**State of Maine: Notice of Agency Rulemaking – November 1, 2023**

**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: **94-457 - Finance Authority of Maine**

CHAPTER NUMBER AND TITLE: **Ch. 612,** Amendment 5 – Maine Dental Education Loan and Loan Repayment Programs

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P228**

BRIEF SUMMARY: This rule defines criteria necessary to be met for student and practitioner eligibility for participation in the Maine Dental Education Loan and Loan Repayment Programs and establishes a procedure for awarding loans and loan repayments.

ADDITIONAL INFORMATION FOR WEB PUBLICATION:The rule amendments implement recent changes by the Legislature to the governing program statute for the Maine Dental Education Loan and Loan Repayment Programs. These changes include expanding, without any additional funding, eligibility for the Maine Dental Education Loan and Loan Repayment Programs to include dental hygienists, dental therapists, expanded function dental assistants, and dental assistants. FAME will continue to award up to three loans or loan repayment agreements annually for dentists (or more if funds permit), and also award up to six loans or loan repayment agreements annually for dental hygienists, dental therapists, expanded function dental assistants, or dental assistants if funds permit.

PUBLIC HEARING: None scheduled. One would be scheduled at the request of five or more parties.

COMMENT DEADLINE: December 1, 2023

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: William Norbert, Esq., Finance Authority of Maine, PO Box 949, 5 Community Dr., Augusta, ME 04332-0949. Telephone: 207-623-3263. Email: wnorbert@famemaine.com.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None.

STATUTORY AUTHORITY FOR THIS RULE: 10 M.R.S.A. § 969-A; 20-A M.R.S.A. § 12305

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

AGENCY WEBSITE: [www.famemaine.com](http://www.famemaine.com)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: croney@famemaine.com

AGENCY: **94-457 - Finance Authority of Maine**

CHAPTER NUMBER AND TITLE: **Ch. 617,** Amendment 2 – Health Professions Loan Program

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P229**

BRIEF SUMMARY: This rule amends the definition of “financial need” under the Health Professions Loan Program as a result of federal legislation eliminating the term “Expected Family Contribution,” which was formerly used in the financial aid award process.

ADDITIONAL INFORMATION FOR WEB PUBLICATION: The amendment changes the definition of “financial need” in the program rule as a result of enactment at the federal level of the FAFSA Simplification Act, which made significant changes to federal student aid, including the FAFSA form. The act replaced the term “Expected Family Contribution” (EFC) with the term “Student Aid Index” (SAI) beginning in the 2024–25 award year.

PUBLIC HEARING: None scheduled. One would be scheduled at the request of five or more parties.

COMMENT DEADLINE: December 1, 2023

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: William Norbert, Esq., Finance Authority of Maine, PO Box 949, 5 Community Dr., Augusta, ME 04332-0949. Telephone: 207-623-3263. Email: wnorbert@famemaine.com.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None.

STATUTORY AUTHORITY FOR THIS RULE: 10 M.R.S.A. § 969-A; 20-A M.R.S.A. §12107

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

AGENCY WEBSITE: [www.famemaine.com](http://www.famemaine.com)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: croney@famemaine.com

AGENCY: **94-457 - Finance Authority of Maine**

CHAPTER NUMBER AND TITLE: **Ch. 618,** Amendment 3 – Maine Veterinary Medicine Loan Program

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P230**

BRIEF SUMMARY: This rule amends the definition of “financial need” under the Maine Veterinary Medicine Loan Program as a result of federal legislation eliminating the term “Expected Family Contribution,” which was formerly used in the financial aid award process.

ADDITIONAL INFORMATION FOR WEB PUBLICATION: The amendment changes the definition of “financial need” in the program rule as a result of enactment at the federal level of the FAFSA Simplification Act, which made significant changes to federal student aid, including the FAFSA form. The act replaced the term “Expected Family Contribution” (EFC) with the term “Student Aid Index” (SAI) beginning in the 2024–25 award year.

PUBLIC HEARING: None scheduled. One would be scheduled at the request of five or more parties.

COMMENT DEADLINE: December 1, 2023

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: William Norbert, Esq., Finance Authority of Maine, PO Box 949, 5 Community Dr., Augusta, ME 04332-0949. Telephone: 207-623-3263. Email: wnorbert@famemaine.com.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None.

