

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**2023 Agency name:** Department of Health and Human Services  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 5 MRS §§ 8051-10004, 22 MRS. § 42, and 22-A MRS § 207  
**Chapter number/title:** **Ch. 1, Administrative Hearing Regulations**  
**Filing number:** **2023-018**  
**Effective date:** 1/30/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The proposed rule changes will modernize the administrative hearing process in several ways, which include the following: (1) adding provisions for remote hearings; (2) updating subpoena issuance power in accordance with 22-A M.R.S. § 207; (3) updating outdated references to Department programs such as Food Stamps and Aid to Families with Dependent Children and replacing them with SNAP and TANF, along with replacing references to "Bureaus" with the current term of "Offices"; (4) adding important time restrictions on when a hearing decision can be corrected or when the record can be re-opened and specifies when a decision becomes final agency action, to align with a recent Law Court decision; (5) eliminating ambiguities regarding what actions a Hearing Officer can take after a Recommended Decision has been issued but before the Commissioner has taken final action; (6) clarifying the process when and how a hearing is reinstated after a party fails to appear; (7) adding guidance to the Hearing Officer and the parties on how the Hearing Officer will address disruptive persons in a hearing; and (8) adding definitions, re-arranging the order of the rule, and correcting grammar and typographical errors will make the rule easier to comprehend.

**Basis statement:**

On October 26, 2022, the Department of Health and Human Services, Division of Administrative Hearings (Department), advertised rulemaking changes for 10-144 CMR, Ch. 1, Administrative Hearing Regulations. The public comment period ended on November 28, 2022. The Department received three comments related to the rulemaking, which are described in the Summary of Public Comments and Department's Responses & List of Changes Made to the Final Rule.

The proposed rule changes will modernize the administrative hearing process in several ways. The proposed rule adds explicit language allowing hearings to be conducted on a remote basis and specifying deadlines for the exchange of exhibits to accommodate the remote hearing process. The proposed rule makes changes that reflect that 22-A M.R.S. § 207 gave the Commissioner the authority to delegate subpoena issuance power. The proposed rule deletes the reference to the necessity of requesting an Assistant Attorney General to issue a subpoena. The proposed rule updates outdated references to Department programs such as Food Stamps and Aid to Families with Dependent Children and replaces them with SNAP and TANF. The proposed rule also replaces references to "Bureaus" with the current term of "Offices". The proposed rule puts important time restrictions on when a hearing decision can be corrected, when the record can be re-opened, and specifies when a decision becomes final agency action. This eliminates language in the current rule that allowed for re-opening records or amending decisions, in accordance with Law Court cases that do not allow such actions after final agency action has been taken. The proposed rule also eliminates ambiguities on what actions a Hearing Officer can take after a Recommended Decision has been issued but before the Commissioner has taken final action. The proposed rule clarifies the process when and how a

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

hearing is reinstated after a party fails to appear. The proposed rule adds guidance to the Hearing Officer and the parties on how the Hearing Officer will address disruptive persons in a hearing. Finally, the proposed rule adds definitions and re-arranges the order of the rule to make it easier to comprehend.

The rule replaces references to "the Office of Administrative Hearings" with "the Division of Administrative Hearings" to reflect the current structure of the Department.

The rule updates statutory references and revises the subpoena issuance process to reflect 22-A M.R.S. § 207 and to clarify language.

The rule substitutes the term "appellant" for the term "claimant" so that the language more accurately describes the roles of the parties.

The rule adds or further defines the terms of Authorized Representative, Chief Administrative Hearing Officer, Commissioner, Irrelevant Evidence, Party, Preponderance of the Evidence, Stipulation, and Unduly Repetitious Evidence.

The rule adds language to clarify that hearings can be held remotely by telephone or by videoconferencing.

The rule adds language regarding deadlines for exchanging exhibits and revises deadlines for the Department to provide access to case files.

The rule adds language clarifying the process that the Hearing Officer should use to warn and control disorderly persons in a hearing.

The rule revises the process regarding how and when a good cause hearing will be held to reinstate a hearing after a party fails to appear.

The rule removes an unnecessary note regarding hearsay evidence.

In general, the rule revises grammar and re-arranges the order of the regulation to provide better clarity. The rule revises deadlines for requesting corrections and re-opening the record. The rule clarifies when a decision becomes final agency action.

In response to comments, the Department made the following changes:

The Department has further revised the definition of "irrelevant evidence" by replacing the phrase "determining the action" with "deciding the issues presented in the hearing".

The Department has made further revisions to replace the terms "he or she" or "his" with "he/she/they" and "his/her/their".

The Department has added the phrase "Providing for and scheduling any exchange of exhibits prior to hearing" to Section VI(G)(2).

The Department has added a reference to the Consent Judgment in *Mann v. Commissioner Department of Human Services*, No. CV-94-424, Me. Super. 1995 (February 14, 1995) to Section VI(H)(2).

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

The Department has added language about Department employees to Section VI(H)(2)(b) stating, "If a party requests the presence of a current employee of the Maine Department of Health and Human Services and the evidence or testimony sought reasonably appears to be relevant to any issue of fact in the proceeding, then the Maine Department of Health and Human Services shall secure the presence of the employee without issuance of a subpoena."

The Department has revised the heading of Section VIII(D)(2) by replacing the word "record" with "decision".

As a result of internal review, the Department has made a legal and policy determination to delete Section IX(E) regarding costs for Certification of Hearing Records so that there is a standardized procedure that the Department is responsible for the preparation of the record in all instances. The Department has determined this revision does not negatively impact any party and does not constitute a substantial change.

**Fiscal impact of rule:**

Since there will be a 10-day delay from when certain decisions are issued and when they become final agency action, there could be a minor increase in costs due to the delay in reducing or terminating benefits if benefits are being provided pending final agency action. Any increase in costs will likely be offset by savings to the Department from the reduction in travel costs for employees due to remote hearings.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, MaineCare Services, Division of Policy  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42, 42(8); 3173; 22 M.R.S. 3173-J; 42 CFR § 440.70; P.L. 2021, ch. 398, Sec. A-17  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual:Ch. II Section 60, Medical Supplies and Durable Medical Equipment  
**Filing number:** **2023-216**  
**Effective date:** 10/31/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
See Basis Statement

**Basis statement:**

The Department of Health and Human Services finally adopts these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 60, Medical Supplies and Durable Medical Equipment.

This adopted rule makes the following changes. The citations used below reflect the provisions in the adopted rule, unless otherwise specified.

