**State of Maine: Notice of Agency Rulemaking – November 3, 2021**

**PROPOSALS**

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

CHAPTER NUMBER AND TITLE: **Ch. 115**, The Credentialing of Education Personnel

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2021-P126** *(2nd publication)*

BRIEF SUMMARY: Three substantive changes to the original proposed ch. 115:

**\*** Refined some of the grade spans

**\*** Reinstated Adaptive Physical Education (APE) endorsement

**\*** Revised language per PL 2021 ch. 348, which requires rules which used the term “hearing impaired” be changed to “hard of hearing”.

PUBLIC HEARING: None

COMMENT DEADLINE: November 29, 2021 at close of business

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / RULEMAKING LIAISON: Jaci Holmes, 23 State House Station, Augusta, Maine 04333. Telephone: (207) 831-3168. Email: Jaci.Holmes@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 20-A §13006-A; Public Law 2021 ch. 228, signed by the Governor June 16, 2021

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

AGENCY RULES WEBSITE: <https://www.maine.gov/doe/about/laws/rulechanges> .

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

AGENCY: **99-639 – ConnectMaine Authority**

CHAPTER NUMBER AND TITLE: **Ch. 101**, ConnectMaine Authority

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P159** *(2nd publication)*

**BRIEF SUMMARY**: This rule makes needed changes to update the 10 cent surcharge per line enacted as part of (PL 2021 ch. 398 section AA). It also updates the definition of underserved, and makes programmatic changes to the infrastructure and planning grants.

This is a reopening of the proposed rulemaking because of substantive changes to the original proposed rule as a result of comments from the public.

**DETAILED SUMMARY**: This rule makes the required changes to implement PL 2021 ch. 398 section AA, which expands the 10 cents per line surcharge to additional phone lines.

It includes in the required data reporting section, data that will be needed to use new federal funding to determine eligibility for grants.

The rule also changes the definition of underserved to reflect the recent changes in ConnectMaine’s unserved definition.

It makes changes in the infrastructure grant program to reflect the input ConnectMaine has received as a result of public outreach, and the increase in federal funding coming to broadband. These changes will allow ConnectMaine greater flexibility in developing applications and scoring. It also updates to the required reporting for grantees.

It simplifies the Community Planning grant process for communities.

This is a reopening of the proposed rulemaking because of substantive changes to the original proposed rule as result of comments from the public.

This is a reopening of the rule making process

**PUBLIC HEARING**: none scheduled

COMMENT DEADLINE: December 3, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Stephanie McLagan, 59 State House Station Augusta, ME 04333. Telephone: (207) 592.8790. Email: S.Maclagan@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 35 MRS ch. 93

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

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

AGENCY RULE-MAKING LIAISON: Peggy.Schaffer@Maine.gov .

AGENCY: **02-031** – Department of Professional and Financial Regulation, **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch. 857**, Small Business Health Insurance Premium Support Program

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P199**

BRIEF SUMMARY: to establish the process and requirements to implement the Small Business Health Insurance Premium Support Program’s provision of premium relief credits to Maine small group employer health plans

PUBLIC HEARING: November 22, 2021, at 10:00 a.m. from the Department of Professional and Financial Regulation, Bureau of Insurance, 76 Northern Avenue, Gardiner, ME 04345. *Instructions for registering for and attending the hearing remotely, by either audio-visual link or telephone, are on the Bureau of Insurance website,* [*www.maine.gov/pfr/insurance*](http://www.maine.gov/pfr/insurance)*.*

COMMENT DEADLINE: 4:30 p.m. December 3, 2021 by mail or e-mail to the Contact Person.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Brittnee Greenleaf, Bureau of Insurance, 34 State House Station, Augusta, ME 04333-0034. Telephone: (207) 624-8491. TTY users use Maine Relay 711. Email: Brittnee.L.Greenleaf@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 24-A MRS §§ 212 and unallocated language in PL 2021 ch. 483 part C, *An Act To Provide Allocations for the Distribution of State Fiscal Recovery Funds* (LD 1733)

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

BUREAU RULEMAKING WEBSITE: <https://www.maine.gov/pfr/insurance/legal/rules/index.html#proposed> .

BUREAU WEBSITE: <https://www.maine.gov/pfr/insurance/> .

AGENCY RULEMAKING LIAISON: Benjamin.Yardley@Maine.gov .

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 #12-21**

PROPOSED RULE NUMBER: **2021-P200**

BRIEF SUMMARY: The principal reason for this rule is the need to respond to Federal Order changes and to certain other conditions affecting prevailing Class I, II and III milk prices in Southern New England in accordance with 7 MRS §2954

PUBLIC HEARING: November 18, 2021, Thursday, starting at 10:30 a.m. Room 101, Department of Agriculture, Conservation & Forestry, Deering Building, Hospital Street, Augusta, Maine

COMMENT DEADLINE:November 18, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MMC RULEMAKING LIAISON: Tim Drake, Maine Milk Commission, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Tim.Drake@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 5 MRS §8054; 7 MRS §2954

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

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

AGENCY: **02-031** – Department of Professional and Financial Regulation (PFR), **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch. 425**, Long-Term Care Insurance

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P201**

BRIEF SUMMARY: The purpose of the proposed rule is to increase the notice to policyholders of rate increases from 60 to 90 days prior to the approved rate increase, to amend reporting requirements and to reflect changes in rating standards consistent with June 2014 amendments to the National Association of Insurance Commissioners Model Regulation. The proposal also makes changes to insurers’ annual reporting requirements. Several other minor clarifying changes are proposed.