STATUTORY AUTHORITY FOR THIS RULE: 10 M.R.S.A. § 969-A; 20-A M.R.S.A. §12124

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

AGENCY WEBSITE: [www.famemaine.com](http://www.famemaine.com)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: croney@famemaine.com

AGENCY: **05-071 - State Board of Education**

CHAPTER NUMBER AND TITLE: **Ch. 61,** State Board Of Education Rules For Major Capital School Construction Projects

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2023-P231**

BRIEF SUMMARY: As a result of the First Special Session of the 131st Maine Legislature, The State Board of Education is engaging in rulemaking in response to Public Law 2023, Chapter 462, “An Act to Expand Access to School Construction Funding” effective October 25, 2023 which directs the State Board to amend their rule regarding administering funding for integrated, consolidated 9-16 educational facilities.

As part of this update, The State Board of Education is opening Rule Chapter 61: State Board Of Education Rules For Major Capital School Construction Projects to complete the legislative changes required by law and is proposing several other changes.

PUBLIC HEARING: November 21, 2023, 9:00-11:00 am Burton Cross Office Building, located at 111 Sewall Street, Augusta, Maine 04333, Room 103.

COMMENT DEADLINE: December 1, 2023

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Laura Cyr, Department of Education, 23 SHS, Augusta, ME 04333. Telephone: 207-446-8791. Email: Laura.Cyr@maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*:  None

STATUTORY AUTHORITY FOR THIS RULE:

20-A M.R.S.A. §3

20-A M.R.S.A. §405(3)(J)

20-A M.R.S.A. §15905 sub-§4

P.L 2023, Chapter 462

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

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Laura.Cyr@maine.gov

AGENCY: 01-015 – Department of Agriculture, Conservation and Forestry,

**Maine Milk Commission**

CHAPTER NUMBER AND TITLE: **Ch. 26,** Cost of Production/Producer Margins

Type of Rule: Major Substantive

PROPOSED RULE NUMBER: **P2023-P232**

BRIEF SUMMARY: This study researches the cost of producing milk on Maine farms at multiple size levels using data from the year 2022. The information is used to frame the Commission’s monthly discussions to set the Producer Margin as part of the pricing order. This is a major substantive rule that will impact the Maine Dairy Stabilization “Tier” Program.

PUBLIC HEARING: November 22, 2023, Wednesday, starting at 4:00 P.M. Room 101, Department of Agriculture, Conservation & Forestry, Deering Building, 90 Blossom Lane, Augusta, Maine and via Microsoft Teams (link available at <https://www.maine.gov/dacf/milkcommission/index.shtml> )

COMMENT DEADLINE: December 4, 2023, 5:00 p.m.

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT:

Julie-Marie Bickford, Maine Milk Commission, 28 SHS, Augusta, ME 04333. Telephone: 207-287-7521. Email: Julie-Marie.Bickford@maine.gov

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: 5 M.R.S.A. Section 8054 and 7 M.R.S.A., Section 2954

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

AGENCY WEBSITE: <http://www.maine.gov/dacf/milkcommission/index.shtml>

EMAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: Julie-Marie.Bickford@maine.gov

**ADOPTIONS**

AGENCY: **01-015,** Department of Agriculture, Conservation and Forestry, **Maine Milk Commission**

CHAPTER NUMBER AND TITLE: **Ch. 3,** Schedule of Minimum Prices, Order #11-23

ADOPTED RULE NUMBER: **2023-194**

CONCISE SUMMARY:Minimum November 2023 Class I price is $23.00/cwt. plus $1.63/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 $26.34/cwt. that includes a $0.20/cwt Federal promotion fee.

EFFECTIVE DATE: October 29, 2023

AGENCY CONTACT PERSON/ RULEMAKING LIAISON: Julie-Marie Bickford, Maine Milk Commission, 28 State House Station, Augusta ME 03333. Telephone: (207) 287-7521. Email Julie-Marie.Bickford@Maine.gov

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

AGENCY:29-250 - Secretary of State, **Bureau of Motor Vehicles**

CHAPTER NUMBER AND TITLE: **Ch.101** (New), Electronic Lien Titling Program

ADOPTED RULE NUMBER:**2023-195**

CONCISE SUMMARY:This rule implements 29-A M.R.S.A. §651-A, which authorizes the Secretary of State to operate an Electronic Lien Titling Program (ELT) permitting the creation and exchange of an electronic record for maintaining vehicle title and lien information. As per §651-A, participation in the program is optional for ELT Lienholders. The proposed Rule stipulates requirements for enrolling in the program as required by statute. Additionally, the Rule outlines expectations for participants regarding work to be performed, future development, and privacy.

