**State of Maine: Notice of Agency Rulemaking – December 27, 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: **06-096 - Department of Environmental Protection (DEP)**  
CHAPTER NUMBER AND TITLE: **Ch. 127-A** (New), Advanced Clean Cars II Program  
TYPE OF RULE: Routine Technical  
PROPOSED RULE NUMBER: **2023-P145 *(Second publication, comment deadline extended)***

BRIEF SUMMARY: In response to a citizen petition, this rule was proposed to establish motor vehicle emission standards for new passenger cars, light-duty trucks, and medium-duty vehicles by incorporating the requirements of the California Advanced Clean Cars II regulations, beginning model year 2027. Due to the state emergency resulting from the December 18, 2023, storm the Board of Environmental Protection meeting scheduled for December 21 was cancelled. This prevented a Board vote on whether to adopt the proposed rule, and therefore the proposed rule must be amended to begin with model year 2028. In light of this substantial change in the proposed rule the Department is requesting comments from the public concerning this change of the proposed rule.

PUBLIC HEARING: A public hearing was held August 17, 2023, at the Augusta Civic Center

NEW COMMENT DEADLINE: February 5, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Lynne Cayting, Chief, Mobile Sources Section, Bureau of Air Quality, Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. Telephone: (207)-287-7599. Email: [Lynne.A.Cayting@maine.gov](mailto:Lynne.A.Cayting@maine.gov)

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

STATUTORY AUTHORITY FOR THIS RULE: 38 M.R.S., Sections 576-A, 585, 585-A, 585-D

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

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Mark.T.Margerum@maine.gov](mailto:Mark.T.Margerum@maine.gov)

AGENCY: **16-633** , Department of Public Safety, **Gambling Control Board**

CHAPTER NUMBER AND TITLE: **Ch. 28,** Advanced Deposit Wagering

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P212** *(Second publication, comment deadline extended)*

BRIEF SUMMARY: This rule is to comply with changes in state law under 8 M.R.S.A., Chapter 31, Subchapter 7 Advanced Deposit Wagering

PUBLIC HEARING: January 16, 2024, 9 a.m., Champlain Conference Room, 45 Commerce Drive, Augusta

COMMENT DEADLINE:February 16, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT INFORMATION/RULEMAKING LIAISON:  Milton Champion, Executive Director, Gambling Control Board, 45 Commerce Drive, Suite 3, Augusta ME 04333-0087; TELEPHONE: 207-626-3901; EMAIL:  [Milton.F.Champion@maine.gov](mailto:Milton.F.Champion@maine.gov)

FISCAL IMPACT: This rule will not have a fiscal impact on municipalities.

STATUTORY AUTHORITY: 8 M.R.S.A. §1003(1)(B)(I), (3)(J); 8 M.R.S.A. § 1031(1).

AGENCY WEBSITE: <https://www.maine.gov/dps/gamb-control/index.html>.

AGENCY: **02-658 -** Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, **Maine Fuel Board**

CHAPTER NUMBER AND TITLE: **Ch. 6,** Adoption of Standards (amend)

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P233** *(Second publication)*

BRIEF SUMMARY: In the 2021 edition of the NFPA 54, recently adopted and incorporated by reference into board rule Chapter 6, a new table was established for both direct vent and non-direct vent appliances requiring that the direct vent termination from appliances over 150,000 btu is required to be 4’ from the side or below an opening or 1’ above.  Prior to the adoption of 2021 NFPA 54, the vent terminal of a direct vent appliance with an input of over 50,000 btu was required to be 12” from building openings. The proposed changes would amend the 2021 NFPA as adopted by the board and revert to the previously adopted standard, requiring direct vent terminal clearances for appliances greater than 150,000 btu to be in accordance with the manufacturer’s instructions, and in no case less than 12”.

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

COMMENT DEADLINE: Friday, January 26, 2024 at 5:00 p.m.

