**State of Maine: Notice of Agency Rulemaking – December 6, 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: **02-280 -** Department of Professional and Financial Regulation, **Board of Accountancy**

CHAPTER NUMBER AND TITLE: **Ch. 3,** Examination Requirements (amend)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P260**

BRIEF SUMMARY: The rulemaking is being proposed to amend the rule regarding examination requirements by extending the number of months during which a certified public accounting license candidate must complete all sections of the Uniform CPA Examination. The intention of this amendment is to remove unnecessary barriers to licensure and to align the board’s rule with other jurisdictions and with guidance from the National Association of State Boards of Accountancy (NASBA).

 The proposed rule changes the length of time, referred to as the “rolling window,” during which a candidate must complete all sections of the Uniform CPA Examination from eighteen (18) months to thirty (30) months.

PUBLIC HEARING: N/A. Pursuant to 5 M.R.S. § 8052(1) and § 8053(3)(B), interested persons may request a public hearing by submitting a request in writing to the contact person for this filing.

COMMENT DEADLINE: Friday, January 5, 2024, by 5:00 p.m.

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Kristin Racine, 35 State House Station, Augusta, ME 04333-0035. Telephone: 207-624-8615, TTY users call  Maine Relay 711. Email: Kristin.Racine@maine.gov

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

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. §§ 12214(4), 12228(4)

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

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/accountancy>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Kristin.Racine@maine.gov

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

CHAPTER NUMBER AND TITLE: **Ch. 255,** Workers’ Compensation Fronting Companies

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2023-P261**

BRIEF SUMMARY: The proposed rule establishes the terms and conditions for the implementation of group self-insurance fronting arrangements and the formation, operation, and dissolution of workers’ compensation fronting companies.

PUBLIC HEARING: December 27, 2023, at 10:00 a.m. at the Department of Professional and Financial Regulation, Kennebec Room, Bureau of Insurance, 76 Northern Avenue, Gardiner ME 04345.

COMMENT DEADLINE: 4:30 p.m., January 7, 2023 by mail or e-mail to the Contact Person.

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Karma Lombard, 34 State House Station, Augusta, ME 04333-0034. Telephone: (207) 624-8450, TTY users use Maine Relay 711. Email: Karma.Y.Lombard@maine.gov

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

STATUTORY AUTHORITY FOR THIS RULE: 24-A M.R.S. §§ 212 and 39-A M.R.S. § 403(4 B)(D)

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

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Stacy.L.Bergendahl@maine.gov

AGENCY: **10-144 -** Department of Health and Human Services, **Office for Family Independence**

CHAPTER NUMBER AND TITLE: **Ch. 333,** Low Cost Drugs for the Elderly and Disabled (DEL) Manual, MC Rule #305 – DEL Asset Test Removal

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P262**

BRIEF SUMMARY:The proposed rule change would remove the asset test, Section 2.1, effective retroactive to January 1, 2024. The proposed rule change is based on a legislative change to 22 M.R.S. § 254-D(4)(B) made by P.L. 2023, ch. 412, Part EEEEE. The rule change is consistent with a recent MaineCare Eligibility Manual proposed rule change which would remove the asset test for all Medicare Savings Plan coverage types. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this provides a benefit to applicants and recipients.

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

PUBLIC HEARING:No public hearing is scheduled.

COMMENT DEADLINE:Monday, January 8, 2024, at 5:00 p.m. ET. Written public comments may be submitted via the link at <https://www.maine.gov/dhhs/about/rulemaking>

CONTACT PERSON FOR THIS FILING:Adam Hooper, MaineCare Program Manager, Department of Health and Human Services, Office for Family Independence, 109 Capitol Street, Augusta, ME 04330-6841. Phone: (207) 624-4178/Fax: (207) 287-3455, TT Users Call Maine Relay – 711. Email: Adam.Hooper@maine.gov

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES:None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 M.R.S. §§ 42(1) and (8); 254-D(4)(B)

AGENCY WEBSITE: [https://www.maine.gov/dhhs/ofi](https://www.maine.gov/dhhs/ofi/arules)

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON:

Emily.A.Cathcart@maine.gov

**ADOPTIONS**

AGENCY: **65-407 - Maine Public Utilities Commission**

CHAPTER NUMBER AND TITLE: **Ch. 311,** Portfolio Requirements

ADOPTED RULE NUMBER: **2023-241**

CONCISE SUMMARY: The Public Utilities Commission amends its Portfolio Requirement rule (Chapter 311) to comply with the requirements of Public Law 2023, chapters 306 and 361. The amended rule creates an alternative compliance payment rate for Class II resources. The amended rule also requires that any alternative compliance payment rate for Class I, Class IA or Class II resources collected are to be used to provide financial assistance for low-income households.