PUBLIC HEARING: November 23, 2021, at 1:30 p.m. from the Department of Professional and Financial Regulation, Bureau of Insurance, 76 Northern Avenue, Gardiner, ME 04345. *Instructions for registering for and attending the hearing remotely, by audio-visual link or telephone, are on the Bureau of Insurance website,* [*www.maine.gov/pfr/insurance*](http://www.maine.gov/pfr/insurance)*.*

COMMENT DEADLINE: 4:30 p.m. December 6, 2021 by mail or email to the Contact Person.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Brittnee Greenleaf, 34 State House Station, Augusta, ME 04333-0034. Telephone: (207) 624-8491. TTY users use Maine Relay 711. Email: Brittnee.L.Greenleaf@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: none

STATUTORY AUTHORITY FOR THIS RULE: 24 MRS §§ 2316, 2321; 24-A MRS §§ 212, 2412, 2413, 2414, 2736, 5071, 5072, 5073, 5074, 5075, 5077, 5078, 5080, 5083, 5084

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: n/a

AGENCY RULES WEBSITE: <https://www.maine.gov/pfr/insurance/legal/rules/index.html#proposed> .

AGENCY WEBSITE: <https://www.maine.gov/pfr/insurance/> .

AGENCY RULEMAKING LIAISON: Benjamin.Yardley@Maine.gov .

AGENCY: **94-457 - Finance Authority of Maine (FAME)**

CHAPTER NUMBER AND TITLE: **Ch. 620**, Maine Health Care Provider Loan Repayment Pilot Program

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P202**

BRIEF SUMMARY: The rule implements legislation recently enacted by the Legislature during the First Regular Session of the 130th Maine Legislature as part of LD 1733, (now PL 2021 ch. 483 (part H)), the bill directing various federal relief funds as a result of *American Rescue Plan Act of 2021* (ARPA). The Maine Health Care Provider Loan Repayment Pilot Program Fund will make loan repayments to eligible program participants to address critical workforce shortages exacerbated by the COVID-19 pandemic, including, but not limited to, the behavioral health and oral care sectors. The program will be geared toward certain health care professionals who commit to living and working in Maine for at least three years. Under the program, FAME shall pay up to $25,000 per year and, in aggregate, the lesser of $75,000 and 50% of the recipient's outstanding loan balance. The program terminates when the funds allocated are fully expended or by December 31, 2024, whichever occurs first, unless other funding is made available to carry out the purpose of the program.

PUBLIC HEARING: None. One would be scheduled at the request of 5 or more parties.

COMMENT DEADLINE: December 3, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: William Norbert, Governmental Affairs and Communications Manager, Finance Authority of Maine, PO Box 949 - 5 Community Drive, Augusta, ME 04332-0949. Telephone: (207) 620-3540 or 1 (800) 228-3734. Fax: (207) 213-2615. TTY: (207) 626-2717. Email: wnorbert@famemaine.com .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: PL 2021 ch. 483 (part H).

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

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

FAME RULEMAKING LIAISON: croney@famemaine.com .

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

CHAPTER NUMBER AND TITLE: **Ch. 33**, Rules Governing Physical Restraint and Seclusion

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2021-P203**

BRIEF SUMMARY: As the result of the Public Law ch. 453, statutory changes were made regarding restraint and seclusion, which is necessitating revisions to the ch. 33 rules. There are new definitions, prohibitions on unlawful restraint and seclusions, reporting requirements and expectations for the provisions of technical assistance. These changes will require targeted revisions to ensure that the rule for restraint and seclusion procedures is in line with the statute.

PUBLIC HEARING: November 22, 2021 – 11 a.m. - 12:30 p.m., Room 103 A,B - Cross State Office Building, Augusta, Maine. *We encourage attending via Zoom:*

*Maine DOE-1 is inviting you to a scheduled Zoom meeting.*

*Topic: Chapter 33 Public Hearing*

*Time: Nov 22, 2021 11:00 AM Eastern Time (US and Canada)*

*Join Zoom Meeting*

*https://us02web.zoom.us/j/89078251244?pwd=ZS9Tc2FaTVJIdXJ4WnhYYWhLbmVFZz09*

*Meeting ID: 890 7825 1244*

*Passcode: 880996*

*One tap mobile*

*+13126266799,,89078251244#,,,,\*880996# US (Chicago)*

*+16468769923,,89078251244#,,,,\*880996# US (New York)*

*Dial by your location*

 *+1 312 626 6799 US (Chicago)*

 *+1 646 876 9923 US (New York)*

 *+1 301 715 8592 US (Washington DC)*

 *+1 253 215 8782 US (Tacoma)*

 *+1 346 248 7799 US (Houston)*

 *+1 408 638 0968 US (San Jose)*

 *+1 669 900 6833 US (San Jose)*

*Meeting ID: 890 7825 1244*

*Passcode: 880996*

*Find your local number: https://us02web.zoom.us/u/kTAxUNGSo*

COMMENT DEADLINE: December 3, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Bear Shea, Department of Education, 23 State House Station, Augusta, ME 04333. Telephone: (207) 441-7404. Email: W.Bear.Shea@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 20-A §4104(5)