- Adds a definition for “qualified provider” and indicates that qualified providers, rather than specific provider types, can prescribe and conduct face-to-face evaluations. This change aligns with Medicare’s requirements and will ensure the policy remains current with evolving federal and state requirements.
- Deletes the definition of “Providers of Medical Supplies and Durable Medical Equipment” and moved most of the definition into Section 60.04, Provider Requirements, because this is a substantive provision and more than a definition. The Department adds an exception to the requirement of having a storefront in Maine or within 15 miles of the border if the Department, in its sole discretion, determines that waiving that requirement is in the best interest of the MaineCare program. Additionally, Section 60.04(5) is taken from the former Section 60.01-12(C).
- Renumbers the current Section 60.05, Policies and Procedures, to 60.06, Policies and Procedures.
- Creates Section 60.06-1, Face-to-Face Encounter, which largely contains content from current Section 60.05. The Department adopts a few changes to the content, such as providing that the written order may be, but does not have to be, prescribed by the provider who performed the face-to-face encounter.
- Removes the requirement in 60.06-1, Face-to-Face Encounters, that DME providers must inform members prior to the provision of DME that is not covered by MaineCare that the member will be responsible for payment because this requirement is already included in 10-144 C.M.R., Chapter 101, Chapter I, Section 1.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- Re-names and re-numbers Section 60.05-1, Requirements, to Section 60.06-2, Medical Supplies and DME Requirements.
- Allows qualified providers, rather than a physician or PCP, to prescribe medical supplies and DME in Section 60.06-2(B) because different provider types can prescribe medical supplies and DME within their scope of practice.
- Removes current Section 60.06-2(I) which contains information regarding prior authorization (PA) and the Department's Health PAS Portal because it is already included elsewhere in the policy.
- Adds the requirement in Section 60.06-2(I) that a physician or qualified provider must review a member's need for DME and supplies annually, as required by 42 CFR 440.70(b)(3)(iii).
- In Section 60.06-2(J), requires a "prescribing provider," rather than a "prescribing physician," to maintain the referenced documentation, including the name of the "qualified provider," rather than the "physician, nurse practitioner, physician assistant or clinical nurse specialist," who performed the face-to-face encounter.
- In Section 60.06-3(F), requires providers to retain, rather than submit, documentation that applicable equipment can freely pass through all entryways without the need for modification or, if applicable, that necessary modifications or structural changes occurred prior to the PA request. Medicare uses this policy, and it is reasonable for MaineCare to utilize this policy.
- Adds that the Department shall rent and/or purchase items consistent with Medicare practices in Section 60.06-4.
- In Section 60.06-7, Replacement of DME, moves the last sentence in the provision regarding when replacement will not be allowed, to the beginning of this provision and added a sentence that DME that is functioning properly will not be replaced unless a change in the member's condition requires a change of DME.
- In Section 60.06-8, to align with 42 CFR § 440.70, removes the requirement that medical supplies and DME may be provided to members residing in their own homes and clarifies that medical supplies and DME may be provided for use in any setting in which normal life activities take place, other than a hospital or any setting in which payment is or could be made under MaineCare for inpatient services that include room and board.
- In Section 60.06-9, clarifies that the regular rate of reimbursement for nursing facilities and intermediate care facilities for individuals with intellectual disabilities is intended to include DME upgrades and add-ons.
- Moves the content of former Section 60.06-2, Prior Authorization, into Section 60.07, Prior Authorization Requirements.
- Removes the current rule provision Section 60.06-2(2), Orthotics and Prosthetic DME, because it contains redundant requirements and unnecessary definitions.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- Moves the content from Section 60.05-8, Prosthetics, and Section 60.12(L), Orthotics & Prosthetics, to new Section 60.08-2, Orthotics and Prosthetics, and makes a few changes to clarify language.
- Adds Section 60.08-3, Augmentative and Alternative Communication Devices, requiring members to trial augmentative and alternative communication devices before the Department will rent or purchase the devices. It is standard industry practice for patients to trial these devices before purchasing, and manufacturers and providers are accustomed to this. Currently, this is a PA-based requirement that is on the Department's website.
- Moves Section 60.12(Z) to Section 60.08-4, Specially Modified Foods and Formulas, which provides that specially modified foods and formulas are covered when the member has inborn errors of metabolism. The Department no longer allows members to receive specially modified foods and formulas when they have "a qualifying medical condition where the most effective and appropriate form of caloric or nutritional intake is orally" because it lacks specificity. Members will continue to be eligible for specially modified foods and formulas when they have inborn errors of metabolism.
- In Section 60.08-5, specifies that modifications and inserts for diabetic shoes are limited to a combined total of six units per member per rolling year, instead of per year.
- Adds coverage for breast milk bags with a limit of 120 units (bags) per member per rolling month in Section 60.08-14.
- Adds coverage for automatic blood pressure monitors with a limit of one unit per member per three calendar years in Section 60.08-15.
- Section 60.10, Reimbursement: The Department adopts the following changes to the reimbursement provision:
  - Retroactively to January 1, 2023, establishes reimbursement for all Medicare covered codes at 100% of the current Medicare fee schedule amount and adds an annual cost-of-living adjustment for the rates for all non-Medicare covered codes. These changes are permitted retroactively pursuant to 22 MRS 42(8) because they benefit MaineCare providers.
  - Clarifies that the Medicare rates are pulled from the Medicare DMEPOS Fee Schedule.
  - Moves the Incontinence Supplies reimbursement provision from the current Section 60.09-1(C) to Section 60.10-2. The Department adjusts the maximum amount allowed by MaineCare for incontinence supplies with an inflation adjustment based on the Consumer Price Index for All Urban Consumers for Medical Equipment and Supplies. This change will be retroactive to January 1, 2023, and is lawful pursuant to 22 M.R.S. 42(8) because the inflation adjustment benefits providers.
  - Adds Section 60.10-2 that contains criteria for providers to request incontinence supplies that are not on the MaineCare fee schedule.
  - Amends Section 60.10-6 provision related to the reimbursement of rental items, so that rental periods (except for oxygen) follow Medicare rental periods.
  - Modifies Section 60.10-7 to remove redundant information and to align oxygen rental requirements with current MaineCare practices.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

P.L. 2021, ch. 398, required the Department to align rate structures and fee schedules with Medicare. The current rule, which was effective in 2018, does already align most DME rate structures and fee schedules with Medicare; this final rule expands the alignment with Medicare, including adopting Medicare's rental period classifications and corresponding rental rates, and thus complies with P.L. 2021, ch. 398. These changes also ensure MaineCare's compliance with the Upper Payment Limit demonstration required by the Centers for Medicare & Medicaid Services and authorized by section 1903(i)(27) of the Social Security Act. This rulemaking also complies with P.L. 2021, ch. 639, *An Act to Codify MaineCare Rate System Reform*, codified in 22 M.R.S. Sec. 3173-J. The Department issued a Rate Determination Initiation Notice on September 27, 2022. The Department held a public rate forum on December 1, 2022, to collect stakeholder input and comments to inform the Rate Determination process for Medical Supplies and DME and accepted written comments through December 15, 2022. The Department determined that for medical supplies and DME for which there is a Medicare rate, the Medicare rate represents the most appropriate benchmark, and payment of 100% of current year Medicare is appropriate. The Department also determined that the rates for medical supplies and equipment that are not covered by Medicare should receive an annual inflation adjustment based on the Consumer Price Index for All Urban Consumers for medical equipment and supplies (CUUR0000SEMG). The Department complies with 22 M.R.S. Sec. 3173(3), by engaging in APA rulemaking to implement this amended reimbursement methodology. The expansion of the current Medicare reimbursement methodology, adding the COLA adjustment to the calculation of the costs of other state Medicaid agencies for non-Medicare DME, and rental period changes are applied retroactive to January 1, 2023, as the changes, consistent with 22 MRS 42(8), benefit DME providers.

Deletes most of Appendix I. Appendix I contains specific PA criteria for select items. The Department is moving most of these criteria to the MaineCare Health PAS Portal (<https://mainecare.maine.gov/Default.aspx>). The rulemaking removes references to Appendix I and refers providers to the Portal. The Department is proposing this change for purposes of efficiency and flexibility, as it will no longer utilize APA rulemaking to make changes to certain medical criteria/standards. Some medical criteria will remain in the APA rule: Appendix I, Section 60.12(L), Orthotics and Prosthetics, moves to new Section 60.08-2, Orthotics and Prosthetics; and Appendix I, Section 60.12(Z), Specially Modified Foods and Formulas, moves to Section 60.08-4, Specially Modified Foods and Formulas.

As described in the List of Changes to the Final Rule at the end of the Summary of Comments and Responses document, the Department made the following changes in the adopted rule (compared to the changes that were included in the proposed rule):

1. In response to a comment, the Department added language that clarifies members are responsible for paying required co-payments in Section 60.10-10
2. In response to a comment, the Department corrected incorrect headers that appeared after Section 60.07.
3. In response to a comment, the Department added breast milk storage bags and CPAP and Bi-PAP supplies to the list of items that can be dispensed in 90-day supplies in Section 60.08-13.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

4. As a result of final rule review, the Department removed “Power Operated Vehicles” from the title of Section 60.08-8 because “Power Mobility Devices” is inclusive of power operated vehicles.
5. Pursuant to P.L. 2023, ch. 216, as codified in 22 MRS 3174-KKK, the Department specified in Section 60.08-16 that electric breast pumps and supplies are covered under MaineCare without prior authorization or limitation when they are prescribed by a Qualified Provider. This provision in policy will be effective on October 25, 2023, the date the law becomes effective. Note that the Department already covers electric breast pumps and supplies without prior authorization or limitation.
6. As a result of final rule review, the Department removed “The Department shall submit to CMS and anticipates approval for a State Plan Amendment related to these provisions” from Section 60.10 because Centers for Medicare & Medicaid Services (CMS) approved the relevant state plan amendment.

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will cost approximately \$735,128 in SFY 2023, which includes \$248,422 in state dollars and \$486,707 in federal dollars, and \$1,470,256 in SFY 2024, which includes \$502,675 in state dollars and \$967,581 in federal dollars.

The reimbursement methodology changes will produce an overall increase in reimbursement for providers of medical supplies and DME. MaineCare members may experience increased access to medical supplies and DME.

Higher rates may increase access to certain medical supplies and DME that providers have chosen not to cover because of previously inadequate rates and may prevent providers from disenrolling from MaineCare.



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, MaineCare Services, Division of Policy  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42, 3173; P.L. 2021, Ch. 291  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: Chapter I, Section 4, Telehealth Services  
**Filing number:** **2023-225**  
**Effective date:** 11/6/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
See Basis Statement

**Basis statement:**

The Department of Health and Human Services finally adopts these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter I, Section 4, Telehealth Services.

