**State of Maine: Notice of Agency Rulemaking – November 9, 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: **19-100 - Department of Economic and Community Development (DECD)**

CHAPTER NUMBER AND TITLE: **Ch. 400**, Employment Tax Increment Financing

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P162** *(2nd publication)*

BRIEF SUMMARY: The proposed rule change brings the rule in line with changes to the Employment Tax Increment Financing (ETIF) statute enacted by PL 2021 c. 602 (LD 1156). ETIF payments will now be based on a fixed percentage of qualified employees' gross wages instead of state income tax withholdings. The rule changes also correct certain phrases and dates for consistency.

PUBLIC HEARING: None

COMMENT DEADLINE: December 9, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Phoenix McLaughlin, DECD, 59 State House Station, Augusta, ME 04333. Telephone: (207) 624-9813. Email: Phoenix.McLaughlin@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: Title 36 §6759

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

DECD WEBSITE: [www.maine.gov/decd](http://www.maine.gov/decd).

DECD RULEMAKING LIAISON: Ben.Goodman@Maine.gov.

AGENCY: **19-499** - Department of Economic and Community Development (DECD), **Office of Business Development**

CHAPTER NUMBER AND TITLE: **Ch. 303**, Rural Workforce Recruitment and Retention Grant Program

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P176** *(2nd publication)*

BRIEF SUMMARY: This proposed rule outlines the procedures, criteria and program review requirements governing the Rural Workforce Recruitment and Retention Grant Program as required by statute enacted by PL 2021 c. 420 (LD 492).

PUBLIC HEARING: None

COMMENT DEADLINE: December 9th, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Ben Sturtevant, DECD, 59 State House Station, Augusta, ME 04333. Telephone: (207) 624-9869. Email: Ben.Sturtevant@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: Title 5 §13056-I

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

DECD WEBSITE: [www.maine.gov/decd](http://www.maine.gov/decd).

DECD RULEMAKING LIAISON: Ben.Goodman@Maine.gov.

AGENCY: **02-502** - Maine Department of Professional and Financial Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Board of Pharmacy**

CHAPTER NUMBERS AND TITLES:

**Ch. 4-A**, Administration of Drugs and Vaccines *(Amend)*

**Ch. 41**, Sales of Nonprescription Drugs through Vending Machine *Outlets (New)*

**Ch. 42**, Compounding Drugs for Veterinarian Office Use *(New)*

TYPE OF RULES: Routine Technical

PROPOSED RULE NUMBERS: **2022-P207, P208, P209**

BRIEF SUMMARY: Each rule proposed is in response to laws enacted from the 129" and 130" Legislature. Ch. 4-A sets forth minimum requirements for treatment protocols, administration and recordkeeping requirements, and standards for the administration of drugs and vaccines and the operation of drug and vaccine administration clinics. Ch. 41 sets forth requirements for licensing, management and safe operation of non-prescription drug vending machine outlets. Ch. 42: this chapter establishes the terms and conditions for the compounding and distribution of animal drugs for nonfood-producing animals and nonpatient-specific use in veterinary offices.

PUBLIC HEARING: December 1, 2022 @ 8:30 a.m. (EST). *Location: Public hearing will be fully virtual using Zoom. Information to present testimony on the proposed rulemaking or to listen in will be posted on the Board's website at Information to join the Zoom meeting online.*

COMMENT DEADLINE: December 11, 2022, @ 5:00 p.m. (EST)

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Geraldine L. Betts, Administrator, 35 State House Station, Augusta ME 04333. Telephone: (207) 624-8625. TTY users call Maine relay 711. Email: Geraldine.L.Betts@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THESE RULES:

Ch. 4-A - 32 MRS §§ 13720, 13723, 13831, 13832, 13833, 13834(1), 13835

Ch. 41 - 32 MRS §§ 13751, 13792(2)

Ch. 42 - 32 MRS §13720, 13723, 13722(1)B-2)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

AGENCY WEBSITE: [www.maine.gov/professionallicensing](http://www.maine.gov/professionallicensing).

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

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

CHAPTER NUMBER AND TITLE: **Ch. 3**, Occupational Safety and Health Standards for Construction Industry Employment in the Public Sector

PROPOSED RULE NUMBER: **2022-P210**

**BRIEF SUMMARY**: These rules make changes to standards in construction related to Beryllium as required by changes to federal regulations.

