**State of Maine: Notice of Agency Rulemaking – October 26, 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.

**PROPOSALS**

AGENCY: **10-144- Department of Health and Human Services (DHHS)**

CHAPTER NUMBER AND TITLE: **Ch. 1**, Administrative Hearing Regulations

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER **2022-P195**

**BRIEF SUMMARY**: The proposed rule does the following: adds language regarding remote hearings and exchange of exhibit deadlines; revises subpoena process; updates references to Department programs; clarifies when a decision becomes final agency action; revises deadlines for requesting correction of decisions or re-opening the record; updates grammar and definitions; and describes process for Hearing Officer to control proceedings.

**DETAILED SUMMARY**:The rule replaces references to the Office of Administrative Hearings to the Division of Administrative Hearings to reflect the current structure of the Department.

The rule updates statutory references and revises the subpoena issuance process to reflect 22-A MRS §207 and to clarify language.

The rule substitutes the term “appellant” for the term “claimant” so that the language more accurately describes the role of the parties.

The rule adds or further defines the terms of Authorized Representative, Chief Administrative Hearing Officer, Commissioner, Irrelevant evidence, Party, Preponderance of the Evidence, Stipulation, and Unduly Repetitious Evidence.

The rule adds language to clarify that hearings can be held remotely by telephone or by videoconferencing.

The rule replaces references to “Food Stamps” and “AFDC” with the updated programs of SNAP and TANF.

The rule adds language regarding deadlines for exchanging exhibits and revises deadlines for the Department to provide access to the case file.

The rule adds language clarifying the process that the Hearing Officer should use to warn and control disorderly persons in a hearing.

The rule revises the process regarding how and when a good cause hearing will be held to reinstate a hearing after a party fails to appear.

The rule removes an unnecessary note regarding hearsay evidence.

In general, the rule revises grammar and re-arranges the order of the regulation to provide better clarity. The rule revises deadlines for requesting corrections and re-opening the record. The rule clarifies when a decision becomes final agency action.

**PUBLIC HEARING**: No public hearing is anticipated.

COMMENT DEADLINE: November 28, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Joseph Pickering, Esq., Division of Administrative Hearings, 11 State House Station, Augusta, ME 04333-0011. Telephone: (207) 624-5350. Fax: (207) 287-8448. TTY: Dial 711 (Maine Relay). Email: Joseph.Pickering@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 5 MRS §§ 8051-10004, 22 MRS §42, 22-A MRS §207

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

AGENCY WEBSITE: <https://www.maine.gov/dhhs>

DHHS RULEMAKING LIAISON: Sara.Gagne-Holmes@Maine.gov.

AGENCIES: **10-144** - Maine Department of Health and Human Services (DHHS), **Maine Center for Disease Control and Prevention (MaineCDC)**, *and* **Maine Department of Environmental Protection (DEP)**

CHAPTER NUMBER AND TITLE: **Ch. 263**, Maine Comprehensive And Limited Environmental Laboratory Accreditation Rule

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P196, P197**

BRIEF SUMMARY: The Department of Health and Human Services – Maine Center for Disease Control and Prevention (DHHS) is proposing routine technical rule changes jointly with the Department of Environmental Protection (DEP) to amend the *Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule* to establish a revised fee schedule based on the cost of certifying or accrediting laboratories, pursuant to 22 MRS §567(4). The DHHS and DEP are proposing to amend the rates per test method category, which increase the total biennial accreditation fee (the base fee, the test method fees, and when applicable, the on-site inspection fee). Specifically, the proposed rule changes include a $200 rate increase for limited laboratory accreditation (annual or biennial) and specifies a fee of $50 for additional methods requested outside of certification. The laboratories subject to this rule will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed. Additional rule changes propose to update the citations for the applicable federal regulations from 2017 to the most current year to date (2022) in accordance with 40 CFR Parts 63, 136, 141, 258, 260-261, 264-266, 268, 270-271 and 279, and to allow for the use of the most recently EPA-approved methods when the alternative method is approved by DHHS and DEP, after the rule is promulgated. Proposed changes also include: 1) adding a reference to Table IA under the waste water program methods; 2) adding a definition for *duplicate* and *field duplicate;* 3) clarifying *accrediting body* in Section 2 subsection (A)(2)(a); 4) specifying that the written management review and management team meeting will be completed within the first quarter of each calendar year; 5) adding actual mass/volume of sample analyzed to the components of test reports; 6) clarifying that, for the required analytical method SOP, references must include method revision number or letter and publication date; 7) requiring labs that fail a second proficiency test to notify the Maine Laboratory Accreditation Program (MLAP); and 8) incorporating ‘enterococcus’ in the alphabetized list of pollutants for which laboratories operated by wastewater discharge facilities licensed pursuant to 38 MRS §413 may analyze wastewater discharges. Proposed rule changes also include minor grammatical and formatting changes to improve rule clarity and readability.