This adopted rule makes the following changes:

1. Removes the requirement that providers may only deliver covered services through telephonic telehealth if interactive telehealth services are unavailable. This change aligns the rule with P.L. 2021, Ch. 219, An Act Regarding Telehealth Regulations. The Department also removes Section 4.04-3, Telephonic Services, because the requirements for telephonic and interactive telehealth services are now the same. Services delivered via telephonic telehealth must still be medically necessary, pursuant to Chapter I, Section 1.06-1.
2. Allows members to provide written, verbal, or electronic consent to telehealth services; this change aligns the rule with P.L. 2021, Ch. 219, as codified in 22 M.R.S. Sec. 3173-H.
3. Removes the restriction in Sections 4.07-2(B)(8) and 4.05(E) that the originating facility fee may only be billed when the originating site is in a health care provider's facility. The Department allows a provider to bill the originating facility fee if the originating site is somewhere other than a provider's facility.
4. Removes language in Section 4.07-2(B)(1) that suggests the originating facility fee is billable only if the provider makes room and telecommunications equipment available and clarifies that it is billable when a provider supports access to telehealth services. The rule also clarifies what supporting access to telehealth services means.
5. Removes a list of services that may not be delivered through telehealth. Section 4.04, Covered Services, defines requirements for what can be delivered through telehealth: it is impractical to maintain an all-encompassing list of services that cannot be delivered through telehealth and keeping a partial list in the rule creates ambiguity.
6. Removes the table of codes and rates in Section 4.07-4, Reimbursement Rates, because codes and rates reside and are updated either in the appropriate Sections of the MBM or the MaineCare provider fee schedules on the MaineCare Health PAS Portal. The Department is retaining reference to the originating facility fee under Section 4.07-4,

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

Reimbursement Rates, because it is reimbursed under this rule. The Department added a sentence explaining that the specific rate for the Telehealth Originating Facility Fee, per visit, is listed on the MaineCare provider fee schedule, which is posted on the Department's website in accordance with 22 MRSA Section 3173-J(7). Note that the specific rate for the Telehealth Originating Facility Fee can be changed or updated only through APA rulemaking, pursuant to 22 M.R.S. Sec. 3173-J(3).

7. Adds guidance to use the modifier "93" when billing for services delivered through telephonic telehealth.
8. Modifies the definition of Originating (Member) Site to clarify that it is not limited to a health care provider's office or a member's residence.
9. Removes references to the requirement that a primary care referral is needed to see a specialist because this requirement is no longer in effect.
10. Moves the content in Sections 4.06-2(A)(5-7) to new Sections 4.06-2(C-E) and makes edits to clarify the requirements.
11. Added the requirement, in Section 4.03-1, that health care providers must be appropriately licensed, accredited, certified, and/or registered in the State where the member is located during the provision of the telehealth service.
12. In Section 4.05(B)(2), adds examples of services that require direct physical contact and cannot be delivered through telehealth.
13. The Department also removed the definition for "Requesting Physician" as this is not a relevant term for this rule. The Department also made minor technical corrections.

As described in detail in the List of Changes to the Final Rule at the end of the Summary of Comments and Responses document, the Department made the following changes in the adopted rule (compared to the changes that were included in the proposed rule):

7. As a result of a comment, the Department changed "his or her" in Section 4.03-1(A) to "their."
8. As a result of a comment, the Department changed "videotaping or other recording" in Section 4.06-2(E) to "audio and/or visual recording."
9. As a result of Office of Attorney General (OAG) review, deleted the definition for "Established Patient" because it is not meaningfully different than the definition for "Member."
10. As a result of OAG review, the Department changed the definitions of "Telemonitoring" and "Telehealth" as those definitions were changed by P.L. 2021, ch. 291. The Department also added definitions for "Asynchronous Encounters" and "Synchronous Encounters" as those definitions were defined in P.L. 2021, ch. 291.
11. As a result of OAG review, the Department is retaining reference to the originating facility fee under Section 4.07-4, Reimbursement Rates, because it is reimbursed under this rule.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

The Department added a sentence explaining that the specific rate for the Originating Facility Fee, per visit, is listed on the MaineCare Provider fee schedule, which is posted on the Department's website in accordance with 22 MRSA Section 3173-J(7), and the specific reimbursement rate is legally enforceable as an APA rule, as it is properly incorporated by reference. Note that the specific rate for the Telehealth Originating Facility Fee can be changed or updated only through APA rulemaking, pursuant to 22 M.R.S. Sec. 3173-J(3).

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will not have a fiscal impact.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, MaineCare Services, Division of Policy  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42, 3173; P.L. 2021, Ch. 398, Part A, Sec. A-17; 22 M.R.S. 3173-J  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: Chapter II, Section 71, National Diabetes Prevention Program Services  
**Filing number:** **2023-226**  
**Effective date:** 11/8/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This proposed rulemaking establishes MaineCare Benefits Manual Chapter II, Section 71, National Diabetes Prevention Program (NDPP) Services, which allows MaineCare to reimburse providers for delivering the National Diabetes Prevention Program Lifestyle Change Program (National DPP LCP).

The National DPP LCP is an evidence-based, intensive lifestyle behavior change program designed and overseen by the United States Centers for Disease Control and Prevention (CDC) to teach participants the skills to change and maintain physical activity levels and dietary habits to prevent or delay type 2 diabetes. Members are eligible for the National DPP LCP when they have a qualifying body mass index in addition to a positive screening for prediabetes or a qualifying blood test. To enroll as a MaineCare National DPP LCP Provider (Provider), providers must have recognition awarded by the CDC's Diabetes Prevention Recognition Program (DPRP) and adhere to the "Centers for Disease Control and Prevention Diabetes Prevention Recognition Program Standards and Operating Procedures," (DPRP Standards) published by the CDC on May 1, 2021 (OMB No. 0920-0909, Exp. Date: 04/30/2024), which outlines provider requirements for delivering the National DPP LCP. The DPRP Standards are incorporated by reference in the rule and are available on the CDC's National DPP webpage at: <https://www.cdc.gov/diabetes/prevention/requirements-recognition.htm>.

The National DPP LCP is comprised of twenty-two sessions delivered over the course of one year, and Providers must use the CDC's PreventT2 Curriculum or another CDC-approved curriculum. The first sixteen core sessions occur during the first six months and the final six maintenance sessions occur monthly during the last six months. Trained lifestyle coaches deliver sessions in-person and/or via telehealth for approximately sixty minutes per session. The allowed amount for each session is 100% of Medicare's current total reimbursement for all sessions without weight loss included in the Medicare Diabetes Prevention Program (MDPP), divided by the total number of sessions required by the DPRP Standards.

Providers are eligible for two performance payments if members achieve weight loss or HbA1C goals. The allowed amount for each performance payment is 100% of Medicare's current maximum reimbursement for payments related to weight loss included in the MDPP, divided by two.

This rulemaking complies with P.L. 2021, Ch. 639, *An Act to Codify MaineCare Rate System Reform*, codified in 22 M.R.S. Sec. 3173-J. The Department issued a Rate Determination Initiation Notice on December 16, 2022. The Department held a public rate forum on February 6, 2023, to collect stakeholder input and comments to inform the Rate Determination for the

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

NDPP and accepted written comments through February 27, 2023. The Department published responses to comments on April 25, 2023.

**Basis statement:**

The Department of Health and Human Services (the “Department”) finally adopts this new rule at 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 71, National Diabetes Prevention Program Services, which allows MaineCare to reimburse providers for delivering the National Diabetes Prevention Program Lifestyle Change Program (National DPP LCP).

The National DPP LCP is an evidence-based, intensive lifestyle behavior change program designed and overseen by the United States Centers for Disease Control and Prevention (CDC) to teach participants the skills to change and maintain physical activity levels and dietary habits to prevent or delay type 2 diabetes. Members are eligible for the National DPP LCP when they have a qualifying body mass index in addition to a positive screening for prediabetes or a qualifying blood test. To enroll as a MaineCare National DPP LCP Provider (Provider), providers must have recognition awarded by the CDC’s Diabetes Prevention Recognition Program (DPRP) and adhere to the “Centers for Disease Control and Prevention Diabetes Prevention Recognition Program Standards and Operating Procedures,” (DPRP Standards) published by the CDC on May 1, 2021 (OMB No. 0920-0909, Exp. Date: 04/30/2024), which outlines provider requirements for delivering the National DPP LCP. The DPRP Standards are incorporated by reference in the rule and are available on the CDC’s National DPP webpage at: <https://www.cdc.gov/diabetes/prevention/requirements-recognition.htm>.

The National DPP LCP is comprised of twenty-two sessions delivered over the course of one year, and Providers must use the CDC’s PreventT2 Curriculum or another CDC-approved curriculum. The first sixteen core sessions occur during the first six months and the final six maintenance sessions occur monthly during the last six months. Trained lifestyle coaches deliver sessions in-person and/or via telehealth for approximately sixty minutes per session. The allowed amount for each session is 100% of Medicare’s current total reimbursement for all sessions without weight loss included in the Medicare Diabetes Prevention Program (MDPP), divided by the total number of sessions required by the DPRP Standards.