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

DOE RULES WEBSITE: <https://www.maine.gov/doe/about/laws/rulechanges>

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

DOE RULEMAKING LIAISON: Jaci.Holmes@Maine.gov .

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

CHAPTER NUMBER AND TITLE: **Ch. 40**, Rule for Medication Administration in Maine Schools

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P204**

BRIEF SUMMARY: This rule provides directions to public and private schools approved pursuant to 20-A MRSA §2902 in the administration of medication to students during the students’ attendance in school programs. It is to assist school administrative units in implementing the provision of the medication statute [20-MRSA §254(5)(A-D)] that provides direction for training of unlicensed school personnel in the administration of medication, requires that students be allowed to carry and self-administer prescribed emergency medications; specifically, asthma inhalers, epinephrine auto-injectors, or prescribed medications or devices for the management of diabetes with health care provider approval and school nurse assessment demonstrating competency. It provides direction for students to use sunscreen as well as provides guidelines for schools who intend to make naloxone available in the case of suspected opioid overdose.

PUBLIC HEARING: November 22, 2021 from 9-10:30 a.m. in Room 103 A,B, Cross State Office Building, Augusta, Maine . *We encourage attending via Zoom:*

*Maine DOE-1 is inviting you to a scheduled Zoom meeting.*

*Topic: Chapter 40 Hearing*

*Time: Nov 22, 2021 09:00 a.m. Eastern Time (US and Canada)*

*Join Zoom Meeting*

*https://us02web.zoom.us/j/86011895585?pwd=aDltTk9ERk9OZExxayt4TjRRN2V0Zz09*

*Meeting ID: 860 1189 5585*

*Passcode: 642052*

*One tap mobile*

*+13126266799,,86011895585#,,,,\*642052# US (Chicago)*

*+16468769923,,86011895585#,,,,\*642052# US (New York)*

*Meeting ID: 860 1189 5585*

*Passcode: 642052*

*Find your local number: https://us02web.zoom.us/u/kdGp2W7Fm*

COMMENT DEADLINE: November 30, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Emily Poland, Department of Education, 23 State House Station, Augusta, ME 04333. Telephone: (207) 592-0387. Email: Emily.Poland@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 20-A MRS §254(5)(A-C); Public Law 2021 ch. 115, signed by the Governor June 8, 2021

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

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

DOE RULEMAKING LIAISON: Jaci.Holmes@Maine.gov .

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

CHAPTER NUMBER AND TITLE: **Ch. 132**, Learning Results: Parameters for Essential Instruction

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2021-P205**

SUMMARY: This amended rule is the culmination of the periodic review of three of the content areas of the Maine Learning Results: health education and physical education, visual and performing arts, and world language.

The health education and physical education, visual and performing arts, and world language standards have been reformatted into the Department’s newly-designed Maine Learning Results structure to ensure consistency across content areas. This structure divides each content area’s standards into three stages of development: childhood, pre-adolescence, and adolescence. Within these stages, the Department has also identified the associated grade levels: elementary, middle, and high school. Additionally, the Department has standardized the following three descriptors, so that they are consistent across the content areas:

**Strand**: A body of knowledge in a content area identified by a simple title.

**Standard**: Enduring understandings and skills that students can apply and transfer to contexts that are new to the student.

**Performance Expectation**: Building blocks to the standard and measurable articulations of what the student understands and can do.

The process for the review and revision of the standards consisted of the following steps:

A public comment period began on October 17th, 2019 and ended November 8th, 2019. In addition, the Department held a public hearing in Augusta on October 23rd, 2019. This public comment period sought feedback regarding the existing standards to ensure that the revision process would address the areas of the standards the public believed were problematic.

Once the comment period ended, the Department convened a steering committee with representation from a variety of grade levels, roles in education (teachers, administrators, higher education, and non-profit organizations), areas of expertise across the content area, and geographic region. This group closely reviewed the existing standards and public comments and provided recommendations as to the types of revisions to be made.

The Department reviewed and approved the recommendations of the steering committee and convened a writing team comprised of current and retired teachers from appropriate content areas. During July and August of 2021, the Department facilitated the writing teams’ work. In September, the writing teams submitted drafts to the Department for review. The Department reviewed drafts and chose to adopt the writing team’s recommendations in promulgating the amendments to this rule.

The proposed Health Education & Physical Education standards have been

The proposed **Visual & Performing Arts** standards have been adapted from the National Core Arts Standards while still including those items that Maine arts educators felt are specific to their work with Maine students.