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

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

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. § 18123(2)

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

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/maine-fuel-board>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Kristin.Racine@maine.gov](mailto:Kristin.Racine@maine.gov)

**AGENCY: 01-001 - Department of Agriculture, Conservation and Forestry**

CHAPTER NUMBERS AND TITLES: **Ch. 400,** Administrative Cost Grants; **Ch. 401,** Income Replacement; **Ch. 402,** Support for No-Cost Technical Assistance; **Ch. 403,** Infrastructure Investment Grants; **Ch. 404,** Assistance Obtaining New Loans; **Ch. 405,** Real Estate Purchases; **Ch. 406,** Competitive Research Grants; **Ch. 407,** Financial Support for Blood Serum Testing; **Ch. 408,** Financial Support for Mental Health Care

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER : **2023-P244 to 2023-P252** *(Third publication, public hearing rescheduled)*

DETAILED SUMMARY:These nine proposed rules are intended to implement certain strategies identified in the *Plan for Administration of the Fund to Address PFAS Contamination* (“PFAS Fund Plan”). The PFAS Fund Plan was developed through a public planning process to prioritize funding and implementation of the $60 million PFAS Fund created by Governor Mills with bipartisan legislative support in response to the discovery of multiple farms in Maine contaminated with per- and polyfluoroalkyl substances (PFAS).

The proposed rules establish, inter alia, the eligibility criteria, administrative procedures, evaluation criteria, and appeals procedures for the following programs:

1. **Ch. 400, Administrative Cost Grants.** Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for a one-time administrative grant. This grant is intended to compensate commercial farms for time expended on activities that are common to most farms upon the initial discovery of PFAS contamination, such as time spent with DACF field staff, time spent strategizing how to respond, and time spent communicating with customers.
2. **Ch. 401, Income Replacement.** Commercial farms that have stopped selling some or all products due to perfluoroalkyl and polyfluoroalkyl substances (PFAS) contamination may apply to the Department of Agriculture, Conservation and Forestry (DACF) for up to two years of lost income, adjusted for inflation.
3. **Ch. 402, Support for No-Cost Technical Assistance.** Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for no-cost technical assistance to help guide their response to the discovery of PFAS or to implement mitigation strategies. Eligible producers may consult, contract, or work with service providers to obtain expert advice, estimates, drawings, plans, research, and technical or professional assistance related to modifying their operations in response to PFAS contamination.
4. **Ch. 403, Infrastructure Investment Grants.** Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for grant funding for infrastructure projects that will help the commercial farm transition to new production methods or new types of production.
5. **Ch. 404, Assistance Obtaining New Loans.** Commercial farms that have Department of Agriculture, Conservation and Forestry (DACF) confirmed unsafe levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) may apply to DACF for assistance covering the cost of obtaining a guaranteed loan, commercial loan insurance, or environmental site assessments required by a lending institution for new loans when a new loan is necessitated by the discovery of PFAS contamination on the commercial farm and the new loan is related to the farm business.
6. **Ch. 405, Real Estate Purchases.** The Department of Agriculture, Conservation and Forestry (DACF) may purchase agricultural land contaminated by perfluoroalkyl and polyfluoroalkyl substances (PFAS) from commercial farms, along with appurtenant buildings, structures, and fixtures. DACF may purchase all or some of an eligible landowner’s real estate.
7. **Ch. 406, Competitive Research Grants.** The Department of Agriculture, Conservation and Forestry (DACF) hereby establishes the rules for a competitive grant program to fund research that will help commercial farmers make informed decisions about how to utilize agricultural property that has been impacted by perfluoroalkyl and polyfluoroalkyl substances (PFAS).
8. **Ch. 407, Financial Support for PFAS Blood Serum Testing.** The Fund to Address PFAS Contamination (PFAS Fund) may pay for costs not otherwise covered by health insurance for perfluoroalkyl and polyfluoroalkyl substances (PFAS) blood serum testing for persons who were exposed to PFAS through the land application of residuals in Maine.
9. **Ch. 408, Financial Support for Mental Health Care.** The Fund to Address PFAS Contamination (PFAS Fund) may pay for costs not otherwise covered by health insurance for mental health care for persons who were exposed to PFAS through the land application of residuals in Maine. Alternatively, the PFAS Fund may contract with mental health professionals to provide services to eligible individuals at no or low cost.

