**State of Maine: Notice of Agency Rulemaking – November 15, 2023**

**NOTICE OF STATE RULEMAKING**

**Public Input for Rules**

Notices are published each Wednesday to alert the public regarding state agency rulemaking. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one - the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. **Petitions**: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rulemaking if the petition is signed by 150 or more registered voters, and may begin rulemaking if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone (207) 287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 §11112). **World‑Wide Web**: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: <http://www.maine.gov/sos/cec/rules>. There is also a list of rulemaking liaisons (<http://www.maine.gov/sos/cec/rules/liaisons.html>), who are single points of contact for each agency.

**PROPOSALS**

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

CHAPTER NUMBER AND TITLE: **Ch. 101,** MaineCare Benefits Manual, **Ch. II, Section 94,** Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P237**

CONCISE SUMMARY: In order to codify telehealth visits allowable during the Public Health Emergency, to add the service of immunization counseling, and to add eligibility for MaineCare to pregnant individuals of any age who but for their immigration status would be eligible for MaineCare, this proposed rulemaking seeks to make the following changes:

Addition of well-child visit: In response to the COVID-19 pandemic, on May 13, 2020, the Department emergency adopted MaineCare Benefits Manual, Ch. I, Section 5, COVID-19 Public Health Emergency Services, which allowed members to receive a second well-child visit when an initial visit was completed via telehealth. This proposed rule codifies that extra visit allowed during the public health emergency in Section 94.06-1.

Immunizations: The proposed rule adds coverage for immunization counseling in Section 94.04-4.

Eligibility: In Section 94.02-02, the proposed rule adds eligibility for EPSDT services. In accordance with the MaineCare Eligibility Manual, 10-144 Ch. 332 Part 3, Section 2.3, III, Coverage for Pregnant Individuals for the Health of Unborn Children, a pregnant individual of any age who is eligible for Medicaid but for noncitizen status and is covered under MaineCare’s Children’s Health Insurance Program (CHIP) is eligible for the services described in this Section.

Changes to the rule also include minor technical changes such as replacing the outdated Bright Futures periodicity schedule with the website address for the most updated schedule, instructing providers to use the EP modifier when billing, and replacing a telephone number with the name of the office.

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

STATUTORY AUTHORITY: 22 M.R.S. §§ 42, 3173

PUBLIC HEARING:December 8, 2023, at 2 p.m. The Department will hold a combined in-person and remote (via Zoom) public hearing.

Location: State Office Building, Conference Rooms A and B, 109 Capitol Street, Augusta, ME.

Zoom Meeting link: <https://mainestate.zoom.us/j/86850790395?pwd=OHpQdTlQdFhDOXF2ZWkycmRLT3pndz09>

*Some devices may require downloading a free app from Zoom prior to joining the public hearing event. The Department requests that any individual requiring special arrangements to attend the hearing in person contact the agency person listed below 5 days in advance of the hearing.*

Meeting ID: 868 5079 0395

DEADLINE FOR COMMENTS: Comments must be received by 11:59 PM on December 18, 2023.

AGENCY CONTACT PERSON: Jeannette Sedgwick, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street, 11 State House Station, Augusta, Maine 04333-0011. Telephone: 207-624-4086 FAX: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing)

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

CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different):N/A

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

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: Emily.A.Cathcart@Maine.gov.

AGENCY: **03-201 - Department of Corrections**

CHAPTER NUMBER AND TITLE: **Ch. 1,** Detention and Correctional Standards for Counties and Municipalities

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P238**

BRIEF SUMARY: The primary reason for amending the current rule is to add and revise jail standards to fulfill recent statutory requirements related to the follow subjects as they affect jail inmates: affirmation of a transgender inmate’s consistently held gender identity; grievance process for complaints of violations of jail standards; transportation of females to and from medical appointments and privacy during appointments; access to menstrual products; protection of confidential attorney-client communications; and additional requirements for approval of home release monitoring for domestic violence offenders.

Copies of the proposed amended rule are available upon request by contacting the Department contact person or on the Department of Corrections website at [**https://www.maine.gov/corrections/policies**](https://www.maine.gov/corrections/policies). Pursuant to Maine law, interested parties are publicly notified of the proposed rulemaking and are provided an opportunity for comment.

