**State of Maine: Notice of Agency Rulemaking – December 29, 2021**

**PROPOSALS**

AGENCY: **06-096 - Department of Environmental Protection (DEP)**

CHAPTER NUMBER AND TITLE: **Ch. 169**, Stationary Generators

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P141** *(2nd publication)*

BRIEF SUMMARY: The purpose of this regulation is to ensure that the operation of new stationary generators does not negatively impact air quality or public health in the vicinity of a facility operating such a generator. The standards and requirements proposed are based on standards and requirements in Federal and State regulations applicable to similar equipment when used in other applications.

PUBLIC HEARING: The proposal was originally posted to public comment on August 25, 2021. A public hearing was held September 16, 2021, at the Augusta Civic Center. The first comment period on the draft rule closed on September 27, 2021. In response to comments received, changes were made to the draft rule. The comment period is being reopened to receive additional written public comment on the revised draft.

COMMENT DEADLINE: January 28, 2022

CONTACT PERSON FOR THIS FILING: Lynn Muzzey, Maine Department of Environmental Protection, 17 State House Station, Augusta, ME 04333. Telephone: (207) 287-2229. Email: Lynn.Muzzey@Maine.gov

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT: N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 38 MRS §§ 585, 585-A

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

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

DEP RULEMAKING LIAISON: Mark.T.Margerum@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. I Section 1**, General Administrative Policies and Procedures

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P217** *(Revised: public hearing information, deadline for comments)*

CONCISE SUMMARY: This proposed rulemaking makes various, complex changes, including changes to comply with federal regulations, make updates to reflect current practices, clarify ambiguous and vague sections of policy, and increase the MaineCare Program Integrity Unit’s ability to safeguard against fraud, waste, and abuse. All the changes in this rulemaking are listed below:

The current rule does not address retroactive enrollment for providers other than federally qualified health centers, rural health centers, and Indian health centers. This rulemaking broadens sec. 1.03-1(F) to allow for retroactive enrollment for other eligible providers, subject to review and approval by the Department of Health and Human Services (the Department) in accordance with 42 CFR §431.108. A request for retroactive enrollment is subject to the Department’s review and discretion and is not a guarantee of claim payment or prior authorization. The Department may grant retroactive enrollment back to providers’ Medicare enrollment effective date but will not grant a retroactive enrollment date that is more than 365 days prior to the date of providers’ MaineCare application submission.

To comply with 42 CFR §455.434, this rule adds a section on fingerprint-based criminal background checks (FCBC), mandating that providers or applicants whose categorical risk level meets the federal definition of high risk must consent to a FCBC. This new sec. 1.03-1(J) includes relevant criteria for termination or denial of enrollment and outlines which providers and suppliers constitute high categorical risk.

The current ‘rounding rule’ (sec. 1.03-8(J)) allows providers to round up a unit of service if the unit of service delivered is equal to or greater than fifty percent. To encourage clarity and precision in delivering the amount of covered services that are medically necessary, this rulemaking makes changes so when a partial unit of service is delivered, the provider may either bill for the partial unit of service provided, or round up if eighty percent of the unit of service was delivered. The rule retains the ability to round up if fifty percent of the unit of service was delivered, but only when unforeseen circumstances prevent a provider from delivering a whole unit of service. This rulemaking also adds misuse of the “rounding rule” to examples of conduct that could constitute fraud.

*MaineCare Benefits Manual*, ch. II sec. 80, which primarily applies to retail pharmacies, previously housed language on the 340B Drug Price Program (340B Program). However, the 340B Program language is better suited in this rule because it applies to all provider types except pharmacies. Hence, this rulemaking adds a section, 1.03-14, on the 340B Program that requires providers or entities who purchase drugs under the 340B program to sign a 340B agreement with the Department and to comply with federal and Health Resources & Services Administration 340B rules and regulations. The Department shall seek and anticipates approval of a state plan amendment related to these changes. Additionally and separately, the Department shall repeal the 340B Program provisions that are in ch. II sec. 80.09-1(D).

This rulemaking expands the definition of non-covered services to include administrative tasks (sec. 1.06-4(B)(8)), including verification of MaineCare eligibility, updating member contact information, scheduling of appointments, and similar activities. This provision strengthens the Office of MaineCare Services (OMS) Program Integrity Unit’s enforcement of the prohibition on billing for administrative tasks, which already exists per current MaineCare rules.

To comply with section 53102 of the *Bipartisan Budget Act of 2018*, PL No. 115-123, this rulemaking updates that the Department will no longer pay and then seek reimbursement, commonly known as pay and chase, from liable third parties for prenatal services.

This rulemaking clarifies (sec. 1.19-1(C)(2)) that the Department may reimburse providers for covered services rendered during the period following a notice of termination up to the effective date of termination, instead of for a period not to exceed thirty days after the date of receipt of the notice of termination, because providers may not be reimbursed after termination of a provider agreement. The rulemaking also adds that providers must follow the provisions of their provider agreements and the *MaineCare Benefits Manual* to continue to receive reimbursement for services.

To enable the OMS Program Integrity Unit to implement appropriate sanctions, this rulemaking allows the Department, in its discretion, to consider a request from a provider to impose a lower percentage than 20% recoupment. The rulemaking adds a list of factors in sec. 1.20-2 for the Department to consider when assessing this type of provider request.

This rulemaking adds other sanctions, such as submitting a plan of correction, so the OMS Program Integrity Unit can ensure providers comply with MaineCare rules and monitor providers who experience rapid growth or changes. Providers who grow rapidly may not have adequate infrastructure to maintain quality of service provision. The additional sanctions are:

• Impose a suspension of referrals to a provider;

• Deny or pend any enrollment applications submitted by a provider;

• Limit the number of service locations a provider may enroll; and

• Limit the number of MaineCare members the provider may serve.

This rulemaking clarifies the provisions in sec. 1.21 regarding reinstatement following termination or exclusion. The current rule regarding, for example, the time period for reinstatement may be confusing and difficult to apply.

The Department adds a section, 1.24-4, on expedited member appeals that includes the procedure to request an expedited appeal, criteria for the Division of Administrative Hearings (DAH) to consider when deciding whether to grant requests, deadlines for when the Department must take final agency action, and other requirements, per 42 CFR §431.224. MaineCare Member Services shall send all expedited hearing requests to a hearings representative and the DAH within 24 hours of identifying the request.

The MaineCare Advisory Committee (MAC) has developed structural and process changes to improve its function and efficiency, which must be put into sec. 1.25. The MAC proposed changes include increasing MAC membership, including at least two Medicaid beneficiaries as members, and other changes.

