**State of Maine: Notice of Agency Rulemaking – December 16, 2020**

**PROPOSALS**

AGENCY: **65-407 – Maine Public Utilities Commission (MPUC)**

CHAPTER NUMBER AND TITLE: **Ch. 420**, Safety Standards for Natural Gas and Liquefied Natural Gas Facility Operators

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P234**

BRIEF SUMMARY: The Public Utilities Commission initiates a rulemaking to amend ch. 420 – *Safety Standards for Natural Gas and Liquefied Natural Gas Facility Operators*. The proposed amendments are intended to update and modernize the Commission's gas safety rules.

PUBLIC HEARING: January 6, 2021, 1:30 p.m. *The Commission will conduct the hearing remotely via Microsoft Teams. Interested persons wishing to participate in the hearing by telephone may dial* ***(207) 209-4724*** *and enter conference* ***ID 470 540 286#****. Interested persons wishing to participate in the hearing using video may contact the Presiding Officer by email at* [*Jordan.D.McColman@Maine.gov*](mailto:Jordan.D.McColman@Maine.gov) *for a link.*

COMMENT DEADLINE: January 22, 2021. Interested persons may file initial comments on the proposed amendments to the rule using the Commission's Case Management System (CMS), in Docket No. 2020-00282, on or before **Friday, December 18, 2020.** Interested persons may file final written comments on the proposed rule in CMS, in Docket No. 2020-00282, no later than **Friday, January 22, 2021**.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Jody McColman, Maine Public Utilities Commission, 18 State House Station, Augusta, Maine 04333. Telephone: (207) 287-1365. Email: [Jordan.D.McColman@Maine.gov](mailto:Jordan.D.McColman@Maine.gov) .

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

STATUTORY AUTHORITY FOR THIS RULE: 35-A M.R.S. §§ 111, 4508, 4515, 4516-A, and 4705-A

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

MPUC WEBSITE: [www.maine.gov/mpuc](http://www.maine.gov/mpuc) .

MPUC RULEMAKING LIAISON: [Jamie.A.Waterbury@Maine.gov](mailto:Jamie.A.Waterbury@Maine.gov) .

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 (MBM: **Ch. II & III Section 19**, Home and Community Benefits for the Elderly and Adults with Disabilities

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P235**

CONCISE SUMMARY: This rule is proposed to align and comply with 42 CFR 441.301(c), the federal Home and Community Based Settings rule, referred to as the Settings Rule. Additionally, the changes update certain Personal Support Services (PSS) and other reimbursement rates pursuant to the State supplemental budget, PL 2019 ch. 616. Pursuant to Resolves 2019 ch. 104, the changes permit spouses to be reimbursed as a Personal Support Specialist for eligible members that need extraordinary care. The rule clarifies roles and responsibilities of the Service Coordination Agency (SCA), the Fiscal Intermediary (FI), and the Assessing Services Agency (ASA) Assessor. It adds or clarifies definitions for Extraordinary Care, and the Person-Centered Planning Process.

The Settings Rule specifies that service planning for Home and Community Based Services (HCBS) waiver members must be developed through a Person-Centered Planning (PCP) process that addresses health and long-term services and support needs in a manner that reflects individual preferences and goals. Moreover, the rule requires that this process be member-directed. This proposed rule will add language to further define the PCP process as it relates to recipients of Section 19 services. Separately, the Department is developing a Global HCBS Settings Rule that will make changes to all the HCBS MaineCare rules to implement in more detail the requirements of the federal Settings Rule.

Additionally, the proposal defines Extraordinary Care to support comprehensive planning and service delivery processes and more readily meet member’s needs.

Furthermore, the rule updates Section 19 rates to comply with PL 2019 ch. 616, *An Act Making Supplemental 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, 2020 and June 30, 2021*. In light of this increased reimbursement for providers, to protect members, the program cap in Section 19.06(A) has been increased to $6,565, effective retroactive to April 1, 2020.

The proposed rule will also transition reimbursement for the SCA, which provides care coordination services, from fee for service to a per member per month reimbursement; this shall take effect prospectively. Due to this change in reimbursement, the Department is removing the limits on care coordination in Section 19.06; members may receive unlimited care coordination services based on their medical needs.

