**State of Maine: Notice of Agency Rulemaking – July 19, 2023**

**NOTICE OF STATE RULEMAKING**

**Public Input for Rules**

Notices are published each Wednesday to alert the public regarding state agency rulemaking. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one - the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. **Petitions**: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rulemaking if the petition is signed by 150 or more registered voters, and may begin rulemaking if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone (207) 287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 §11112). **World‑Wide Web**: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: <http://www.maine.gov/sos/cec/rules>. There is also a list of rulemaking liaisons (<http://www.maine.gov/sos/cec/rules/liaisons.html>), who are single points of contact for each agency.

**PROPOSALS**

AGENCY: **90-590 – Maine Health Data Organization (MHDO)**

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

PROPOSED RULE NUMBER: **2023-P139**

**Correction to notice published on July 12:** The comment deadline is August 14, 2023 (not August 3).

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. III Section 45**, Hospital Services

PROPOSED RULE NUMBER: **2023-P142**

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

This proposed rulemaking seeks to make the following specific changes:

* **Section 45.01- Definitions**:

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

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

* **Section 45.02-1- Inflation**:

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

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

The Department proposes to eliminate the current methodology for reimbursing distinct psychiatric units and distinct SUD units and to establish a new reimbursement methodology that the Department has determined in accordance with 22 MRS §3173-J(2). Under the proposed new methodology, the Department will calculate reimbursement for covered in-person stays in these units using the following formula: multiplying the per diem base rate (determined by whether the MS-DRG is a psychiatric or SUD MS-DRG) by the applicable MS-DRG relative weight and multiplying that figure by the applicable Length of Stay factor.

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

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

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

The Department proposes that the new reimbursement methodology have a retroactive application date of July 1, 2023, as authorized by 22 MRS §42(8), as the changes benefit, and do not harm MaineCare members or providers. In order to prevent any adverse financial impact to any hospital with a distinct psychiatric unit, the Department has proposed a time limited supplemental payment for hospitals with distinct psychiatric units that are located in zip codes that CMS designates as “super rural” and that also have a High Geographic Need Health Professional Shortage Area for mental health designation by the Health Resources and Services Administration.

* **Appendix A(VIII)**:

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

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

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

PUBLIC HEARING: Wednesday, August 9, 2023 - 9:00 a.m., 109 Capital Street, Augusta, ME: Conference Room A. *The public hearing will be held both in-person and via Zoom.*

Zoom Meeting link:

<https://mainestate.zoom.us/j/84802366882?pwd=L1VVYmpRWnYyRkJFL0l2SWQyMzRQUT09>

Meeting ID: 848 0236 6882

*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 Saturday, August 19, 2023.

OMS CONTACT PERSON: Catherine Coolidge, Comprehensive Health Planner II, MaineCare Services, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4082. Fax: (207) 287-6106. TTY: 711 (Deaf or Hard of Hearing). Email: Catherine.Coolidge@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 *(if different)*: N/A

STATUTORY AUTHORITY: 22 MRS §§ 42, 3173; 22 MRS §3173-J

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: Emily.A.Cathcart@Maine.gov.

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

CHAPTER NUMBER AND TITLE: **Ch. 264**, Immunization Requirements for Healthcare Workers

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P143**

BRIEF SUMMARY: The Department is proposing routine technical rule changes to amend Ch. 264, *Immunization Requirements for Healthcare Workers*, that include removing COVID-19 from the list of vaccine preventable diseases for which Designated Healthcare Facility employees must show proof of immunization or provide appropriate exemption documentation.

This Department’s proposed change is based on available clinical and epidemiological data about COVID-19, increased population immunity resulting from vaccination and prior infections, decreasing disease severity, improved treatments, and declining infection and death rates. In addition, the U.S. Centers for Medicare and Medicaid Services (CMS) in June 2023 withdrew COVID-19 vaccine requirements for healthcare employees, following the May 11, 2023 end of the federal Public Health Emergency for COVID-19.

PUBLIC HEARING: August 7, 2023 – 9 a.m. - 1 p.m., State Office Building, Conference Rooms A and B, 109 Capitol Street, Augusta, ME. *The Department requests that any individual requiring special arrangements to attend the hearing in person contact the agency person listed below 5 days in advance of the hearing.*

In addition to the public hearing, the Department will accept written comments submitted on or before August 17, 2023.

COMMENT DEADLINE: August 17, 2023

CONTACT PERSON FOR THIS FILING: Bridget Bagley, 286 Water Street - 11 State House Station, Augusta, ME, 04333-0011. Telephone: (207) 287-9394 or 711 (TTY). Fax: (207) 287-2887. Email to submit comments: stakeholders.MECDC@maine.gov.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*:

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §802(3)

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

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

MAINECDC RULEMAKING LIAISON: Tera.Pare@Maine.gov.

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

DHHS RULEMAKING LIAISON: Emily.A.Cathcart@Maine.gov.

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

CHAPTER NUMBER AND TITLE: **Ch. 265**, Maine Drug Testing Laboratory Rules

PROPOSED RULE NUMBER: **2023-P144**

BRIEF SUMMARY: The proposed rule change amends 10-144 CMR Ch. 265, the *Maine Drug Testing Laboratory Rules*, to be consistent with updates to the Maine Department of Labor’s (DOL) best practices and 26 MRS Ch. 7 sub-Ch. 3-A (*Substance Use Testing*). Proposed changes include: 1) updates to protocols in Section 2 of the rule specific to the collection of hair, oral fluids and sweat patches for drugs; 2) revised cut-off levels for substance-use tests to be consistent with current levels established by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration; 3) revised list of proficiency testing programs; 4) updates to testing technology for screening tests; and 5) revised protocols for sample storage. In Section 3 of the rule, the Department proposes to reorder substances listed and add the following substances to the list of substances for which an employer may test: *buprenorphine, fentanyl, hydrocodone, hydromorphone, oxycodone, oxymorphone, and propoxyphene* for urine testing and clarify metabolites, where applicable. Other proposed rule changes clarify the Department’s discretionary authority over inspections and, in the definition section of the rule, proposes amendments to clarify *confirmed positive result*, *screening test*, and *confirmation test*. Finally, the Department proposes grammatical and technical corrections, a new title, changes to format and other minor non-substantive changes, for clarity and conformity to agency standards for improvement of the rule.