The two biggest changes to the document include the addition of Media Arts standards, a rapidly developing field of the creative economy that includes audio, video, digital design, and mixed media creations, and the realignment of strands that separate each arts discipline into its own collection of unique standards and performance expectations (previously, three of the five arts standards were universal across all arts disciplines; now, they are individualized for each discipline.) Although some disciplines share the same standards, their performance expectations are unique.

The proposed **World Languages** standards are in alignment to national standards ([ACTFL World-Readiness Standards for Learning Languages](https://www.actfl.org/sites/default/files/publications/standards/World-ReadinessStandardsforLearningLanguages.pdf)), which were published in 2012, and are designed to meet the needs of Maine educators. Whereas the current standards include four strands, in the proposed draft, they have been reorganized into five strands, consistent with the five goal areas represented in the national standards. To make this shift, concepts included in the four original strands were retained but categorized differently in order to align with the five goal areas. For example, *language comparisons* appears in the Communication strand in the current standards, while in the proposed draft it appears in the Comparisons strand.

Another substantial shift is the inclusion of proficiency levels in addition to grade spans. The current standards represent a full pre-K to Grade 12 progression of language learning. The proposed draft also offers this full progression, while at the same time providing multiple entry points by directing educators to begin at the current level of proficiency of their students. For example, if a program begins in Kindergarten, the educator will start by addressing the Kindergarten/Novice Low performance expectations. If the program begins in 7th grade, the educator will start with the performance expectations in the same Kindergarten/Novice Low level, in order to appropriately target instruction to students’ current proficiency level.

Finally, a third shift is within the performance expectations themselves. In the current standards, performance expectations direct educators to focus on specific topics and skills within the standard. However, the proposed draft mirrors the national standards in its intention to provide general, universally applicable performance expectations that can be tailored to all languages, whether modern, classical, or signed. Supplemental resources will provide greater guidance on how to tailor them to specific languages, particularly classical and signed languages, which differ from modern languages in terms of uses, communities of speakers/users, and cultures.

It is also important to note that the [NCSSFL-ACTFL Can-Do Statements](https://www.actfl.org/resources/ncssfl-actfl-can-do-statements), which include general Communication and Intercultural Communication, provided the basis for the performance expectations in the proposed standards. The performance expectations in the Communication strand are based on the Can-Do Statements for interpersonal, interpretive, and presentational communication. For the four remaining strands, performance expectations were established based primarily on the Intercultural Communication Can-Do Statements.

PUBLIC HEARING: November 22, 2021 from 3-5 p.m. at Cross Office Building, 111 Sewall St, Augusta, ME 04333, Room 103A and B and through Zoom using this [link](https://networkmaine.zoom.us/j/86542877220).

COMMENT DEADLINE: December 3, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Beth Lambert, Department of Education, 23 State House Station, Augusta, ME 04333. Telephone: (207) 592-4398. Email: sis.doe@maine.gov .

IMPACT ON MUNICIPALITIES OR COUNTIES:

STATUTORY AUTHORITY FOR THIS RULE:20-A MRS §6211

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: 20-A MRS §6209

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

DOE RULEMAKING LIAISON: Jaci.Holmes@Maine.gov .

AGENCY: **12-170** - Department of Labor (DOL), **Bureau of Labor Standards (BLS)**

CHAPTER NUMBER AND TITLE: **Ch. 9**, Rules Governing Administrative Civil Money Penalties

PROPOSED RULE NUMBER: **2021-P206**

**BRIEF SUMMARY**: The Bureau of Labor Standards is proposing amendments to this Rule to clarify and expand upon the process for calculation of penalties for wage and hour violations and to provide more detail on the procedure when such penalties are appealed.

**DETAILED SUMMARY**: The Bureau of Labor Standard is proposing amendments to ch. 9 to clarify and expand upon the process for calculation of penalties for wage and hour violations, specifically, to add multipliers for repeat and willful violations and to provide for combining or grouping violations. The proposed rule expands upon the process for appeals of such penalties, by explaining in more detail the conduct of an appeal hearing, the role of the Hearing Officer in conducting the hearing and issuing a Recommended Decision, the role of the Bureau Director in issuing a final agency decision, and the right of appeal to Superior Court. The proposed rule adds definitions and explains the respective roles of the Division Director and the Bureau Director.

PUBLIC HEARING: November 22, 2021 - 2:00 p.m. This hearing will be held via Zoom and details will be posted ahead of the hearing date.

COMMENT DEADLINE: December 6, 2021

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 §§ 42, 53

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

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

AGENCY: **16-163** - Department of Public Safety (DPS), **Bureau of Maine Emergency Medical Services (EMS)**

CHAPTER NUMBER AND TITLE: **Ch. 21** *(New)*, Immunization Requirements for EMS Personnel

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P207**

**BRIEF SUMMARY**: Ch. 21 is a new chapter to be added to the Maine EMS Rules. The purpose of this rule is to adopt a list of vaccine preventable diseases for which licensees must obtain immunization or provide appropriate exemption documentation. No Entity may permit a Covered Emergency Medical Services Person to provide Direct Patient Care as defined by the rule without a Certificate of Immunization, or documentation of an Exemption pertaining to the Diseases enumerated in the Chapter after the Effective Date required by this chapter. New employees must have begun the COVID-19 series, or have an approved medical exemption, prior to employment, and will have three months to come into compliance with the remaining immunizations identified in this rule. Required vaccines include rubeola, mumps, rubella, varicella, hepatitis B, influenza, and COVID-19.

