**State of Maine: Notice of Agency Rulemaking – August 21, 2024 ONLINE**

**NOTICE OF STATE RULEMAKING**

**PUBLIC INPUT FOR RULES** A list of state agency rule proposals is published here each Wednesday. You can get a copy of a proposed rule by contacting the person listed in the notice. You can comment on a proposed rule by submitting a written comment to the agency or by attending the public hearing, if one is scheduled. If no hearing is scheduled, you can request one.  The agency must hold a hearing if it receives 5 or more requests.  If you have a disability and need assistance to participate in a hearing you should tell the agency at least 7 days before the hearing. **ONLINE INFORMATION** Weekly notices, full text of adopted rules, and a list of agency rulemaking contacts are available at this website: [https://www.maine.gov/sos/cec/rules/index.html](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Fsos%2Fcec%2Frules%2Findex.html&data=05%7C02%7CJ.Chris.Parr%40maine.gov%7C645b27059f0346864d7008dc94834bf0%7C413fa8ab207d4b629bcdea1a8f2f864e%7C0%7C0%7C638548538834447354%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=K93i9Iukz%2F4M1hnG1XnmVSNiEpRD2zB99vb6RheIZ8A%3D&reserved=0)

**PROPOSALS**

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

**CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services**

**TYPE OF RULE: Routine Technical**

**PROPOSED RULE NUMBER: 2024-P251**

CONCISE SUMMARY:

The Department of Health and Human Services proposes these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services. On August 9, 2024, the Department enacted changes to this policy through emergency rulemaking pursuant to Title 5, M.R.S. §8054.

The Department’s principal purpose of this rulemaking is to make permanent the establishment of a new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented a new reimbursement methodology.

In compliance with 22 M.R.S. Sec. 3173-J(2), the Department conducted a rate determination process: a Rate Determination Initiation Notice was issued on June 23, 2023. MaineCare presented the draft reimbursement methodology and definitions to providers and interested stakeholders on December 11, 2023; February 16, 2024; and June 11, 2024. The Department accepted public comments through June 25, 2024 and responded in writing to comments with an explanation of whether and how feedback was incorporated into the final reimbursement methodology and rates.

These changes include improved alignment with Medicare, greater consistency in reimbursement methodology across hospitals, and ensuring that reimbursement for services better reflects patient acuity. The Department adopts methodology which aligns reimbursement for facilities with similar delivery systems and cost structures, recognizing three distinct hospital peer groups that recognize distinct Maine Base Rates for inpatient services: Acute Care Non-Critical Access, Non-State Government Owned, and Rehabilitation. The Department’s updated methodology introduces mechanisms to keep pace with inflation and improve the relationship between the quality of service outcomes and payment.

The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for State Plan Amendments related to these provisions.

Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).

This rulemaking proposes to make permanent the following changes:

1. Introduction:
* Removes specific mention of “private” classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.
* Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.
* Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.
* Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.
1. Section 45.01- Definitions:
* Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.
* Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).
* Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital Reimbursement Methodology.
1. Section 45.02 – General Provisions
* 45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.
* 45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.
* 45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.
* 45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.
* 45.02-9 – Claims Billing: Adds new section to introduce links to the Department’s billing instructions and new supplemental Hospital Billing Guidance.
* 45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions “window” from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.
1. Section 45.03 – Acute Care Non-Critical Access Hospitals
* Removes Department’s Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.
* 45.03-1 – Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for cost settlement of capital costs from July 1, 2025 to September 1, 2024.
* 45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.
* Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.
* Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement
* Removes Prospective Interim Payment (PIP) for Outpatient Services as Non-State Government Owned Hospitals will no longer receive PIPs.
* Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end dated. DRG and APC payments will not be cost settled.
1. Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008
* Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.
1. Section 45.06 – Rehabilitation Hospitals
* Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.
* Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the Department.
* Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department’s larger hospital investment initiative.
1. Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool
* Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).
1. Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals
* Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).
1. Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement
* Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024.
1. Appendix A – DRG-Based Payment Methodology
* Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:
	+ This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.
	+ The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.
	+ The Department calculates a hospital’s DRG payment for a covered inpatient service by summing the assigned peer group’s Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital’s FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital’s DRG payment. The rule updates the MS-DRG weights to the current year’s Medicare weights to account for cost differences in services delivered and patient acuity.
	+ Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.

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

STATUTORY AUTHORITY: 22 M.R.S. §§ 42, 3173-J; P.L. 2023, ch. 643.

PUBLIC HEARING: Tuesday, September 10, 2024, 9:00 AM EST at 109 Capitol Street, Augusta, Maine 04333.

The Department has determined that its public hearing will be hybrid, conducted both in-person and remotely, via Zoom.

Zoom meeting link: https://mainestate.zoom.us/j/86814440368

Meeting ID: 868 1444 0368

One Tap Mobile: 1-309-205-3325

Find your local number: https://mainestate.zoom.us/u/kdGlnAICuR

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.