PUBLIC HEARING: Jan. 16, 2024, 2:00 – 3:00 p.m., Deering 101, 90 Blossom Lane, Augusta, ME and via Zoom: <https://mainestate.zoom.us/webinar/register/WN_a_6xyqnLQoy88DqZus96_g> (preregistration required).

COMMENT DEADLINE: January 26, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Beth Valentine, PFAS Fund Director, 22 State House Station, Augusta, ME 04333-0022, 207-313-0962, [Beth.Valentine@maine.gov](mailto:Beth.Valentine@maine.gov)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*:  The proposed rule is not expected to impose any cost on municipalities or counties. Notably, unlike private landowners, DACF will not pay property tax on PFAS-contaminated property it purchases. To avoid a loss of revenue to municipalities, DACF may pay an “in lieu of” fee (Ch. 405).

STATUTORY AUTHORITY FOR THIS RULE: 7 MRS Ch 10-D, §320-K - §320-L and PL 2021, Ch. 635.

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

AGENCY WEBSITE: [PFAS Fund Advisory Committee: Maine Department of Agriculture, Conservation and Forestry](https://www.maine.gov/dacf/about/commissioners/pfasfund/advisory-committee.shtml)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Shannon.Ayotte@maine.gov](mailto:Shannon.Ayotte@maine.gov)

AGENCY: **95-648 - Efficiency Maine Trust**

CHAPTER NUMBER AND TITLE: **Ch. 3,** Electric Efficiency and Conservation Programs

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P256** *(Second publication, public hearing rescheduled)*

BRIEF SUMMARY: The Efficiency Maine Trust (the Trust) proposes amendments to the rule governing the implementation of its Electric Efficiency and Conservation Programs. The proposed updates reflect changes to the Efficiency Maine Trust Act resulting from the recent enactment of P.L. 2023, ch. 328, An Act to Enact the Beneficial Electrification Policy Act. These changes pertain to the Trust’s activities to advance the policy of beneficial electrification and to the inclusion of certain cost-effective beneficial electrification measures in the determination of maximum achievable cost-effective (MACE) resources in the Trust’s triennial plan. The Trust also proposes updates to the rule to reflect changes made by the Legislature in recent years to 35-A M.R.S.A. §10104(4) and to 35-A M.R.S.A. §10110(2), which describe goals that the Trust must advance in its triennial plans and criteria for conservation programs. A rescheduled public hearing will be held at the address below on January 16, 2024. Comments on the proposed rule may be provided in writing if submitted by January 26, 2024. Requests for a copy of the draft rule may be directed to the Contact Person for this filing. More information is available online at [www.efficiencymaine.com/rulemaking](http://www.efficiencymaine.com/rulemaking).

PUBLIC HEARING: January 16, 2024, 1:00 PM at the Offices of the Efficiency Maine Trust, 168 Capitol St, Suite 1, Augusta, ME 04330. The option to participate by phone and online video conferencing will also be available.

COMMENT DEADLINE: January 26, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Nat Haslett, Manager for Regulatory and Legislative Affairs, 168 Capitol Street, Suite 1, Augusta, ME 04330. Telephone: (207) 553-3068, Fax – (207) 213-4153. Email: [Nat.Haslett@effiencymaine.com](mailto:Nat.Haslett@effiencymaine.com)

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: No change

STATUTORY AUTHORITY FOR THIS RULE: 35-A M.R.S.A. §§10102, 10103, 10104, 10105, 10106, 10109, 10110

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: Same

AGENCY WEBSITE: [www.efficiencymaine.com](http://www.efficiencymaine.com)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Nat.Haslett@efficiencymaine.com](mailto:Nat.Haslett@efficiencymaine.com)

AGENCY: 10-144 - Department of Health and Human Services, **Maine Center for Disease Control and Prevention**