EFFECTIVE DATE: October 30, 2023

AGENCY CONTACT PERSON:Catherine Curtis, Deputy Secretary of State, Bureau of Motor Vehicles, 29 State House Station, Augusta, ME 04333-0029. Telephone: (207) 624-9003. Email: Catherine.Curtis@maine.gov

BMV WEBSITE: <https://www.maine.gov/sos/bmv/>

BMV RULEMAKING LIAISON: Tina.B.Corkum@Maine.gov.

AGENCY: **10-144** - Department of Health and Human Services, **Maine Center for Disease Control and Prevention**

CHAPTER NUMBER AND TITLE: **Ch. 265,** Substance Use Testing For The Workplace Rule

ADOPTED RULE NUMBER: **2023-196**

CONCISE SUMMARY:Adopted rule changes amend 10-144 CMR ch. 265, formerly entitled Drug Testing Laboratory Rules, to be consistent with updates to the Maine Department of Labor’s (DOL) best practices and statute (26 MRS ch. 7, subch. 3-A -Substance Use Testing). The adopted rule is consistent with the proposed rule. Changes include: 1) updates to protocols in Section 2 of the rule specific to the collection of hair, oral fluids and sweat patches for drugs; 2) revised cut-off levels for substance-use tests to be consistent with current levels established by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration; 3) a revised list of proficiency testing programs; 4) updates to testing technology for screening tests; and 5) revised protocols for sample storage. In Section 3 of the rule, the Department amended a reordered list of substances and added the following substances to the list of substances for which an employer may test: *buprenorphine, fentanyl, hydrocodone, hydromorphone, oxycodone, oxymorphone, and propoxyphene* for urine testing and clarify metabolites, where applicable. Additionally, this rule adoption clarifies the Department’s discretionary authority over inspections and, in the definition section of the rule, clarifies *confirmed positive result*, *screening test*, and *confirmation test*. Grammatical and technical corrections, a new title (*Substance Use Testing For The Workplace Rule*), changes to format and other minor non-substantive changes have been adopted for clarity and conformity to agency standards for improvement of the rule.

EFFECTIVE DATE: November 1, 2023

AGENCY CONTACT PERSON:Bridget Danis, Policy Analyst; Maine CDC , 11 SHS, 286 Water Street, Augusta, ME 04333-0011; Fax: (207) 287-2887; Telephone: (207) 287-9394; TTY: 711;EMAIL Bridget.Danis@maine.gov

AGENCY WEBSITE: <http://www.maine.gov/dhhs/mecdc/rules/>

DEPARTMENT RULES WEBSITE:<https://www.maine.gov/dhhs/about/rulemaking>

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

DHHS RULEMAKING LIAISON: Emily.A.Cathcart@Maine.gov.

AGENCY: **16-633 –** Department of Public Safety, **Gambling Control Unit**

CHAPTER NUMBERS AND TITLES: **Regulation of Sports Wagering**

**Ch. 50,** Introduction

**Ch. 51,** Definitions

**Ch. 52,** License Application, Fee and Renewal

**Ch. 53,** Internal Controls

**Ch. 54,** Facility Operator Operational Requirements

**Ch. 55,** Physical Premise Requirements

**Ch. 56,** House Rules

**Ch. 57,** Sports Wagering System Requirements

**Ch. 58,** Sports Wagers

**Ch. 59,** Sports Wagering Kiosks

**Ch. 60,** Sports Wagering Accounts

**Ch. 61,** Sports Wagering Revenue Reconciliations

**Ch. 62,** Geolocation and Remote Access

**Ch. 63,** Responsible Wagering Program

**Ch. 64,** Advertising and Promotions

**Ch. 65,** Management Service Contract Criteria

**Ch. 66,** Complaints and Disciplinary Actions

ADOPTED RULE NUMBERS: **2023-197 *to* 2023-213**

CONCISE SUMMARY:These rule chapters establish the requirements for sports wagering licensing and compliance, pursuant to the recently enacted Chapter 35 of Title 8, Regulation of Sports Wagering. 8 M.R.S. §§1201-1219. The rules establish licensing criteria, technical and physical operational requirements, and compliance standards related to wagering systems, accounts, responsible gaming, and advertising and promotions, and establish a complaint process.