PUBLIC HEARING: December 4, 2023, 1:00 p.m. to 3:00 p.m. This hearing will be conducted via a Microsoft Teams virtual meeting. Anyone wishing to attend should join the Microsoft Teams meeting accessible at this link: [https://teams.microsoft.com/l/meetup-join/19%3ameeting\_ZjhmYTBjN2YtMGVhOC00MGMwLTgzNzQtN2YxZmMzNTZjZDkx%40thread.v2/0?context=%7b%22Tid%22%3a%22413fa8ab-207d-4b62-9bcd-ea1a8f2f864e%22%2c%22Oid%22%3a%2242c132ed-0ac6-4d91-b911-cee298c26912%22%7d](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2Fl%2Fmeetup-join%2F19%253ameeting_ZjhmYTBjN2YtMGVhOC00MGMwLTgzNzQtN2YxZmMzNTZjZDkx%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522413fa8ab-207d-4b62-9bcd-ea1a8f2f864e%2522%252c%2522Oid%2522%253a%252242c132ed-0ac6-4d91-b911-cee298c26912%2522%257d&data=05%7C01%7CDiane.E.Sleek%40maine.gov%7Ce602081f1cdd4f1c42ce08dbded70bfe%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638348787423416978%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=5w7fvxWEWh1NzsrjWLW62O7HstmNbKaF%2FNV4lS16vP8%3D&reserved=0)

In addition, directions on how to attend the hearing will be posted on the Department of Corrections website and sent upon request to interested persons.

The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed below before November 27, 2023.

COMMENT DEADLINE: December 15, 2023

Written comments may be submitted by mail, e-mail, or fax to the contact person before the end of the comment period. To ensure the comments are considered, they must include the name of the commenter and the organization represented, if any.

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Mary Lucia, Policy Development Coordinator, Department of Corrections, 111 SHS, Augusta ME 04333. Phone: (207) 530-0983, TTY: Relay Service Dial 711, Fax: (207) 287-4370. Email: Mary.A.Lucia@maine.gov

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

STATUTORY AUTHORITY FOR THIS RULE: Title 34-A, sections 1208 & 1208-B

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Title 30-A, sections 1561-A, 1565, & 1659-A, Title 34-A, section 1402(5)

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Mary.A.Lucia@maine.gov

AGENCY: **06-096 - Department of Environmental Protection**

CHAPTER NUMBER AND TITLE: **Ch. 526,** Cooling Water Intake Structures

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P239**

BRIEF SUMMARY: The Department is proposing a new rule: 06-096 C.M.R. Chapter 526: Cooling Water Intake Structures. This rule establishes requirements that apply to cooling water intake structures at new and existing facilities that are subject to section 316(b) of the Clean Water Act (CWA), 33 U.S.C. § 1326(b). These requirements include standards for minimizing adverse environmental impact associated with the use of cooling water intake structures and required procedures (e.g., permit application requirements, information submission requirements) for establishing the appropriate technology requirements at certain specified facilities as well as monitoring, reporting, and record keeping requirements to demonstrate compliance.

The purpose of the rulemaking proposal is to enable the Department to seek delegated authority under the Clean Water Act section 316(b), as required by Maine's Memorandum of Agreement with USEPA. The proposed rule does not contain any substantive changes to the existing rule as currently administered by USEPA. Chapter 526 is based on the EPA rules found a 40 CFR part 125, subpart I and subpart J.

PUBLIC HEARING: December 7, 2023, 9:00 AM, Marquardt Building, 32 Blossom Lane, Augusta, Maine. Entrance located on east side of building (Door D7)

COMMENT DEADLINE: December 18, 2023

CONTACT PERSON FOR THIS FILING: Matthew Hight, 17 State House Station, Augusta, Me 04333. Telephone: 207-719-0703, Email: Matt.Hight@maine.gov

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT: N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None.

STATUTORY AUTHORITY FOR THIS RULE: 38 M.R.S. § 341-H.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: Section 316(b) of the Clean Water Act, (33 U.S.C. § 1326(b)).