**DETAILED SUMMARY:**

1. **Definitions**

1. “Certificate of Immunization” means a written statement from a physician, nurse practitioner, physician assistant or other health care provider who has administered an immunization to a Covered Emergency Medical Services Person, specifying the vaccine administered and the date it was administered.

2. “Covered Emergency Medical Services Person” means an advanced emergency medical services person, a basic emergency medical services person or any person who routinely provides Direct Patient Care. For the purposes of this definition, EMS students that provide Direct Patient Care are Covered Emergency Medical Services Persons.

3. “Direct Patient Care” means any activity that places an individual within 6 feet of a patient for a period of 15 minutes or more.

4. “Disease” means the following conditions which may be preventable by immunization:

1. Rubeola (measles);

2. Mumps;

3. Rubella (German measles);

4. Varicella (chicken pox);

5. Hepatitis B.;

6. Influenza; and

7. COVID-19.

5. “Effective Date” means full immunization for Rubeola, Mumps, Rubella, Varicella, Hepatitis B, and Influenza by 1/1/2024, and COVID-19 by 12/1/2021.

6. “Entity” means an organization which holds a license issued by the Board that authorizes it as an organization to provide emergency medical services, or a training center licensed by the Board.

7. “Exemption” means a formal procedure to procure discharge from the requirement to vaccinate under this rulein accordance with Section 3 below.

8. “Immunization” means a vaccine, antitoxin or other substance used to increase an individual’s immunity to Disease.

1. **Immunization Required**

1. Each Entity with which a Covered Emergency Medical Services Person is associated must require that the Covered Emergency Medical Services Person provide to the Entity a Certificate of Immunization or documentation of an Exemption pertaining to the Diseases enumerated in the Chapter.

2. No Entity may permit a Covered Emergency Medical Services Person to provide Direct Patient Care without a Certificate of Immunization, or documentation of an Exemption pertaining to the Diseases enumerated in the Chapter after the Effective Date required by this chapter. **New employees must have begun the COVID-19 series, or have an approved medical exemption, prior to employment, and will have three months to come into compliance with the remaining immunizations identified in this rule.**

3. The number and timing of immunization administrations shall be in accordance with the applicable immunization manufacturer’s dosing specification or labelling.

4. Any such immunization must meet the standards for biological products which are approved by the United States Public Health Service.

1. **Exemptions**

1. A Covered Emergency Medical Services Person who does not obtain a Certificate of Immunization may be permitted to provide direct patient care if that Covered Emergency Medical Services Person possesses an Exemption.

2. An Exemption is available to a Covered Emergency Medical Services Person who provides a written statement from a licensed physician, nurse practitioner or physician assistant that, in the physician’s, nurse practitioner’s or physician assistant’s professional judgment, immunization against any of the Diseases enumerated in this Chapter may be medically inadvisable, provided that, the Covered Emergency Medical Services Person has an established patient-qualified provider relationship with the provider issuing the written statement.

**4. Record Keeping**

1. An Entity must keep a record of the immunization status of each Covered Emergency Medical Services Person associated with the Entity. The record must include, at a minimum, the month and year that each immunization was administered.

2. Where an Exemption has been granted to a Covered Emergency Medical Services Person, the Entity must maintain the written documentation of the Exemption on file.

3. Each Entity must maintain a listing of the names of all Covered Emergency Medical Services Person associated with the Entity who are not currently immunized against Diseases enumerated in the Chapter. The list must also include the names of all Covered Emergency Medical Services Persons with Exemptions.

4. All records required under this chapter shall be deemed, for the purposes of public access, confidential medical records under statute. Notwithstanding this statement, the Board may obtain and disclose records required under this chapter in accordance with 32 M.R.S. § 91-B.

**5. Required Reports**

1. Periodic Reporting

Each Entity must, on an annual basis, submit a summary report on the immunization status of all Covered Emergency Medical Services Persons associated with the Entity on a form prescribed by Maine EMS no later than December 15th of that year. The summary report will include the following information at a minimum: specific contact information identifying the Entity, the total number of Covered Emergency Medical Services Persons who are immunized, the total number of Covered Emergency Medical Services Persons who possess Exemptions, and the total number of Covered Emergency Medical Services Persons who do not possess a Certificate of Immunization or an Exemption. Each report must be signed by a representative of the Entity as a certification that the information is accurate.

2. Additional Requests

An Entity must provide to the Board, within 48 hours of the request, any requested information pertaining to those Covered Emergency Medical Services Persons who do not possess a Certificate of Immunization or an Exemption. Such information shall be subject to the confidentiality provisions of 32 .RS §91-B.

