**State of Maine: Notice of Agency Rulemaking – November 10, 2021**

**PROPOSALS**

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

CHAPTER NUMBER AND TITLE: **Ch. 301**, Fee Schedule

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2021-P182** *(2nd publication)*

BRIEF SUMMARY: This proposed rule amendment makes permanent the emergency rule adopted in July 2021 which raised the hourly rate paid to counsel to $80.00 per hour. The proposed rule would also provide for some discretion for the Executive Director to authorize payment of a voucher submitted after 90 days of the triggering date upon a showing of good cause. The rule also clarifies what constitutes a triggering event for billing purposes and sets the fee amounts that trigger presumptive review for specific case types.

PUBLIC HEARING: November 29, 2021 at 9:00 a.m., Room 228 - State House, Augusta

COMMENT DEADLINE: December 8, 2021

CONTACT PERSON FOR THIS FILING /SMALL BUSINESS IMPACT STATEMENT: Justin Andrus, Executive Director, MCILS, 154 State House Station, Augusta, ME 04330. Telephone: (207) 287-3254. Email: Justin.Andrus@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: no fiscal impact

STATUTORY AUTHORITY FOR THIS RULE: 4 MRS §1804(2)(F),(3)(B),(4)(D)

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

MCILS WEBSITE: [www.maine.gov/mcils](http://www.maine.gov/mcils) .

MCILS RULEMAKING LIAISON: Eleanor.Maciag@Maine.gov .

AGENCY: *Affiliated with 02 – Department of Professional and Financial Regulation (PFR)*: **02-373 - Board of Licensure in Medicine; 02-380 - State Board of Nursing; 02-383 - Board of Osteopathic Licensure**

CHAPTER NUMBER AND TITLE: **Ch. 11**, Joint Rule Regarding Telehealth Standards of Practice

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P208, P209, P210**

BRIEF SUMMARY: On June 21, 2021, Public Law ch. 291 “An Act Regarding Telehealth Regulations” became law following emergency enactment. The new law included definitions for telehealth and expanded them to include “interactive audio or video connection” between a patient and health care provider. In addition, it required licensing boards, including the Board of Licensure in Medicine (BOLIM), Board of Osteopathic Licensure (BOL), and State Board of Nursing (BON) to adopt rules governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions.” At the time of the enactment of PL ch. 291, the BOLIM and BOL had an existing joint “telemedicine” rule (effective December 10, 2016) that established “definitions” and “practice guidelines” including but not limited to licensure requirements, standards of care and professional ethics, scope of practice, identification requirements, the physician-patient relationship, practice standards, informed consent, record keeping, privacy and security requirements, and prescribing practices. The BOLIM and BOL propose amendments to the existing joint rule, which will also be adopted by the BON. The proposed amendments: change the chapter number and title of the rule from “Chapter 6, Telemedicine Standards of Practice” to “Chapter 11, Joint Rule Regarding Telehealth Standards of Practice”; update definitions to comport with definitions in PL ch. 291; and include terminology and requirements applicable to nurses.

PUBLIC HEARING: None planned. *Requests to hold a public hearing by any interested party may be submitted in writing to the identified agency contact person.*

COMMENT DEADLINE: Friday, December 10, 2021 by 4:30 p.m.

CONTACT PERSONS FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION:

**Dennis E. Smith**, Executive Director, Board of Licensure in Medicine 137 State House Station, Augusta, ME 04333-0137, tel. (207) 287-3605, fax (207) 287-6590, Dennis.E.Smith@Maine.gov . Rulemaking liaison: Maureen.S.Lathrop@Maine.gov .

**Kimberly S. Esquibel**, Executive Director / Rulemaking Liaison, State Board of Nursing, 158 State House Station, Augusta, ME 04333-0158, tel. (207) 287-1148, fax (207) 287-1149, Kim.Esquibel@Maine.gov .

**Susan E. Strout**, Executive Secretary / Rulemaking Liaison, Board of Osteopathic Licensure, 142 State House Station, Augusta, ME 04333-0142, tel. (207) 287-2480, fax (207) 536-5811, Susan.E.Strout@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 3269(3), 3269(7), 3300-AA, 3300-EE (Board of Licensure in Medicine); 32 MRS §§ 2102(2-A), 2153-A(1), 2266-2270 (State Board of Nursing); 32 MRS §§ 2562, 2600-AA, 2600-EE (Board of Osteopathic Licensure)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: PL. 2021 ch. 291

