**State of Maine: Notice of Agency Rulemaking – May 18, 2022**

**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** *(3rd 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: This 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, substantive changes were made to the draft rule, and the comment period was reopened to receive additional written public comment on the revised draft. The second comment period closed on January 18, 2022. In response to comments received on the revised rule, additional substantive changes have been made to the draft rule. The Department is now seeking public comment on the newly revised draft rule.

COMMENT DEADLINE: June 20, 2022

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

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: **94-411 - Maine Public Employees Retirement System (MainePERS)**

CHAPTER NUMBER AND TITLE: **Ch. 803**, Participating Local District Consolidated Retirement Plan

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2022-P069**

BRIEF SUMMARY: This rule governs the Consolidated Plan for Participating Local Districts. Under the current rule, cost-of-living adjustments to eligible retirees are capped at 2.5%. The proposed amendment to the rule sets the cost-of-living adjustment for the period September 1, 2021 to August 31, 2022, to 3.5%. The proposed amendments also remove obsolete language and correct cross-references.

PUBLIC HEARING: June 9, 2022 - 10:30 a.m., Maine Public Employees Retirement System, 139 Capitol Street, Augusta, Maine

COMMENT DEADLINE: June 20, 2022

EMAIL FOR PUBLIC TO SUBMIT COMMENTS: rulemaking@MainePERS.org.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / AGENCY RULEMAKING LIAISON: Kathy J. Morin, Director, Actuarial and Legislative Affairs, Maine Public Employees Retirement System, P.O. Box 349, Augusta, ME 04332-0349. Telephone: 1 (800) 451-9800 or (207) 512-3190. Email: Kathy.Morin@MainePERS.org.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 5 MRS §§ 17103(4), 18801

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

AGENCY WEBSITE: <https://www.mainepers.org/>.

AGENCY: **02-298** - Department of Professional and Occupational Regulation (PFR), Office of Professional and Occupational Regulation (OPOR), **Board of Real Estate Appraisers (Board)**

CHAPTER NUMBER AND TITLE:

**Ch. 220**, Educational Course Requirements

**Ch. 230**, Supervising Appraiser Duties

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBERS: **2022-P070, P071**

BRIEF SUMMARY: Due to the nationwide public health emergency caused by the Coronavirus Disease (COVID-19), the Appraisal Qualifications Board (AQB) temporarily allowed its programs approved for in-person delivery to be offered via synchronous distance delivery. The change became permanent beginning January 1, 2022. The proposed rulemaking would amend the Board’s rule setting forth criteria for continuing education program approval by removing the requirement that program attendees must be in the actual physical presence of the instructor, and would further amend the rule to permit synchronous distance education programs. Board approval of a program would be valid for both in-person and synchronous delivery.

The proposed rulemaking also removes the requirement that a supervising appraiser, who is responsible for the training and direct supervision of a trainee real property appraiser, personally inspect a certain number of appraised properties with the trainee. The AQB requires a supervising appraiser to personally inspect each appraised property with the trainee appraiser until the supervising appraiser determines the trainee is competent to inspect the property in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice (USPAP) for the property type. The proposed rule removes the requirement that the supervising appraiser personally inspects each appraised property with the trainee for the first fifty (50) appraisals at a minimum and, instead, allows the supervising appraiser to determine when the trainee is competent in accordance with the Competency Rule of USPAP and no longer needs personal supervision for a particular property type. Accordingly, the proposed rulemaking removes, as no longer necessary, the requirement that in the event the trainee had a series of supervising appraisers, the determination of competency must be made by the trainee’s most recent supervising appraiser on the basis of at least 25 supervised inspections.

Copies of the proposed rulemaking may be found on the agency webpage at <https://www.maine.gov/pfr/professionallicensing/professions/board-real-estate-appraisers>. Scroll down to “What’s New” and the section titled Rulemaking Changes. Comments may be submitted in writing to the contact person for this filing.