Providers are eligible for two performance payments if members achieve weight loss or HbA1C goals. The allowed amount for each performance payment is 100% of Medicare’s current maximum reimbursement for payments related to weight loss included in the MDPP, divided by two.

This rulemaking complies with P.L. 2021, Ch. 639, *An Act to Codify MaineCare Rate System Reform*, codified in 22 M.R.S. Sec. 3173-J. The Department issued a Rate Determination Initiation Notice on December 16, 2022. The Department held a public rate forum on February 6, 2023, to collect stakeholder input and comments to inform the Rate Determination for the NDPP and accepted written comments through February 27, 2023. The Department published responses to comments on April 25, 2023, which it then updated on August 22, 2023 to reflect final changes to the reimbursement methodology.

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will cost approximately \$834,087 in SFY 2024, which includes \$309,106 in state dollars and \$524,981 in federal dollars, and \$1,484,766 in SFY 2025, which includes \$555,235 in state dollars and \$929,531 in federal dollars.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, MaineCare Services, Division of Policy  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S.A, Ch 855 § 3173  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: Chapter III, Section 67, Principles of Reimbursement for Nursing Facilities  
**Filing number:** **2023-239**  
**Effective date:** 11/26/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
See Basis Statement

**Basis statement:**

The Department adopts the following changes to 10-144 C.M.R., Chapter 101, Ch. III, Section 67, Principles of Reimbursement for Nursing Facilities:

- Removes language that stated the Department is seeking approval from CMS for changes where approval has been granted, and adds CMS approval language where the Department is seeking CMS approval.
- Changes the date of the most recently filed cost report for purposes of subsequent rebasing from the report available by April 1st of the re-basing year to the report available by June 1st of the re-basing year, to ensure the Department uses the most recent cost reports available.
- Principle 13.2 (Cost Reports): The Department made two changes: (1) To comply with the Social Security Act, 42 U.S.C. Section 1320a-7k(d), if a nursing facility determines from the cost report that the nursing facility owes moneys to the Department, it must submit 100% (changed from 50%) of the amount owed to the Department with its filed cost report; and (2) In compliance with Resolves 2021, ch. 121, added a requirement that if it is determined that the Department owes the facility money, the Department must reimburse at least seventy-five percent (75%) of the settlement pursuant to the facility's cost reports within ninety (90) days of receipt.
- Adds a list of twenty items that nursing facilities must submit as supporting documentation with the cost report to support a more accurate analysis of costs.
- Principle 13.4: The Department adopts changes that formalize the process for the Division of Audit to accept cost reports for completeness and adequacy of all supporting documentation. The acceptance review should be completed within 45 days of receipt of the cost report. The Division of Audit will continue to perform what were previously known as uniform desk reviews on each cost report that has been accepted. The term "audit" has been substituted for the previous term "uniform desk review." The Department deleted the rule requirement that such audits be completed within three hundred and sixty five (365) days after receipt of an acceptable cost report filing. The Department made changes to the final rule from the proposed rule, after receiving comments and also Office of Attorney General review, to clarify the provision.
- Adds health savings accounts and flexible spending accounts to the list of Direct Care Cost Components.
- Adds background checks and software costs and licensing fees to the list of allowable costs for the routine component of the rate.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- Principle 17.4.2.6 (Purchased Central Office services): Adds “Purchased Central Office Services” to the list of Administration Functions under Routine Cost Components to clarify that Central Office services purchased from another provider are only allowable to the extent they are actual costs, as a service provided by a related party. After comments, the Department added clarifying language to the final rule, clarifying that the nursing facility providing this service to another nursing facility would not be reimbursed for the cost of providing the service.
- Clarifies the Motor Vehicle Allowance to state that only one vehicle per facility is allowed as a Routine Cost Component.
- Removes language stating that allowable costs not specified for inclusion in another cost category shall be included in the Fixed Costs Component as those costs fall under the Routine Cost Component, not the Fixed Costs Component.
- Principle 18.5.1(Interest Expense) The Department made two changes: (1) Added clarifying language that Interest Expenses must be for a purpose related to patient care; and (2) Added a new provision (f) with clarifying language that loan principal payments need to be applied to the allowable portion of debt first, consistent with *CMS The Provider Reimbursement Manual, Part I, Chapter 2 (Interest Expense), Publication # 15-1*.
- Principle 18.12 (Payment for High MaineCare Utilization): The Department made two changes: (1) Clarifies that Payment for High MaineCare Utilization is based on the number of resident days and not the number of residents; and (2) Added a new provision, with a retroactive effective date of July 1, 2021, pursuant to Resolves 2021, ch. 171, so that any nursing facility whose MaineCare resident days constitute more than 80% of the nursing facility’s total number of resident days will receive a High MaineCare Utilization Payment of \$0.60 per resident day for each one percentage of MaineCare resident days above 80%, and this payment is not subject to cost settlement and must be retained by the nursing facility in its entirety.
- Principle 22.3.4.3 (Add On to Support Essential Support Worker): In compliance with 22 M.R.S. Section 7402 (Essential support worker reimbursement), the Department added a new provision which creates an Essential Support Worker Add-On reimbursement to the direct care rate to increase cost reimbursement caps as necessary to enable providers to cover labor costs for essential support workers as defined in 22 M.R.S. Section 7401(3) that equal at least 125% of the minimum wage established in 26 M.R.S. Section 664(1), and by increasing related taxes and benefits accordingly. This add-on is not case mix adjusted. Pursuant to P.L. 2021, ch. 398, Sec. AAAA-5, this additional reimbursement has a retroactive effective date of July 1, 2022.
- Changes the facility allowance to receive an annual inflation adjustment based on the Consumer Price Index under the Prospective Per Diem Rate for Rates for Facilities Recently Sold, Renovated or New Facilities.
- Eliminates the requirement that Remote Island Nursing Facilities must maintain Medicaid utilization of ninety-five percent or more.
- Principle 44 (Special Wage Allowances): The Department made the following changes: In compliance with P.L. 2019, ch. 533, the Department added a provision for Special Wage Allowances for January 1, 2020 to June 30, 2021 to provide for wages and wage-related benefits in both the direct care cost component and route care cost component. This reimbursement has been approved by CMS. The rule also notes that a Special Wage Allowance for the period January 1 through June 30, 2022, was authorized and reimbursed under the Section 67 Principle 34 Extraordinary Circumstances Allowance. Note that, consistent with P.L. 2019, ch. 533, Sections 1, 2 and 3, the Special Wage Allowance is not continued past the January 1 through June 30, 2022 period because

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

the rebasing required under 22 M.R.S. Section 1708(3)(F) is based on 2020 or a later calendar year as a base year and the rebased rates have incorporated the costs of contract labor, wages and allowable benefits and taxes that were reported on each nursing facility's cost report for its fiscal year ending in calendar year 2020.

- Makes other, non-substantive grammatical corrections.

**Fiscal impact of rule:**

The Department anticipates that these changes will cost \$11,088,966 in State Fiscal Year 2020; \$10,965,143 in State Fiscal Year 2021; \$7,001,887 in State Fiscal Year 2022; \$3,269,661 in State Fiscal Year 2023; and \$3,349,946 in State Fiscal Year 2024.

**ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:** The Department anticipates that the total cost of the proposed rule will cost approximately \$11,088,966 in SFY 2020, which includes \$3,326,690 in state dollars and \$7,762,276 in federal dollars; \$10,965,143 in SFY 2021, which includes \$3,969,382 in state dollars and \$6,995,761 in federal dollars; \$7,001,887 in SFY 2022, which includes \$2,541,221 in state dollars and \$4,460,666 in federal dollars; \$3,269,661 in SFY 2023, which includes \$1,227,129 in state dollars and \$2,042,532 in federal dollars; and \$3,349,946 in SFY 2024, which includes \$1,259,867 in state dollars and \$2,090,079 in federal dollars.

**INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:** MaineCare members utilizing nursing facility services may have an indirect benefit from higher reimbursement rates to nursing facilities as those facilities will be better positioned to pay and retain staff.

**BENEFITS OF THE RULE:** Providers will benefit from increased reimbursement.



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, MaineCare Services, Division of Policy  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42, 3173  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: Chapter II, Section 89, MaineMOM Services and Reimbursement  
**Filing number:** **2023-244**  
**Effective date:** 12/6/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
See Basis Statement

**Basis statement:**

The adopted rulemaking establishes 10-144 CMR Ch. 101, MaineCare Benefits Manual (the “MBM”), Chapter II, Section 89, MaineMOM Services and Reimbursement.

