**State of Maine: Notice of Agency Rulemaking – December 7, 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: **14-197** - Department of Health and Human Services (DHHS), **Office of Aging and Disability Services (OADS)**

CHAPTER NUMBER AND TITLE: **Ch. 5**, Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism Spectrum Disorder in Maine

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P222**

BRIEF SUMMARY: In January 2014, the federal Centers for Medicare and Medicaid Service (CMS) published new Medicaid requirements, in 42 CFR §441.301(c), regarding Section 1915(c) waiver Home and Community-Based Services (HCBS). The federal rule requires that people who receive HCBS funded through Medicaid must receive those services and supports in settings that meet specific standards. Though 14-197 CMR ch. 5 (Chapter 5) is not a MaineCare rule, most or all of the persons protected by the rule receive MaineCare services – often in the form of HCBS waiver services. The Department adopted and CMS approved a State Transition Plan guiding Maine’s transition to compliance with the federal HCBS rule, and in that Plan the Department agreed to assure that Ch. 5 is not inconsistent with federal HCBS requirements because of its impact on some MaineCare HCBS waiver recipients. To come into compliance with this State Transition Plan, the Office of Aging and Disability Services is proposing to update Ch. 5 to acknowledge this rule’s interaction with 10-144 CMR Ch. 101 (*MaineCare Benefits Manual*), Ch. I Section 6 – “Global HCBS Waiver Person-Centered Planning and Settings Rule” (Global HCBS Waiver Rule), which implements the new federal HCBS waiver requirements in MaineCare.

Specifically, the amended rule will clarify that when a Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under the Global HCBS Waiver Rule, the provision of supports authorized under this Ch. 5 shall comply with the Global HCBS Waiver Rule.

The Department plans to further amend Ch. 5 in 2023, with a comprehensive and stakeholder-informed update to the rule.

DATE, TIME AND PLACE OF PUBLIC HEARING: *Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearings will be conducted remotely, via ZOOM. This is in accordance with the DHHS Remote Rulemakings Hearings Policy issued September 10, 2021. A virtual hearing via ZOOM with be held on December 29, 2022. To register, please use this link:*

[*https://mainestate.zoom.us/meeting/register/tZwud-utpz4tG9M6eVtSou5TtC-ts23MmVN2*](https://mainestate.zoom.us/meeting/register/tZwud-utpz4tG9M6eVtSou5TtC-ts23MmVN2)

*After registering, you will receive a confirmation email containing information about joining the hearing. Interpreter services will be provided during the hearing upon request.*

COMMENT DEADLINE: January 9, 2023, at 5:00 p.m.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Joseph Zamboni, Policy and Program Development Manager, Office of Aging and Disability Services - Department of Health and Human Services, 41 Anthony Avenue – 11 State House Station, Augusta, Maine 04333. Telephone: (207) 287-9298. Fax: (207) 287-3005. TTY: Maine relay 711. Email: Joseph.Zamboni@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 34-B MRS §§ 5201(9), 5605

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

OADS WEBSITE: <https://www.maine.gov/dhhs/oads>.

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

DHHS RULEMAKING LIAISON: Sara.Gagne-Holmes@Maine.gov.

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 851**, Clear Choice Designs for Individual and Small Group Health Plans

ADOPTED RULE NUMBER: **2022-232**

CONCISE SUMMARY: The amendment revises the process for developing health plan cost share designs for individual and, as applicable, small group health plans to conform to amendments to 24-A MRS §2793 by PL 2021 Ch. 361 §3 (LD 1725, *An Act To Clarify the Deferral of the Pooled Market and Link Small Employer Clear Choice to Pooling in the Made for Maine Health Coverage Act*), and makes technical changes related to implementation issues observed during the Clear Choice program’s first year.

EFFECTIVE DATE: December 4, 2022

BUREAU CONTACT PERSON / RULEMAKING LIAISON: Benjamin Yardley, Senior Staff Attorney, Department of Professional & Financial Regulation - Bureau of Insurance, 34 State House Station, Augusta, ME 04333-0034. Telephone: (207) 624-8537. Email: Benjamin.Yardley@Maine.gov.

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

AGENCY: **99-346 - Maine State Housing Authority (MaineHousing)**

CHAPTER NUMBER AND TITLE: **Ch. 19**, Homeless Solutions Rule

ADOPTED RULE NUMBER: **2022-233**

CONCISE SUMMARY: This rule repeals and replaces in its entirety the current *Homeless Solutions Rule*. MaineHousing uses funds from certain federal and state resources to give grants to agencies for a variety of activities to assist people who are experiencing homelessness or the risk of becoming homeless. The rule governs MaineHousing’s allocation of resources for such programs. The new rule (i) revises and updates language where appropriate; (ii) adds language regarding the new regionalized homeless response system; (iii) addresses concerns regarding bed utilization; and (iv) makes changes to the funding formula allocation.

EFFECTIVE DATE: December 7, 2022

AGENCY CONTACT PERSON / RULEMAKING LIAISON: Ashley Janotta, Chief Counsel, Maine State Housing Authority, 26 Edison Drive – 89 State House Station, Augusta, Maine 04330-6046. Telephone: (207) 626-4600, or Maine Relay 711. Email: AJanotta@MaineHousing.org.

WEBSITE: <https://MaineHousing.org>.

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

CHAPTER NUMBER AND TITLE: Ch. 331, Public Assistance Manual (TANF)

ADOPTED RULE NUMBER: **2022-234**

CONCISE SUMMARY: This adopted rule amends Ch. III to clarify the exclusion of certain nonrecurring payments as assets. Ch. III Section (B) increases the excluded threshold in recognition of inflation. Ch. V Section B extends the Transitional Transportation (TT) benefit to working families with income below 200% of the federal poverty level even if a family did not participate in ASPIRE-TANF, or lost TANF for a reason other than employment. Pursuant to P .L. 2021 Ch. 1 §N-1, this adopted rule restricts eligibility for this group to $1,400,000 per year.