EFFECTIVE DATE: December 2, 2023

AGENCY CONTACT PERSON: Pam Kowalchuk, MPUC, 18 State House Station, Augusta, ME 04333-0018. Telephone: 207-287-1564. Email: Pamela.Kowalchuk@maine.gov

MPUC WEBSITE: [www.maine.gov/mpuc](http://www.maine.gov/mpuc)
MPUC RULEMAKING LIAISON: Deirdre.Schneider@Maine.gov

AGENCY: **10-144** - Department of Health and Human Services, **Office for Family Independence**

CHAPTER NUMBER AND TITLE: **Ch. 301,** Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-3; SNAP Rule #231 – FFY24 Budgeting Changes

ADOPTED RULE NUMBER: **2023-242**

CONCISE SUMMARY:Maine exercises an option for Broad Based Categorical Eligibility under [7 C.F.R. § 273.2(j)(2)](https://www.ecfr.gov/current/title-7/part-273#p-273.2(j)(2)) which includes a 200% Federal Poverty Level (FPL) test. This figure is not included in the figures updated each federal fiscal year per [7 C.F.R. § 273.9(a)(4)](https://www.ecfr.gov/current/title-7/part-273#p-273.9(a)(4)), it is updated as soon as the the FPLs are published. This year’s FPLs were published at <https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines> on January 19. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 88:12 (January 19, 2023) p. 3424, <https://www.govinfo.gov/content/pkg/FR-2023-01-19/pdf/2023-00885.pdf>. The adopted rule incorporates these figures effective January 19, 2023.

Federal rule [7 C.F.R. §§273.9(a)(3)](https://www.ecfr.gov/current/title-7/part-273#p-273.9(a)(3)), [273.10(e)(4)](https://www.ecfr.gov/current/title-7/part-273#p-273.10(e)(4)), and [273.11(r)(2)(ii)](https://www.ecfr.gov/current/title-7/part-273#p-273.11(r)(2)(ii)) require that income allowances, standard shelter deductions, and minimum and maximum benefit limits, are updated each year, effective October 1st. The U.S.D.A. - Food and Nutrition Services (FNS) provides updated income allowances, standard deductions, and minimum and maximum benefit standards to states and territories, annually. The final income allowance, standard deductions, and minimum and maximum benefit levels were distributed by the U.S.D.A. - FNS on August 3, 2023. The adopted rule incorporates these figures effective October 1, 2023.

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. These changes would make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households.

Federal rule [7 C.F.R. §](https://www.ecfr.gov/current/title-7/part-273%22%20%5Cl%20%22p-273.9%28d%29%286%29%28ii%29)[273.9(d)(6)(ii)](https://www.ecfr.gov/current/title-7/part-273%22%20%5Cl%20%22p-273.9%28d%29%286%29%28ii%29) and [(iii)(B)](https://www.ecfr.gov/current/title-7/part-273#p-273.9(d)(6)(iii)(B)) require that standard heating/cooling, non-heat, and phone allowances as well as excess shelter deductions are updated each year, effective October 1st. The U.S.D.A. - Food and Nutrition Services (FNS) provides the updated excess shelter deduction to states and territories, annually. The final excess shelter deduction was distributed by the U.S.D.A. - FNS on August 3, 2023. FNS annually approves standard utility allowances (SUA) calculated by states. The calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2023 and June 2024. FNS approved Maine’s SUAs for FFY 2024 on August 18, 2023. These figures were adopted in emergency rule SNAP 231E on September 29, 2023. The adopted rule extends the use of these figures beyond the emergency period.

See <https://www.maine.gov/dhhs/about/rulemaking> for rules and related rulemaking documents.

EFFECTIVE DATE: December 3, 2023

AGENCY CONTACT PERSON: Ian Miller, Senior Program Manager – SNAP, Office for Family Independence, Department of Health & Human Services, 109 Capitol Street

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OFI RULEMAKING LIAISON: Dan.Cohen@Maine.gov.
DHHS WEBSITE: <https://www.maine.gov/dhhs/>.
DHHS RULEMAKING LIAISON: Emily.A.Cathcart@Maine.gov .