EFFECTIVE DATE: October 29, 2023

AGENCY CONTACT PERSON / RULEMAKING LIAISON: Milton Champion, Department of Public Safety, Gambling Control Unit, 45 Commerce Blvd., Augusta, ME 04333. Telephone: (207) 626-3900; Email: Milton.F.Champion@Maine.gov
AGENCY WEBSITE: <https://www.maine.gov/dps/gamb-control/index.html>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Paul.F.Cavanaugh@Maine.gov.

AGENCY: **01-001 - Department of Agriculture, Conservation and Forestry**

CHAPTER NUMBER AND TITLE: **Ch. 266,** Hemlock Woolly Adelgid Quarantine

ADOPTED RULE NUMBER: **2023-214**

CONCISE SUMMARY: This proposed rule modifies the existing Hemlock Woolly Adelgid quarantine by adding 112 Minor Civil Divisions in Maine and additional civil divisions in other states and Canadian provinces that have been found to be infested with this pest to the area under quarantine.

EFFECTIVE DATE: October 30, 2023

AGENCY CONTACT PERSON/RULEMAKING LIAISON: Shannon Ayotte, Dept. of Agriculture, Conservation and Forestry, 22 State House Station, Augusta, ME 04333. Telephone: 207-287-5976. Email: Shannon.Ayotte@Maine.gov.

AGENCY WEB SITES:

HWA Quarantine: <https://www.maine.gov/dacf/mfs/forest_health/quarantine_information.html#hwa>

**Department of Agriculture, Conservation and Forestry:** <https://www.maine.gov/dacf>.

AGENCY: **01-001 - Department of Agriculture, Conservation and Forestry**

CHAPTER NUMBER AND TITLE: **Ch. 272,**  European Larch Canker Quarantine

ADOPTED RULE NUMBER: **2023-215**

CONCISE SUMMARY: This rule extends a state quarantine against the European larch canker to prevent its movement from 271 additional civil divisions to other parts of the State in order to protect Maine's forest and landscape tree resources. The European larch canker is federally regulated, and this rule fulfills the requirement that Maine must have a similar state quarantine in place because the state is partially regulated for European larch canker.

EFFECTIVE DATE: October 30, 2023

Agriculture, Conservation and Forestry, 22 State House Station, Augusta, ME 04333. Telephone: 207-287-5976. Email: Shannon.Ayotte@Maine.gov.

AGENCY WEB SITES:

ELC Quarantine: <https://www.maine.gov/dacf/mfs/forest_health/quarantine_information.html#elc>.

**Department of Agriculture, Conservation and Forestry:** <https://www.maine.gov/dacf>.

**AGENCY:** **10-144 -** Department of Health and Human Services, **Office of MaineCare Services, Division of Policy**

CHAPTER NUMBER AND TITLE: **Ch. 101,** MaineCare Benefits Manual, **Ch. II Section 60,** Medical Supplies and Durable Medical Equipment

ADOPTED RULE NUMBER: **2023-216**

CONCISE SUMMARY: This adopted rule makes the following changes. The citations used below reflect the provisions in the adopted rule, unless otherwise specified.