PUBLIC HEARING: No public hearing scheduled (5 MRS §8053(1)).

COMMENT DEADLINE: Friday, August 18, 2023

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Bridget Bagley, DHHS – Maine CDC, 11 State House Station - 286 Water Street, Augusta, ME 04333-0011. Telephone: (207) 287-9394. TTY: 711. Fax: (207) 287-2887. Email: Bridget.Bagley@Maine.gov.

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 26 MRS §§ 683(11), 687(1)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: Drug and Alcohol Regulations at 49 CFR Part 40

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

MAINECDC RULEMAKING LIAISON: Tera.Pare@Maine.gov.

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

DHHS RULEMAKING LIAISON: Emily.A.Cathcart@Maine.gov.

**ADOPTIONS**

AGENCY: **29-255** – Secretary of State (SOS), **Maine State Archives**

CHAPTER NUMBER AND TITLE: **Ch. 2**, State Records Center Facilities and Services

ADOPTED RULE NUMBER: **2023-108**

CONCISE SUMMARY: Statutory authority for this rule is 5 MRS Ch. 6 §95-C sub-§1. The Records Center now falls under Records Management. Changes in Ch. 2 reflect those changes.

This rule prescribes policies, standards, and procedures to govern the custody, use and withdrawal of agency records transferred to State Records Center facilities. The rule may be amended to comply with law and policy changes.

EFFECTIVE DATE: July 17, 2023

ARCHIVES CONTACT PERSON / RULEMAKING LIAISON: Tammy Marks, Maine State Archives, 230 State Street – 84 State House Station, Augusta, ME 04330. Telephone: (207) 287-5799. Email: Tammy.Marks@Maine.gov.

ARCHIVES WEBSITE: <https://www.maine.gov/sos/arc/>.

AGENCY: **10-149** - Department of Health and Human Services (DHHS), **Office of Aging and Disability Services** (OADS part 1), *and* **14-197** (OADS part 2)

CHAPTER NUMBERS AND TITLES:

**10-149 CMR Ch. 5 Section 63**, In-Home and Community Support Services for Elderly and Other Adults). *This hybrid Routine Technical/Major Substantive rule is REPEALED.*

**14-197 CMR Ch. 11**, Consumer Directed Personal Assistance Services. *This hybrid Routine Technical/Major Substantive rule is REPEALED.*

**10-149 CMR Ch. 5 Section 63**, Home Based Supports and Services for Older and Disabled Adults. *This hybrid Routine Technical/Major Substantive rule REPLACES the two repealed rules.*

ADOPTED RULE NUMBERS: **2023-096, 097**

CONCISE SUMMARY: In this rulemaking, the Department of Health and Human Services (DHHS) finally repeals the major substantive provisions of the Section 63 rule and the Ch. 11 rule, and finally adopts the major substantive provisions of the new Section 63 rule – all with a legal effective date of October 1, 2023.

On December 29, 2022, DHHS Commissioner Lambrew finally adopted the routine technical provisions of the Section 63 rule, the Ch. 11 rule, and the new Section 63 rule – all with a legal effective date of October 1, 2023. Also on December 29, 2022, Commissioner Lambrew provisionally adopted the major substantive provisions of the Section 63 rule, the Ch. 11 rule, and the new Section 63 rule.

The provisionally adopted three major substantive rules were submitted to the Maine Legislature in January 2023. The Maine Legislature authorized the final adoption of the three major substantive rules. The Governor approved the Resolve on April 24, 2023 as emergency legislation. *Resolves 2023 Ch. 9.*

In 2011 DHHS was directed by the Legislature to consolidate the Section 63 rule and the Ch. 11 rule into a single rule. *Resolves 2011 ch. 71*. This rulemaking accomplishes that Legislative directive. The benefits of consolidating Section 63 and Ch. 11 for consumers, Department staff and providers are: (1) centralized management of the waitlist; (2) one set of program rules; (3) consumer choice of service coordination agency; and (4) expansion of services for Ch. 11 consumers. The new Section 63 rule continues financial eligibility requirements for liquid assets. Ch. 11 consumers, however, who are receiving Ch. 11 services on September 30, 2023, are exempt from this liquid asset requirement. The new Section 63 rule also has a separate consumer payment formula for those Ch. 11 consumers who were receiving Ch. 11 services on September 30, 2023. The new Section 63 rule also proposes a separate household asset amount for determining eligibility for waiver of consumer payment for those Ch. 11 consumers who were receiving Ch. 11 services on September 30, 2022.

EFFECTIVE DATE: The Section 63 rule and Ch. 11 rule will remain in legal effect through September 30, 2023, and the new Section 63 rule will be legally effective on October 1, 2023.

AGENCY CONTACT PERSON: Esther Miller, Policy and Program Development Manager Maine Department of Health and Human Services - Office of Aging and Disability Services, 41 Anthony Avenue - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 441-8349. TTY: 711 (Deaf or Hard of Hearing). Email: Esther.Miller@Maine.gov.

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

OADS RULEMAKING LIAISON: Janes.Moorhead@Maine.gov.

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

DHHS RULEMAKING LIAISON: Emily.A.Cathcart@Maine.gov.