CHAPTER NUMBER AND TITLE: **Ch. 201,** Administration and Enforcement of Establishments Regulated by the Health Inspection Program

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P267**

BRIEF SUMMARY: The Department’s Health Inspection Program (HIP) is proposing changes to its rule, to update requirements consistent with PL 2021, ch. 125, as well as clarify language that improves protection of patrons of eating establishments, lodging places, campgrounds, recreational and sporting camps, youth camps, or public pools/spas in Maine. Proposed changes include added and clarified definitions, removal of the waiver for an alternative entity performing inspections of youth camps, increased licensing fees for delegated municipalities, and increasing administrative fines for establishments operating without a license or committing other unresolved violations. The Department is also proposing to rename this rule from Administration and Enforcement of Establishments Licensed by the Health Inspection Program Rule to the Health Inspection Program Administration Rule.

PUBLIC HEARING:Thursday January 18, 2024, 9:00 AM, 32 Blossom Lane, Augusta, Maine, Marquardt Building (former AMHI Campus) Conference Room 118

COMMENT DEADLINE:January 28, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Andrew Hardy, 286 Water Street, 11 State House Station, Augusta, ME 04333-0011. Telephone: (207) 287-4490, Fax: (207) 287-2887, TTY: Call 711 (Maine Relay), Email: [Andrew.Hardy@maine.gov](mailto:Andrew.Hardy@maine.gov)

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

STATUTORY AUTHORITY FOR THIS RULE: 22 M.R.S. §§2491, 2496 and 1551-A; 32 M.R.S. §§1242, 4251, 4313 and 4326.

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

AGENCY WEBSITE: <http://www.maine.gov/dhhs/mecdc>/

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: [Emily.Cathcart@maine.gov](mailto:Emily.Cathcart@maine.gov)

AGENCY: **10-144** - Department of Health and Human Services, **Maine Center for Disease Control and Prevention**

CHAPTER NUMBER AND TITLE: **Ch. 208,** Rules Relating to Boys, Girls, Boys and Girls, Day Camps and Primitive and Trip Camping.

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P268**

BRIEF SUMMARY: The Maine CDC Health Inspection Program is proposing to update and clarify safety and wellness standards for its Rules Relating to Boys, Girls, Boys and Girls, Day Camps and Primitive and Trip Camping (10-144 CMR Ch. 208), which was last updated in 2007. The Department is proposing to change the rule title, add and clarify definitions, incorporate application, licensing and enforcement provisions and requirements from its Administration and Enforcement of Establishments Regulated by the Health Inspection Program Rule (Ch. 201), as well as clarify safety standards for swimming, adventure challenge activities, trip camping, farm animals, subsurface wastewater disposal systems, fire safety, drinking water, certified food protection managers, water temperature for hand washing, health supervisors, standing orders, medication protocols, notifiable conditions and diseases, ensuring proper background checks, hiring and training of staff, supervision ratios for campers, and transportation protocols. In addition, the Department is proposing to clarify the prohibition against abuse, neglect, hazing and bullying, which includes but is not limited to requiring camps to establish and maintain policies that prevent child abuse and neglect, as well as train staff on how to respond to and report allegations or observations of abuse, neglect, hazing or bullying.

PUBLIC HEARING:Thursday January 18, 2024, 10:30 AM, 32 Blossom Lane, Augusta, Maine, Marquardt Building (former AMHI Campus) Conference Room 118

COMMENT DEADLINE:January 28, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Andrew Hardy, 11 SHS-286 Water Street, Augusta, ME 04333-0011. Telephone: (207) 287-4490; Email: [Andrew.Hardy@maine.gov](mailto:Andrew.Hardy@maine.gov)

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

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §§ 2491 to 2501

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

AGENCY WEBSITE: [https://www.maine.gov/dhhs](https://www.maine.gov/dhhs/about/rulemaking)/mecdc/

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: [Emily.Cathcart@maine.gov](mailto:Emily.Cathcart@maine.gov)