This proposed rulemaking also makes the following changes:

• Define the ownership and control relationships that are subject to an offset;

• Establish a timeframe for when providers need to update OMS of changes to their National Provider Identifier or other enrollment information;

• Require providers who change their name or “doing business as” name to change their MaineCare Provider Agreement;

• Clarify that providers must take all reasonable and appropriate steps requested by the Department to transition members before changes of ownership, closures, and disenrollment, except in the case of reasonably unforeseen circumstances, and, upon request, submit a transition plan to the Department for review and approval;

• Update the rule in accordance with 10-144 *Code of Maine Rules*, ch. 128, *Certified Nursing Assistant and Direct Care Worker Registry Rule*, to require agencies hiring direct care workers (DCWs) to check the Maine Certified Nursing Assistant and Direct Care Worker Registry to ensure DCWs are eligible for employment in Maine and comply with all requirements stipulated in the rule;

• Add that providers may not bill MaineCare for an interpreter service supplied by an entity in which the providers, any owner of the providers, or an immediate family member of the providers or any of their owners has any direct or indirect ownership or financial interest, unless the provider also reimburses other entities for the provision of interpreter services and the entity providing the interpreting service makes those services commercially available to MaineCare providers or other businesses that do not share a direct or indirect familial ownership interest with the interpreting entity;

• Change the billable amount for interpreter services to be the lesser of the interpreter’s usual and customary charge and the rate authorized by the Department;

• To comply with section 53102 of the *Bipartisan Budget Act of 2018*, increase the number of days, from 30 to 100, that providers must wait for a response from an absent parent’s third party insurance before billing MaineCare;

• Add that the Department may impose sanctions on providers who fail to provide information to the Department or to otherwise respond to Departmental requests for information within a reasonable timeframe established by the Department;

• Add a penalty of 25% of MaineCare payments for covered goods and services where the providers’ records lack a required signature by a member or the member’s guardian;

• Change penalties to equal 20%, as opposed to not exceeding 20%, when mandated records are missing but providers are able to demonstrate by a preponderance of the evidence that the disputed goods or services were medically necessary;

• Make clear the Department’s authority to exclude individuals, entities, and providers from participation in MaineCare for any reason identified in 42 CFR Part 1001 or 1003;

• Add considerations for reinstatement from termination or exclusion to include the conduct of the individual or entity prior to and after the date of the notice of exclusion; and

• Clarify that providers may request an informal review within 60 calendar days from the date of written notification of the Department’s alleged grievance and extend the deadline to the next business day if it falls on a weekend or holiday.

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

**DATE, TIME, AND LOCATION OF PUBLIC HEARING:** 1 p.m. Thursday, January 20th, 2022. *Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearing will be conducted solely remotely, via Zoom. This is in accordance with the DHHS Remote Rulemaking Hearings Policy issued September 10th, 2021.*

*(link to Remote Hearings Policy:* [*https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/9%209%2021%20Remote%20Rulemaking%20Hearings%20Policy.pdf*](https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/9%209%2021%20Remote%20Rulemaking%20Hearings%20Policy.pdf) *)*

***Zoom Meeting link:***[*https://mainestate.zoom.us/j/83872072632*](https://mainestate.zoom.us/j/83872072632)

**Meeting ID:** 838 7207 2632

*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 participate in the hearing contact the person listed for this filing 5 days in advance of the hearing.*

**DEADLINE FOR COMMENTS**: Comments must be received by 11:59 p.m. on Sunday, January 30th, 2022.

OMS CONTACT PERSON / SMALL BUSINESS IMPACT INFORMATION: Henry Eckerson, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4085. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Henry.Eckerson@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(7)(H), 3173; 42 CFR §§ 431.108, 455.434, 447.56, 431.224, 431.12; 42 CFR Parts 1001 *and* 1003; *Bipartisan Budget Act of 2018* sec. 53102; PL No. 115-123

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: Kevin.Wells@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 Section 90**, Physician Services

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P234** *(Revised: public hearing information, deadline for comments)*

CONCISE SUMMARY: This proposed rulemaking seeks to make the following changes:

Pursuant to PL 2021 ch. 398 sec. A-17, *An Act Making Unified 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, 2021, June 30, 2022 and June 30, 2023* (the “Budget”), and in alignment with the recommendations from the comprehensive rate setting evaluation conducted by Myers and Stauffer at the request of the Department, the proposed rule increases the reimbursement rate from 70% of the lowest level in the 2009 Medicare fee schedule to 72.4% of the current year’s Medicare rate per code. In addition, the proposed rule sets the reimbursement rates for select primary care services at 100% of current Medicare rates, from 100% of 2014 Medicare rates, for eligible primary care providers, which is an additional reimbursement increase. These reimbursement changes shall be effective July 1, 2022, as authorized and required by the Budget.

Also per the Budget, the proposed rule adds a new provision, section 90.04-7(B), Physician-Administered Drugs that have Biosimilar Equivalents and/or Prior Authorization Criteria. This provision implements a Biosimilar Preferred Drug List which establishes preferred and non-preferred drug statuses based on cost and biosimilar equivalency for physician-administered drugs. Physician-administered drugs are those that satisfy the criteria in 90.04-7(A), but they also may be drugs administered orally. For drugs that are not administered orally, the proposed changes require providers not only to go through the steps set forth in 90.04-7(A), but also to use physician-administered biosimilar drugs when a physician-administered drug has a Food and Drug Administration (FDA) approved, biosimilar equivalent that the Department identifies as more affordable. Annually, the Department shall identify drugs that have a more affordable FDA-approved biosimilar equivalent on the Biosimilar Preferred Drug List on the MaineCare Health PAS Online Portal. Physicians shall submit a PA request to administer the original drug. For physician-administered drugs that are administered orally, providers must satisfy the requirements in 90.04-7(B).

Section 90.04-7 also requires that some physician-administered drugs may require PA to ensure members meet age, clinical, or other requirements for MaineCare to provide payment and that the MaineCare Health PAS Online Portal contains a complete list of physician-administered drugs that require PA and corresponding PA criteria sheets. Providers must make requests for PA on the Department’s approved form and get approval prior to the date of service. This new proposed PA process is in addition to the requirements for PA in 90.04-7(A).

The proposed rule (sec. 90.04-30) allows members under the age of 21 to receive the application of topical fluoride varnish up to four times per calendar year from eligible providers, rather than two times per calendar year or three times for members with a high caries rate or new restorations placed in the last 18 months. This change aligns with other states’ Medicaid program limitations on fluoride treatment and the current American Academy of Pediatrics recommendation on fluoride treatment. The proposed rule (sec. 90.04-31) also allows all members to receive an oral health risk assessment if they do not have a dental home and/or have not seen a dentist in the past year, rather than restricting the service to members under three years of age.

The proposed rule (sec. 90.05-2(A)) clarifies that medication abortions are covered and shall be performed in compliance with applicable Food and Drug Administration law and guidelines.

The 130th Maine Legislature enacted PL 2021 ch. 348, An Act to Discontinue the Use of the Terms "Handicap," "Handicapped" and "Hearing Impaired" in State Laws, Rules and Official Documents. The proposed rule replaces the term ‘handicapped’ with ‘person with disabilities’ pursuant to PL 2021 ch. 348.

This section 90 rulemaking also proposes to eliminate sec. 90.09-4, Primary Care Provider Incentive Payment (PCPIP), as part of the new Primary Care Plus (PCPlus) initiative. PCPIP authorizes an incentive payment to primary care practices (PCP) based on their performance on several access, utilization, and quality measures. Retaining this payment after PCPlus takes effect would be duplicative of the reimbursement PCPs will receive under the new PCPlus rule. PCPs who currently receive the Incentive Payment may instead apply to participate in PCPlus and, if approved as part of the program, will receive reimbursement based on their performance for members attributed to their practice.