Additionally, the rule proposes to clarify roles and responsibilities of the SCA, the Fiscal Intermediary (FI), and the ASA Assessor. The proposed rule outlines the responsibilities of the SCA to promote the Person-Centered Planning process and to clarify the authority of the SCA to reduce, suspend, and deny members’ services. Additionally, the proposed rule outlines the qualifications and role of the ASA Assessor. Further, the rule identifies and outlines the data and reports required of the SCA and the FI to ensure collection and tracking of quality data in support of the transition to Per Member Per Month reimbursement for care coordination.

As reflected in the proposed rules, certain changes in the rule will have a retroactive effective date of either April 1, 2020, or July 1, 2020, while the remainder shall be effective upon final adoption of the rule pursuant to 5 MRS §8052(6). Further, various changes require approval by the Centers for Medicare and Medicaid Services (CMS), and the Department is working with CMS on amendments to the Section 1915(c) waiver to implement same.

Finally, this proposed rule makes technical and grammatical edits.

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

PUBLIC HEARING: none scheduled

30 DAY DEADLINE FOR COMMENTS: Comments must be received by 11:59 p.m. on January 15, 2021.

AGENCY CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Heather Bingelis, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-6951. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: [Heather.Bingelis@Maine.gov](mailto:Heather.Bingelis@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, 42(8), 3173; PL 2019 ch. 616 *(Emergency)* effective March 20, 2020; Resolves 2019 ch. 104

DATE FILED WITH THE SECRETARY OF STATE’S OFFICE: December 8, 2020

OMS WEBSITE: <https://www.maine.gov/dhhs/oms> .

OMS RULEMAKING LIAISON: [Thomas.Leet@Maine.gov](mailto:Thomas.Leet@Maine.gov) .

DHHS RULEMAKING LIAISON: [Kevin.Wells@Maine.gov](mailto:Kevin.Wells@Maine.gov) .

AGENCY: **17-229 - Maine Department of Transportation (MDOT)**

CHAPTER NUMBER AND TITLE: **Ch. 210**, Utility Accommodation Rules

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P236**

**BRIEF SUMMARY**: These changes are primarily intended to improve the clarity and intent of the existing rules and address the following areas: The use of a geotextile with crushed stone backfill; traffic control for short-term wire crossings; aerial attachments to existing poles; services to corner lots; service consolidation for new installations with multiple highway crossings; and, underground service lines located on the highway side of ditches. An additional section addressing the potential designation of replaced or out-of-service poles as public safety hazards is also included.

**DETAILED SUMMARY:**

**Section 6. 5. D.** amended to add the following language:

D. Backfill.

When crushed stone is utilized as bedding or backfill under paved areas, an approved geotextile shall be used to minimize the migration of fine soils.

**Section 7.2:** replaced existing language with the following:

(2) Short-Term Wire Crossings.

If an Authorized Entity must install an aerial wire across a Freeway, the Traffic Control Plan that is submitted in accordance with Section7.7.B may utilize a procedure to control traffic in accordance with the following requirements:

**Added a new Section 9.1.K** as follows:

K. Aerial Attachment Requirements

When a pole line exists within a highway corridor, Facilities that can be accommodated aerially will normally be permitted as aerial facilities that are attached to the existing poles, or new poles that replace the existing poles.

**Added the following to section 10.1.F:**

(6) Services to Corner Lots

Lots having frontage on both a state or state-aid highway and a lower classification public way, shall normally have the underground service provided from the lower classification corridor, whenever both corridors are served by the distribution facilities.

(7) Service Consolidation

In locations where numerous underground service lines must cross the Traveled Way, consolidation of service crossings shall be evaluated and utilized whenever possible. MaineDOT may require such consolidation whenever it is determined that impacts on the traveling public, highway maintenance or other accommodated Facilities will be minimized.

**Added a new section in 11.1.D:**

(5) Underground Service Lines

Poles that are located on the Traveled Way side of a ditch line or open drainage area that will require periodic ditch maintenance shall not be used to provide underground service lines to adjacent properties.

**Section 7.2 Added the following to the list of records required:**

D. The name and contact information of any entities using shared Facilities.

**Section 7.5 Revised to read:**

Unless otherwise approved by MaineDOT, all wire transfers and removal of replaced poles shall occur within one year from the installation date of the new pole(s). Poles that remain beyond this one-year, maximum tolerance, or otherwise approved completion date, are not considered maintained in accordance with the terms of their permit as specified in 35-A MRS §2503(6). All replaced poles are deemed Out of Service and no longer in public use upon transfer or removal of all wires and/or cables and must be removed from the Highway limits in accordance with Section 7(4), *Out of Service Facilities*.