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

COMMENT DEADLINE: Tuesday, June 21, 2022 at 5:00 p.m. Comments may be submitted by email or mail to the contact person for this filing.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Catherine Pendergast, 35 State House Station, Augusta, ME 04333-0035. Telephone: (207) 624-8518. TTY: Maine relay 711. Email: Catherine.Pendergast@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 32 MRS §§ 14012, 14027, 14039

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

BOARD WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/board-real-estate-appraisers>.

OPOR RULEMAKING LIAISON: Kristin Racine, Esq.: Kristin.Racine@Maine.gov.

**ADOPTIONS**

AGENCY: **13-188 - Department of Marine Resources (DMR)**

CHAPTER NUMBER AND TITLE: **Ch. 41**, Atlantic Menhaden (2022 Harvest Start Date)

ADOPTED RULE NUMBER: **2022-066** *(Correction)*

CONCISE SUMMARY: This rule is a technical update amending the opening date of the State Allocation fishery from Monday, June 14, 2021 to Monday, June 13, 2022 at 12:01 a.m. for the 2022 fishing year. This filing replaces the version that was filed with the Secretary of State on April 21, 2022.

EFFECTIVE DATE: May 15, 2022

DMR CONTACT PERSON: Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333. Telephone: (207) 624-6573. Fax: (207) 624-6024. TTY: (207) 633-9500 (Deaf/Hard of Hearing). Email: dmr.rulemaking@maine.gov.

DMR RULEMAKING WEBSITE: <http://www.maine.gov/dmr/rulemaking/>.

DMR WEBSITE: <https://www.maine.gov/dmr/index.html>.

DMR RULEMAKING LIAISON: Deirdre.Gilbert@Maine.gov.

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

CHAPTER NUMBER AND TITLE: **Ch. 813**, Property Tax Fairness Credit

ADOPTED RULE NUMBER: **2022-082**

CONCISE SUMMARY: MRS amends Rule 813 (“Property Tax Fairness Credit”) to reflect a recent law change that makes property tax payments made on behalf of a taxpayer by the State through the reinstated Elderly Tax Deferral Program to be eligible for the credit and to reflect that married taxpayers filing separately are not eligible for the credit.

EFFECTIVE DATE: May 8, 2022

MRS CONTACT PERSON / RULEMAKING LIAISON: Alex Weber, Office of General Counsel, Maine Revenue Services, 24 State House Station, Augusta, ME 04333-0024. Telephone: (207) 624-9712. Email: Alexander.J.Weber@Maine.gov.

MRS WEBSITE: <https://www.maine.gov/revenue/>.

DAFS WEBSITE: <https://www.maine.gov/dafs/>.

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

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS) - Division of Policy**

CHAPTER NUMBERS AND TITLES: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. VI Section 3**, “Primary Care Plus”, *and* **Ch. 101**, MaineCare Benefits Manual (MBM), **Ch. VI Section 1**, “Primary Care Case Management” (PCCM).

ADOPTED RULE NUMBER: **2022-083** *(Repeal and replace)*

CONCISE SUMMARY: This adopted rule will have a future effective date of June 21, 2022, and will not be effective five days after filing the adopted rule with the Secretary of State’s Office, as is typical.

This adopted 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”) also repealed MBM, Ch. II Sec. 90.09-4 “(Primary Care Provider Incentive Payment”) and significantly revised MBM, Ch. II Sec. 91 (titled “Health Home Services – Community Care Teams”), which includes repealing Health Home Practices. All of these rulemakings relate to the PCPlus initiative and have the same effective date.

On April 21, 2022, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) for the state plan amendment (SPA) to implement the PCPlus program. The Department shall seek approval from CMS for SPAs to repeal and revise any other programs necessary to implement the PCPlus program. The Department will publish notice of changes in reimbursement methodology pursuant to 42 CFR 447.205.