To complete the transition to PCPlus, the Department shall also propose to significantly revise MBM, ch. II sec. 91 (proposed to be titled “Health Home Services – Community Care Teams), which includes repealing Health Home Practices. All of these rulemakings make up the PCPlus initiative, will be proposed simultaneously, and will have the same effective date.

The PCPlus program is intended to give primary care providers (PCPs) greater flexibility and incentives to effectively meet MaineCare members’ health care needs by transitioning away from a volume-based (fee-for-service) payment system with little connection to value, toward an approach that provides risk-adjusted Population-Based Payments tied to cost- and quality-related outcomes To receive reimbursement under PCPlus, providers are required to locate, coordinate, and monitor health care services for members who are attributed to them. The Department will continue to reimburse other MaineCare covered services under the fee-for-service system. Interested parties should refer to the new PCPlus rule (MBM ch. VI sec. 3) for more details.

The Department shall seek approval from the Centers for Medicare and Medicaid Services (CMS) of state plan amendments (SPAs) to repeal and revise the aforementioned programs and implement the PCPlus program. Additionally, the Department will publish notice of the changes in section 90 reimbursement methodology pursuant to 42 CFR §447.205.

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

**DATE, TIME, AND LOCATION OF PUBLIC HEARING:** *1:30 p.m. Tuesday, January 18th, 2022. Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearing will be conducted solely remotely, via Zoom. This is in accordance with the DHHS Remote Rulemaking Hearings Policy issued September 10th, 2021.*

*(link to Remote Hearings Policy:* [*https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/9%209%2021%20Remote%20Rulemaking%20Hearings%20Policy.pdf*](https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/9%209%2021%20Remote%20Rulemaking%20Hearings%20Policy.pdf) *)*

***Zoom Meeting link:***[*https://mainestate.zoom.us/j/86873386512*](https://mainestate.zoom.us/j/86873386512)

***Meeting ID:*** *868 7338 6512*

*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 participate in the hearing contact the person listed for this filing 5 days in advance of the hearing.*

**DEADLINE FOR COMMENTS**: Comments must be received by 11:59 p.m. on Friday, January 28th, 2022.

OMS CONTACT PERSON: Henry Eckerson, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4085. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Henry.Eckerson@Maine.gov.

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

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: N/A

STATUTORY AUTHORITY:22 MRS §§ 42, 3173; PL 2021 ch. 398 sec. A-17; PL 2021 ch. 348

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

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: Kevin.Wells@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** and **III Section 91**, Health Home Services

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P235** *(Revised: public hearing information, deadline for comments)*

CONCISE SUMMARY: This section 91 rulemaking proposes to eliminate Health Home Practices (HHP) from the section 91 rule, makes various changes to Community Care Teams (CCTs), establishes the Housing Outreach and Member Engagement Provider (HOME Provider) as a provider of specialized CCT services and adds affiliated reimbursement rates to ch. III section 91, and changes the names of the ch. II and III section 91 policies to “Health Home Services – Community Care Teams”.

**Health Home Practices and the PCPlus Initiative**

HHPs are primary care practices that have been approved by MaineCare to provide Health Home Services. In this section 91 rulemaking, the Department eliminates HHPs as providers in section 91 because it would be duplicative of the covered services and reimbursement which the members and primary care providers (PCPs), respectively, will receive via the new Primary Care Plus (PCPlus) program. To complete the transition to PCPlus, the Department shall also propose to repeal Primary Care Case Management (ch. VI sec. 1) and the Primary Care Provider Incentive Payment within ch. II sec. 90 (Physician Services).

The PCPlus program is intended to give PCPs greater flexibility and incentives to effectively meet MaineCare members’ health care needs by transitioning away from a volume-based (fee-for-service) payment system with little connection to value, toward an approach that provides risk-adjusted Population-Based Payments tied to cost-and quality-related outcomes. To receive reimbursement under PCPlus, providers are required to locate, coordinate, and monitor health care services for members who are attributed to them, as set forth in the PCPlus rule, section 3.04. The Department will continue to reimburse other MaineCare-covered services under the fee-for-service system. PCPs who are currently HHPs may apply to participate in the soon-to-be-implemented PCPlus program and, if approved, will receive reimbursement based on their practice level characteristics and performance for members attributed to their practice. Interested parties should refer to the new PCPlus rule (MBM ch. VI sec. 3) for more details.

The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services (CMS) of state plan amendments (SPAs) to repeal and/or alter these programs and implement the PCPlus program. Additionally, the Department will publish notices of the changes in reimbursement methodology pursuant to 42 CFR §447.205.

Members currently attributed to an HHP panel will not experience any direct impacts once the HHP rule provisions are repealed. Members will keep their PCPs, but those PCPs that were HHPs will no longer be held to the HPP provider and covered service requirements. Members will be notified of the HHP repeal if their PCP is currently an HHP and if their PCP becomes a PCPlus provider.

**Community Care Teams**

Under the proposed rule, CCTs support PCPs, rather than HHPs, by providing services to members who are high-risk and/or high-cost and whose health care needs are more intense than can be managed by a PCP. The proposed rule expands, simplifies, clarifies, and removes redundancies from the covered service requirements.

Under this proposed rule, CCTs will be subject to new provider requirements. CCTs must implement an electronic health record, participate in Department-required technical assistance and educational opportunities, maintain a Participant Agreement for data sharing with Maine’s Health Information Exchange, follow ten core standards currently designed for and applied to HHPs under the current rule, have a documented relationship with one or more PCPs, and have a multidisciplinary team of at least three health care professionals whose roles have been clarified.

The proposed rule also changes member eligibility requirements for CCT services to be more inclusive by decreasing the number of chronic medications, hospital admissions, and emergency department visits that are needed to qualify a member. Members would also now be eligible if they are transitioning from an institutional setting and if members are identified by risk-stratification as at risk for deteriorating health; high-risk or high-cost due to severity of illness or high social needs; or higher health care needs than is expected for their clinical risk group. To receive CCT services Members must still have two or more chronic conditions or have one chronic condition and be at risk for another. The proposed rule also adds new risk factors that would make a member at risk for a chronic condition.

**Housing Outreach and Member Engagement (HOME) Services and Providers**

Via *Resolve, To Increase Access to Housing-related Support Services*,LD 1318 (129th Legislature 2019), the Legislature directed the Department to examine federal opportunities to provide housing-related services to persons experiencing chronic homelessness who have mental health conditions or substance use disorder and other vulnerable populations. In addition, the Office of MaineCare Services, Maine State Housing Authority (MSHA), and various housing and homeless services providers applied for and were accepted into a Medicaid Innovation Accelerator Program (IAP) for State Medicaid-Housing Agency Partnerships with technical assistance from the Corporation for Supportive Housing (CSH) and the Center for Health Care Strategies (CHCS). The collaborative group focused on improving outcomes for MaineCare members with disabilities and chronic health conditions, including Substance Use Disorder (SUD), who are experiencing homelessness and developing a Medicaid benefit to support housing sustainability, improved health outcomes, and reduced overall costs of care. The group proposed to use section 2703 of the *Affordable Care Act* to develop a new type of CCT, a “HOME Provider,” that would provide comprehensive care management and medical and behavioral health care coordination with intensive levels of transitional care and individual supports to meet the needs of MaineCare members with long-term homelessness.