The Department adopts this rule in order to create a new section of policy describing MaineMOM Services. The rulemaking addresses MaineMOM provider requirements, member eligibility, policies and procedures, covered services, and reimbursement methodology. The adopted MaineMOM Services rule is intended to expand Maine’s offering of substance use treatment services for pregnant and postpartum MaineCare members. This service is being created specifically to address and improve care for pregnant and postpartum people with Opioid Use Disorder (OUD) and their infants by integrating perinatal and substance use treatment services. The adopted rule establishes a new model of care which builds upon Opioid Health Home Services within the Health Home Services Medicaid State Plan benefit, designed to integrate and coordinate medical and behavioral health services and supports for people living with chronic conditions.

MaineMOM services are separate from Section 93, Opioid Health Home Services. MaineCare will not reimburse a MaineMOM provider for delivering MaineMOM services to a member if that member also receives Section 93 services.

The Department adopts service and provider requirements for MaineMOM Services that are consistent with Health Home Service requirements, to include core Health Home Services and Standards, and the delivery of person-centered, quality-driven health care services. These adopted core services include creating care plans that support individual needs of patients, identifying health-related social needs, connecting individuals to needed resources, providing education related to substance use and perinatal care, supporting transitions between inpatient and outpatient care settings, and offering access to recovery-focused services. The Department further adopts that MaineMOM Services be provided by an interdisciplinary care team that includes a clinical lead, a Medications for Opioid Used Disorder (MOUD) prescriber, a perinatal provider, a nurse care manager, a clinical counselor, a patient navigator, and a recovery coach.

The adopted rule establishes three (3) models of MaineMOM Services to accommodate various provider and member situations. The three (3) models are:

- the Integrated Model,
- the Partnership Model, and

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- the Perinatal Navigation Model

In compliance with 22 M.R.S. Section 3173-J(3), this adopted rule establishes the reimbursement rate methodology for Section 89 services, as follows:

- For each of the three (3) models of MaineMOM Services, the adopted rule establishes a monthly Per Member Per Month (PMPM) reimbursement rate which incorporates quality of care incentives with the review of performance on two quality measures (access to postpartum services and screening for viral hepatitis C in pregnant patients).
- 4% of the PMPM payments is withheld and redistributed every six months in accordance with the Performance-Based Adjustments rule provision.
- In compliance with 22 M.R.S. Section 3173-J, the adopted reimbursement methodology applies an annual cost of living adjustment (COLA) equal to the percentage increase in the state minimum wage as set by the Department of Labor, pursuant to 26 M.R.S. Section 664(1), effective July 1, 2024, to the three MaineMOM PMPM rates.
- The PMPM rates and the annual COLA adjustments will be posted on the Department's website.

As described in detail in the Summary of Comments and Responses document, the Department made a few changes to the final rule based on public comment. First, the Department changed the phrase "Consent Forms" to "Documentation of Consent" in Section 89.04-2(D). Second, the Department changed Section 89.05-1(A)(3) to establish new timelines for the Plan of Safe Care that reflect variances in when a member enrolls in MaineMOM services. Providers shall ensure a Plan of Safe Care is created prior to the pregnancy due date for members who enroll in services at least thirty (30) days prior to the pregnancy due date. For a member who enrolls in services after thirty (30) days prior to the pregnancy due date, the plan is developed as soon as possible and appropriate, conditional on birth outcome. Third, the Department made two changes under Section 89.05-3. The first change replaced "hourly visit" with "billable hour." The second change was to clarify that while the counseling requirements will be at a minimum one hour in duration monthly, this may be delivered in multiple member contacts, as clinically appropriate, and documented in the member's record. Fourth, the Department replaced "long-term recovery" with "recovery" in Section 89.06. Fifth, the Department added "If a MaineMOM member has a primary care provider" to the beginning of Section 89.06-1(M). Finally, as a result of final rule review, the Department eliminated Section 89.08(A)(9) "Adequate clinical documentation to support the phase of treatment to which the MaineMOM provider is attesting." MaineMOM services do not include phases of treatment and this was erroneously included in the proposed rule.

The Department has received approval from the Centers for Medicare & Medicaid Services (CMS) for most of the new covered services and rates. The rule notes for which provisions the Department is seeking a State Plan Amendment.

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will cost approximately \$742,279 in SFY2023, which includes \$259,668 in state dollars and \$482,611 in federal dollars; \$1,065,012 in SFY 2024, which includes \$390,966 in state dollars and \$674,046 in federal dollars; and \$1,065,012 in SFY 2025, which includes \$390,966 in state dollars and \$674,046 in federal dollars.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, MaineCare Services, Division of Policy  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42(8), 3173; 22 M.R.S. 3173-J; P.L. 2021, ch 635; P.L. 2023, ch 3, Sec. S-1  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: Chapter III, Section 45, Principles of Reimbursement for Hospital Services  
**Filing number:** **2023-251**  
**Effective date:** 12/18/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

See Basis Statement

**Basis statement:**

The Department of Health and Human Services finally adopts these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services.

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

The adopted rule makes the following specific changes:

- Section 45.01- Definitions:

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

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

- Section 45.02-1- Inflation:

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

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

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

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

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

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

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

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

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

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

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

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

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

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- In response to public comments:

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

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

- Appendix A(VIII):

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

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

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will cost approximately \$18,286,649 in SFY 2024, which includes \$4,548,675 in state dollars and \$13,737,974 in federal dollars, and \$18,475,723 in SFY 2025, which includes \$4,732,057 in state dollars and \$13,743,666 in federal dollars.

The Department anticipates that this rulemaking will cost approximately \$18,286,649 in SFY 2024, which includes \$4,548,675 in state dollars and \$13,737,974 in federal dollars, and \$18,475,723 in SFY 2025, which includes \$4,732,057 in state dollars and \$13,743,666 in federal dollars.

The reimbursement methodology changes will produce an overall increase in reimbursement for hospitals with distinct psychiatric and substance use disorder units.

The new reimbursement methodology for the two distinct units is a generally higher rate of reimbursement, which is a benefit to the hospitals. Higher reimbursement rates may better enable units to ensure they are fully staffed and able to accept MaineCare members.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Maine Center for Disease Control and Prevention  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42(3), 42(3-A), 42(3-B); 30-A MRS §§ 4211, 4215, & 4452(A); and 22-A MRS § 205(2)  
**Chapter number/title:** **Ch 241**, Subsurface Wastewater Disposal Rule  
**Filing number:** **2023-172**  
**Effective date:** 9/23/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Maine CDC is proposing amendments to the Maine Subsurface Wastewater Disposal Rules at 10-144 CMR Chapter 241, which contains the requirements for the subsurface wastewater permitting processes performed by municipalities and overseen by the Department. More specifically, this rule governs the siting, design, construction and inspection of subsurface wastewater disposal systems, in order to protect the health, safety and welfare of the residents and visitors of Maine.

Proposed changes include adding clarifying language to the requirements, adding definitions, rearranging and adding sections to the rule, and updating formatting elements, to align with Maine CDC rulemaking convention.

The Maine CDC is also proposing the addition of requirements for the conversion of seasonal dwelling units into year-round residences in Section 8(B). This proposed language, would make requirements in Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone, 10-144 CMR Ch 242, no longer applicable and necessitates the repeal of that rule in a concurrent rulemaking.

In addition, Maine CDC proposes adding a new section that establishes minimum recommended standards for inspectors who conduct subsurface wastewater disposal system inspections, in order to promote reliable and consistent inspections when properties in Maine are transferred, to ensure higher environmental sanitation and safety levels, and to comply with 22 MRS § 42(3-A). This rule addition is intended to complement municipal planning, zoning, and land use control regulations.

**Basis statement:**

The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised rulemaking changes for its Subsurface Wastewater Disposal Rule on December 14, 2022, with a 30-day public comment period. The comment period ended on January 13, 2023. After all comments were reviewed, the Department revised the proposed rule in response to concerns raised by commenters. Two of these changes substantially differed from what was originally proposed. Therefore, Maine CDC conducted a second 30-day comment period on those two changes from April 19, 2023 through May 19, 2023.

The Department amended the rule by adding clarifying language to the requirements, adding new definitions, rearranging existing sections, adding new sections to the rule, and updating formatting elements, to align with Maine CDC rulemaking conventions. The Department has amended requirements regarding the use of soil fill material outside of a shoreland zone for septic systems, by removing the requirement for soil to be in place prior

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

to October 1, 1995 and replaced it with a requirement for soil fill material to be in place for at least 20 years. The Department also amended the required age for soil fill material in a shoreland zone to be at least 40 years old, rather than the previous requirement for the fill material to be in place before July 1, 1974. The Department determined that fill material in place for at least 20 years outside of the shoreland zone and 40 years inside the shoreland zone provide sufficient time for the fill material to resemble the stability of natural soil.

The Department also updated and clarified requirements for converting seasonal dwellings into year-round residences, given the outdated Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone, (10-144 CMR Ch 242). The Department plans to propose a repeal of the Seasonal Conversion Rule, now that this Chapter 241 is updated. An additional section to this newly adopted rule establishes the minimum standards for inspectors who conduct subsurface wastewater disposal system inspections, in order to promote reliable and consistent inspections when properties in Maine are transferred, to ensure higher environmental sanitation and safety levels and comply with 22 MRS § 42 (3-A), which complements municipal planning, zoning, and land use control regulations.