* Adds a definition for “qualified provider” and indicates that qualified providers, rather than specific provider types, can prescribe and conduct face-to-face evaluations. This change aligns with Medicare’s requirements and will ensure the policy remains current with evolving federal and state requirements.
* Deletes the definition of “Providers of Medical Supplies and Durable Medical Equipment” and moved most of the definition into Section 60.04, Provider Requirements, because this is a substantive provision and more than a definition. The Department adds an exception to the requirement of having a storefront in Maine or within 15 miles of the border if the Department, in its sole discretion, determines that waiving that requirement is in the best interest of the MaineCare program. Additionally, Section 60.04(5) is taken from the former Section 60.01-12(C).
* Renumbers the current Section 60.05, Policies and Procedures, to 60.06, Policies and Procedures.
* Creates Section 60.06-1, Face-to-Face Encounter, which largely contains content from current Section 60.05. The Department adopts a few changes to the content, such as providing that the written order may be, but does not have to be, prescribed by the provider who performed the face-to-face encounter.
* Removes the requirement in 60.06-1, Face-to-Face Encounters, that DME providers must inform members prior to the provision of DME that is not covered by MaineCare that the member will be responsible for payment because this requirement is already included in 10-144 C.M.R., Chapter 101, Chapter I, Section 1.
* Re-names and re-numbers Section 60.05-1, Requirements, to Section 60.06-2, Medical Supplies and DME Requirements.
* Allows qualified providers, rather than a physician or PCP, to prescribe medical supplies and DME in Section 60.06-2(B) because different provider types can prescribe medical supplies and DME within their scope of practice.
* Removes current Section 60.06-2(I) which contains information regarding prior authorization (PA) and the Department’s Health PAS Portal because it is already included elsewhere in the policy.
* Adds the requirement in Section 60.06-2(I) that a physician or qualified provider must review a member’s need for DME and supplies annually, as required by 42 CFR 440.70(b)(3)(iii).
* In Section 60.06-2(J), requires a “prescribing provider,” rather than a “prescribing physician,” to maintain the referenced documentation, including the name of the “qualified provider,” rather than the “physician, nurse practitioner, physician assistant or clinical nurse specialist,” who performed the face-to-face encounter.
* In Section 60.06-3(F), requires providers to retain, rather than submit, documentation that applicable equipment can freely pass through all entryways without the need for modification or, if applicable, that necessary modifications or structural changes occurred prior to the PA request. Medicare uses this policy, and it is reasonable for MaineCare to utilize this policy.
* Adds that the Department shall rent and/or purchase items consistent with Medicare practices in Section 60.06-4.
* In Section 60.06-7, Replacement of DME, moves the last sentence in the provision regarding when replacement will not be allowed, to the beginning of this provision and added a sentence that DME that is functioning properly will not be replaced unless a change in the member’s condition requires a change of DME.
* In Section 60.06-8, to align with 42 CFR § 440.70, removes the requirement that medical supplies and DME may be provided to members residing in their own homes and clarifies that medical supplies and DME may be provided for use in any setting in which normal life activities take place, other than a hospital or any setting in which payment is or could be made under MaineCare for inpatient services that include room and board.
* In Section 60.06-9, clarifies that the regular rate of reimbursement for nursing facilities and intermediate care facilities for individuals with intellectual disabilities is intended to include DME upgrades and add-ons.
* Moves the content of former Section 60.06-2, Prior Authorization, into Section 60.07, Prior Authorization Requirements.
* Removes the current rule provision Section 60.06-2(2), Orthotics and Prosthetic DME, because it contains redundant requirements and unnecessary definitions.
* Moves the content from Section 60.05-8, Prosthetics, and Section 60.12(L), Orthotics & Prosthetics, to new Section 60.08-2, Orthotics and Prosthetics, and makes a few changes to clarify language.
* Adds Section 60.08-3, Augmentative and Alternative Communication Devices, requiring members to trial augmentative and alternative communication devices before the Department will rent or purchase the devices. It is standard industry practice for patients to trial these devices before purchasing, and manufacturers and providers are accustomed to this. Currently, this is a PA-based requirement that is on the Department’s website.
* Moves Section 60.12(Z) to Section 60.08-4, Specially Modified Foods and Formulas, which provides that specially modified foods and formulas are covered when the member has inborn errors of metabolism. The Department no longer allows members to receive specially modified foods and formulas when they have “a qualifying medical condition where the most effective and appropriate form of caloric or nutritional intake is orally” because it lacks specificity. Members will continue to be eligible for specially modified foods and formulas when they have inborn errors of metabolism.
* In Section 60.08-5, specifies that modifications and inserts for diabetic shoes are limited to a combined total of six units per member per rolling year, instead of per year.
* Adds coverage for breast milk bags with a limit of 120 units (bags) per member per rolling month in Section 60.08-14.
* Adds coverage for automatic blood pressure monitors with a limit of one unit per member per three calendar years in Section 60.08-15.
* Section 60.10, Reimbursement: The Department adopts the following changes to the reimbursement provision:
* Retroactively to January 1, 2023, establishes reimbursement for all Medicare covered codes at 100% of the current Medicare fee schedule amount and adds an annual cost-of-living adjustment for the rates for all non-Medicare covered codes. These changes are permitted retroactively pursuant to 22 MRS 42(8) because they benefit MaineCare providers.
* Clarifies that the Medicare rates are pulled from the Medicare DMEPOS Fee Schedule.
* Moves the Incontinence Supplies reimbursement provision from the current Section 60.09-1(C) to Section 60.10-2. The Department adjusts the maximum amount allowed by MaineCare for incontinence supplies with an inflation adjustment based on the Consumer Price Index for All Urban Consumers for Medical Equipment and Supplies. This change will be retroactive to January 1, 2023, and is lawful pursuant to 22 M.R.S. 42(8) because the inflation adjustment benefits providers.
* Adds Section 60.10-2 that contains criteria for providers to request incontinence supplies that are not on the MaineCare fee schedule.
* Amends Section 60.10-6 provision related to the reimbursement of rental items, so that rental periods (except for oxygen) follow Medicare rental periods.
* Modifies Section 60.10-7 to remove redundant information and to align oxygen rental requirements with current MaineCare practices.