As a result of comments, the Department determined that it would delay the effective date of the PCPlus rule until June 21, 2022. The removal of the Primary Care Provider Incentive Payment in Section 90 and the final adopted changes in Section 91 (described below and in separate MAPA documents) shall also be effective June 21, 2022.

**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 to 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 both 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 preventive 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 adopted rulemaking for Section 90, the Department eliminated the Primary Care Provider Incentive Payment because it would duplicate the reimbursement model of the new PCPlus program. Physicians who received 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 removed Health Home Practices (HHPs) because payment for these Health Home services would be duplicative of the reimbursement the PCPs will receive and the covered services they provide via PCPlus. HHPs that received 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.

EFFECTIVE DATE: June 21, 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.

STATUTORY AUTHORITY: 22 MRS §§ 42, 3173; *Social Security Act* §1905(t)(1) (42 USC §1396d(t)(1))

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

ADOPTED RULE NUMBER: **2022-084**

CONCISE SUMMARY: This adopted rule will have a future effective date of June 21, 2022, and will not be effective five days after filing the adopted rule with the Secretary of State’s Office, as is typical.

This adopted rule eliminates 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, rules to “Health Home Services – Community Care Team”.

**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 adopted rule, the Department eliminates HHPs as providers 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 repealed 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 were 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.

On April 21, 2022, the Department received approval from the Centers for Medicare and Medicaid Services (CMS) for the state plan amendment (SPA) to implement the PCPlus program. The Department shall seek approval from CMS for SPAs to repeal and revise any other programs necessary to implement the PCPlus program. The Department will publish notice of changes in reimbursement methodology pursuant to 42 CFR 447.205.

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

**Community Care Teams**

Under the adopted 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 rule expands, simplifies, clarifies, and removes redundancies from the covered service requirements.

Under the adopted rule, CCTs are 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 originally designed for and applied to HHPs, 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 adopted 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 are also now 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 adopted rule also adds new risk factors that make a member at risk for a chronic condition.

**Housing Outreach and Member Engagement 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, the adopted rule 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.

EFFECTIVE DATE: June 21, 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.

STATUTORY AUTHORITY: 22 MRS §§ 42, 3173; *Social Security Act* §1905(t)(1) (42 USC §1396d(t)(1))

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: **01-026** - Department of Agriculture, Conservation and Forestry (DACF), **Board of Pesticides Control**

CHAPTER NUMBER AND TITLE: **Ch. 20**, Special Provisions

ADOPTED RULE NUMBER: **2022-085**

CONCISE SUMMARY: Three amendments were adopted:

**1.** Define “Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS”.

**2.** Add a requirement for registrants to submit a confidential statement of formula to register their product with the state of Maine.

**3.** Add two affidavit requirements; one affidavit that asks registrants to disclose if their pesticide product has ever been stored in a fluorinated container and a second affidavit asking registrants to disclose if the formulation of the pesticide product contains any perfluoroalkyl or polyfluoroalkyl substances.

EFFECTIVE DATE: May 16. 2022

BOARD CONTACT PERSON / FULEMAKING LIAISON: Megan Patterson, Board of Pesticides Control, 28 State House Station, Augusta, ME 04333. Telephone: (207) 287-2731. Email: Megan.L.Patterson@Maine.gov.

BOARD WEBSITE: <https://www.maine.gov/dacf/php/pesticides/index.shtml>.

DACF WEBSITE: <https://www.maine.gov/dacf/>.

DACF RULEMAKING LIAISON: Shannon.Ayotte@Maine.gov.

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

CHAPTER NUMBER AND TITLE: **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules, **Section 999-3 Charts** (**SNAP 224A**: March 2022 Standard Utility Allowance Updates)

ADOPTED RULE NUMBER: **2022-086**

CONCISE SUMMARY: This rule implements increases to the standard utility allowances. As a result, SNAP benefits will increase for some households.