**PUBLIC HEARING**: November 22, 2021, 6:00 p.m. *The hearing will be held through remote access pursuant to 32 MRS §88 (2) (B). The information needed to access the hearing remotely will be posted on the Board’s website at:* [*https://www.maine.gov/EMS*](https://www.maine.gov/EMS) *.*

*A second hearing will be held November 23, 2021, 9:00 a.m. The hearing will be held through remote access pursuant to 32 MRS §88 (2) (B). The information needed to access the hearing remotely will be posted on the Board’s website at:* [*https://www.maine.gov/EMS*](https://www.maine.gov/EMS) *. The hearing may be continued on additional dates if necessary.*

*Comments on the proposed rules may be submitted to the staff rules representative no later than 11:59 p.m., December 3, 2021 by emailing* *griffin.z.bourassa@maine.gov* *or by mailing your comments to Maine Board of Emergency Medical Services, Attn: Griffin Bourassa, 152 State House Station, Augusta, ME 04333.*

COMMENT DEADLINE: December 3, 2021, 11:59 p.m.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / EMS RULEMAKING LIAISON: Griffin Bourassa, Maine Emergency Medical Services, 152 State House Station, Augusta, ME 04333. Telephone: (207) 626-3864. Fax: (207) 287-6251. Email: Griffin.Z.Bourassa@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 81-A, 84, 88

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

EMS WEBSITE: <https://www.maine.gov/ems/> .

**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 #11-21**

ADOPTED RULE NUMBER: **2021-222** *(Emergency)*

CONCISE SUMMARY: Minimum November 2021 Class I price is $21.23/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 $24.57/cwt. that includes a $0.20/cwt. Federal promotion fee.

EFFECTIVE DATE: October 31, 2021

MMC CONTACT PERSON / RULEMAKING LIAISON: Tim Drake, Agriculture – Maine Milk Commission, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Tim.Drake@Maine.gov .

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

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 97**, Private Non-Medical Institution Services

ADOPTED RULE NUMBER: **2021-223**

CONCISE SUMMARY: The Department of Health and Human Services (the “Department”) adopts the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual* (MBM), Ch. II section 97, “Private Non-Medical Institution Services”.

The Department adopts these rule changes to align Section 97 requirements with the *Family First Prevention Services Act* (FFPSA), which establishes standards for children’s residential treatment programs in order to improve quality and oversight of services. The adopted changes are specific to Private Non-Medical Institution (PNMI) Appendix D Facilities, and are reflected in the definitions, eligibility for care, covered services and policies and procedures sections of this rule. Additionally, as directed under the FFPSA, the adopted rule includes requirements for Appendix D providers to meet Qualified Residential Treatment Programs (QRTP) standards, which include obtaining and maintaining specified licensing and accreditation standards, as well as delivering trauma-informed treatment.

For compliance with the FFPSA related to improving quality and oversight of services, the Department amended Appendix D language referring to Child Care Facility Services and Models of Child Care Facilities, to be replaced with the term, “Children’s Residential Care Facilities” (CRCFs). The adopted rule distinguishes models of residential care that address specific treatment needs of different member populations. CRCF models include Intellectual Disabilities/Developmental Disabilities (ID/DD-CRCF), Mental Health (MH-CRCF), Crisis Stabilization (CS-CRCF), and Child and Adolescent Therapeutic Foster Care. This rule further adopts amended language referring to “Intensive Temporary Residential Treatment Services” by replacing this with the term “Temporary High Intensity Services” and including language clarifying the covered services while also establishing the requirement for a Prior Authorization process.

The rule also adopts the use of Department-approved, age appropriate Level of Care/Service Intensity tools, which is required as a component of eligibility determination for ID/DD, MH, and CS CRCFs. The Level of Care/Service Intensity tools replace outdated instruments, to include the Child and Adolescent Functional Assessment Scale (CAFAS), the Children’s Global Assessment Scale (C-GAS), the Global Assessment Functioning (GAF), and the Children’s Habilitation Assessment Tool (CHAT); and streamline the process by utilizing one tool that is evidence based and clinically appropriate by age, to include the Early Childhood Service Intensity Instrument (ECSII), the Child and Adolescent Level of Care/Service Intensity Utilization System (CALOCUS-CASII) and the Level of Care Utilization System for Psychiatric and Addiction Services (LOCUS).

Additionally, this rule adopts various new covered services, including Aftercare Support Services, which are designed to promote a continuation of treatment gains with the goal of supporting the child in their home and community environment, and must be provided to youth for at least six (6) months post discharge from MH and ID/DD CRCFs. The Department is additionally requiring a new position, a Family Transition Specialist (FTS), to aid in the delivery of aftercare and transition services for the youth and family.

To further align with the FFPSA to achieve improved quality and oversight of services, this adopted rule clarifies Appendix D requirements for the CRCF assessment, Individual Treatment Plan, progress notes, and discharge summary as well as adding various new defined terms.