P.L. 2021, ch. 398, required the Department to align rate structures and fee schedules with Medicare. The current rule, which was effective in 2018, does already align most DME rate structures and fee schedules with Medicare; this final rule expands the alignment with Medicare, including adopting Medicare’s rental period classifications and corresponding rental rates, and thus complies with P.L. 2021, ch. 398. These changes also ensure MaineCare’s compliance with the Upper Payment Limit demonstration required by the Centers for Medicare & Medicaid Services and authorized by section 1903(i)(27) of the Social Security Act. This rulemaking also complies with P.L. 2021, ch. 639, *An Act to Codify MaineCare Rate System Reform*, codified in 22 M.R.S. Sec. 3173-J. The Department issued a Rate Determination Initiation Notice on September 27, 2022. The Department held a public rate forum on December 1, 2022, to collect stakeholder input and comments to inform the Rate Determination process for Medical Supplies and DME and accepted written comments through December 15, 2022. The Department determined that for medical supplies and DME for which there is a Medicare rate, the Medicare rate represents the most appropriate benchmark, and payment of 100% of current year Medicare is appropriate. The Department also determined that the rates for medical supplies and equipment that are not covered by Medicare should receive an annual inflation adjustment based on the Consumer Price Index for All Urban Consumers for medical equipment and supplies (CUUR0000SEMG). The Department complies with 22 M.R.S. Sec. 3173(3), by engaging in APA rulemaking to implement this amended reimbursement methodology. The expansion of the current Medicare reimbursement methodology, adding the COLA adjustment to the calculation of the costs of other state Medicaid agencies for non-Medicare DME, and rental period changes are applied retroactive to January 1, 2023, as the changes, consistent with 22 MRS 42(8), benefit DME providers.

* Deletes most of Appendix I. Appendix I contains specific PA criteria for select items. The Department is moving most of these criteria to the MaineCare Health PAS Portal (https://mainecare.maine.gov/Default.aspx). The rulemaking removes references to Appendix I and refers providers to the Portal. The Department is proposing this change for purposes of efficiency and flexibility, as it will no longer utilize APA rulemaking to make changes to certain medical criteria/standards. Some medical criteria will remain in the APA rule: Appendix I, Section 60.12(L), Orthotics and Prosthetics, moves to new Section 60.08-2, Orthotics and Prosthetics; and Appendix I, Section 60.12(Z), Specially Modified Foods and Formulas, moves to Section 60.08-4, Specially Modified Foods and Formulas.

As described 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. In response to a comment, the Department added language that clarifies members are responsible for paying required co-payments in Section 60.10-10
2. In response to a comment, the Department corrected incorrect headers that appeared after Section 60.07.

 In response to a comment, the Department added breast milk storage bags and CPAP and Bi-PAP supplies to the list of items that can be dispensed in 90-day supplies in Section 60.08-13.