**DETAILED SUMMARY:** Modifications to the 29 CFR 1926.1124 beryllium in construction and shipyards standard include:

* Specified definition of Beryllium sensitization, which is an immune response in people exposed to beryllium. While it is often symptomless it is the first step to developing CBD (chronic beryllium disease).
* Pulmonologists in CBD medical diagnostic centers are no longer required to be on-site, but simply on staff.
* The written exposure control plan for beryllium now must contain a list of operations and job titles who are expected to work with beryllium, engineering controls, means of protection from exposure, a list of PPE (personal protective equipment) used, as well as procedures for restricting access during work exposures, procedures to contain exposure and procedures for cleanup.
* Engineering rules have been simplified to state that engineers must be used by employers to reduce and maintain beryllium exposure below the TWA PEL and STEL unless provably unfeasible.
* In-writing notification of airborne exposure of beryllium to housekeeping staff is no longer required. Instead, in any operation that could result in airborne dust, the workers must be provided with personal protective equipment if it will result in airborne exposure above TWA PEL or STEL levels.
* When beryllium is disposed of or transported to another entity, written warnings are no longer required.
* Physician evaluations at CBD diagnostic centers must include tests for pulmonary function, bronchoalveolar lavage (BAL), and transbronchial biopsy if deemed necessary.
* Warning labels on containers contaminated with beryllium are no longer required.
* Employees now are only required to be trained in beryllium safety if they are reasonably thought to have airborne exposure—skin exposure is now excluded.

§1926.1400 SCOPE – **new change.** This standard was updated with the new paragraph (18) which clarifies that flash-butt welding trucks that are not equipped with hoisting devices are defined as roadway maintenance machines and are used for railroad track work, as defined in 49 CFR 214.7. *Source: National Safety Compliance – OSHA Safety Training*

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

COMMENT DEADLINE: December 9, 2022

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

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated

STATUTORY AUTHORITY FOR THIS RULE: 26 MRS §565

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

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

AGENCY: **94-270 - Commission on Governmental Ethics and Election Practices**

CHAPTER NUMBERS AND TITLES:

**Ch. 2**, Hearing Procedures

**Ch. 3**, Maine Clean Election Act and Related Provisions

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBERS: **2022-P211, P212**

BRIEF SUMMARY: The proposed amendments would amend the Commission’s hearing rules to conform to the *Maine Administrative Procedure Act*. They would also formalize a policy that qualifying contributions will not be returned to Maine Clean Election Act (MCEA) candidates, provide the Commission more flexibility in setting a qualifying period for replacement candidates, and prohibit MCEA candidates from spending public campaign funds on post-election parties (consistent with statute).

PUBLIC HEARING: Wednesday, November 30, 2022 @ 9:00 a.m., Commission Office, 45 Memorial Circle, Second Floor, Augusta, Maine

COMMENT DEADLINE: 5:00 p.m. on Sunday, December 11, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Julie Aube, Commission Assistant, Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, ME 04333. Telephone: (207) 287-4179. Fax: (207) 287-6775. Email: Julie.Aube@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: No impact

STATUTORY AUTHORITY FOR THIS RULE:MRS §1003(1); 21-A MRS §1126

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: None

AGENCY WEBSITE:<http://www.maine.gov/ethics>.

COMMISSION RULEMAKING LIAISON:Jonathan.Wayne@Maine.gov.

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II Section 65**, Behavioral Health Service

ADOPTED RULE NUMBER: **2022-219**

CONCISE SUMMARY: The Department of Health and Human Services (“the Department”) adopted this rule to finalize the following changes to 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. II Section 65, “Behavioral Health Services”.

The Department adopts this rule to incorporate various new Intensive Outpatient Program (IOP) Services to be covered in Ch. II, including Mental Health, Developmental Disabilities/Behavioral Health, Geriatric, Dialectical Behavior Therapy, and Eating Disorder (Level I and Level II) IOPs. The adopted rule updates Substance Use IOP requirements and establishes requirements for new IOP services to include: IOP service and staff requirements, general and specific member eligibility criteria, as well as program requirements.

To align with federal regulations under 42 CFR Part 8, the Department adopts language in Ch. II replacing the term “Medication Assisted Treatment with Methadone (MAT)”, with the term, “Opioid Treatment Program (OTP) with Methadone.” The adopted Ch. II rule also updates requirements for OTPs, under Section 65.05-11, to align with the federal regulation including Counseling, Substance Use Disorder Testing, Medication Administration, and Facility Operation requirements in 42 CFR §8.12.

To reduce barriers to services and administrative burden to providers, the Department adopts a change in the definition of the Crisis Resolution Services “treatment episode” under 65.05-1, from limiting the service to “six (6) face-to-face visits and related follow up phone calls over a thirty (30) day period after the first face-to-face visit,” to “face-to face visits and related follow up phone calls, as clinically indicated, for up to a sixty-day period after the first face-to-face visit.” Additionally, the Department adopts the removal of language from Section 65.07-5(B) that limited substance use individual and family outpatient therapy to three (3) hours per week, for thirty (30) weeks in a forty (40) week period. Each of these changes provide broader access to these Section 65 services.