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

CHAPTER NUMBER AND TITLE: **Ch. 2,** Rule Concerning the Processing of Applications and Other Administrative Matters

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P269**

BRIEF SUMMARY: The existing Chapter 2 governs the processing of license applications, appeals of Commissioner license decisions to the Board, petitions and motions to modify, revoking or suspending licenses, petitions for corrective action orders, and other matters as described in the rule. The purpose of this rulemaking is to revise or establish new procedural requirements and improve the clarity and organization of the rule based on the Department’s experience applying Chapter 2 across a wide range of programs, and to incorporate recent legislative changes to the Board’s responsibilities and duties.

PUBLIC HEARING: January 18, 2024, 9 AM, Augusta Civic Center, 76 Community Dr, Augusta, ME 04330

COMMENT DEADLINE: January 29, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Bill Hinkel, 17 State House Station, Augusta, ME 04333-0017. Telephone: 207-314-1458. Email: [Bill.Hinkel@maine.gov](mailto:Bill.Hinkel@maine.gov)

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

STATUTORY AUTHORITY FOR THIS RULE: 5 M.R.S. § 8051 and 38 M.R.S. § 341-H

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

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Bill.Hinkel@maine.gov](mailto:Bill.Hinkel@maine.gov)

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

CHAPTER NUMBER AND TITLE: **Ch. 200,** Metallic Mineral Exploration, Advanced Exploration and Mining

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2023-P270**

BRIEF SUMMARY: In response to P.L. 2023, ch. 398, the Department is proposing to amend the existing Chapter 200: *Metallic Mineral Exploration, Advanced Exploration and Mining* (06-096 C.M.R. 200) to allow applications for exclusion from Chapter 200 requirements. In accordance with the law, this proposal would allow applications for exclusion for the physical extraction, crushing, grinding, sorting, or storage of metallic minerals. The proposal creates a process for exclusion applications that includes pre-application geologic and hydrologic investigations and criteria for granting an exclusion.

To approve an exclusion, the Department must determine the project will not have the potential to create acid rock drainage or alkali rock drainage, violate water quality standards (other than sedimentation and turbidity), or expose radioactive or other materials that could endanger human health or the environment. If an exclusion is granted, the excluded activities would be regulated under other existing laws: performance standards for quarrying, performance standards for borrow pits, Site Location of Development Law, or by the Land Use Planning Commission’s statutes. The proposed revision also requires ongoing water quality monitoring in cases where an exclusion is granted.

PUBLIC HEARING: January 18, 2024, 9 AM, Augusta Civic Center, 76 Community Dr, Augusta, ME 04330

COMMENT DEADLINE: January 29, 2024

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Naomi Kirk-Lawlor, DEP, State House Station 17, Augusta, Me 04333. Telephone: 207-287-7844. Email: [Naomi.Kirk-Lawlor@maine.gov](mailto:Naomi.Kirk-Lawlor@maine.gov)

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

STATUTORY AUTHORITY FOR THIS RULE: P.L. 2023, ch. 398 and 38 MRSA § 341-H

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

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

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [Mark.T.Margerum@Maine.gov](mailto:Mark.T.Margerum@Maine.gov)

**ADOPTIONS**

AGENCY: **90-590 - Maine Health Data Organization**

CHAPTER NUMBER AND TITLE: **Ch. 243,** Uniform Reporting System for Health Care Claims Data Sets (routine technical)

ADOPTED RULE NUMBER: **2023-249**

CONCISE SUMMARY: This rule adds new fields to collect de-identified substance use disorder (SUD) data, prescription drug rebate data, and additional dental claims information. It modifies fields in the medical claims file to better account for the payment arrangement type at the claim level. It also removes obsolete requirements, definitions, and sources.

Copies of these proposed rules can be reviewed and printed from the MHDO website at <https://mhdo.maine.gov/rules.htm> or, to receive a paper copy call 287-6722.

This rule is not expected to have any adverse economic impact on small businesses.