BOARD WEBSITES: [www.maine.gov/md](http://www.maine.gov/md) (Board of Licensure in Medicine); [www.maine.gov/boardofnursing](http://www.maine.gov/boardofnursing) (State Board of Nursing); [www.maine.gov/osteo](http://www.maine.gov/osteo) (Board of Osteopathic Licensure)

AGENCY: *Affiliated with 02 – Department of Professional and Financial Regulation (PFR)*: **02-373 - Board of Licensure in Medicine; 02-380 - State Board of Nursing; 02-383 - Board of Osteopathic Licensure**

CHAPTER NUMBER AND TITLE: **Ch. 12**, Joint Rule Regarding Office Based Treatment of Opioid Use Disorder

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBERS: **2021-P211, P212, P213**

BRIEF SUMMARY: The Board of Licensure in Medicine, State Board of Nursing, and Board of Osteopathic Licensure propose amendments to a joint rule regarding office-based treatment of opioid use disorder. The proposed amendments: eliminate gender terms, change the term “medical records” to “patient records”, and update the definition of telemedicine to telehealth to comport with the definition in 2021 PL ch. 291 enacted June 21, 2021.

PUBLIC HEARING: None planned. *Requests to hold a public hearing by any interested party may be submitted in writing to the identified agency contact person.*

COMMENT DEADLINE: Friday, December 10, 2021 by 4:30 p.m.

CONTACT PERSONS FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION:

**Dennis E. Smith**, Executive Director, Board of Licensure in Medicine 137 State House Station, Augusta, ME 04333-0137, tel. (207) 287-3605, fax (207) 287-6590, Dennis.E.Smith@Maine.gov . Rulemaking liaison: Maureen.S.Lathrop@Maine.gov .

**Kimberly S. Esquibel**, Executive Director / Rulemaking Liaison, State Board of Nursing, 158 State House Station, Augusta, ME 04333-0158, tel. (207) 287-1148, fax (207) 287-1149, Kim.Esquibel@Maine.gov .

**Susan E. Strout**, Executive Secretary / Rulemaking Liaison, Board of Osteopathic Licensure, 142 State House Station, Augusta, ME 04333-0142, tel. (207) 287-2480, fax (207) 536-5811, Susan.E.Strout@Maine.gov .

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

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 3269(3), 3269(7), 3300-F, 3300-EE (Board of Licensure in Medicine); 32 MRS §§ 2102(2-A), 2153-A(1), 2210, 2270 (State Board of Nursing); 32 MRS §§ 2562, 2600-C, 2600-EE (Board of Osteopathic Licensure)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: PL 2021 ch. 291

BOARD WEBSITES: [www.maine.gov/md](http://www.maine.gov/md) (Board of Licensure in Medicine); [www.maine.gov/boardofnursing](http://www.maine.gov/boardofnursing) (State Board of Nursing); [www.maine.gov/osteo](http://www.maine.gov/osteo) (Board of Osteopathic Licensure)

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 (OMS): **Ch. III Section 97**, Private Non-Medical Institutions (PNMI)

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2021-P214**

CONCISE SUMMARY: The Department of Health and Human Services (the “Department”) proposes the following 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 proposes to update the Main Rule and corresponding Appendices B and D to support the final adopted changes in ch. II section 97 (effective Nov. 1, 2021), with the emergency major substantive 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 add 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 proposes these 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 provided 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. The Department filed the emergency major substantive rule changes on November 1, 2021, which shall be effective for up to 12 months or until the Legislature has completed review of the provisionally adopted major substantive rule per 5 MRS §8073. Through this major substantive rule proposal, the Department is taking the first step toward making the emergency changes permanent. Following review of comments on the proposed rule changes, the Department shall send the provisionally adopted major substantive rule to the Legislature for review, per 5 M.S §8072. The Department shall seek approval from the Centers for Medicare and Medicaid Services (CMS) for the increased Appendix B and Appendix D rates.

In addition to the above, the Main Rule and relevant Appendices propose name 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 proposes rate updates from an independent rate study, recommending substantial increases, consistent with appropriations approved in the Supplemental Budget. Additional changes are proposed 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 now referred to as “Medically Supervised Withdrawal Services.” This rulemaking proposes creating two tiers of reimbursement, one tier accounting for 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 are proposed to clarify that social workers are licensed clinical social workers and to add licensed marriage and family therapists, to align with changes adopted in ch. II.

Appendix D proposes changing 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 are proposed to align with changes in ch. II. Following the independent rate study, rate recommendations are proposed, 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 proposes removing language from section 6000 because the referenced member assessment is no longer required. Ch. III also proposes 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, effective Nov. 1, 2021, this rule proposes 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.

PUBLIC HEARING: No public hearing scheduled. The Department will be providing a 30-day comment period instead of a public hearing.

DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. December 10, 2021.

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

IMPACT ON MUNICIPALITIES OR COUNTIES: The Department anticipates that this rulemaking will not have any impact on municipalities or counties.

STATUTORY AUTHORITY: 22 MRS §§ 42, 3173; 22 MRS §8110; 42 USC §671(20); PL 2019 ch. 407; *The Family First Prevention Services Act*, Public Law 115-123 (as part of Division E in the *Bipartisan Budget Act of 2018* (HR 1892) (eff. Feb. 9, 2018) (as amended through PL 116–260, enacted December 27, 2020); PL 2021 ch. 398

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

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: Kevin.Wells@Maine.gov .

**ADOPTIONS**

AGENCY: **10-144** – Department of Health and Human Services (DHHS), **Maine Center for Disease Control and Prevention (Maine CDC)**

CHAPTER NUMBER AND TITLE: **Ch. 264**, Immunization Requirements For Healthcare Workers

TYPE OF RULE:Routine Technical

ADOPTED RULE NUMBER: **2021-226**

CONCISE SUMMARY: The Department is adopting routine technical amendments to 10-144 CMR ch. 264, *Immunization Requirements for Healthcare Workers.* The Department is adding COVID-19 to the list of vaccine preventable diseases for which Designated Healthcare Facility employees must show proof of immunization or provide appropriate exemption documentation pursuant to 22 MRS §802(4-B) or as otherwise required by law. The Department clarified the definition of "employee" to include independent contractors but to exclude persons who provide *ad hoc*, non-healthcare services for a Designated Healthcare Facility and have no potential for direct contact with staff, patients, or visitors. These amendments also clarify exclusion and reporting requirements, update the required dosage for Hepatitis B, clarify that no Proof of Immunization is available for Influenza or COVID-19, and specify the manner in which annual survey data must be reported and the manner in which it may be used by the Department.

EFFECTIVE DATE: November 10, 2021

MAINE CDC CONTACT PERSON: Bridget Bagley, 286 Water Street - 11 State House Station, Augusta, ME 04333-0011. Telephone: (207) 287-9394. Email: Bridget.Bagley@Maine.gov .

MAINE CDC RULES WEBSITE: <http://www.maine.gov/dhhs/mecdc/rules/> .

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

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

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

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

AGENCY: **16-642** – Department of Public Safety (DPS), Office of State Fire Marshal (FMO), **Bureau of Building Codes and Standards**

CHAPTER NUMBER AND TITLE: **Ch. 3**, Maine Uniform Building and Energy Code - Commercial Building Code of Maine

ADOPTED RULE NUMBER: **2021-227**

CONCISE SUMMARY: The *2015 International Building Code* has been adopted and in place in Maine since 2018. These changes are updates to the current code to reflect updates to the code that the MUBEC Board felt were needed to allow two new industries in the State to conduct business withing the scope of the MUBEC code. The third change was a proposed code change allowing small summer cabins to be built without sprinkler systems. This code change as well as the others were discussed at length at public hearings and debated during MUBEC Board meetings.

EFFECTIVE DATE: November14, 2021

AGENCY CONTACT PERSON / RULEMAKING LIAISON: Richard E. Taylor, Sr. Research and Planning Analyst, Office of State Fire Marshal, 52 State House Station, Augusta, Maine 04333-0052.

Telephone: (207) 626-3873 or (207) 592-6105. Email: Richard.E.Taylor@Maine.gov .

BUREAU WEBSITE: <https://www.maine.gov/dps/fmo/building-codes> .

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

CHAPTER NUMBER AND TITLE: **Ch. 36**, Atlantic Herring (2021 Season 2 Open)

 ADOPTED RULE NUMBER: **2021-228**

 CONCISE SUMMARY: The Days Out Commissioners have set four landing days for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery, Monday at 12:01 a.m. through Thursday at 11:59 p.m., beginning on Monday, November 8, 2021 at 12:01 a.m. All individuals harvesting herring are required to email their pre-land hail weight three hours prior to landing to herring.dmr@maine.gov. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

EFFECTIVE DATE: November 6, 2021

DMR CONTACT PERSON: Melissa Smith, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021. Telephone: (207) 441-5040. Fax: (207) 624-6024. TTY: (207) 633-9500 (Deaf/Hard of Hearing). Email: Melissa.Smith@Maine.gov .

DMR RULEMAKING WEBSITE: <http://www.maine.gov/dmr/rulemaking/> .

DMR WEBSITE: <https://www.maine.gov/dmr/index.html> .

DMR RULEMAKING LIAISON: Deirdre.Gilbert@Maine.gov .