HOME Providers shall conduct outreach to underserved populations in need of intensive HOME services due to high emergency services utilization, chronic conditions, complex care coordination needs, and long-term homelessness. The HOME Provider shall be comprised of a manager, clinical leader, case manager, peer support staff, and housing navigator. HOME Providers shall receive and review referrals for HOME service eligibility and enrollment from any point of care, including but not limited to hospitals, medical and behavioral health providers, and community service organizations. HOME Providers shall provide comprehensive care management, care coordination, health promotion, comprehensive transitional care, individual and family support services, and referral to community and social support services. There are three HOME service tiers in which members can be enrolled. Members must first meet the Intensive Tier criteria before entering the Stabilization and Maintenance Tiers. Each tier represents an intensity level of covered services and has a different per member per billing month reimbursement amount. Eligible members who are children may receive covered HOME services, as long as the HOME Provider obtains written consent from a parent or legal guardian.

Lastly, this rulemaking requires both CCTs and HOME Providers to submit data necessary to compile and report on performance measures, as identified by the Department. This will aid in the development of value-based metrics to include in future iterations of rulemaking and to ensure that the services provided are high-quality. The rulemaking also defines “billing month” as the period from the 21st of a month to the 20th of the following month and, when appropriate, replaces “month” and “calendar month” with “billing month” to clarify the reimbursement period for providers.

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

**DATE, TIME, AND LOCATION OF PUBLIC HEARING:** 11 a.m. Tuesday, January 18th, 2022. *Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearing will be conducted solely remotely, via Zoom. This is in accordance with the DHHS Remote Rulemaking Hearings Policy issued September 10th, 2021.*

*(link to Remote Hearings Policy:* [*https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/9%209%2021%20Remote%20Rulemaking%20Hearings%20Policy.pdf*](https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/9%209%2021%20Remote%20Rulemaking%20Hearings%20Policy.pdf) *)*

***Zoom Meeting link:***[*https://mainestate.zoom.us/j/84981478440*](https://mainestate.zoom.us/j/84981478440)

***Meeting ID:*** *849 8147 8440*

*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 participate in the hearing contact the person listed for this filing 5 days in advance of the hearing.*

**DEADLINE FOR COMMENTS**: Comments must be received by 11:59 p.m. on Friday, January 28th, 2022.

OMS CONTACT PERSON: Henry Eckerson, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4085. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Henry.Eckerson@Maine.gov.

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: N/A

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

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §§ 42, 3173; section 2703 of the *Affordable Care Act*; LD 1318 (129th Legislature 2019), *Resolve, To Increase Access to Housing-related Support Services*; PL 2021 ch. 398 sec. A-17, *An Act Making Unified 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, 2021, June 30, 2022 and June 30, 2023*

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

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: Kevin.Wells@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. VI Section 3**, Primary Care Plus

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P236** *(Revised: public hearing information, deadline for comments)*

CONCISE SUMMARY: This proposed rulemaking repeals 10-144 CMR ch. 101, *MaineCare Benefits Manual* (the “MBM”), ch. VI sec. 1, Primary Care Case Management (PCCM), and replaces it with MBM ch. VI sec. 3, Primary Care Plus (PCPlus), a single integrated program for MaineCare’s current primary care programs. To complete the transition to PCPlus, the Maine Department of Health and Human Services (the “Department”) shall also propose to repeal MBM ch. II sec. 90.09-4 (Primary Care Provider Incentive Payment) and shall propose to significantly revise MBM ch. II sec. 91 (proposed to be titled “Health Home Services – Community Care Teams”), which includes repealing Health Home Practices. All of these rulemakings make up the PCPlus initiative, will be proposed simultaneously, and will have the same effective date.

The Department shall seek approval from the Centers for Medicare and Medicaid Services (CMS) of state plan amendments (SPAs) to repeal the aforementioned programs and implement the PCPlus program. Additionally, the Department will publish a notice of change in reimbursement methodology pursuant to 42 CFR §447.205.

**Overview of the PCPlus Initiative**

The Department and the Office of MaineCare Services (OMS) are committed to improving health care access and outcomes for MaineCare members, demonstrating cost-effective use of resources, and creating an environment where providers can innovate in delivering high-value care. PCPlus is part of OMS’ commitment to have 40% of MaineCare expenditures paid through Alternative Payment Models (APMs) by the end of 2022. APMs are health care payment methods that use financial incentives to promote or leverage greater value, indicated by higher quality care and/or lower costs.

PCPlus is considered an “Integrated Care Model” by CMS under State Medicaid Director Letter #12-002, aligns with the Center for Medicare and Medicaid Innovation’s (CMMI) Primary Care First Model (See also: <https://innovation.cms.gov/innovation-models-options>), and operates under the authority of section 1905(t)(1) of the *Social Security Act* (SSA). The PCPlus program is intended to give primary care providers (PCPs) greater flexibility and incentives to effectively meet MaineCare members’ health care needs by transitioning away from a volume-based (fee-for-service) payment system with little connection to value, toward an approach that provides risk-adjusted Population-Based Payments tied to cost- and quality-related outcomes.

Participation in PCPlus is voluntary for PCPs. For PCPs that elect to participate, the Department will share quality and utilization data, offer a new value-based payment model, and provide technical assistance to assist practices transform care delivery and achieve performance outcomes. The new payment model is risk-based, meaning reimbursement will increase or decrease depending on the PCPlus provider’s performance, as set forth in section 3.08 of the rule. Providers may appeal Departmental actions, pursuant to chapter I section 1.

Member participation in this model is based on which PCP the member visited for health care services or by the members’ identification of a PCP through calling MaineCare Member Services. Member participation is voluntary and does not interfere with MaineCare members’ freedom of choice to access other MaineCare providers. If a member identified their PCP for attribution through MaineCare Member Services but does not receive at least one primary care service from their selected PCP within one year, then DHHS will notify and reattribute the member in accordance with the primary care services-based attribution methodology. Members may change their PCP or opt out of PCPlus at any time.

To receive reimbursement under PCPlus, providers are required to locate, coordinate, and monitor health care services for members who are attributed to them, as set forth in section 3.04. All covered services rendered by PCPlus providers must be documented in the member’s electronic health record. The Department will continue to reimburse other MaineCare covered services under the fee-for-service system.

**Differences Between PCPlus and PCCM**

CMS considers PCCM to be a form of managed care, which operates under section 1905(a)(25) of the SSA and 42 CFR 438.6 with mandatory member participation for the majority of MaineCare members. PCPlus operates under 1905(t)(1) of the SSA and is not a managed care program. Since PCPlus is not a managed care program, it does not include many of the managed care requirements that PCCM follows. For example, except as set forth in the rule, member participation in PCPlus is based on members’ selection of a PCP, members may opt out of this program, and this program has no bearing on MaineCare members’ freedom of choice to access services from any qualified MaineCare provider. In addition, PCPlus, unlike PCCM, does not include the PCCM provisions on member participation or complaints, and PCP selection, change, and reassignment.