Additional updates to Ch. V Section B( 4) and ( 5) include changes related to Ch. V Sections B(4) and (5) regarding payment of TT supports. It also applies the $20 cap uniformly to all months rather than reduce it to $15 for the second six months. In addition, it also clarifies that this benefit is available so long as transportation is incurred regardless of the mode of transportation.

Ch. V(B)(6)(a)(v) is amended to clarify that households only need to report increases in income that put them over the applicable limit.

Appendix Charts page I, The Table of Percentages for First Month Payment, corrects the rate for the 31st day of the month from 3.20 percent to 3.23 percent.

This adopted rulemaking includes minor changes such as correcting typographical errors, enumeration and formatting changes necessitated by more substantive changes, adding clarifying language, and reducing the use of stigma inducing language as well as modernizing the asset type list to include crypto currency.

All of the above changes are effective upon adoption of this rule.

Updates to Ch. V Section B(4) increases the mileage reimbursement to align with the rate afforded to those covered under the Maine State Employees Association (MSEA) contract. This change is effective retroactive to October 1, 2022, consistent with the MSEA contractual change.

Pursuant to 22 MRS §3769-C(l)(D), this adopted rule increases Appendix Charts, page 2, Standard of Need and Maximum Grant, each October based on the Cost of Living Increase, used by the Social Security Administration.

To comply with 22 MRS §3762(8)(C), Appendix Charts page 3, Worksheet For Calculating Transitional Child Care (TCC) Parent Fees and Subsidy Payments, is updated based on Federal Poverty Level (FPL) figures published in the Annual Update of the HHS Poverty Guidelines, Federal Register 87:14 (January 21, 2022) p. 3315. <https://www.federalregister.gov/documents/2022/01/21/2022-01166/annual-update-of-the-hhs-poverty-guidelines> effective retroactive to October 22, 2022.

Retroactive rulemaking is authorized by the Legislature in accordance with 22 MRS §42(8) because this rule provides a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

The adopted rule differs from the proposed rule in the following way:

Ch. V Section (B)( a)(i) is updated to Transitional Transportation (TT) is available for up to 18 months when requested within twelve months of TANF/PaS closure.

This adopted rule effectuates additional supports for working families and reduces complexity of the program for them and Department staff. Additional changes to the adopted rule intends to improve readability and contemporariness of the sections. Families receiving TANF may see an increase in their benefits. In addition, some families not previously eligible for TANF may be eligible under the new income guidelines.

The Department does not anticipate that this rulemaking will cause any specific, actual or any potential points of public controversary for stakeholders, businesses, or municipalities.

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

EFFECTIVE DATE: December 10, 2022

OFI CONTACT PERSON: Alexandria Lauritzen, TANF Program Manager, Office for Family Independence, Department of Health & Human Services, 109 Capitol Street – 11 State House Station, Augusta, ME 04333. Telephone: (207) 624-4109. Fax: (207) 287-3455. TT Users Call Maine Relay- 711. Email: Alexandria. Lauritzen@Maine.gov.

OFI WEBSITE: <https://www.maine.gov/dhhs/ofi/>.

OFI RULEMAKING LIAISON: Dan.Cohen@Maine.gov.

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

DHHS RULEMAKING LIAISON: Sara.Gagne-Holmes@Maine.gov.

AGENCY: **94-348 - Maine Human Rights Commission (MHRC)**

CHAPTER NUMBERS AND TITLES:

**Ch. 2**, Procedural Rule

**Ch. 3**, Employment Regulations of the Maine Human Rights Commission

**Ch. 7**, Accessibility Regulations of the Maine Human Rights Commission

**Ch. 8**, Housing Regulations of the Maine Human Rights Commission

ADOPTED RULE NUMBER: **2022-235** *to* **238**

CONCISE SUMMARY:

**Chapter 2**: The amendments to the procedural rule will make the Commission's process more transparent, and will provide more concrete guidance to the patties. For example, it clarifies applicable standards and rules for hearings and submissions, and provides that in the case of a tie vote at a Commission hearing, the Commission's finding(s) will be the findings recommended by the investigator in the case.

**Chapter 3**: The employment provisions of the MHRA have been amended by the Legislature in recent years, and this revision addresses those changes. It includes, but is not limited to, inclusion of new protected classes (familial status and having sought and obtained a permanent order of protection), clarification that leave can be a reasonable accommodation, updated provisions on protections for persons who are pregnant or have recently been pregnant, and using gender-inclusive language.

**Chapter 7**: The public accommodation provisions of the MHRA have also been amended recently, and this revision incorporates those changes. It includes, but is not limited to, the inclusion of age as a protected class, the requirement of gender-neutral single-user toilet rooms, and use of gender-inclusive language.

**Chapter 8**: The housing provisions of the MHRA were also recently amended by the Legislature, and this revision incorporates those changes. It includes, but is not limited to, a new definition of familial status, inclusion of a new protected class (having sought and obtained a permanent order of protection), and the use of gender-inclusive language.

EFFECTIVE DATE: December 10, 2022

MHRC CONTACT PERSON / RULEMAKING LIAISON: Barbara Archer Hirsch, Commission Counsel, 51 State House Station, Augusta, ME 04333. Telephone: (207) 624-8730. Fax: (207) 624-6063. Email: Barbara.ArcherHirsch@mhrc.maine.gov.

MHRC WEBSITE: <https://www.maine.gov/mhrc/>.