The rule also adopts clarifications on qualified staff allowed to provide Crisis Resolution Services (65.05-1) and Crisis Residential Services (65.05-2) to include Clinicians (as defined in 65.01-11), Mental Health Rehabilitation Technicians (MHRTs), Behavioral Health Professionals (BHPs), or Direct Support Professionals (DSPs) with Certification at the level appropriate for the services being delivered and for the population being served.

As a result of comments, the Department determined not to adopt a rule change that would have removed the requirement that licensed Mental Health Agencies and Substance Use Agencies must separately contract with the Office of Child and Family Services and/or the Office of Behavioral Health.

The adopted rule reorganizes requirements related to Individualized Treatment Plans in 65.08-4(B) and updates requirements for treatment plans for members receiving OTP services.

In addition and separately, the Department is adopting rulemaking to repeal and replace the former Ch. III of Section 65. The changes in Ch. III Section 65 make it consistent with the Ch. II-related updates, and related budget initiatives that require reimbursement increases for Section 65 providers, per PL 2021 Ch. 398. The Ch. III Section 65 rulemaking shall be filed simultaneously, so that the upcoming changes will be effective at the same time these changes in Ch. II Section 65 are finally adopted.

Throughout the rule, the Department adopted edits to language to make updates to formatting, citations, and references where necessary, including changes to address potentially stigmatizing language based on recommendations from the Maine 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.

Considering public comment, in addition to the changes to the adopted rule described above, the Department made the following changes to the adopted rule:

**1.** Pursuant to Comment #4, The Department updated its definition of Serious Emotional Disturbance in 65.01-41 to align with national standards through SAMHSA.

**2.** Pursuant to Comment #11, 65.05-5.A.2.a has been updated from “Intake and Comprehensive Assessment” to “Intake and service assessment” to reflect the purpose of the assessment under the IOP program.

**3.** Pursuant to Comment #1, 65.07-6 has been updated to remove the prohibition of billing the Comprehensive Assessment separately from final rule.

**4.** Pursuant to Comment #12, 65.07-6 has been updated to add “Members may receive additional outpatient services as medically necessary when the treating condition(s) is distinct from the condition(s) addressed by the IOP.”

**5.** Pursuant to Comment #16, 65.05-1 been amended to change “specific to the population being served” to read “…at the level appropriate for the services being delivered and appropriate for the population being served” to allow for staff types to serve members when appropriate to do so.

**6.** Pursuant to Comment #21, 65.05-5.B.2.a has been updated to note the physician evaluation must be clinically indicated. The change is as follows: “Assessment by a Clinician; and evaluation by a physician (MD/DO) as clinically indicated, as part of the service assessment; and…”

**7.** Pursuant to Comment #24, 65.05-6.C.2 has been updated to add “or” after each of the at risk criterion to clearly state a member meet one of a-d.

**8.** Pursuant to Comment #25, to 65.05-5.D.5 was updated to add “Otherwise Specified Feeding or Eating Disorder” and “Unspecified Feeding or Eating Disorder” in the final rule

**9.** Pursuant to Comment #31, 65.05-9.A.1.e was updated to add “or caregiver involvement, when appropriate.”

**10.** Pursuant to Comment #38, 65.08-4.A.1-3 was updated to fix the numbering error.

**11.** Pursuant to Comment #39, the final rule updated references to amend the title of the “Diagnostic Classification of Mental Health and Development Disorders of Infancy and Early Childhood” and to update to the current version 5 (“DC: 0-5”).

**12.** As a result of legal review, the Department finds that it must update the definition of “Affected Other” has been updated to more clearly state the “Affected Other” have a familial relationship to the member.

**13.** As a result of legal review, the Department finds that it must make technical edits to 65.05-9.A for clarity and readability.

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

EFFECTIVE DATE: November 9, 2022

AGENCY CONTACT PERSON: Dean Bugaj, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4045. Fax: (207) 287-1864. TTY: 711 (Deaf or Hard of Hearing). Email: Dean.Bugaj@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.

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

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. III Section 65**, Behavioral Health Services

ADOPTED RULE NUMBER: **2022-220**

CONCISE SUMMARY: The Department of Health and Human Services (the “Department”) adopts this rule to repeal and replace the prior 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Ch. III Section 65, “Behavioral Health Services”.