**Fiscal impact of rule:**

There are no additional costs associated with this rule. The Department will utilize existing staff and resources.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Maine Center for Disease Control and Prevention  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS § 567 and 38 MRS § 341-H  
**Chapter number/title:** **Ch 263**, Maine Comprehensive and Limited Environmental Laboratory Accreditation Rule  
**Filing number:** **2023-040**  
**Effective date:** 3/15/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The principal reason for the proposed rule changes is to update federal references and update the laboratory accreditation fee schedule. The proposed changes will permit the use of laboratory methods most recently approved federally by the U.S. Environmental Protection Agency (EPA), which includes the recently EPA-approved LC/MS/MS method for analysis of the regulated contaminants carbofuran and oxamyl in drinking water. Additionally, DHHS and DEP may allow certain methods approved by the EPA after this rule is promulgated as an alternate method, as described in this rule. The benefits of using the newest method(s) for laboratories include the following: reduced analysis time, higher sensitivity and less hazardous waste, translating into reduced cost for analysis and disposal. Other proposed changes include adding a reference to Table IA, omitted from the current rule under the methods for the Wastewater Program test category as provided in 40 CFR Part 136. In order to align with the statute, a change is proposed to add ‘enterococcus’ to the list of pollutants for which laboratories operated by wastewater discharge facilities licensed pursuant to 38 MRS § 413 may analyze wastewater discharges and not require accreditation. Pursuant to 22 MRS §567(4), proposed changes to the current fee schedule are based on the cost of certifying or accrediting laboratories and reflect fees set for bordering states. The fees collected under this rule are deposited into the Health and Environmental Testing Laboratory Special Revenue Account to fund staffing and program operations. Additionally, changes are proposed to specify that the written management review and management team meeting will be completed within the first quarter of the following year; define ‘duplicate’ and ‘field duplicate;’ add actual mass/volume of sample analyzed to the components of test reports; clarify that, for the required analytical method SOP, the topic references must include method revision number or letter and publication date; and add a requirement for labs that fail a second PT to notify the appropriate department (DHHS or DEP). Proposed rule changes also include minor grammatical and technical changes to improve the rule.

**Basis statement:**

This rule is adopted jointly by the Department of Health and Human Services – Maine Center for Disease Control and Prevention (Maine CDC) and Maine’s Department of Environmental Protection (DEP). Maine Comprehensive And Limited Environmental Laboratory Accreditation Rule governs the accreditation of laboratories producing compliance data for programs administered by Maine CDC and DEP, as authorized by 22 MRS § 567 and 38 MRS § 341-H. Adopted amendments update requirements and revise fees for laboratory accreditation.

This rule adoption permits laboratories to use methods most recently approved federally by the U.S. Environmental Protection Agency (EPA), which includes the EPA-approved LC/MS/MS method for analysis of the regulated contaminants carbofuran and oxamyl in drinking water, as well as future alternative methods approved by EPA after the rule has been



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

promulgated that the Department may allow. The benefits of new method(s) for laboratories include the following: reduced analysis time, higher sensitivity and less hazardous waste, translating into reduced cost for analysis and disposal. The reference to Table IA corrects the omission of the Wastewater Program test category as provided in 40 CFR Part 136. The changes to the list of pollutants that wastewater discharge facility labs licensed under 38 MRS § 413 may analyze align with statute. The amended fee schedule is based on the cost of certifying or accrediting laboratories, and these updates are in line with costs set for bordering states (22 MRS §567(4)).

As laboratory owner/operators, approximately 11 utility districts will be impacted by the fee increase adopted for this rule. The Department does not consider the increase in fee(s) to be prohibitive. The biennial accreditation fee for laboratories with limited accreditation will increase from \$650 to \$850. The laboratories will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed.

After consideration of comments about the potential administrative burden and anticipated cost for labs to implement the proposed change that would add actual mass/volume to components required for test reports, this proposed change is not included as a requirement in the final adopted rule. Additionally, in response to comments, non-substantive changes are adopted to further clarify in Section 7 that a lab may have some methods that are fully accredited, have others that are provisional, and then lose accreditation for others – all while being an “accredited lab”. In order to receive initial accreditation, the laboratory must have applied for and passed the assessment for at least one method and, for the purpose of this rule, be accredited for the specific method(s) run by the lab.

**Fiscal impact of rule:**

The Department of Health and Human Services determined that Maine Laboratory Accreditation Program operations are not sustainable with the current modest fee collection. The Department estimates that more than 40% of the cost of operating will continue to be unmet by the proposed fee collection increase and will require funding through other revenue account(s), including general funds. The revenue anticipated from the proposed fee structure will reduce, but not eliminate, the need for other funding to cover approximately 30% of program costs. The biennial accreditation fee for laboratories with limited accreditation will increase from \$650 to \$850. The laboratories will experience a fee increase ranging from 5-50%, depending on the number of methods analyzed. The average DHHS fee increase for labs is estimated to be 26%.

| <b>TEST METHOD CATEGORIES</b> | <b>CURRENT RULE</b><br>(2018-Present) | <b>PROPOSED RULE</b><br>(Proposed Fees) |
|-------------------------------|---------------------------------------|-----------------------------------------|
| Bacteriology                  | \$50                                  | \$75                                    |
| Inorganic Chemistry           | \$50                                  | \$75                                    |
| Metals                        | \$125                                 | \$150                                   |
| Organic Compounds             | \$150                                 | \$175                                   |
| Radiochemistry                | \$200                                 | \$250                                   |

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Maine Center for Disease Control and Prevention  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§802(1), (3)  
**Chapter number/title:** **Ch. 264**, Immunization Requirements for Healthcare Workers  
**Filing number:** **2023-149**  
**Effective date:** 9/5/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Department is proposing to amend *Immunization Requirements For Healthcare Workers*, to remove COVID-19 from the list of vaccine-preventable diseases for which Designated Healthcare Facilities must require all employees to provide proof of immunization or documentation of an authorized medical exemption. This 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 the COVID-19 vaccine requirement for healthcare employees, following the May 11, 2023 end of the federal Public Health Emergency for COVID-19. CMS will continue to encourage healthcare worker COVID-19 vaccination through other mechanisms, including quality reporting and value-based incentive programs.

**Basis statement:**

The Department of Health and Human Services Maine Center for Disease Control and Prevention adopted a routine technical rule change that amends Chapter 264, Immunization Requirements for Healthcare Workers, by 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. The requirement was established in rule during the COVID-19 pandemic to protect Maine's most vulnerable populations and their care providers, to reduce the number of outbreaks, lower infection rates and lessen the severity of the impact of the disease.

Notice of rulemaking was published on July 19, 2023. A public hearing was held on August 7, 2023 at 109 Capital Street, Augusta, Maine at a DHHS Office. Written comments were accepted through August 17, 2023. The Department considered all comments before adopting the proposed changes. This rule 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. This rule change follows the U.S. Centers for Medicare and Medicaid Services' (CMS) withdrawal of its requirement for COVID-19 vaccination of health care workers on June 6, 2023.

The State of Maine has long required the immunization of employees of designated health care facilities to reduce the risk of exposure to and transmission of vaccine-preventable diseases and until this rulemaking, Maine was among four remaining states with some type of COVID-19 vaccine requirement. While COVID-19 vaccination remains an important tool to protect public health, the vaccination requirement for health care workers achieved the intended benefits of saving lives, protecting health care capacity, and limiting the spread of the virus in

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

Maine during the height of the pandemic. Following the end of the federal and State declared health emergencies and the removal of the COVID-19 from the State's list of vaccine preventable diseases for which Designated Healthcare Facility employees must show proof of immunization or provide appropriate exemption documentation, health care providers may choose to implement COVID-19 vaccination requirements for their employees as a matter of public health and a measure to protect patients, care providers and communities.