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

DEADLINE FOR COMMENTS: Comments must be received by 11:59 PM on Friday, September 20, 2024.

AGENCY CONTACT PERSON: Julieanna Scott, Comprehensive Health Planner II

AGENCY NAME: Office of MaineCare Services

ADDRESS: 109 Capitol Street, 11 State House Station, Augusta, Maine 04333-0011

TELEPHONE: 207-287-2286 FAX: (207) 287-6106 TTY: 711 (Deaf or Hard of Hearing)

IMPACT ON MUNICIPALITIES OR COUNTIES (if any): 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 FOR THIS RULE: 22 M.R.S. §§ 42, 3173-J; P.L. 2023, ch. 643.

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

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: emily.a.cathcart@maine.gov

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

**CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Chapter 332; MaineCare Eligibility Manual – Part 2**

**MaineCare Rule #308 – Eligibility and Verification Changes**

**TYPE OF RULE: Routine Technical**

**PROPOSED RULE NUMBER: 2024-P252**

BRIEF SUMMARY: The Department proposes rule changes to the MaineCare Eligibility Manual, Part 2, Basic Eligibility Criteria consistent with the Centers for Medicaid and Medicare Services’ “2023 Streamlining Medicare Savings Program Enrollment” final rule ([89 FR 22780](https://www.govinfo.gov/content/pkg/FR-2024-04-02/pdf/FR-2024-04-02.pdf)). The proposed rule removes the requirement that applicants apply for other benefits as a condition of MaineCare eligibility. Additionally, it removes the limit on the number of reasonable opportunity periods for individuals verifying their citizenship and immigration status.

PUBLIC HEARING *(if any)*: No public hearing is scheduled.

COMMENT DEADLINE: Monday, September 23, 2024, at 5:00 p.m. E.T.

CONTACT PERSON FOR THIS FILING:

Adam Hooper, MaineCare Program Manager

Office for Family Independence

Department of Health & Human Services

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

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

STATUTORY AUTHORITY FOR THIS RULE: 22 M.R.S. §§ 42(1) and (8); 3174

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: 42 C.F.R. § 435.

AGENCY WEBSITE: [https://www.maine.gov/dhhs/ofi](https://www.maine.gov/dhhs/ofi/arules)

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Emily.A.Cathcart@maine.gov

**ADOPTIONS**

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

**CHAPTER NUMBER AND TITLE: Chapter 8 Rules for Departmental Grant Awards and Appeals**

**ADOPTED RULE NUMBER: 2024-182**

**CONCISE SUMMARY:**

This rule chapter defines the procedures and criteria to be used in all of the Department of Agriculture, Conservation and Forestry grant program awards, including those funded through emergency relief funds, bequests, gifts, or contributions from any person, corporation, or government, for the purpose of economic opportunity, business growth, and other strategic investment. The rule describes procedures to be used in grant solicitations, award procedures, hearings and appeals, and how appellants will be notified of final agency action.

**EFFECTIVE DATE:**

AGENCY CONTACT PERSON: Shannon Ayotte

AGENCY NAME: Dept. of Agriculture, Conservation and Forestry

ADDRESS: 22 SHS, Augusta, ME 04333

TELEPHONE: 207-287-5976

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

**CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Chapter 332; MaineCare Eligibility Manual – Part 8**

**MaineCare Rule #307 – Medicare Savings Program Income Eligibility Changes**

**ADOPTED RULE NUMBER: 2024-183**

**CONCISE SUMMARY:**

The adopted rule effectuates the Federal Poverty Level (FPL) increases in the MaineCare Eligibility Manual, Part 8, Medicare Savings Program (Buy-In) and are based on a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Part 8, Section 4.1(I)(B) increases the FPL to 185% from 150% FPL. Part 8, Section 4.2 adds “The rules in this Section apply through June 30, 2024.”

In addition, Section 4.3(I)(B) increases the Federal Poverty Level to 250% from 185%. The adopted rule increases access to health insurance. The adopted rule changes are effective July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.

See <https://www.maine.gov/dhhs/about/rulemaking> for rules and related rulemaking documents.

**EFFECTIVE DATE: Sunday, August 18, 2024**

AGENCY CONTACT PERSON:

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

**CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Chapter 332; MaineCare Eligibility Manual, Parts 4 and 5**

**MaineCare Rule #303A – Household Income Standard for Children and CHIP Changes**

**ADOPTED RULE NUMBER: 2024-184**

**CONCISE SUMMARY:**

The adopted rule increased the Federal Poverty Level (FPL) to 300% from 208% of the FPL for all children. The adopted rule aligns the MaineCare Eligibility Manual with a legislative change to 22 M.R.S. § 3174-G(B) made by P.L. 2024 ch. 597, §5. The adopted rule is anticipated to increase access to health insurance coverage.