Poles that are in violation of this section and Section 7.4 may be deemed a public safety hazard by MaineDOT, in its sole discretion, if they constitute a danger to the traveling public. Upon identifying a pole or poles as a public safety hazard, MaineDOT may provide a minimum of 60-days’ notice to the pole owner that it must completely remove the public safety hazard from the Right-of-Way by a specified “deadline date.” The failure of the pole owner or any authorized entity to remove the pole or poles that have been identified by MaineDOT as a public safety hazard by the deadline date will result in the offending poles subject to the rights and remedies set out in 23 MRS §1402.

**PUBLIC HEARING**: N/A

COMMENT DEADLINE: January 15, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Michael Moreau, MDOT, 16 State House Station, Augusta, Maine. Telephone: (207) 624-3365. Email: [Michael.Moreau@Maine.gov](mailto:Michael.Moreau@Maine.gov) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: Negligible

STATUTORY AUTHORITY FOR THIS RULE: 23 MRS §52; 35-A MRS §2503(16); 23 CFR §645.211

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

MDOT RULEMAKING WEBSITE: <https://www.maine.gov/mdot/rulemaking/> .

MDOT WEBSITE: <https://www.maine.gov/mdot/> .

MDOT RULEMAKING LIAISON: [Toni.Kemmerle@Maine.gov](mailto:Toni.Kemmerle@Maine.gov) .

AGENCY: **18-125** - Department of Administrative & Financial Services (DAFS), **Maine Revenue Services (MRS)**

CHAPTER NUMBER AND TITLE: **Ch. 812**, Credit for Educational Opportunity

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P237**

BRIEF SUMMARY: The draft rule proposes the following changes:

Regarding the Credit for Educational Opportunity (“Credit”), MRS is proposing to update its current criteria in Rule 812 for determining which degrees will be considered Science, Technology, Engineering, and Mathematics (“STEM”) for refundability of the Credit.

For Bachelor’s and graduate degrees that are awarded simultaneously, MRS is proposing to amend the existing language in Rule 812 to clarify how qualifying taxpayers should apportion tuition and fees to each degree when calculating the Credit.

MRS is proposing to make permanent changes that have already been adopted by emergency Rule 812, effective October 21, 2020. The first change would make permanent the reconciliation of two provisions in 36 MRS §5217-D(2)(B). As a result, MRS could consider the payment amount that would be due, but for forbearance or deferment, when calculating the Credit. The proposed language further provides that, if the payment amount due cannot be established, but for forbearance or deferment, the benchmark loan payment as determined under 36 MRS §5217-D(1)(A) will be used instead.

Lastly, MRS proposes to add a new definition of “regional accrediting association” for purposes of defining “accredited non-Maine community college, college or university” in 36 MRS §5217-D(A-1). This new definition will help determine if degrees from accredited non-Maine educational institutions (including non-U.S. educational institutions) are eligible for the Credit, depending on whether the non-Maine educational institution is accredited by a “regional accrediting association” or by one of the specialized accrediting agencies recognized by the U.S. Secretary of Education.

PUBLIC HEARING: N/A

COMMENT DEADLINE: January 16, 2021

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MRS RULEMAKING LIAISON: Alex Weber, General Counsel, Maine Revenue Services, 24 State House Station, Augusta, ME 04333-0024. Telephone: (207) 624-9712. Email: [Alexander.J.Weber@Maine.gov](mailto:Alexander.J.Weber@Maine.gov) .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §§ 112, 5217-D

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

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

DAFS RULEMAKING LIAISON: [Anya.Trundy@Maine.gov](mailto:Anya.Trundy@Maine.gov) .

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 301**, Maine Food Supplement Manual: **Section FS 999-2**, Food Supplement Rule **#FS 214A** – FFY 2021 ABAWD

ADOPTED RULE NUMBER: **2020-244**

CONCISE SUMMARY: 7 CFR 273.24 provides that no individual shall be eligible to participate in the Supplemental Nutrition Assistance Program (SNAP) as a member of any household if the individual received program benefits for more than 3 months during any 3-year period in which the individual was subject to but did not comply with the ABAWD work requirement.

PL 116-127 (*Families First Coronavirus Response Act*) §2301 suspended these requirements from April 1, 2020 through the month following the month the public health emergency (PHE) declaration by the Secretary of Health and Human Services, based on an outbreak of COVID-19 is lifted. The PHE declaration has not been lifted as of the date of this proposed rulemaking. The current PHE is set to expire January 20, 2021 though the Secretary has the authority to extend the PHE.