PUBLIC HEARING: 9 a.m.; November 17, 2022, Marquardt Building, 32 Blossom Lane, Augusta, ME 04330 (Door 7, Eastside entrance). *Persons may observe but not participate in the meeting via live stream (Zoom) at:* [*https://mainestate.zoom.us/j/81067449078*](https://mainestate.zoom.us/j/81067449078)*. Or join by phone: 1 (312) 626-6799; Webinar ID: 810 6744 9078.*

COMMENT DEADLINE: November 28, 2022

CONTACT PERSONS FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: **DHHS Maine CDC**: Bridget Bagley; 286 Water Street - 11 State House Station, Augusta, ME 04333. Telephone: (207) 287-9394. Fax: (207) 287-5807. TTY: 711; Email: Bridget.Bagley@Maine.gov. **DEP**: Matthew R. Hight, 17 State House Station, Augusta, ME 04333. Telephone: (207) 719-0703. Fax: (207) 822-6303. TTY: 711; Email: Matt.Hight@Maine.gov.

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

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §567

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

AGENCY RULES WEBSITES: <https://www.maine.gov/dhhs/mecdc/rules/>; <https://www.maine.gov/dep/rules/index.html>.

AGENCY RULEMAKING LIAISONS: **DHHS Maine CDC**: Tera.Pare@Maine.gov; **DEP**: Mark.T.Margerum@Maine.gov.

DEP WEBSITE: <https://www.maine.gov/dep/>.

MAINECDC WEBSITE: <https://www.maine.gov/dhhs/mecdc/>.

AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

CHAPTER NUMBER AND TITLE: **Ch. 27**, Transfers of Ownership Interests

PROPOSED RULE NUMBER: **2022-P198**

BRIEF SUMMARY: This rule sets forth the requirements and procedures for obtaining the consent of MaineHousing to changes of ownership interests in multifamily and supportive housing projects that have funding or an allocation of tax credits from MaineHousing. The Rule applies to the transfer of a project to a new owner along with the assumption by the new owner of the existing MaineHousing obligations. The rule also applies to the transfer of a direct or indirect ownership interest in a business entity that continues to own the project. This rule does not address criteria for modifying the term or amount of any MaineHousing obligation in connection with a proposed change of ownership interest. This rule repeals and replaces in its entirety the current *Transfer of Ownership Interests* rule.

A copy of the proposed replacement rule may be found at [www.mainehousing.org/about/rules](http://www.mainehousing.org/about/rules).

PUBLIC HEARING: A public hearing will be held on Tuesday, November 15, 2022 at 9:30 a.m. at Maine State Housing Authority, 26 Edison Drive, Augusta, Maine. *To listen or testify virtually, please contact Gerrylynn Ricker no later than 5:00 p.m. on Thursday, November 10, 2022 at MaineHousing, 26 Edison Drive, Augusta, Maine 04330-6046; (207) 626-4600 (voice); 1 (800) 452-4668 (voice in state only); or 711 (Maine Relay) or via e-mail:* *gricker@mainehousing.org**.*

*Maine State Housing Authority’s office and the hearing room are accessible to persons with disabilities and, upon sufficient notice, appropriate communications auxiliary aids and services will be provided to persons with disabilities and persons with limited English proficiency.*

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / AGENCY RULEMAKING LIAISON: Ashley Janotta, Chief Counsel, Maine State Housing Authority, 89 State House Station - 26 Edison Drive, Augusta, Maine 04330-6046. Telephone: (207) 626-4600, (800) 452-4668 (voice in state only), or Maine Relay 711. Email: ajanotta@mainehousing.org. *Upon sufficient notice, this notice and the proposed rule will be made available in alternative formats for persons with disabilities and in alternative languages for persons with limited English proficiency.*

COMMENT DEADLINE: Friday, November 25, 2022 at 5:00 p.m.

IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 30-A MRS §4741.1

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: Same as above.

AGENCY WEBSITE: <https://mainehousing.org/>.

AGENCY: **99-420 - Maine Turnpike Authority**

CHAPTER NUMBER AND TITLE: **Ch. 1**, Rules Governing the Use of the Maine Turnpike

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P199**

**BRIEF SUMMARY**: This rule change would lower the speed limit to 55 miles per hour south of mile maker .7 on the Maine Turnpike. It would also limit parking at concession areas to four hours, with an exception for commercial vehicle drivers to facilitate compliance with hours of service requirement. It also addresses parking in electric vehicle charging spaces at concession areas.

This rule would also specify more specifically certain activities which are not allowed at MTA service plazas, expanding the current list to include demonstrating, picketing, and solicitation of signatures or donations.

This rule also clarifies the procedure for approval of night moves of over limit vehicles.

**DETAILED SUMMARY:** This rule change would lower the speed limit to 55 miles per hour south of mile maker .7 on the Maine Turnpike. This is necessary because the southbound acceleration lane approaching the Piscataqua River Bridge is shorter during times when shoulder use by traffic is allowed on the bridge. It will also be consistent with the speed limit on the New Hampshire side of the bridge.

This rule change would limit parking at concession areas to four hours, with an exception for commercial vehicle drivers to facilitate compliance with hours of service requirement. It would also address parking in electric vehicle charging spaces at concession areas by stating that parking will be governed by posted rules in these spaces but that in no event should electric vehicles be parked in these spaces for longer than it takes to acquire a full charge.

This rule would also strengthen the current prohibition on solicitation at the MTA’s service plazas and specify more specifically certain activities which are not allowed at MTA service plazas, expanding the current list to include demonstrating, picketing, and solicitation of signatures or donations.

This rule change also clarifies the procedure for approval of night moves of over limit vehicles. It does this by removing the requirement that representatives of the State Police other than the troop commander may approve night moves of over limit vehicles on the Maine Turnpike. The rule change would also replace the requirement that a State Police escort accompany every night move with a provision that the MTA and/or the State Police may require a State Police escort if one is required in either agency’s judgment. The primary purpose of this rule change is to facilitate movement of equipment by MTA contractors so that equipment is not unnecessarily left on or adjacent to travel lanes during hours of heavier traffic.

**PUBLIC HEARING**: November 17th – 9 a.m., MTA Headquarters Bldg., Maine Turnpike Authority, 2360 Congress Street, Portland, Maine 04102

COMMENT DEADLINE: November 28th

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / AGENCY RULEMAKING LIAISON: Jonathan Arey, Maine turnpike Authority, 2360 Congress Street, Portland, Maine 04102. Telephone:(207) 482-8136. Email: JArey@MaineTurnpike.com.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 23 MRS §1965

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

AGENCY WEBSITE: <https://www.maineturnpike.com/>.

**ADOPTIONS**

AGENCY: **01-015** – Department of Agriculture, Conservation and Forestry (DACF), **Maine Milk Commission (MMC)**

CHAPTER NUMBER AND TITLE: **Ch. 3**, Schedule of Minimum Prices, **Order #11-22**

ADOPTED RULE NUMBER: **2022-211** *(Emergency)*

CONCISE SUMMARY: Minimum November 2022 Class I price is $27.34/cwt. plus $1.58/cwt. for Producer Margins, an over-order premium of $1.04/cwt. as being prevailing in Southern New England and $0.47/cwt. handling fee for a total of $30.63/cwt. that includes a $0.20/cwt. Federal promotion fee.

EFFECTIVE DATE: October 30, 2022

MMC CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION / RULEMAKING LIAISON: Julie-Marie R. Bickford, Maine Milk Commission – DACF, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Julie-Marie-Bickford@Maine.gov.