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

CHAPTER NUMBER AND TITLE: **Ch. 3,** Schedule of Minimum Prices, Order #12-23

ADOPTED RULE NUMBER: **2023-243** *(Emergency)*

CONCISE SUMMARY: Minimum December 2023 Class I price is $23.01/cwt. plus $1.63/cwt. for Producer Margins, an over-order premium of $1.04/cwt as being prevailing in Southern New England and $0.47/cwt. handling fee for a total of $26.35/cwt. that includes a $0.20/cwt Federal promotion fee.

EFFECTIVE DATE: December 3, 2023

AGENCY CONTACT PERSON/ RULEMAKING LIAISON: Julie-Marie Bickford, Maine Milk Commission, DACF, 28 State House Station, Augusta ME 03333. Telephone: (207) 287-7521. Email Julie-Marie.Bickford@Maine.gov
MMC RULES WEBSITE: <https://www.maine.gov/dacf/milkcommission/statutes_rules.shtml>.
COMMISSION WEBSITE: <https://www.maine.gov/dacf/milkcommission/index.shtml>.

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

CHAPTER NUMBER AND TITLE: **Ch. 101,** MaineCare Benefits Manual, **Chapter II, Section 89,** MaineMOM Services and Reimbursement

ADOPTED RULE NUMBER: **2023-244**

CONCISE SUMMARY: The adopted rulemaking establishes 10-144 CMR Ch. 101, MaineCare Benefits Manual (the “MBM”), Chapter II, Section 89, MaineMOM Services and Reimbursement.

The Department adopts this rule in order to create a new section of policy describing MaineMOM Services. The rulemaking addresses MaineMOM provider requirements, member eligibility, policies and procedures, covered services, and reimbursement methodology. The adopted MaineMOM Services rule is intended to expand Maine’s offering of substance use treatment services for pregnant and postpartum MaineCare members. This service is being created specifically to address and improve care for pregnant and postpartum people with Opioid Use Disorder (OUD) and their infants by integrating perinatal and substance use treatment services. The adopted rule establishes a new model of care which builds upon Opioid Health Home Services within the Health Home Services Medicaid State Plan benefit, designed to integrate and coordinate medical and behavioral health services and supports for people living with chronic conditions.

MaineMOM services are separate from Section 93, Opioid Health Home Services. MaineCare will not reimburse a MaineMOM provider for delivering MaineMOM services to a member if that member also receives Section 93 services.

The Department adopts service and provider requirements for MaineMOM Services that are consistent with Health Home Service requirements, to include core Health Home Services and Standards, and the delivery of person-centered, quality-driven health care services. These adopted core services include creating care plans that support individual needs of patients, identifying health-related social needs, connecting individuals to needed resources, providing education related to substance use and perinatal care, supporting transitions between inpatient and outpatient care settings, and offering access to recovery-focused services. The Department further adopts that MaineMOM Services be provided by an interdisciplinary care team that includes a clinical lead, a Medications for Opioid Used Disorder (MOUD) prescriber, a perinatal provider, a nurse care manager, a clinical counselor, a patient navigator, and a recovery coach.

The adopted rule establishes three (3) models of MaineMOM Services to accommodate various provider and member situations. The three (3) models are:

* the Integrated Model,
* the Partnership Model, and
* the Perinatal Navigation Model

In compliance with 22 M.R.S. Section 3173-J(3), this adopted rule establishes the reimbursement rate methodology for Section 89 services, as follows:

* For each of the three (3) models of MaineMOM Services, the adopted rule establishes a monthly Per Member Per Month (PMPM) reimbursement rate which incorporates quality of care incentives with the review of performance on two quality measures (access to postpartum services and screening for viral hepatitis C in pregnant patients).
* 4% of the PMPM payments is withheld and redistributed every six months in accordance with the Performance-Based Adjustments rule provision.
* In compliance with 22 M.R.S. Section 3173-J, the adopted reimbursement methodology applies an annual cost of living adjustment (COLA) equal to the percentage increase in the state minimum wage as set by the Department of Labor, pursuant to 26 M.R.S. Section 664(1), effective July 1, 2024, to the three MaineMOM PMPM rates.
* The PMPM rates and the annual COLA adjustments will be posted on the Department’s website.