This rule implements the national suspension of the ABAWD requirements under the *Families First Coronavirus Response Act*, for the period of September 1, 2020 through September 30, 2020.

7 CFR 273.24(f) provides that, upon the request of the State agency, the Secretary may waive the applicability of the 3-month ABAWD time limit for any group of individuals in the State if the Secretary makes a determination that the geographic area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals.

This rule implements the July 15, 2020, ABAWD geographic state-wide waiver approval, pursuant to 7 CFR §273.24(f)(2) and Section 6(o) of the *Food and Nutrition Act of 2008*, for the period October 1, 2020 through September 30, 2021, or until the date at which the new waiver standards become effective, whichever occurs earlier. The Department’s waiver request was approved by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), on July 15, 2020. USDA: Able-Bodied Adults Without Dependents (ABAWD) Waiver Response, Serial Number 2190025.

In the July 15, 2020 FNS Waiver Response, FNS determined that the Department met the waiver requirement by providing a copy of the Department of Labor Trigger Notice No. 2020-17, effective May 10, 2020, showing that, state-wide, Maine qualified for extended unemployment benefits.

This rule change will enhance nutritional stability and consistency for thousands of Maine households at a time of financial and health uncertainty.

The Department is adopting this rule with a retroactive application to September 1, 2020. 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.

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

EFFECTIVE DATE: December 17, 2020

AGENCY CONTACT PERSON: Patricia Dushuttle, Special Projects Program Manager, Department of Health and Human Services - Office for Family Independence, 109 Capitol Street – 11 State House Station, Augusta, ME 04330-6841. Telephone: (207) 624-6907. Fax: (207) 287-3455. TT Users Call Maine Relay – 711. Email: [Patricia.Dushuttle@Maine.gov](mailto:Patricia.Dushuttle@Maine.gov)

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

OFI RULEMAKING LIAISON: [Dan.Cohen@Maine.gov](mailto:Dan.Cohen@Maine.gov) .

DHHS RULEMAKING LIAISON: [Kevin.Wells@Maine.gov](mailto:Kevin.Wells@Maine.gov) .

AGENCY: **65-407 – Maine Public Utilities Commission (MPUC)**

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

ADOPTED RULE NUMBER: **2020-245**

CONCISE SUMMARY: The Public Utilities Commission adopts amendments to it Renewable Portfolio Standard (RPS) rule (ch. 311) as required to implement recently enacted legislation. These amendments implement a new thermal energy credit portfolio requirement.

EFFECTIVE DATE: December 15, 2020

AGENCY CONTACT PERSON / MPUC RULEMAKING LIAISON: Jamie Waterbury, Public Utilities Commission, 18 State House Station, Augusta, ME 04333. Telephone: (207) 287-1360. Email: [Jamie.A.Waterbury@Maine.gov](mailto:Jamie.A.Waterbury@Maine.gov) .

MPUC WEBSITE: <https://www.maine.gov/mpuc/> .

AGENCIES:

**02-373 - Board of Licensure in Medicine;**

**02-383 - Board of Osteopathic Licensure**

CHAPTER NUMBER AND TITLE: **Ch. 2**, Joint Rule Regarding Physician Assistants

ADOPTED RULE NUMBER: **2020-246, 247**

CONCISE SUMMARY The Board of Licensure in Medicine and the Board of Osteopathic Licensure amended an existing joint rule relating to the licensure and practice of physician assistants to implement PL 2020 c. 627, “An Act to Improve Access to Physician Assistant Care.”

EFFECTIVE DATE: December 16, 2020

AGENCY CONTACT PERSONS:

Dennis E. Smith, Executive Director, Board of Licensure in Medicine, 137 State House Station - 161 Capitol Street, Augusta, ME 04333-0137. Telephone: (207) 287-3605. Email: [Dennis.E.Smith@Maine.gov](mailto:Dennis.E.Smith@Maine.gov) .

Susan E. Strout, Executive Secretary, Board of Osteopathic Licensure, 142 State House Station - 161 Capitol Street, Augusta, ME 04333-0142. Telephone: (207) 287-2480. Email: [Susan.E.Strout@Maine.gov](mailto:Susan.E.Strout@Maine.gov) .

AGENCY WEBSITES:

Medicine: <https://www.maine.gov/md/> .

Osteopathic: <https://www.maine.gov/osteo/> .