Under PCCM and PCPlus, providers locate, coordinate, and monitor health care services. However, PCPlus expands service and practice requirements to support whole-person coordination and transitions of care; completing timely prior authorizations; providing, tracking, and following up on referrals; and closing care gaps, including a focus on preventative services.

PCCM providers who choose to participate in PCPlus will benefit from a new value-based payment model, which includes a risk-adjusted population-based payment tied to cost- and quality-related outcomes, rather than the flat per member per month management fee provided under PCCM. Given the additional requirements and support for providers, PCPlus should improve health outcomes for members.

**Section 90 and 91 Rulemakings for PCPlus Initiative**

Regarding the related proposed rulemaking for section 90, the Department is eliminating the Primary Care Provider Incentive Payment because it would duplicate the reimbursement model of the new PCPlus program. Physicians who currently receive the Incentive Payment may apply to be PCPs under the PCPlus program, and, if approved, will receive reimbursement based on the PCPlus service expectations and performance for members attributed to their practice.

For section 91, as it relates to the PCPlus initiative, the Department is removing Health Home Practices (HHPs) because they would be duplicative of the reimbursement the PCPs will receive and the covered services they provide via PCPlus. HHPs that currently receive reimbursement through section 91 may apply to participate in the PCPlus program, and, if approved, PCPs will receive reimbursement based on the PCPlus service expectations and performance for members attributed to their practice.

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

**DATE, TIME, AND LOCATION OF PUBLIC HEARING:** 8:30 a.m. Tuesday, January 18th, 2022. *Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearing will be conducted solely remotely, via Zoom. This is in accordance with the DHHS Remote Rulemaking Hearings Policy issued September 10th, 2021.*

*(link to Remote Hearings Policy:* [*https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/9%209%2021%20Remote%20Rulemaking%20Hearings%20Policy.pdf*](https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/9%209%2021%20Remote%20Rulemaking%20Hearings%20Policy.pdf) *)*

***Zoom Meeting link:***[*https://mainestate.zoom.us/j/89474720387*](https://mainestate.zoom.us/j/89474720387)

**Meeting ID:** 894 7472 0387

*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 participate in the hearing contact the person listed for this filing 5 days in advance of the hearing.*

**DEADLINE FOR COMMENTS**: Comments must be received by 11:59 p.m. on Friday, January 28th, 2022.

OMS CONTACT PERSON: Henry Eckerson, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4085. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Henry.Eckerson@Maine.gov.

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: N/A

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, 3173; *Social Security Act* §1905(t)(1) (42 USC §1396d(t)(1))

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

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: Kevin.Wells@Maine.gov.

AGENCY: **06-096 - Department of Environmental Protection (DEP)**

CHAPTER NUMBER AND TITLE: **Ch. 180**, Appliance Efficiency Standards

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2021-P239**

BRIEF SUMMARY: Public Law 2021 ch. 433 (LD 940) *An Act To Establish Appliance Energy and Water Standards,* authorizes the Department to adopt rules to restrict the sale of certain appliances and plumbing fixtures. Federal and state efficiency standards and guidelines have long been in place for most of the appliances and fixtures addressed by this rule; however, they have not been enforceable. The proposed rule will require certain new products to meet minimum efficiency standards, reducing resource consumption and emissions of greenhouse gases and other pollutants. The rule allows for sell-through of existing stocks of noncompliant products, and defers to any federal preemptions.

PUBLIC HEARING: January 20, 2022, 9:00 a.m., Marquardt State Office Building - Room 118, 32 Blossom Lane, Augusta, Maine.

COMMENT DEADLINE: January 31, 2022

CONTACT PERSON FOR THIS FILING: Erle Townsend, Office of the Commissioner, Department of Environmental Protection, 17 State House Station, Augusta ME 04333-0017. Email: Erle.Townsend@Maine.gov.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT: N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: Public Law 2021 ch. 433; 38 MRS §576-A

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

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

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

AGENCY: **09-137 – Department of Inland Fisheries and Wildlife (IFW)**

CHAPTER NUMBER AND TITLE: **Ch. 16**, Hunting: **16.09**, Bear Hunting

PROPOSED RULE NUMBER: **2021-P240**

TYPE OF RULE: Routine Technical

BRIEF SUMMARY: In accordance with Public Law ch. 100, the Department is proposing to amend ch. 16 rules to establish limits on the number of bear a person may hunt and possess in a season as follows: The bag limit on bears taken by hunting is one bear per year. A person may not hunt bear after that person has killed or registered a bear by hunting during that calendar year. A person may not possess more than 2 bears in any calendar year, except a person may keep more than two legally obtained bear in that person’s home or as otherwise provided in law. To ensure consistency with 12 MRS, the rule also clarifies that the bear hunting season ends no later than November 30th.

PUBLIC HEARING: Wednesday, January 19, 2022 @ 4:00 p.m. – Maine Department of Inland Fisheries & Wildlife, 353 Water Street, 4th floor conference room, Augusta

COMMENT DEADLINE: January 31, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries & Wildlife, 41 State House Station, 284 State Street, Augusta, ME 04333. Telephone: (207) 287-5202. Email: Becky.Orff@Maine.gov.

IMPACT ON MUNICIPALITIES OR COUNTIES: No fiscal impact is anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 10104, 11251, 11351

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

IFW WEBSITE: <https://www.maine.gov/ifw/>.

AGENCY: **09-137 – Department of Inland Fisheries and Wildlife (IFW)**

CHAPTER NUMBER AND TITLE: **Ch. 17**, Trapping: **17.07(1)**, Bear Trapping

PROPOSED RULE NUMBER: **2021-P241**

TYPE OF RULE: Routine Technical

BRIEF SUMMARY: In accordance with Public Law ch. 100, the Department is proposing to amend ch. 17 rules to establish limits on the number of bears a person may trap and possess in a season as follows: The bag limit on bears taken by trapping is one bear per year. A person may not trap bear after that person has killed or registered a bear by trapping during that calendar year. A person may not possess more than 2 bears in any calendar year, except a person may keep more than two legally obtained bear in that person’s home or as otherwise provided in law.

PUBLIC HEARING: Wednesday, January 19, 2022 @ 4:00 p.m. – Maine Department of Inland Fisheries & Wildlife, 353 Water Street, 4th floor conference room, Augusta

COMMENT DEADLINE: January 31, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries & Wildlife, 41 State House Station, 284 State Street, Augusta, ME 04333. Telephone: (207) 287-5202. Email: Becky.Orff@Maine.gov.

IMPACT ON MUNICIPALITIES OR COUNTIES: No fiscal impact is anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §§ 10104, 11351

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

IFW WEBSITE: <https://www.maine.gov/ifw/>.