EFFECTIVE DATE: December 17, 2023

CONTACT PERSON: Karynlee Harrington, Acting Executive Director, Maine Health Data Organization, 151 Capitol Street – 102 State House Station, Augusta, ME 04333-0102. TELEPHONE: (207) 287-6722. Email: [Karynlee.Harrington@Maine.gov](mailto:Karynlee.Harrington@Maine.gov).  
MHDO WEBSITE: <https://mhdo.maine.gov/>.  
MHDO RULEMAKING LIAISON: [Debra.J.Dodge@Maine.gov](mailto:Debra.J.Dodge@Maine.gov).

**AGENCY: 90-590 - Maine Health Data Organization 90-590**

CHAPTER NUMBER AND TITLE: **Ch. 247,** Uniform Reporting System for Non-Claims Based Primary Care Payments and Other Supplemental Health Care Data Sets (routine technical rule)

ADOPTED RULE NUMBER: **2023-250**

CONCISE SUMMARY: This rule adds new data fields and updates others to ensure collection of aggregated dollar amounts paid in relation to substance use disorder (SUD) and non-claims-based prescription drug rebate data.

Copies of this rule can be reviewed and printed from the MHDO website at <https://mhdo.maine.gov/rules.htm> or, to receive a paper copy call 287-6722.

This rule will not have a fiscal impact on municipalities or counties, or any adverse economic impact on small businesses.

EFFECTIVE DATE: December 17, 2023

CONTACT PERSON: Karynlee Harrington, Executive Director, Maine Health Data Organization, 151 Capitol Street – 102 State House Station, Augusta, ME 04333-0102. TELEPHONE: (207) 287-6722. Email: [Karynlee.Harrington@Maine.gov](mailto:Karynlee.Harrington@Maine.gov).  
MHDO WEBSITE: <https://mhdo.maine.gov/>.  
MHDO RULEMAKING LIAISON: [Debra.J.Dodge@Maine.gov](mailto:Debra.J.Dodge@Maine.gov).

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

CHAPTER NUMBER AND TITLE: **Ch. 101,** MaineCare Benefits Manual (MBM), **Chapter III, Section 45,** Principles of Reimbursement for Hospital Services

ADOPTED RULE NUMBER: **2023-251**

CONCISE SUMMARY: The principal change the Department made in this rulemaking was to eliminate the current provider-specific rates for reimbursing distinct psychiatric units and distinct substance use disorder (SUD) units in hospitals, and to establish a new reimbursement methodology. In compliance with 22 M.R.S. Sec. 3173-J(2), the Department conducted a rate determination process: a Rate Determination Initiation Notice was issued on October 7, 2022; MaineCare presented the draft rate methodology and definitions to providers and interested stakeholders in January 2023; accepted public comments until February 3, 2023; and will respond in writing to comments with an explanation of whether and how feedback was incorporated into the final rate determination. The Department’s resulting reimbursement methodology generally aligns with Medicare’s payment method for distinct psychiatric units. In compliance with P.L. 2023, ch. 3, Sec. S-1, the initial per diem base rates were set so the methodology will provide, in aggregate, one hundred percent (100%) cost reimbursement across all hospitals with these distinct units based upon 2022 data.

The adopted rule makes the following specific changes:

* Section 45.01- Definitions:

Change the definition of “Discharge” to add that a discharge occurs if a patient is transferred to a distinct psychiatric Unit or a distinct SUD unit. The Department proposes a retroactive application of July 1, 2023, for this change, as authorized by 22 M.R.S. Sec. 42(8), as this change benefits, and does not harm MaineCare members or providers.

Added definitions for “From Date” and Medicare Severity Diagnosis-Related Group (MS-DRG), terms utilized in Section 45.03-1(B), the new reimbursement methodology for distinct psychiatric Units and SUD units.

* Section 45.02-1- Inflation:

Change the name of the entity producing the economic trend factor used by the Department for determining inflation, from Global Insight to IHS Markit due to a change in the name of the organization that publishes the “Healthcare Cost Review”.