The Department additionally adopted language that requires providers operating under Appendix D and Adolescent Residential Rehabilitation Services operating under Appendix B, to demonstrate utilization of the Federal Substance Abuse and Mental Health Services Administration’s (SAMHSA) System of Care Principles. The rule requires delivery of trauma-informed care through the completion of a Trauma-Informed Agency Assessment, staff training and incorporation of these principles into program policy and procedures.

The Department also adopts specific requirements regarding background checks for providers operating under Appendix D and Adolescent Residential Rehabilitation Services providers operating under Appendix B. Children’s residential facility providers must follow the requirements set forth in 22 MRS §8110 and 42 USC §671(20). Behavioral Health Services providers must conduct background checks every five (5) years and fingerprinting. The adopted rule requires completed background checks for all staff and all adults providing services to a member within ninety (90) days of the effective date of this rule and that all background checks are to be completed every five (5) years thereafter.

The Department further adopts, under Appendix D, the addition of Behavioral Health Professionals (BHP) and Family Transitional Specialists (FTS) as Other Qualified Residential Treatment Facility Staff as well as including Board Certified Behavior Analyst services, Registered Behavior Technician services and Board Certified Assistant Behavior Analyst services. The Department is requiring confirmation that prospective BHPs are not annotated in the registry (per 10-144 CMR ch. 128, *Certified Nursing Assistant and Direct Care Worker Registry Rule*) prior to qualifying as a staff member under this rule.

In addition to the above adopted changes, the Department adopted language increasing access to necessary services by removing the ‘single admission’ limitation and increasing the number of allowable covered days for Halfway House and Extended Care Services under PNMI Appendix B of this rule. The Department also adopted edits to language to accurately reflect current practices as well as updates to formatting, citations, and references where necessary, including changes to address potentially stigmatizing language based on recommendations from Maine’s opioid task force and legislation passed in 2018 to minimize stigma (PL 2017 ch. 407).

The Department shall seek CMS approval for the new covered services and provider requirements, as specifically noted in various adopted rule changes.

In addition, the Department intends to implement corresponding changes as needed in the MBM, ch. III section 97, to ensure adequate reimbursement for providers to deliver all new covered services and meet QRTP standards and other ch. II-related updates. For example, ch. III Appendix D section 2400.1 must be updated in order to ensure that rates cover the costs of Board Certified Behavior Analysts and the other new types of direct service staff. The ch. III section 97 rule is major substantive, and the upcoming changes shall be filed as an emergency rule no later than Nov. 1, 2021, so that they will be effective at the same time the changes in Chapter II, Section 97 are finally adopted.

Considering public comment and legal advice from the Office of Attorney General, the Department made various changes to the final rule from what was proposed.

Changing requirements for Appendix D providers, service delivery, and provisions of treatment to provide more specificity and allow for more flexibility for providers, include:

* Updating language related to accreditation, under 97.07-2(F)(h)(2) to allow for accreditation to be completed within 12 months.
* Extending the Prior Authorization for Temporary High Intensity Services (97.02-5(C)) from a seven (7) day authorization to “up to thirty (30) days.”
* Including language under 97.08-2.G(6) to address exemptions related to Aftercare Support Services.
* Adding language under 97.06-3 (“Non-Reimbursable Days”), to include, “Members receiving services in an emergency department are exempt from this provision when emergency treatment is sought at 8:00pm or later and the member returns to the facility the following day.”
* Removing references that limit telehealth services and reducing the frequency of required in-person contact for Aftercare Support Services.
* Clarifying that both ITPs and FBAs are reviewed minimally every thirty (30) days.
* Updating language, under 97.08-2(C)(2), to include more flexibilities for behavioral and/or rehabilitative therapies.
* Clarifying language related to family involvement in treatment under Appendix D CRCFs to include more involvement by the Department’s Office of Child and Family Services (OCFS) and specific requirements.

Changing requirements for Appendix D CRCF staff include:

* Allowing for, under 97.07-2(H)(2), a bachelor’s degree in an unrelated field with at least one (1) year of related professional experience, extending time for staff to obtain BHP certification for new hires to six (6) months from the date of hire and staff currently employed to one (1) year from the effective date of the rule.
* Updating CRCF staff supervision requirements to include a minimum of three (3) hours per month includes one (1) hour of individual and one (1) hour of clinical supervision conducted by a Clinician as defined in 97.01-4.

All changes are specifically listed in the separate document, Summary of Comments and Responses and List of Changes to the Final Rule.

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

EFFECTIVE DATE: November 1, 2021

OMS CONTACT PERSON: Melanie Miller, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4087. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Melanie.Miller@Maine.gov .

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

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

DHHS RULEMAKING LIAISON: Kevin.Wells@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. III Section 97**, Private Non-Medical Institution Services

ADOPTED RULE NUMBER: **2021-224** *(Emergency)*

CONCISE SUMMARY: The Department of Health and Human Services (the “Department”) adopts the following emergency major substantive rule changes in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. III section 97, “Private Non-Medical Institution Services”, including ch. III (the “Main Rule”) and Appendices B (Substance Abuse Treatment Facilities) and D (Child Care Facilities).