Part 4, Section 4(B, D and E) updates the Federal Poverty Level (FPL) for children under age 21 to 300% of the FPL from 208% of the FPL effective retroactive to October 1, 2023 and consistent with Maine’s State Plan Amendment approved by the Center for Medicaid & CHIP Services. In addition, the adopted rule removes language from D and E that indicates uninsured children, with income between a certain FPL, may be covered under CHIP.

The adopted rule updates Part 4, Section 1, Family Definition as follows:

1. “individual” would replace “woman”
2. “one individual” would replace “herself” and “1 person”
3. “they are” would replace “she is”

CHIP replaces Cub Care throughout the open parts of this rule consistent with legislative changes to 22 M.R.S. §§ 3174-G, 3174-NNN and 3174-T made by P.L. 2024, Ch. 597, *An Act to Correct Language Related to Medicaid Coverage for Children*.

In order to comply with Medicaid rules at 42 C.F.R. § 433.147, Part 5, Section 3 removes “There is no requirement to refer the non-custodial parent without health insurance to the Division of Support Enforcement and Recovery (DSER).”

Part 5, Section 6, Income Standard increases the household income for all children from 208% of the Federal Poverty Level (FPL) to 300% of the FPL effective retroactive to October 1, 2023.

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.

See <https://www.maine.gov/dhhs/about/rulemaking> for rules and related rulemaking documents.

**EFFECTIVE DATE: August 18, 2024**

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

**CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Chapter 332; MaineCare Eligibility Manual, Part 16**

**MaineCare Rule #306A – Mortuary Trust Allowance Changes**

**ADOPTED RULE NUMBER: 2024-185**

**CONCISE SUMMARY:**

The adopted rule updated the MaineCare Eligibility Manual, Part 16, Section 4.6 consistent with amendments made by Resolves 2023, Ch. 34, *Resolve to Update Allowable Limits on Mortuary Trusts for the Purposes of MaineCare Eligibility.*

The adopted rule change updated Section 4.6(A)(2) to “Prepaid burial contracts (mortuary trusts) established on or after March 1, 2006 but prior to April 1, 2024 are excluded as long as either the contract is less than or equal to the statewide average for burial and funeral costs of $12,000. If the contract is for more than $12,000 then the estate of the Medicaid recipient must be named the beneficiary of any funds remaining after payment of funeral and burial charges.”

The adopted rule updated Section 4.6(A)(3) as “Prepaid burial contracts (mortuary trusts) established on or after April 1, 2024, that are irrevocable, are excluded so long as either the contract is less than or equal to the statewide average for burial and funeral costs of $18,000. If the contract is for more than the excluded amount, then the estate of the Medicaid recipient must be named the beneficiary of any funds remaining after payment of funeral and burial charges. Effective January 1, 2025, the excluded contract amount will increase annually, by the same percentage as the percentage increase of the Consumer Price Index for the preceding year. The Consumer Price Index is updated periodically in the Federal Register by the U.S. Department of Labor under the authority of 49 U.S.C. § 33105(c). The Consumer Price Index is found at <https://www.bls.gov/cpi>. To calculate the increased excluded contract amount, the Department shall multiply the current excluded amount by the percentage increase of the Consumer Price Index, for the preceding year, and then add that amount to the current excluded contract amount, with effective dates of January 1, and posted online at <https://www.maine.gov/dhhs/ofi/programs-services/health-care-assistance>.

The adopted rule changes are effective retroactive to April 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.

In addition, the adopted rule corrected a typographical error in Section 4.25 to “For settlements associated with the replacement of an excluded asset, see Section 4.43 of this Part.”

See <https://www.maine.gov/dhhs/about/rulemaking> for rules and related rulemaking documents.

EFFECTIVE DATE: August 18, 2024

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

**CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Chapter 301; Supplemental Nutrition Assistance**

**Program (SNAP) Rules; Section 444-12, Lottery and Gambling Winning**

**SNAP Rule #233A – Lottery and Gambling Winnings**

**ADOPTED RULE NUMBER: 2024-186**

**CONCISE SUMMARY:**

The adopted rule updates Section 444-12 based on a legislative change to 22 M.R.S. § 3104(16) made by P.L. 2024, ch. 501. The adopted rule change aligns Maine law with the Code of Federal Regulations as it relates to disqualifications based on gambling or lottery winnings. Applying one standard instead of two clarifies requirements for recipients and the Department without having an adverse impact on program integrity.

In addition, the Department determined it necessary to make non-substantial changes in FS 444-12 for consistency within the rule. These changes include:

* The header of FS 444-12 is updated to Section 444-12.
* Section 999-3 replaces FS 999-3.
* FS is removed from Sections FS 333, 444 and 555.

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

See <https://www.maine.gov/dhhs/about/rulemaking> for rules and related rulemaking documents.

**EFFECTIVE DATE: August 18, 2024**

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