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 Section 21**, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P242**

CONCISE SUMMARY: This section 21 rule provides home and community-based services (HCBS) that are authorized by a federal Medicaid 1915(c) home and community-based waiver that meets federal standards.

On September 25, 2020, CMS approved the Department’s request to renew the Home and Community Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver for a five-year period, with an effective date of July 1, 2020. In accordance with this CMS approval, the Department proposes the following changes to this rule:

* Eliminates Counseling as a section 21 service. Counseling services are available to section 21 Members under Section 65 of the *MaineCare Benefits Manual*. All section 21 Members who were receiving Counseling services under section 21 received written notice of this change in October 2020.
* The description for the following Covered Services has been updated, expanded and/or clarified:
* Career Planning
* Community Support
* Crisis Intervention Services (Requires additional documentation by the Planning Team)
* Home Support – Agency Per Diem (Requires that at least one staff person is in the same residence 24/7 in order to respond immediately to Member requests for assistance)
* Home Support – Family Centered Support
* Home Support – Quarter Hour
* Non-Medical Transportation Service
* Shared Living (Foster Care Adult)
* Specialized Medical Equipment
* Speech Therapy (Maintenance) (clarifies the intent is to prevent regression, loss of movement, injury and medical complications that would result in a higher level of skilled care).
* Work Support – Individual (clarifies the primary focus of the service is job related and encompasses adherence to workplace policies and safety).
* The following definitions were updated: Autism Spectrum Disorder, Intellectual Disability, Activities of Daily Living, Instrumental Activities of Daily Living, Person-Centered Service Plan and Shared Living.

The Department proposes the following additional changes:

* Community Support services are proposed to be separated into three tiers of service delivery: Community Only-Individual, Community Only-Group, and Center-Based, to support individualized needs of the participant population more broadly. The Department will seek CMS approval for this change.
* **DOJ Settlement Agreement**: On June 4, 2021, the Department entered into a Settlement Agreement with the U.S. Department of Justice (DJ No. 204-34-72). The Department agreed to adopt a rule which established an exceptions process which provides that section 21 Members, and Members applying to receive section 21 benefits, may request services in excess of otherwise applicable section 21 monetary and/or unit caps, where necessary to ensure that section 21 Members receive adequate and appropriate services and supports in the most integrated setting appropriate to their needs, consistent with the Americans with Disabilities Act (ADA). This rulemaking proposes the Requests for Exceptions provision (See sec. 21.14).
* On August 10, 2021 the Department proposed a new rule which implements the federal requirements for Maine’s section 1915(c) home and community-based waiver programs as required by 42 CFR sec. 441.301(c). This proposed rule is cited as:10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. I section 6, ’”Global HCBS Waiver Person-Centered Planning and Settings Rule”, referred to as the HCBS Global Rule. The HCBS Global Rule includes requirements for person-centered service planning and for settings in which home and community-based waiver services (“HCBS”) are provided, including requirements for provider-owned or controlled residential settings. This proposed section 21 rule includes provisions that incorporate the requirements of the Global rule (see sec. 21.04-2 [Person Centered Service Planning Process] and sec. 21.05-1 [Home and Community Based Settings]).
* This proposed rule notifies providers and the public that all section 21 providers must comply with all applicable federal and state law, which includes applicable Maine licensing laws and regulations as well as ch. I section 1 of the *MaineCare Benefits Manual* including maintaining current licenses, as applicable.
* **21.07-2 (Limits)**: The Department proposes to change the limit from $26,640 to $39,875 for the combined annual cost of Work Support – Group, Work Support-Individual, and Community Support Services, retroactive to January 1, 2021. This retroactive application is lawful under 22 MRS sec. 42(8), as the change is a benefit to both Members and Providers. The Department received CMS approval for this change.
* **POCA**: The Department proposes a new provision which authorizes the Department to issue written notices of deficiencies, and requires providers to submit and implement Plans of Corrective Action (POCA) as approved by the Department. Providers have the right to appeal written notices of deficiencies in service provision. This POCA process will provide increased protections for Members and ensure that providers are in compliance with service requirements, have sufficient clinical and administrative capability to carry out the intent of the service, and have taken steps to assure the safety, quality, and accessibility of the service for Members.
* **21.08-3 (Termination from Participation as a MaineCare Provider)**: The Department proposes to clarify this provision by expressly notifying providers of the *MaineCare Benefits Manual*, ch. I sec. I requirement that providers must give written notice of their intent to terminate all participation in the MaineCare Program. In addition, this provision requires section 21 providers to notify all section 21 members that they serve of any intent to terminate participation in the MaineCare program.
* **21.10-1 (Direct Support Professional)**: The Department proposes changes to Provider Qualifications and Requirements for Direct Support Professionals (DSPs) for Career Planning and Employment Specialist Services. For DSPs, the proposed rule eliminates the requirement for grievance training prior to working with Members and adds a requirement for DSPs who provide Crisis Intervention to receive behavioral intervention training.
* **Appendix IV (Performance Measures)**: The Department proposes to eliminate Appendix IV because the Department utilizes data available through the Department of Labor, Person Centered Service Plans, and authorization data as part of the Department’s commitment to quality assurance and quality improvement system. Additionally, specific performance measures are either no longer relevant or necessary to measure the performance of specifically listed employment services, or have been met.
* **21.10-9 (Electronic Visit Verification)**: The Department proposes to require that providers of Home Support-Quarter Hour services comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements. This complies with the *21st Century Cures Act* (PL 114-255), section 12006, as codified in 42 USC §1396b(l).
* **21.10-1(DSP qualification)**: The Department proposes to require all DSPs, regardless of capacity and prior to provision of services to a Member, receive training regarding the Global HCBS Waiver Person Centered Planning and Settings Rule, *MaineCare Benefits Manual*, ch. I section 6. Moreover, within six (6) months of hire and annually thereafter, the proposed rule requires that DSPs comply with the Department’s regulations; Reportable Events System (14-197 CMR ch. 12) and the Adult Protective Services System (10-149 CMR ch. 1).
* **21.11 (Member Appeals)**: The Department proposes adding a sentence to provide that Members have the right to appeal decisions made regarding priority level and waitlist determinations.

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

STATUTORY AUTHORITY: 22 MRS §§ 42, 42(8), 3173; 42 CFR sec. 441.301(c); 42 USC §1396b(l)

DATE FILED WITH THE SECRETARY OF STATE’S OFFICE: December 21, 2021

PUBLIC HEARING: 1 p.m. Wednesday, January 19, 2022. *Due to the ongoing threat posed by COVID-19 (see below), DHHS has determined that its public hearing will be conducted solely remotely, via Zoom.*

*Zoom Meeting link:* [*https://mainestate.zoom.us/j/84195696775*](https://mainestate.zoom.us/j/84195696775)

*Meeting ID: 841 9569 6775*

*In addition to the public hearing, individuals may submit written comments to DHHS by the date listed in this notice.*

COMMENT DEADLINE: Comments must be received by 11:59 p.m. on January 31, 2022

OMS CONTACT PERSON: 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.