The Department adopts this rule to comply with PL 2021 Ch. 398 (the “Budget”) and PL 2021 Ch. 635 (the “Supplemental Budget”). Per the Budget, the rule adopts increased medication management rates. This provision will be effective retroactive to October 1, 2021, as directed by the Supplemental Budget, and in alignment with 22 MRS §42(8), which authorizes the Department to adopt retroactive rules that do not have any adverse financial impact on any MaineCare provider or member. The Department received CMS approval for these rate changes in January 2022.

Additionally, pursuant to Legislative directive and funding, the rule will incorporate updates to Ch. III from an independent rate study recommending increases to rates for Substance Use Disorder Intensive Outpatient Program (IOP) services. This provision will be effective retroactive to January 1, 2022, pursuant to 22 MRS §42(8). On March 31, 2022, the Department submitted a request for changes to its SPA to implement these changes.

Also, pursuant to Legislative directive and funding, from the Budget as well as the Supplemental Budget, the rule adopts cost-of-living adjustments (COLAs) for services that have not received a rate adjustment in the prior 12 months, according to appropriate criteria for calculating COLAs. This provision will be effective retroactive to July 1, 2022, pursuant to 22 MRS §42(8). On September 30, 2022, the Department submitted a request for changes to its SPA to implement these changes.

The Department is adopting a separate rule for Ch. II Section 65, simultaneous with this adopted rule. The adopted changes in Ch. II include the addition of various new IOP Services including Mental Health, Developmental Disabilities/Behavioral Health, Geriatric, Dialectical Behavior Therapy, and Eating Disorder (Level I and Level II). The Department also adopted a new modifier (ST) for use with the H2021 code, for reimbursement tracking purposes of the Trauma Focused-Cognitive Behavioral Therapy (TF-CBT) treatment modality, which is already allowable under Children’s Comprehensive Community Support Services – HCT-Master’s Level. This Chapter III rulemaking will adopt rates from an independent rate study for the new IOP Services pursuant to Legislative directive and funding from the Budget. These reimbursement rates shall be effective prospectively, upon the legal effective date of the adopted rule.

Throughout the rule, the Department adopts language consistent with the adopted Ch. II rule to address potentially stigmatizing language based on recommendations from the Maine opioid task force and legislation passed in 2018 to minimize stigma (PL 2017 Ch. 407).

The Department made the following change to the final rule:

**\*** As a result of the Department’s review, the Department finds that it must delete the term LADC because it was erroneously included in the proposed rule under the designated Substance Use Agency codes of H0004 (Outpatient Services – Individual/Family Therapy) and H0004 HQ (Outpatient Services – Group Therapy).

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

EFFECTIVE DATE: November 9, 2022

AGENCY 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) 287-1864. TTY: 711 (Deaf or Hard of Hearing). Email: Melanie.Miller@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.

AGENCY: **29-250** – Secretary of State (SOS), **Bureau of Motor Vehicles (BMV)**

CHAPTER NUMBER AND TITLE: **Ch. 15**, Rules Governing Acceptable Documents to Establish Legal Presence

ADOPTED RULE NUMBER: **2022-221**

CONCISE SUMMARY: These rules, first published in 2008, implement the provisions of 29-A MRS §§ 1301(2-A) and 1410(8) which prohibit the Secretary of State from issuing a driver’s license or nondriver identification card to an individual unless the individual presents valid documentary evidence of legal presence in the United States. These rules describe the documents that may be accepted to establish evidence of legal presence in the United States. The changes update the existing guidance, bringing Maine’s practices into compliance with federal law changes since this chapter originally became effective. These changes clarify procedures for BMV staff, increasing efficiency and effectiveness, which will ultimately improve customer service.

EFFECTIVE DATE: November 13, 2022

AGENCY CONTACT PERSON: Christopher Ireland, Bureau of Motor Vehicles, 101 Hospital Street – 29 State House Station, Augusta, ME 04333. Telephone: (207) 624-9124. Email: Christopher.Ireland@Maine.gov.

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

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

AGENCY: **94-649 - Maine Commission on Indigent Legal Services (MCILS)**

CHAPTER NUMBER AND TITLE: **Ch. 303** *(New)*, Procedures Regarding Legal Research Access and Materials

ADOPTED RULE NUMBER: **2022-222**

CONCISE SUMMARY: This rule establishes the administrative procedures for requesting access to online legal research services and for requesting reimbursement for necessary legal research materials to support the representation of indigent clients.

EFFECTIVE DATE:

MCILS CONTACT PERSON / RULEMAKING LIAISON: Justin W. Andrus, Esq., Executive Director, Maine Commission on Indigent Legal Services, 154 State House Station, Augusta, ME 04333. Telephone: (207) 287-3254. Email: Justin.Andrus@Maine.gov.

MCILS WEBSITE: <https://www.maine.gov/mcils/>.