Each state agency is charged with determining standard utility allowances and having those approved by the United States Department of Agriculture (USDA). Each year, Maine proposes figures based on the best available data in July for implementation in October. The utility allowance values for Federal Fiscal Year 2022 were calculated to increase using The Consumer Price Index (CPI) of 240.778% for June 2021 published by the Bureau of Labor Statistics of the Department of Labor, and were submitted to and approved by the USDA. Between June and October 2021, the CPI increased another 11.88 percentage points. This increase is indicative of an additional $2 per month in phone expenses, an additional $14 per month in utility expenses for households without a heating or cooling expense, and an additional $42 per month in utility expenses for households with a heating or cooling expense. To accurately reflect the expense of Maine families, the Department has submitted and the USDA has approved updated standard utility allowances for the remainder of Federal Fiscal Year 2022. These same changes were incorporated into the Supplemental Nutrition Assistance Program (SNAP) Rules, in emergency rule making number 2022-031. This rulemaking makes those changes permanent to ensure that SNAP benefits are issued appropriately and accurately taking into account the high utility expenses experienced by Maine residents as verified by the Maine Public Utilities Commission and attested to by various media outlets. (See [maine.gov/tools/whatsnew/index.php?topic=puc-pressreleases&id=6112651&v=article088](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Ftools%2Fwhatsnew%2Findex.php%3Ftopic%3Dpuc-pressreleases%26id%3D6112651%26v%3Darticle088&data=04%7C01%7CMichael.E.Downs%40maine.gov%7C610aff9a39404f46a7cd08d9e03014b1%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637787319377494604%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=RI8DW0Iof0QSd9IWpuQbT0VVLXKP8hc6adPtx5cDpq8%3D&reserved=0), and [maine.gov/tools/whatsnew/index.php?topic=puc-pressreleases&id=6040934&v=article088](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Ftools%2Fwhatsnew%2Findex.php%3Ftopic%3Dpuc-pressreleases%26id%3D6040934%26v%3Darticle088&data=04%7C01%7CMichael.E.Downs%40maine.gov%7C610aff9a39404f46a7cd08d9e03014b1%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637787319377494604%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=c2kADDVoldJ6k0ZrNHKCMNP2UUS8pqyuneMnwC9wDWM%3D&reserved=0), and [thedenverchannel.com/news/national/with-rising-heating-cost-more-people-are-expected-to-ask-for-assistance-with-bills-this-winter](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.thedenverchannel.com%2Fnews%2Fnational%2Fwith-rising-heating-cost-more-people-are-expected-to-ask-for-assistance-with-bills-this-winter&data=04%7C01%7CMichael.E.Downs%40maine.gov%7C610aff9a39404f46a7cd08d9e03014b1%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637787319377494604%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=ToTjL50Zwmm90f%2Fpz5PBmlX2GumyudkiMja%2FmYhDoKk%3D&reserved=0), [pressherald.com/2021/11/09/mainers-to-face-double-digit-shock-in-electricity-supply-rates-next-year](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.pressherald.com%2F2021%2F11%2F09%2Fmainers-to-face-double-digit-shock-in-electricity-supply-rates-next-year%2F&data=04%7C01%7CMichael.E.Downs%40maine.gov%7C610aff9a39404f46a7cd08d9e03014b1%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637787319377494604%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=CvPIw5uQYndRKCrrVloS0byzdxqllWUy8WFLJxwSnko%3D&reserved=0), and [mainepublic.org/business-and-economy/2021-11-16/maine-utility-regulators-are-warning-electricity-customers-to-brace-for-a-big-rate-hike](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.mainepublic.org%2Fbusiness-and-economy%2F2021-11-16%2Fmaine-utility-regulators-are-warning-electricity-customers-to-brace-for-a-big-rate-hike&data=04%7C01%7CMichael.E.Downs%40maine.gov%7C610aff9a39404f46a7cd08d9e03014b1%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C637787319377494604%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=5MRVNeCcOKzSIRFSBgf%2FpJnkH%2BZlzJjF0X3jj%2FEupBI%3D&reserved=0).)