MMC WEBSITE: <https://www.maine.gov/dacf/milkcommission/index.shtml>.

DACF WEBSITE: <https://www.maine.gov/dacf/>.

DACF RULEMAKING LIAISON: Shannon.Ayotte@Maine.gov.

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 45**, “Hospital Services”, *and* **Ch. III Section 45**, “Principles of Reimbursement for Hospital Services”

ADOPTED RULE NUMBER: **2022-212**

CONCISE SUMMARY: This letter gives notice of adopted rule: 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. II Section 45, “Hospital Services”, and Ch. III Section 45, “Principles of Reimbursement for Hospital Services”.

The Department adopts the following changes:

**A. Ch. II Section 45, Hospital Services**

The adopted rule adds Outpatient Partial Hospitalization Services as a covered service for MaineCare members. These services may be offered by Acute Care Non-Critical Access Hospitals, Acute Care Non-Critical Access hospital-based clinics, or in a distinct part of the Acute Care Non-Critical Access Hospital, if allowed by the Hospital’s license. These programs provide intensive psychiatric care that is more intensive than outpatient day treatment but less intensive than an inpatient program. Upon admission, a physician must certify that the member would need inpatient hospitalization services if the partial hospitalization services were not provided. The certification must include the diagnosis and psychiatric need for partial hospitalization. The adopted rule also allows for Certified Intentional Peer Support Specialist (someone who has undergone the training for this specialty and who maintains their certification) to be part of the multi-disciplinary team that provides Outpatient Partial Hospitalization Services.

After public comment, the Department declined to adopt the proposed rule change that required Hospital Emergency Departments to make referrals to designated Health Home providers. Instead, the adopted rule requires that Hospital Emergency Departments include discharge instructions for eligible individuals with chronic conditions to contact designated Health Home providers as required under the *Social Security Act* (SSA), Title 19, 42 USC Section 1945(d).

After public comment, the Department received CMS approval for several changes to the rule and updated the language in the adopted rule to reflect these approvals. The Department finds that these changes are necessary to improve clarity in the rules and to accurately reflect CMS’ approval.

**B. Chapter III Section 45, Principles of Reimbursement for Hospital Services**

The adopted rule adds Ch. III Sec. 45.07, Value-Based Purchasing (VBP) Supplemental Sub-Pool, pursuant to PL 2021 ch. 398. The VBP Supplemental Sub-Pool distributes $600,000 annually, to eligible hospitals (acute care non-critical access, critical access, and hospitals reclassified to a wage area outside of Maine) that participate in the MaineCare Accountable Communities initiative (defined by Ch. III Sec. 45.01-1). The funds are distributed based on performance of one or more quality measures. The Department ranks each eligible hospital based on the quality measures and allocates the funds according to performance, weighted by its Hospital Service Area.

Pursuant to Resolves 2021, Ch. 119, the adopted rule also provides reimbursement for members discharged from Southern Maine Health Care’s psychiatric inpatient unit in the amount of $10,166 per distinct discharge effective retroactively to October 1, 2021.

The adopted rule also eliminates the need for annual rulemaking to update the supplemental pool amounts. The specific dollar amounts for the supplemental pools have been removed from the rule and replaced with a link to the MaineCare website and a phone number, which the public can call for detailed information on annual supplemental pool amounts. Ch. III Sec. 45.04-1(C); 45.08.

The proposed rule included a change to Ch. III Sec. 45.03(3), which would have removed payments for graduate medical education costs in non-rural hospitals. After reviewing the public comments, the Department declines to adopt this provision of the proposed rule. The original language of this section remains unaltered in the adopted rule.

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

EFFECTIVE DATE: October 24, 2022

OMS CONTACT PERSON: Derrick Grant, Special Projects, Division of Policy, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6931. Fax: (207) 287-6106. TTY users call Maine relay 711. Email: Derrick.Grant@Maine.gov.

OMS RULEMAKING LIAISON: Jennifer.Patterson@Maine.gov.

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

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

DHHS RULEMAKING LIAISON: Sara.Gagne-Holmes@maine.gov.