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Mark.T.Margerum@maine.gov

**ADOPTIONS**

AGENCY: **05-017 – Department of Education**

CHAPTER NUMBER AND TITLE: **Ch. 117,** Rule Regarding the Duties of School Counselors and School Social Workers *(Major Substantive)*

ADOPTED RULE NUMBER: **2023-229**

CONCISE SUMMARY: Chapter 117 outlines standards for the professional qualifications and duties of school counselors and school social workers; including appropriate roles, and use of time. This rule was developed over two years of conceptual discussions with various stakeholder groups including school-based counselors, social workers, and the Maine chapter of the National Association of Social Workers and in response to Public Law 2019, chapter 45, an Act to Increase the Amount of Time School Counselors and Social Workers Spend Providing Students Direct and Indirect Counseling. The new rule establishes that each school counselor and each school social worker shall spend at least 80% of their time providing indirect and direct services on behalf of students in accordance with [*20-A MRSA §4008-A(2).*](https://www.mainelegislature.org/legis/statutes/20-A/title20-Asec4008-A.html) A public hearing was scheduled October 24 2022 which was followed by a comment period that concluded on November 14, 2022. The provisional rule was filed with the Secretary of State on December 8, 2022 and delivered to the Legislative Council on the same day. The rule received a public hearing in the Education and Cultural Affairs Committee and was heard and debated in both the House and the Senate. The language was signed by the Governor on June 8, 2023.

EFFECTIVE DATE: December 9, 2023

DOE CONTACT PERSON / RULEMAKING LIAISON: Laura Cyr, Department of Education, 23 State House Station, Augusta, Maine. Telephone: (207) 446-8791. Email: Laura.Cyr@Maine.gov.

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

AGENCY: **06-096 - Department of Environmental Protection**

CHAPTER NUMBER AND TITLE: **Ch. 101,** Visible Emissions Regulation

ADOPTED RULE NUMBER: **2023-230**

CONCISE SUMMARY: Chapter 101 establishes visible emission standards, also known as opacity limits, for facilities, both licensed and unlicensed, throughout the state. It is part of Maine’s State Implementation Plan (SIP) to fulfill requirements of the Clean Air Act. The rule has been amended to comply with federal requirements.

EFFECTIVE DATE: January 1, 2024

AGENCY CONTACT PERSON: Lynn Muzzey, Department of Environmental Protection, 17 State House Station, Augusta, ME 04333. Telephone: (207) 332-1279. Email: Lynn.Muzzey@maine.gov .

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

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

AGENCY: **06-096 - Department of Environmental Protection**

CHAPTER NUMBER AND TITLE: **Ch. 305,** Natural Resource Protection Act – Permit by Rule (*Section 16 -- Major Substantive)*

ADOPTED RULE NUMBER: **2023-231**

CONCISE SUMMARY:Section 16 of the existing rule has been amended to bring the rule into alignment with statutory provisions concerning minor expansions in coastal sand dunes. In P.L. 2021, Chapter 186 the legislature removed the exemption for minor expansions and replaced it with a provision allowing these same minor expansions through a NRPA permit-by-rule process (38 M.R.S. § 480-E(14)). This amendment is a major substantive rulemaking that was approved by the Maine Legislature in Resolves 2023, Chapter 8.

EFFECTIVE DATE: December 9, 2023

AGENCY CONTACT PERSON: Naomi Kirk-Lawlor, Department of Environmental Protection, State House Station 17, Augusta, Me 04333. Phone: 207-287-7844. Email: Naomi.Kirk-Lawlor@maine.gov .

DEP WEBSITE: <https://www.maine.gov/dep/>.
DEP RULEMAKING LIAISON: Mark.T.Margerum@Maine.gov.

AGENCY: **18-553 -** Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, **Maine State Liquor and Lottery Commission**

CHAPTER NUMBER AND TITLE: **Ch. 30,** Cash Pop Game Rules

ADOPTED RULE NUMBER: **2023-232**

CONCISE SUMMARY: These rules will allow the Maine Lottery to sell the new “Cash Pop” lottery game and provide the rules that will govern the game. The rules will provide transparency to players regarding how the game is played, how retailers are compensated, what prizes can be won, costs to play and all other game related information.

EFFECTIVE DATE:  November 19, 2023

AGENCY CONTACT PERSON/RULEMAKING LIAISON: Michael Boardman, Acting Director Lottery, Bureau of Alcoholic Beverages and Lottery Operations, 8 State House Station, Augusta, ME  04333-0008, Telephone: 207-287-4614; Fax:207-287-6769; Email:Michael.Boardman@maine.gov

WEBSITE: <https://www.maine.gov/dafs/bablo/>