This rule will not have an adverse impact on municipalities or small businesses.

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

EFFECTIVE DATE: May 30, 2022

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AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services (OMS) - Division of Policy**

CHAPTER NUMBER AND TITLE: **Chapter 101**, *MaineCare Benefits Manual* (MBM): **Chapter II Section 21**, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder

ADOPTED RULE NUMBER: **2022-087**

CONCISE SUMMARY: This letter gives notice of adopted rule: 10-144 CMR Chapter 101, *MaineCare Benefits Manual*, Chapter II Section 21, “Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

The Department is adopting comprehensive amendments of 10-144 CMR Chapter 101, *MaineCare Benefits Manual* (“MBM”), Chapter II Section 21, “Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder”.

This Section 21 rule implements and regulates a Section 1915(c) home and community-based services (HCBS) Medicaid waiver approved by the Centers for Medicare and Medicaid (“CMS”) in the U.S. Dept. of Health and Human Services. Under this Section 21 waiver program, the Department provides comprehensive services to support eligible adult MaineCare Members with an intellectual disability or autism living in the community. MBM Chapter II Section 21 is a routine technical rule pursuant to 34-B MRS §5432(3).

On September 25, 2020,CMS approved the request of the Maine Department of Health and Human Services (DHHS or the Department) to renew the Section 21 HCBS waiver for a five-year period, with an effective date of July 1, 2020. The Section 21 waiver was further amended effective January 1, 2021, April 1, 2021, and July 1, 2021, and the Department will prepare and request CMS approval of additional amendments of the waiver authorizing additional changes made as part of this rulemaking.

On or about December 29, 2021, the Office of the Secretary of State gave notice of proposed amendments of MBM Chapter II Section 21 to the Executive Director of the Legislative Council, and published notice of the rulemaking. The Department gave notice of the rulemaking to known interested parties, and held a remote public hearing pursuant to 34-B MRS §5465(4) on January 19, 2022 and accepted other public comment regarding the proposed rulemaking pursuant to 5 MRS §8057-A(3) until the close of business on January 31, 2022. A summary of public comments, the Department’s responses, and changes made to the rule after it was published for public comment will be filed with the Secretary of State in conjunction with this rulemaking.

In conformance with the CMS-approved Section 21 waiver, the Department now:

* Adds a definition of “Competitive Integrated Employment” in §21.02;
* Updates the definitions of “Autism Spectrum Disorder”, “Intellectual Disability”, “Activities of Daily Living”, “Instrumental Activities of Daily Living”, “Person-Centered Service Plan”, and “Shared Living”;
* Eliminates Counseling as a Section 21 Covered Service. Counseling services are available to Section 21 Members under Section 65 of the *MaineCare Benefits Manual* (MBM). All Section 21 Members who were receiving Counseling services under Section 21 received written notice of this change in October 2020;
* Updates, expands, and/or clarifies the description of the following Covered Services in §21.05:
* 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 be present and awake at all time one or more Members are at home, 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.).
* **U.S. Department of Justice (DOJ) Settlement Agreement**: On June 4, 2021, the Department entered into a Settlement Agreement with the DOJ (DJ No. 204-34-72). The Department agreed to adopt a rule which establishes an exceptions process that provides 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 Title II of the *Americans with Disabilities Act* (ADA). This rulemaking adopts this exceptions process as *Requests for Exceptions* in §21.14.
* On January 19, 2022 the Department adopted a new rule which implements the federal requirements for Maine’s Section 1915(c) home and community-based waiver programs set forth in 42 C.F.R. §441.301(c). This adopted rule is codified as 10-144 CMR Ch. 101, *MaineCare Benefits Manual*, Chapter I Section 6, “Global HCBS Waiver Person-Centered Planning and Settings Rule”, referred to as the Global HCBS Rule. The Global HCBS Rule includes requirements for person-centered service planning and for settings in which home and community-based waiver services are provided, including requirements for provider-owned or controlled residential settings. Consistent with the Global HCBS Rule, MBM Chapter II Section 21 rule incorporates applicable HCBS planning and settings requirements (*See, e.g.*, §21.04-2 [“Person Centered Service Planning Process”] and §21.05-1 [“Home and Community Based Settings”]).
* This adopted rule notifies providers and the public that all Section 21 providers must comply with all applicable federal and state laws, which includes applicable Maine licensing laws and regulations as well as Ch I Section 1 of the MBM including maintaining current licenses, as applicable.
* **Plan of Corrective Action (“POCA”)**: The Department adopts a new provision which expands upon the quality assurance activities authorized under Appendix V of the rule. This new §21.14 authorizes the Department to issue written Notices of Deficiency, and to require providers to submit and implement Plans of Corrective Action as approved by the Department. Providers have the right to appeal written Notices of Deficiency. This POCA process provides increased protections for Members and ensures 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 clarifies this provision by expressly notifying providers of the MBM Ch. I Sec. 1 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 they serve of any intent to terminate participation in the MaineCare program.
* **§21.10-1 (Direct Support Professional Qualifications)**: The Department requires all DSPs, regardless of capacity and prior to provision of services to a Member, to receive training regarding the Global HCBS Waiver Person Centered Planning and Settings Rule, *MaineCare Benefits Manual*, Chapter I Section 6; eliminates the requirement for grievance process training prior to working with Members; and adds a requirement for DSPs who provide Crisis Intervention to receive behavioral intervention training. Within six (6) months of hire and annually thereafter, the adopted rule requires DSPs to 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). The Department changes Provider Qualifications and Requirements for Direct Support Professionals (DSPs) for Career Planning and Employment Specialist Services.
* **§21.10-9 (Electronic Visit Verification)**: The Department requires providers of Home Support-Quarter Hour services to comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements. This complies with the 21st Century Cures Act (P.L. 114-255), Section 12006, as codified in 42 USC §1396b(l).
* **21.11 (Member Appeals)**: The Department is adding a sentence to provide that Members have the right to appeal decisions made regarding priority level and waitlist determinations.
* **Appendix IV (Performance Measures)**: The Department eliminates 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.

With this rulemaking, the Department adopts and will seek CMS approval of the following additional changes:

* Community Support services are 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.
* **21.07-2 (Limits)**: The Department changes 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 authorized under 22 MRS §42(8), as the change is a benefit to both Members and Providers.

As a result of public comments and further review by the Department and the Office of the Attorney General, the adopted rule includes clarifying language for various Covered Services, including: §21.05-1, “Home and Community-Based Settings”, §21.05-11, “Community Support Services”, § 21.05-13, “Home Support-Quarter Hour Services”, §21.05-14, “Home Support-Remote Support Services”, and §21.05-20 (Shared Living / Foster Care, Adult).

Additionally, as a result of public comment the adopted rule includes a definition for Competitive Integrated Employment (§21.02-9)consistent with the Department’s CMS-approved waiver, a revised definition for §21.02-5, “Autism Spectrum Disorder”, to align with the most current edition of the *Diagnostic and Statistical Manual of Mental Disorders*, (American Psychiatric Association), and a clarified definition for §21.02-4, “Agency Home Support”.

Finally, as a result of public comment, the Department has revised the Plan of Corrective Action (POCA) process, specifically §21.10-14(D), to align with Chapter I Section 1 of the MBM in allowing providers 60 days to appeal a Notice of Deficiency and including the mailing address of the Clinical Review Team at §21.14-2(C).

The Summary of Public Comments and Responses identifies more specifically all changes that were made to the final rule.

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

EFFECTIVE DATE: May 22, 2022

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