lifetime per service location to three times per member per year per service location.

9. The Department clarified the limit for bitewings in Section 25.03-1(B).

10. The Department re-added coverage for diagnostic casts (CDT code D0470) in Section 25.03-1(F) because they enable orthodontic treatment planning.

11. The Department removed the PA requirement for replacement of lost or broken retainers in Section 25.03-8(G).

12. As a result of comments, in Section 25.05-3, the Department clarified that “year” in the context of service limits defined on a “per year” basis means calendar year. For any limit that is defined on a multi-year basis, each “year” means a rolling 365-day period or the 365 days following the date of the delivery of the first covered service subject to the limit. For example, a “two per three years” limit means a member cannot receive more than two of the specified services in any given 1,095-day period.

13. The Department removed the PA requirement for sedation in Section 25.03-9(A).

14. The Department removed the PA requirement for crowns for members under the age of 21 in Section 25.03-3(B).

15. The Department revised the definition for dental extern because the Board no longer issues permits to dental externs.

16. The Department redefined “dental resident” to mean “any person with a resident dental license, as defined in 32 MRS §18302.”

17. The Department clarified in Section 25.03-6(A) that replacement dentures are covered when they are no longer sufficiently functional and there is not a cost-efficient way to repair them, not when they are “medically necessary,” because dentures are not technically medically necessary.

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

EFFECTIVE DATE: September 28, 2022

AGENCY CONTACT PERSON: Henry Eckerson, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4085. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: [Henry.Eckerson@Maine.gov](mailto:Henry.Eckerson@Maine.gov).

STATUTORY AUTHORITY: 22 MRS §§ 42, 3173; PL 2021 Ch. 398 Sec. A-17 Part CCC

OMS WEBSITE: <http://www.maine.gov/dhhs/oms/>.

OMS RULEMAKING LIAISON: [Jennifer.Patterson@Maine.gov](mailto:Jennifer.Patterson@Maine.gov).

DHHS WEBSITE: <http://www.maine.gov/dhhs/>.

DHHS RULEMAKING LIAISON: [Sara.Gagne-Holmes@Maine.gov](mailto:Sara.Gagne-Holmes@Maine.gov).

AGENCY: **13-188 - Department of Marine Resources (DMR)**

CHAPTER NUMBER AND TITLE: **Ch. 36**, Atlantic Herring: 2022 Season 2 Harvest Controls

ADOPTED RULE NUMBER: **2022-195**

CONCISE SUMMARY: During the Days Out meeting held on September 14, 2022, the Days Out Commissioners set zero landing days for October 1 through November 6, 2022 at 5:59 pm. The Days Out Commissioners designated four landing days for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Thursday at 6:00 p.m., beginning on Sunday, November 6, 2022 at 6:00 p.m. contingent upon receipt of the 1,000 mt quota transfer from the management uncertainty buffer associated with catches from the Canadian weir fishery. If the quota transfer does not occur as anticipated prior to October 31, 2022, there will be another Days Out meeting to determine next steps. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

EFFECTIVE DATE: September 29, 2022

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