**Fiscal impact of rule:**

N/A

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Maine Center for Disease Control and Prevention  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 26 MRS §§ 683(11) and 687(1)  
**Chapter number/title:** **Ch. 265**, Substance Use Testing For the Workplace Rule  
**Filing number:** **2023-196**  
**Effective date:** 11/1/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule is intended to ensure that employees and applicants receive reliable and accurate testing for substances of use, and that privacy rights are protected. This rule change clarifies existing requirements related to substance use testing programs at the State of Maine Department of Labor, consistent with 26 MRS Chapter 7, Subchapter 3-A, which will promote greater technological advancement. Proposed rule changes include 1) updates to protocols for the collection of hair, oral fluids and sweat patches for specific substances based on mandated guidelines for federal workplace substance use testing programs; 2) revisions to cut-off levels for substance use tests to reflect current levels established by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration; and 3) updates to the testing technology for screening tests. In Section 3, proposed changes alphabetize the lists of substances, and, where applicable, the Department proposes to add the following substances for which a Maine employer may require testing: *buprenorphine, fentanyl, hydrocodone, hydromorphone, oxycodone, oxymorphone, and propoxyphene*. The Department proposes to clarify *THC, codeine* and *morphine*, as well. In addition, the Department proposes to: 1) replace *substance abuse* with the term *substance use*, to be consistent with current usage and reduce stigma; 2) update protocols for sample storage; 3) clarify the Department's discretionary authority over inspections; and 3) revise the list of proficiency testing programs in Section 4 of the rule. Other proposed changes include a new title: *Substance Use Testing For The Workplace Rule*, as well as grammatical corrections, changes to format and other minor changes for consistency with agency standards and to improve readability.

**Basis statement:**

The Department of Health and Human Services has adopted routine technical rule changes amending Chapter 265, Substance Use Testing For The Workplace Rule (formerly Drug Testing Laboratory Rules), a rule administered by the Department's Maine Center for Disease Control and Prevention that governs programs and laboratories testing employees and applicants for substances of abuse. The adopted rule is consistent with the rule proposed for public comments.

In Maine, employers may establish drug testing programs, due to federal regulations or because of business or legal requirements. Drug testing may also legally occur through a voluntary drug-free workplace program instituted to reduce incident of substance use among an organization's employees. This rule is intended to ensure consistency in testing protocols and reliable and accurate testing for employees and applicants , and protection of privacy rights.

Changes adopted align with updates in technology, policies and best practices adopted by the Maine Department of Labor (DOL), Maine's Labor and Industry statute at 26 MRS ch. 7 (Employment Practices), subch. 3-A (Substance Use Testing), as well as cut-off levels for

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

substance-use tests established by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

**Fiscal impact of rule:**

None anticipated.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Maine Center for Disease Control and Prevention  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 29-A MRS §§ 2431, 2524 and 2527  
**Chapter number/title:** **Ch 270**, Sample Collection and Drug Testing for Suspected Operating Under the Influences Cases  
**Filing number:** **2023-050**  
**Effective date:** 4/3/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This proposed rule updates requirements for law enforcement agencies and laboratories involved in testing of persons suspected of operating under the influence of intoxicating liquor or drugs pursuant to 29-A MRS 2431-2528, recently amended by Public Law 2019, c. 368. This rule change expands testing methods for more comprehensive and accurate results to ensure accurate and reliable testing for those who rely on legally defensible testing. The proposed rule:

- Revises the title to *Sample Collection and Drug Testing Rule for Suspected Operating Under the Influence Cases*;
- Adds the definition for Drug Recognition Expert (DRE);
- Replaces “substance of abuse” with the term “substance of use,” for consistency with related rules and regulations;
- Removes obsolete language and verbiage;
- Updates certification guidelines in Section 5 and testing standards and specify requirements for laboratory accreditation and analyst certification and for reporting for quality assurance purposes. Laboratories testing for substances of use under this rule must be accredited as a Forensic Testing Laboratory to ISO 17025 standards by an accrediting body, such as ANSI National Accreditation Board (ANAB);
- Removes “American Society of Crime Laboratory Director’s – Laboratory Accreditation Board (ASCLD-LAB),” in order to update the board’s former name with a current reference;
- Removes “ASCLD-LAB and the Society of Forensic Toxicologists (SOFT),” the specific names of approving bodies of proficiency testing programs listed under certification guidelines;
- Replaces “urine drug analysis” with the term “toxicology analysis,” where applicable, to allow for new testing method;
- Clarifies requirements related to procedure manuals and sample collection and storage, and further clarify release of samples; and
- Clarifies analysis of blood for alcohol level in Section 4.

Additionally, the proposed rule includes changes to formatting conventions and other minor non-substantive changes to language and grammar to improve and clarify the rule.

**Basis statement:**

This rule, formerly titled *Rules for Sample Collection and Drug Testing in Suspected O. U. I. Cases*, specifies certification requirements and testing standards for law enforcement agencies and laboratories involved in testing persons suspected of operating under the influence of intoxicating liquor or drugs, pursuant to 29-A MRS §§ 2431-2528. The adopted amendments update these requirements for compliance with law changes recently enacted by Maine’s 129th Legislature. (Public Law 2019, ch. 368.) Among other changes to Title 29-A enacted by the

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

Maine Legislature, § 2524, sub-§ 2 now requires labs conducting analyses of blood-alcohol level or testing for the presence of other drugs to either be: 1) certified by the Department of Health and Human Services or 2) licensed to do so under the laws of this State or any other state and also certified by the United States Department of Health and Human Services under the federal Clinical Laboratory Improvement Amendments of 1988, 42 United States Code, Section 263a (2018).

The adopted amendments to Chapter 270 are necessary for consistency with legislative changes impacting certification, sample collection and testing for substances of use, to ensure accuracy for forensic purposes and to clarify requirements for compliance. This rule adoption is consistent with the proposed changes with the addition of language to further clarify and improve Section 2 (A)(1). The adopted rule clarifies certification requirements for labs conducting chemical tests other than alcohol. Laboratories testing for substances of use under this rule must be accredited as a Forensic Testing Laboratory to ISO 17025 standards by an accrediting body, such as ANSI National Accreditation Board (ANAB). This rule's allowance for current testing methods will enable the laboratory to expand testing methods for more comprehensive and accurate results, ensuring reliable results for those who rely on legally defensible testing. Rule language has been modernized, after considering the overwhelming research that supports the finding that replacing *substance of abuse* with *substance of use* lessens the negative and stigmatizing connotations associated with "abuse." This change aligns with other Maine rule and statutory updates.

**Fiscal impact of rule:**

None anticipated.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42(1), and (8), 3104(13), and 3104-A(1)(C) and (D)  
**Chapter number/title:** **Ch. 301**, Supplement Nutrition Assistance Program (SNAP), **FS Rule #223**, Omnibus Rule Change 2022  
**Filing number:** **2023-026**  
**Effective date:** 3/1/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
*(See Basis Statement)*

**Basis statement:**

The adoption of this final rule effectuates many changes required by state statute or federal regulation. The adopted rule aligns Maine policy with various federal waivers and options. The adopted rule makes non-substantive changes to improve the readability and inclusivity of the manual and reduces the use of stigma inducing language.

Consistent with multiple extensions of SNAP Waiver 2055 received from Food and Nutrition Services (FNS), the Department proposed to extend the waiver of most interview requirements through December 31, 2022. Since the rule was proposed, an extension has been granted to the Department, to waive most interview requirements through March 31, 2023. The rule has been amended to reflect the new date of March 31, 2023. Changes to Sections 222-4(2)(A), 444-5(2)(B)(4)(a), and 666-9(1)(C)(1) are retroactive to January 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as the change affords this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

Maine exercises an option for Broad Based Categorical Eligibility under 7 C.F.R. § 273.2(j)(2) which has included a 185% Federal Poverty Level (FPL) test. This figure is not included in the figures updated by FNS each federal fiscal year per 7 C.F.R. § 273.9(a)(4), it is updated as soon as the the FPLs are published. The 2022 year's FPLs were published at <https://aspe.hhs.gov/poverty-guidelines> on January 19. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 87:14 (January. 21, 2022) p. 3315, <https://www.govinfo.gov/content/pkg/FR-2022-01-21/pdf/2022-01166.pdf>. The Department incorporated these figures effective January 12, 2022. Further, the Department increased this income limit from 185% of the FPL to 200% as permitted under 7 C.F.R. § 273.2(j)(2)(ii)(A) and required by 22 M.R.S. § 3104(13) effective July 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. Changes to Section 444-8(2) and Section 999-3 Chart 4 make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households.

The Department implemented various budgeting figures in Section 999-3 as required by 7 C.F.R. § 273.9(d). It requires that SNAP income and asset limits, maximum and minimum allotments, standard deductions, maximum shelter deductions, homeless shelter deductions, standard utility allowances (SUAs) and income change reporting thresholds are updated each year, effective October 1. This year, the United States Department of Agriculture (USDA)



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

COLA Memos FY2022, issued August 9 and 16, 2022 provided more generous income limits, maximum and minimum allotments, standard deductions, maximum shelter deduction, homeless shelter deduction, asset limits, and income change reporting thresholds. Each state agency is charged with determining SUAs and having those approved by USDA. The utility allowance values were calculated using The Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor, and were submitted to and approved by USDA. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. Changes to Section 999-3 are intended to make SNAP benefits and the related SNAP E&T services available to more Maine households and increase the benefit amounts for some.