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

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: N/A

STATUTORY AUTHORITY: 22 MRS §§ 42, 42(8), 3173; 42 CFR sec. 441.301(c); 42 USC §1396b(l)

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

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: Kevin.Wells@Maine.gov.

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

CHAPTER NUMBER AND TITLE: **Ch. 210**, Telecommunications Excise Tax

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P243**

BRIEF SUMMARY: This rule is being proposed to provide an overview of the excise tax levied by the State on telecommunications businesses pursuant to 36 MRS §457. The rule clarifies the law and provides guidance regarding the requirements of the tax.

PUBLIC HEARING: none

COMMENT DEADLINE: January 31, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Alex Weber, General Counsel, Maine Revenue Services, 51 Commerce Drive – 24 State House Station, Augusta, Maine 04333 Telephone: (207) 624-9712. Email: Alexander.J.Weber@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 36 MRS §§ 112, 305, 457

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

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

MRS RULEMAKING LIAISON: Anya.Trundy@Maine.gov.

AGENCY: **94-293 -** **Baxter State Park Authority**

CHAPTER NUMBER AND TITLE: **Ch. 1**, Baxter State Park Rules and Regulations

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2021-P244 *(in 5 items)*:**

**ITEM 1:**

**BRIEF SUMMARY:** **Revising Rule 1.2 in section 1: Resource Protection and Wilderness Preservation** - to remove language not judicially enforceable, and to allow for alternative management options. The expected operation of this Rule will be in accordance with BSP Policy. See Rules and Regulations at [www.baxerstatepark.org](http://www.baxerstatepark.org)

**Current Rule 1.2:** Camping is permitted by reservation only and only in authorized campgrounds and campsites, as specified by the Park, May 15 through October 22 and December 1 through March 31. Campers must register at the gatehouse no later than 8:30 p.m. Check-out time is 11:00 a.m. and check-in time is 1:00 p.m. Tents are not permitted outside of lean-tos at lean-to sites. Camping by groups of more than 12 people is permitted only at group camping areas located at Bear Brook, Foster Field, Nesowadnehunk Field, Trout Brook Farm and North Branch Camps.

**Proposed Rule 1.2:** Camping is permitted by reservation only and only in authorized campgrounds and campsites **during certain dates and times,** as specified by the Park. May 15 through October 22 and December 1 through March 31. Campers must register at the gatehouse no later than 8:30 p.m. Check-out time is 11:00 a.m. and check-in time is 1:00 p.m. Tents are not permitted outside of lean-tos at lean-to sites. Camping by groups of more than 12 people is permitted only at **designated** group camping areas. located at Bear Brook, Foster Field, Nesowadnehunk Field, Trout Brook Farm and North Branch Camps.

**DETAILED SUMMARY:** Park season length, check out times, and specific locations of group areas are not intended to be “judicially enforceable”, Visitors are informed by other means (website, reservation confirmation) of these details and expectations. The removal of the “no tents outside of lean-tos” provision allows the Park to consider alternative management options for this issue, which also is better placed as a policy-level issue.

**Current Rule 1.2:**

Camping is permitted by reservation only and only in authorized campgrounds and campsites, as specified by the Park, May 15 through October 22 and December 1 through March 31. Campers must register at the gatehouse no later than 8:30 p.m. Check-out time is 11:00 a.m. and check-in time is 1:00 p.m. Tents are not permitted outside of lean-tos at lean-to sites. Camping by groups of more than 12 people is permitted only at group camping areas located at Bear Brook, Foster Field, Nesowadnehunk Field, Trout Brook Farm and North Branch Camps.

**Proposed Rule 1.2:**

Camping is permitted by reservation only and only in authorized campgrounds and campsites **during certain dates and times,** as specified by the Park. May 15 through October 22 and December 1 through March 31. Campers must register at the gatehouse no later than 8:30 p.m. Check-out time is 11:00 a.m. and check-in time is 1:00 p.m. Tents are not permitted outside of lean-tos at lean-to sites. Camping by groups of more than 12 people is permitted only at **designated** group camping areas. located at Bear Brook, Foster Field, Nesowadnehunk Field, Trout Brook Farm and North Branch Camps.

**ITEM 2**

**BRIEF SUMMARY:** **Revising Rule 3.1 in section 3: Hunting, Trapping and Fishing** - to add “crossbow”. The expected operation of this Rule will be in accordance with BSP Policy. See Rules and Regulations at [www.baxerstatepark.org](http://www.baxerstatepark.org).

**Current Rule 3.1 (Part):** Hunting and trapping are prohibited within the Park. Use or possession of any firearm, bow and arrow, sling shot, or air rifle or pistol is prohibited….

**Proposed Rule 3.1 (Part):** Hunting and trapping are prohibited within the Park. Use or possession of any firearm, bow and arrow, sling shot, **crossbow**, or air rifle or pistol is prohibited…

**DETAILED SUMMARY:** Crossbow hunting has enjoyed increasing popularity in recent years and it is useful from an enforcement standpoint to list this specific activity.

**Current Rule 3.1 (Part)**

Hunting and trapping are prohibited within the Park. Use or possession of any firearm, bow and arrow, sling shot, or air rifle or pistol is prohibited….

**Proposed Rule 3.1 (Part):**

Hunting and trapping are prohibited within the Park. Use or possession of any firearm, bow and arrow, sling shot, **crossbow**, or air rifle or pistol is prohibited…

**ITEM 3**

**BRIEF SUMMARY:** **Revising Rule 4.6 in section 4: Resource Protection and Wilderness Preservation** - to align with Leave No Trace practices. The expected operation of this Rule will be in accordance with BSP Policy. See Rules and Regulations at [www.baxerstatepark.org](http://www.baxerstatepark.org)

**Current Rule 4.6:** Where toilets are not available, human waste must be disposed of at least 200’ from water or trail by burying or by carry-out.

**Proposed Rule 4.6:** Where toilets are not available, human waste must be disposed of at least 200' from water or trail by burying or by carry-out. **Below treeline human waste must be buried or carried out. Above treeline, the digging of catholes is prohibited, and human waste must be carried out or left on the surface of the soil or a rock.**

**DETAILED SUMMARY:** The current rule suggests that catholes should be dug to bury human waste in all places, but in fact the best practices put forth as guidelines but Leave No Trace suggest that such activity may harm sensitive soils and plants rooted therein. LNT best practices now call for a preference to carry out waste in sensitive areas like the alpine zone, or deposit the waste at least 200’ from a trail or water on the surface of a rock where it may degrade quickly in the sun, and leave no toilet paper.

Park staff would like to bring this rule into alignment with LNT best practices and current standards of natural resource protection. This offers enforceability for the issue of hikers relieving themselves directly on the trail above treeline, and offers environmentally friendly alternatives.

**Current Rule 4.6:** Where toilets are not available, human waste must be disposed of at least 200’ from water or trail by burying or by carry-out.

**Proposed Rule 4.6:** Where toilets are not available, human waste must be disposed of at least 200' from water or trail by burying or by carry-out. **Below treeline human waste must be buried or carried out. Above treeline, the digging of catholes is prohibited, and human waste must be carried out or left on the surface of the soil or a rock.**

**ITEM 4**

**BRIEF SUMMARY:** **Revising Rule 5.4 in section 5: Vehicles and Transportation -** to make this provision more practically enforceable. The expected operation of this Rule will be in accordance with BSP Policy. See Rules and Regulations at [www.baxerstatepark.org](http://www.baxerstatepark.org).