In ch. III, the Department is updating the Main Rule and corresponding appendices for Appendix B and Appendix D to support the final adopted changes in ch. II section 97, with the rules intended to be filed simultaneously. The ch. II rule changes implement various new requirements on Appendix D providers per the *Family First Prevention Services Act* (FFPSA), and also adds new covered MaineCare services. Ch. II also imposes new requirements on Appendix B providers and broadens those covered services.

In recognition of these new requirements, the Department implements these emergency major substantive reimbursement rate increases. The new rates were authorized by the Legislature pursuant to PL 2021 ch. 29, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2022 and June 30, 2023* (the “Budget”) and PL 2021 ch. 398, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2021, June 30, 2022 and June 30, 2023* (the “Supplemental Budget”). The rates are also consistent with independent rate studies completed for Appendix B and Appendix D services.

Section GGGG-1 of the Supplemental Budget provides the Department with authority to enact these changes on an emergency basis, without the need to make findings in support of an emergency per 5 MRS §8054. Emergency major substantive rules are effective for up to 12 months or until the Legislature has completed review of the provisionally adopted major substantive rule. 5 MRS §8073. The Department shall seek approval from the Centers for Medicare and Medicaid Services (CMS) for the increased Appendix B and Appendix D rates. The Department shall file the corresponding ch. III section 97 proposed major substantive rules in order to begin the process for implementing these changes permanently.

In addition to the above, the Main Rule and relevant Appendices has been updated to reflect changes to certain services in order to gain consistency with ch. II, including updating “Crisis Residential” services to “Crisis Stabilization” services, “Treatment Foster Care” to “Therapeutic Foster Care,” and “Substance Abuse treatment” to “Substance Use treatment.”

Appendix B implements rate updates from an independent rate study, recommending substantial increases, consistent with appropriations approved by the Budget and the Supplemental Budget. Additional changes are required to ensure that the terminology in Appendix B is consistent with what is utilized in the finally adopted ch. II rule; for example, “Detoxification” programs are changed to “Medically Supervised Withdrawal Services.” This rulemaking creates two tiers of reimbursement, one tier incorporating all medical personnel, and another tier as an exception rate for low nursing staff, given substantial workforce challenges. Lastly, service components of the rate in 2400.1 were updated to clarify social workers as licensed clinical social workers and to add licensed marriage and family therapists, to align with changes adopted in ch. II.

Appendix D updates the name from “Childcare Facilities” to “Children’s Residential Care Facilities” in order to align with changes adopted in ch. II. In Section 2400.1, board certified behavioral analyst services, board certified assistant behavior analyst services, and registered behavior technician services were added to align with changes in ch. II. Following the independent rate study, rate recommendations are incorporated, including consolidating Mental Health Level I and Level II services into a single Mental Health level of reimbursement, and consolidating Intellectual Disabilities and Autism Spectrum Disorder Levels I and II into a single Intellectual Disabilities/Developmental Disabilities residential treatment rate. Due to the rate changes and finally adopted changes in ch. II section 97, this rule removes language from Section 6000 because the referenced member assessment is no longer required. Ch. III also establishes rates for a proposed new MaineCare covered service, Aftercare Services, for the service itself and for mileage reimbursement. Aftercare is a required component of the FFPSA, and establishing the rate is necessary in order to meet the requirements of the FFPSA and the changes adopted in ch. II section 97. The Department shall seek approval from CMS for the new Aftercare Services and the additional practitioners allowable under this Appendix.

Finally, in order to be consistent with the changes that will be finally adopted in ch. II, the Department implements necessary updates to further address potentially stigmatizing language pursuant to PL 2017 ch. 407, and to update references to the Office of Behavioral Health from the Office of Substance Abuse.

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

EFFECTIVE DATE: November 1, 2021

OMS CONTACT PERSON: Dean Bugaj, Children’s and Behavioral Health Manager, Division of Policy, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4045. Fax: (207) 287-6106. TTY users call Maine relay 711. Email: Dean.Bugaj@Maine.gov .

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

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

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

AGENCY: **06-096 - Department of Environmental Protection (DEP)**

CHAPTER NUMBER AND TITLE: **Ch. 4** *(New)*, Rule Governing Hearings on Appeals of Certain Emergency or Administrative Commissioner Orders

ADOPTED RULE NUMBER: **2021-225**

CONCISE SUMMARY: The Department has adopted a new rule, ch. 4, *Rule Governing Hearings on Appeals of Certain Emergency or Administrative Commissioner Orders*, to govern proceedings in which hearings are held by the Board of Environmental Protection on appeals of certain emergency or unilateral administrative orders issued by the Commissioner. Some of the types of emergency or unilateral administrative orders issued by the Commissioner in the exercise of the Commissioner’s statutory responsibility to protect public health, safety and welfare, and the environment are identified in section 2 of the new rule.

EFFECTIVE DATE: November 3, 2021

DEP CONTACT PERSON: William Hinkel, Board Executive Analyst, Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. Telephone: (207) 314-1458. Email: Bill.Hinkel@Maine.gov .

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

DEP RULEMAKING LIAISON: Mark.T.Margerum@Maine.gov .