The Department has received approval from the Centers for Medicare & Medicaid Services (CMS) for most of the new covered services and rates. The rule notates for which provisions the Department is seeking a State Plan Amendment for. As described in detail in the Summary of Comments and Responses document, the Department made a few changes to the final rule based on public comment. First, the Department changed the phrase “Consent Forms” to “Documentation of Consent” in Section 89.04-2(D). Second, the Department changed Section 89.05-1(A)(3) to establish new timelines for the Plan of Safe Care that reflect variances in when a member enrolls in MaineMOM services. Providers shall ensure a Plan of Safe Care is created prior to the pregnancy due date for members who enroll in services at least thirty (30) days prior to the pregnancy due date. For a member who enrolls in services after thirty (30) days prior to the pregnancy due date, the plan is created as soon as possible and appropriate, conditional on birth outcome. Third, the Department made two changes under Section 89.05-3. The first change replaced “hourly visit” with “billable hour.” The second change was to clarify that while the counseling requirements will be at a minimum one hour in duration monthly, this may be delivered in multiple member contacts, as clinically appropriate, and documented in the member’s record. Fourth, the Department replaced “long-term recovery” with “recovery” in Section 89.06. Fifth, the Department added “If a MaineMOM member has a primary care provider” to the beginning of Section 89.06-1(M). Finally, as a result of final rule review, the Department eliminated Section 89.08(A)(9) “Adequate clinical documentation to support the phase of treatment to which the MaineMOM provider is attesting.” MaineMOM services do not include phases of treatment and this was erroneously included in the proposed rule.

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

EFFECTIVE DATE: December 6, 2023

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

AGENCY CONTACT PERSON: Steven Fritzsche, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street, 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207)-624-4031 FAX: (207)-287-6106. TTY users call Maine relay 711. Email: Steven.Fritzsche@maine.gov

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

AGENCY: **10-148 -** Department of Health and Human Services, **Office of Child and Family Services**

CHAPTER NUMBER AND TITLE: **Ch. 30** *(New)***,** Early Childhood Educator Workforce Salary Supplement Program Rules(*Emergency Rule)*

ADOPTED RULE NUMBER: **2023-245**

CONCISE SUMMARY:This is a new rule, and a new Department program. In 2022 the Maine Legislature enacted P.L. 2021, ch. 635, Sec. RR-1, codified as 22 M.R.S. Sec. 3737-A (Early childhood educator workforce salary supplements). Pursuant to the law, the Department was required to establish a new program to provide salary supplements to child care providers and early childhood educators who provide direct services to children in a licensed child care facility or who are licensed family child care providers. The Department implemented this program in 2022, but the standards and requirements were never established in rule. The law directs the Department to establish a rule beginning July 1, 2023. On October 11, 2023, the Department published a notice for a proposed rule for this program. On October 11, 2023, the Department held a public hearing, and accepted public comments until November 9, 2023.

Pursuant to 5 M.R.S. Sec. 8054, the Department has determined it needs to adopt this emergency rule, as it continues to complete the rulemaking process on the proposed rule. This emergency rule implements the tiered system for supplemental payments the Legislature required. Raising the pay of child care workers in Maine is critical to recruit and retain essential child care workers, and will allow Maine families to have the stability and support they need to be able to take jobs, start new businesses, move to rural communities and will also provide critical developmental care for children. The Department anticipates the Commissioner will finalize and adopt the final rule early in 2024, but the tiered system of payments provided by the emergency rule needs immediate implementation. Given the urgent need to address this critical need for child care workers in Maine, the Department has determined that immediate adoption is necessary to avoid an immediate threat to public health, safety or general welfare.

This emergency rule provides:

* Outlines procedures for Early Childhood Educator Workforce Salary Supplements;
* Provides that the Department will provide monthly Salary Supplements to the Programs.
* Complies with 22 M.R.S. Sec. 3737-A by providing a three tier system for salary supplements, based on the education and experience level of child care providers and early childhood educators.
* Complies with 22 M.R.S. 3737-A by providing that the 2nd tier provides a salary supplement that is 50% greater than the first tier, and the 3rd tier provides a salary supplement that is 50% great than the 2nd tier.
* Complies with 22 M.R.S. Sec. 3737-A by requiring that the child care facility or family child care provider is required to pay the supplement to the employee who provides direct services to children.
* Explains how a program can enroll in the Early Childhood Educator Workforce Supplement Program.
* Describes an appeal process for overpayments and underpayments.

The Department will continue to process and finalize the proposed rulemaking and anticipates adopting a final rule early in 2024, prior to the expiration of this emergency rule. This emergency rule can be effective for up to 90 days.

EFFECTIVE DATE: December 1, 2023

AGENCY CONTACT PERSON:Crystal Arbour, Child Care Services Program Manager, DHHS, Office of Child and Family Services, 2 Anthony Avenue, Augusta, ME 04330. Telephone: (207) 626-8683. Email: Crystal.Arbour@Maine.gov.
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DHHS WEBSITE: <https://www.maine.gov/dhhs/>.
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