* Section 45.03-1(B) New Reimbursement Methodology for Distinct Psychiatric Units and Distinct Substance Use Disorder (SUD) Units:

The Department eliminated the methodology for reimbursing distinct psychiatric units and distinct SUD units and established a new reimbursement methodology that the Department determined in accordance with 22 M.R.S. Sec. 3173-J(2). Under the new methodology, the Department calculates reimbursement for covered in-person stays in these units using the following formula: multiplying the per diem base rate (determined by whether the MS-DRG is a psychiatric or SUD MS-DRG) by the applicable MS-DRG relative weight and multiplying that figure by the applicable Length of Stay factor.

* Section 45.03-1(B)(1)(a):

The Department calculated per diem base rates to result in total reimbursement equal to one hundred percent (100%) of the costs of such discharges in the aggregate across all hospitals with distinct psychiatric units and distinct SUD units, utilizing 2022 data when adjusted for MS-DRG relative weights and Length of Stay factor.

* Section 45.03-1(B)(1):

The Department proposes to adopt the Medicare MS-DRG and Length of Stay factors for the new reimbursement methodology. The Medicare Length of Stay factor is a cumulative factor that takes into account how many days the patient stays in the distinct unit.

* Section 45.03-1(B)(1)(d):

The Department adopted the updated per diem base rate annually based on the inflation provision in this rule (Section 45.02-1): the economic trend factor from the most recent addition of the “Healthcare Cost Review” from IHS Markit. In accordance with 22 M.R.S. Sec. 3173-J(3), the per diem base rates are posted on the MaineCare Provider Fee Schedule, and the Department is not required to do rulemaking to make the annual inflation adjustments to the per diem base rate.

The new reimbursement methodology has a retroactive application date of July 1, 2023, as authorized by 22 M.R.S. 42(8), as the changes benefit, and do not harm MaineCare members or providers.

* Section 45.03-1(B)(2):

In order to prevent any adverse financial impact to any hospital with a distinct psychiatric unit, the Department adopted a time limited supplemental payment for hospitals with distinct psychiatric units that are located in zip codes that CMS designates as “super rural” and that also have a High Geographic Need Health Professional Shortage Area for mental health designation by the Health Resources and Services Administration.

* In response to public comments:

In the adopted rule, the Department expanded the eligibility of hospitals who can claim for the distinct psychiatric units and distinct substance use disorder units to include acute care critical access hospitals.

* + The adopted rule adds a new provision – Section 45.04-1(C)(Distinct Psychiatric and Substance Use Disorder Units) to the acute care critical access 45.04 provision
  + Section 45.04-2 (Prospective Interim Payment) was also amended to exclude distinct psychiatric units and distinct substance use disorder units from the departmental prospective interim payment obligation.
  + Additionally, the definition of Distinct Psychiatric Unit (Section 45.01-9) was amended to include acute care critical access hospitals.
* Appendix A(VIII):

The Department includes distinct psychiatric units and SUD units in this provision, so that hospitals can claim for two episodes of care if patients are transferred to distinct rehabilitation, psychiatric or SUD units. The Department adopted a retroactive application of July 1, 2023, for this change, as authorized by 22 M.R.S. Sec. 42(8), as this change benefits, and does not harm MaineCare members or providers.

* Remove website addresses and embed links to those websites in their place.
* Make minor technical edits and format corrections.

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

EFFECTIVE DATE:December 18, 2023

## STATUTORY AUTHORITY: 22 M.R.S. §§ 42(8), 3173; 22 M.R.S. 3173-J; P.L. 2021, ch 635; P.L. 2023, ch 3, Sec. S-1

AGENCY CONTACT PERSON:Catherine Coolidge, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street, 11 State House Station, Augusta, Maine 04333-0011. Email: [Catherine.Coolidge@maine.gov](mailto:Catherine.Coolidge@maine.gov) . TELEPHONE:(207)-624-4082 FAX: (207)-287-6106. TTY users call Maine relay 711.

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