1. As a result of final rule review, the Department removed “Power Operated Vehicles” from the title of Section 60.08-8 because “Power Mobility Devices” is inclusive of power operated vehicles.
2. Pursuant to P.L. 2023, ch. 216, as codified in 22 MRS 3174-KKK, the Department specified in Section 60.08-16 that electric breast pumps and supplies are covered under MaineCare without prior authorization or limitation when they are prescribed by a Qualified Provider. This provision in policy will be effective on October 25, 2023, the date the law becomes effective. Note that the Department already covers electric breast pumps and supplies without prior authorization or limitation.
3. As a result of final rule review, the Department removed “The Department shall submit to CMS and anticipates approval for a State Plan Amendment related to these provisions” from Section 60.10 because Centers for Medicare & Medicaid Services (CMS) approved the relevant state plan amendment.

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

EFFECTIVE DATE: October 31, 2023

STATUTORY AUTHORITY: 22 M.R.S. §§ 42, 42(8); 3173; 22 M.R.S. 3173-J; 42 CFR § 440.70; P.L. 2021, ch. 398, Sec. A-17; P.L. 2023, ch. 216, codified in 22 M.R.S. Sec. 3174-KKK

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

OMS WEBSITE: <https://www.maine.gov/dhhs/oms/>.
OMS RULEMAKING LIAISON: Jennifer.Patterson@Maine.gov.
DHHS WEBSITE: <https://www.maine.gov/dhhs/>.
DHHS RULEMAKING LIAISON: Emily.A.Cathcart@Maine.gov.

AGENCY: **09-137 –** **Inland Fisheries and Wildlife**

CHAPTER NUMBER AND TITLE: **Ch. 16,** Hunting (Emergency rule)

ADOPTED RULE NUMBER: **2023-217**

CONCISE SUMMARY: This emergency rule is brought forth in light of the mass shooting incident in Lewiston, Maine occurring on October 25, 2023, where an active shooter killed 18 people and wounded 13 others. The shooter has not been brought into custody, remains at large, and is considered armed and dangerous. The Commissioner of Inland Fisheries and Wildlife, in consultation with Maine State Police, Governor Mills and the Attorney General’s Office, finds that an emergency exists under these circumstances and the immediate adoption of this rule is necessary to avoid an immediate threat to public safety and health. Therefore, the Commissioner adopts this rule prohibiting any hunting activity, for any species, with use of any implement in the locations where the “shelter-in-place order” issued by the Maine State Police exists. The prohibitions in this rule will go into effect at 12:01 a.m., Saturday, October 28, 2023, until the “shelter-in-place order” issued by the Maine State Police is lifted or 90 days after the effective date, whichever comes sooner.

EFFECTIVE DATE: October 27, 2023

AGENCY CONTACT PERSON/RULEMAKING LIAISON:Becky Orff, Inland Fisheries and Wildlife, 353 Water St, 41 SHS, Augusta, ME  04333; Telephone:  207-287-5202; EMAIL:  Becky.Orff@maine.gov
IFW WEBSITE: <https://www.maine.gov/ifw/>

AGENCY: **02-392 -** Department of Professional and Occupational Regulation, Office of Professional and Occupational Regulation, **Board of Pharmacy**

CHAPTER NUMBERS AND TITLES:

**Ch. 1,** Definitions (amend)

**Ch. 13,** Operation of Retail Pharmacies (amend)

**Ch. 25,** Patient Counseling (amend)

**Ch. 36,** Licensure of Opioid Treatment Programs (repeal)

ADOPTED RULE NUMBERS: **2023-218 to 2023-221**

CONCISE SUMMARY: The rules adopted by the Board of Pharmacy, repeals chapter 36 on licensure of opioid treatment programs and amends areas of related rules specifically, chapters 1, 13 and 25 related to opioid treatment program regulations. Opioid Treatment Programs are currently regulated at the federal and state level by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration and licensed by the Maine Department of Health and Human Services, Division of Licensing and Regulatory Services.

EFFECTIVE DATE: November 4, 2023

AGENCY CONTACT PERSON: Geraldine L. Betts, Administrator, Maine Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Pharmacy, 35 State House Station, Augusta ME 04333; Telephone: 207-441-146. Email: Geraldine.L.Betts@maine.gov

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

OPOR RULEMAKING LIAISON: Kristin.Racine@Maine.gov .