**Current Rule 5.4 (Part):** The operation of…The operation of Motorcycles is prohibited on unpaved roads within the Park.

**Proposed Rule 5.4 (Part):** The operation of…The operation of Motorcycles is prohibited **beyond Togue and Matagamon gatehouses** on unpaved roads within the Park.

**DETAILED SUMMARY:** This proposed change seeks to make this provision more practically enforceable- currently, to the south, the unpaved road begins about a ¼ mile before the Togue Pond Gatehouse, and given the slow speed limit there and interest in motorcycles accessing the beach, this clarifies that access without degrading safety. Near Matagamon Gatehouse, the unpaved road begins almost two miles outside the gatehouse, and it is impractical to enforce this provision in that area. This proposed change would bring the rule language into alignment with current enforcement practice. See Rules and Regulations at [www.baxerstatepark.org](http://www.baxerstatepark.org).

**Current Rule 5.4 (Part):** The operation of…The operation of Motorcycles is prohibited on unpaved roads within the Park.

**Proposed Rule 5.4 (Part):** The operation of…The operation of Motorcycles is prohibited **beyond Togue and Matagamon gatehouses** on unpaved roads within the Park.

**ITEM 5**

**BRIEF SUMMARY:** **Revising Rule 5.5 in section 5: Vehicles and Transportation –** to bring prohibition of UAVs into alignment with the prohibition of hunting weapons within the Park. The expected operation of this Rule will be in accordance with BSP Policy. See Rules and Regulations at [www.baxterstatepark.org](http://www.baxterstatepark.org).

**Current Rule 5.5:** Take-off and landing of aircraft in the Park is prohibited except on Matagamon, Nesowadnehunk, and Webster Lakes. Persons landing aircraft on permitted waters in the Park must register with Park Headquarters or a gatehouse in advance. "Aircraft" is defined to include any machine or device capable of deriving support in the atmosphere from the reactions of the air, including, but not limited to model craft, hot air balloons, hang gliders, para-sails, para-gliders and unmanned aerial vehicles (UAVs). The possession of a UAV on any trail, waterway or body of water within the Park is prohibited.

**Proposed Rule 5.5:** Take-off and landing of aircraft in the Park is prohibited except on Matagamon, Nesowadnehunk, and Webster Lakes. Persons landing aircraft on permitted waters in the Park must register with Park Headquarters or a gatehouse in advance. "Aircraft" is defined to include any machine or device capable of deriving support in the atmosphere from the reactions of the air, including, but not limited to model craft, hot air balloons, hang gliders, para-sails, para-gliders and unmanned aerial vehicles (UAVs). The possession or use of a UAV within the Park boundaries on any trail, waterway or body of water within the Park is prohibited. UAVs may be transported through the Park if kept in a car trunk, enclosed in a case, or otherwise inaccessible to use.

**DETAILED SUMMARY:** The current rule leaves room for visitors to legally carry and deploy drones as long as they do so off of trails or bodies of water. Park Staff would like to close these loopholes and bring the prohibition into alignment with the prohibition on hunting weapons within the Park (see rule 3.1).

**Current Rule 5.5:** Take-off and landing of aircraft in the Park is prohibited except on Matagamon, Nesowadnehunk, and Webster Lakes. Persons landing aircraft on permitted waters in the Park must register with Park Headquarters or a gatehouse in advance. "Aircraft" is defined to include any machine or device capable of deriving support in the atmosphere from the reactions of the air, including, but not limited to model craft, hot air balloons, hang gliders, para-sails, para-gliders and unmanned aerial vehicles (UAVs). The possession of a UAV on any trail, waterway or body of water within the Park is prohibited.

**Proposed Rule 5.5:** Take-off and landing of aircraft in the Park is prohibited except on Matagamon, Nesowadnehunk, and Webster Lakes. Persons landing aircraft on permitted waters in the Park must register with Park Headquarters or a gatehouse in advance. "Aircraft" is defined to include any machine or device capable of deriving support in the atmosphere from the reactions of the air, including, but not limited to model craft, hot air balloons, hang gliders, para-sails, para-gliders and unmanned aerial vehicles (UAVs). The possession or use of a UAV within the Park boundaries on any trail, waterway or body of water within the Park is prohibited. UAVs may be transported through the Park if kept in a car trunk, enclosed in a case, or otherwise inaccessible to use.

**PUBLIC HEARING**: none scheduled

COMMENT DEADLINE: 9:00 a.m. January 28, 2022

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / PARK RULEMAKING LIAISON: Georgia Manzo, Office Specialist I, Baxter State Park, 64 Balsam Drive, Millinocket, ME 04462. Telephone: (207) 723-9616 x222. Email: Georgia.Manzo@BaxterStatePark.org. Fax: (207) 723-6381. TTY: (207) 723-4419.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: Baxter State Park Authority, Pursuant to 12 MRS §903.1

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

AGENCY WEBSITE: <https://baxterstatepark.org/>.

**ADOPTIONS**

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

CHAPTER NUMBER AND TITLE: **Ch. 3**, Schedule of Minimum Prices, **Order #01-22**

ADOPTED RULE NUMBER: **2021-260** *(Emergency)*

CONCISE SUMMARY: Minimum January 2022 Class I price is $22.96/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 $26.30/cwt. that includes a $0.20/cwt. Federal promotion fee.

EFFECTIVE DATE: January 2, 2022

MMC CONTACT PERSON / RULEMAKING LIAISON: Julie-Marie R. Bickford, Maine Milk Commission - Agriculture, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-7521. Email: Julie-Marie.Bickford@Maine.gov.

MMC WEBSITE: <https://www.maine.gov/dacf/milkcommission/index.shtml>.

AGENCY: **99-639 – ConnectMaine Authority**

CHAPTER NUMBER AND TITLE: **Ch. 101**, ConnectMaine Authority

ADOPTED RULE NUMBER: **2021-261**

CONCISE SUMMARY: This rule:

**\*** makes the required changes to implement PL 2021 ch. 398 section AA, which expands the 10 cents per line surcharge to additional phone lines.

**\*** includes in the required data reporting section, data that will be needed to use new federal funding to determine eligibility for grants.

**\*** changes the definition of underserved to reflect the recent changes in ConnectMaine’s unserved definition.

**\*** changes in the infrastructure grant program to reflect the input ConnectMaine has received as a result of public outreach.

**\*** updates to the required reporting for grantees.

**\*** simplifies the Community Planning grant process for communities.

EFFECTIVE DATE: January 2, 2022

CONNECTMAINE CONTACT PERSON: Stephenie MacLagan, ConnectMaine, 59 State House Station, Augusta, ME 04333. Telephone: (207) 592.8790. Email: Connect.ME@Maine.gov.

CONNECTMAINE RULEMAKING LIAISON: Peggy.Schaffer@Maine.gov.