The Department updated the open sections consistent with the recent change of the terms “Food Supplement” and “Food Supplement Program” to “Supplemental Nutrition Assistance Program” and, by extension, their associated abbreviations to “SNAP” or other substitutable terms. This update is consistent with the terminology used in federal law and regulation as well as signage and other materials seen throughout the state and nation. Further, P.L. 2021 c. 398 Part OO made this change throughout Maine’s revised statutes. This change is reflected in all uses of the terms and abbreviations in sections included in this adopted rule (unless they refer only to a time prior to the statutory change). The “FS” is removed from all section numbers. Similarly, references to “coupons” are updated to “benefits” as coupons are no longer issued.

The Department effectuates the following changes to improve the readability of the manual and improve the ease of making references and citations within the manual. Where practical, phrases are converted to active voice. To the extent possible, text is rephrased to provide an objective set of rules rather than instructions to Department staff. Some text is moved within a section to consolidate information, reduce redundancies, or improve the flow. Some terms are eliminated for consistency. (E.g. the term “agency” would be replaced with “Department” when referring to Maine’s Department of Health and Human Services.) Gender specific terms are converted to gender neutral terms in the interest of inclusivity. The enumeration of paragraphs, subparagraphs and so on, and the representation of numbers are updated as part of an ongoing, office-wide effort at standardization and clarity. Outdated abbreviations, such as JTPA, are eliminated or updated. Stigma inducing language has been updated. (E.g. “alcohol treatment centers” are changed to “centers for the treatment of Substance Use Disorders”.)

The Department has changed all references to “recertification form” to “renewal form” consistent with the renaming of this document in print and online.

The Department added consistency to the language related to the submission of applications, renewals, and six-month-reports, and meeting interview requirements. These forms can, now, be submitted on paper, electronically, or telephonically. Further, interviews may be completed in person, by phone, or, in some cases, through Department established video conferencing sites. Language that referenced “showing up” for an interview or submitting a form in a specific medium is updated accordingly.

The adopted rule provides more clarity around questionable information (which would require verification) and unclear information (which sometimes triggers the need for an interview). Instances of “questionable” information sections in this rulemaking are replaced with language

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

specifying “contradictory to information known to or received by the Department.” The definition of “questionable information” in Section 999-1 is modified to use “contradictory to” rather than “inconsistent with” in the same context. It is necessary to retain the definition as some sections not being reviewed as part of this rulemaking use the term “questionable information”. A definition of “unclear information” is added to Section 999-1.

The adopted rule clarifies Section 111-1(2) that a parent can be a separate household from their child(ren) for the duration of a court order granting a third-party guardianship of the child(ren). This change reduces confusion for applicants, participants and Department staff as the current rule does not specify a timeframe.

The Department updated language in Section 111-6 related to job quit penalties to clarify that not all work registration exemptions apply to job quit. Further edits clarify the minimum job characteristics to remedy a job quit disqualification and removed any language that could be interpreted to apply the disqualification to the entire household. These changes intend to reduce confusion for applicants, participants and Department staff.

The Department clarifies Section 444-10 that disqualifications for noncompliance with another means tested program are applied based on the policy in effect at the time of the infraction. Further, language is added to Section 555-3, consistent with 7 C.F.R. § 273.11(j), articulating that SNAP benefits may not be increased based on a decrease in other means tested benefits that results from noncompliance.

Per 7 C.F.R. § 273.9(d)(6)(iii)(E), the Department updates Section 555-5(7)(B) to use standard utility allowances (SUA) for all households with qualifying expenses. Further, the Department will apply each SUA in full to any household paying a portion of the qualifying expenses. This standardization reduces confusion for applicants, participants, and Department staff; reduce the burden on many households, including those with self-employment, to provide documentation; and increase benefit amounts for many households.

In addition to the other modifications detailed in this document, the adopted rule updates Section 444-2, Self-employment, Migrant Farm Workers, and Contract Employees. Language is clarified and standardized to “largest income source anticipated for the 12 month periods” rather than the less specific and inconsistent terms “major source of support,” “supplements,” etc. Clarification is added that verification is not only for income, but for self-employment related assets and expenses as well. The allowable expense for child or adult care meals is updated consistent with 7 C.F.R. § 273.11(b)(3)(i). Clarification is added that the application of shelter expenses in the case of business use of the home is at the household’s discretion. The method of determining business use of the home expenses is clarified. Clarification is added related to when rental income is treated as earned or unearned income. Although this clarification is redundant to information in Sections 555-2 and 555-3, the Department believes it warrants reiteration. The formulas for determining business use of the home expenses in rental situations are made more precise. Each of these changes add to the clarity of this section and streamline the process for applicants, participants and Department staff. Relatedly, a definition of “Roomer” is added to Section 999-1 to distinguish this situation from other rental income.

In addition to the other modifications to Section 444-8 detailed in this document, the Department removed references to the publication of the 130% and 100% Federal Poverty Level figures. These figures are not adopted upon publication in the Federal Register, but are

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

adopted at the start of the Federal Fiscal Year consistent with their adoption by Food and Nutrition Services.

In addition to the other modifications to Section 555-4, Excluded Income, detailed in this document, the Department removed the reference to the SCSEP program being administered by the ABLE network. As the ABLE network no longer administers this program.

In addition to the other modifications detailed in this document, the Department updated Section 555-5, Deductions. A summary, introductory paragraph and a description of the reason for some standard deductions have been added. The exclusion of premiums paid for Office for Family Independence health policies from the excess medical deduction is eliminated consistent with 7 C.F.R. § 273.9(d)(3). The paragraph on Dependent Care Deductions is significantly reworked to add clarity without making substantive changes. Clarification has been added as to what expenses related to service animals are deductible. When expenses related to a live-in attendant could be applied either as a medical or a dependent care expense, they will be counted as a dependent care expense as this application is to the recipients benefit. Verification requirements for Excess Medical Deductions are simplified consistent with 7 C.F.R. § 273.2(f)(8)(i)(A). Each of these changes adds to the clarity of this section and streamline the process for applicants, participants, and Department staff.

The adopted rule updated language around reporting of unissued benefits to comport the timelines with those in 7 C.F.R. § 273.17(a)(1). This change increased the amount of time participants have to notify the Department of issuance problems. Further, Section 777-4, Replacement of Benefits is simplified as follows: Reference to benefits being destroyed are removed as that language was specific to physical coupons and does not apply to electronic benefits; and separate processes related to a disaster declaration is eliminated as the disaster declaration constitutes the verification is required in the general process.

The adopted rule differs from the proposed rule as follows:

1. Section 222-4(2)(A): is amended to read “The Department shall process all applications and annual eligibility reviews without an interview until March 31, 2023” and removed “the earlier of December 31, 2022, or the end of the month after the month in which the public health emergency (PHE) declaration related to COVID-19 is lifted by the U.S. Secretary of Health and Human Services.” This change was made consistent with the extension granted by the Food and Nutrition Services (FNS) on December 12, 2022 and the Supplemental Nutrition Assistance Program (SNAP) – Temporary Administrative Waivers available to State Agencies to Support Unwinding from the COVID-19 Public Health Emergency memo from FNS dated August 15, 2022 (The Unwinding Memo) which allows for waiver of interviews beyond the end of the Public Health Emergency.
2. Section 444-5(2)(B)(4)(a): is amended to read “The Department shall process all application and annual eligibility reviews without an interview until March 31, 2023” and removed “the earlier of December 31, 2022, or the end of the month after the month in which the public health emergency (PHE) declaration related to COVID-19 is lifted by the U.S. Secretary of Health and Human Services.” This change was made consistent with the extension granted by FNS on December 12, 2022 and The Unwinding Memo.
3. Section 444-8(6): the following has been removed from the rule “Exception: Broad Based Categorically eligible households with three or more members who are eligible for zero

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

benefits will be denied, or if an ongoing case, will be closed.” These cases will remain “suspended: making them potentially eligible for SNAP E&T services.

4. Section 666-9(1)(C)(1) is amended to read “The Department shall process all annual eligibility reviews without an interview until March 31, 2023” and removed “the earlier of December 31, 2022, or the end of the month after the month in which the public health emergency (PHE) declaration related to COVID-19 is lifted by the U.S. Secretary of Health and Human Services.” This change was made consistent with the extension granted by FNS on December 12, 2022 and The Unwinding Memo.
5. Section 777-4(2)(A): is amended to read “The household must complete the SNAP Loss and Replacement Request form within 10 days of the initial report of the loss.” This update provides clarification consistent with 7 C.F.R. § 274.6(a)(4)(ii).

This rule will not have an adverse impact on municipalities or small businesses. The adopted rule is anticipated to result in an additional \$25,000 in federal SNAP benefits provided to Maine residents and spent at Maine businesses annually.

**Fiscal impact of rule:**

Direct costs to the Department include the cost of rulemaking activity, updates to training, and necessary technology changes such as changes to the Department’s Automated Client Eligibility System (ACES), (all of which are covered by the existing budget for such changes). The vast majority of the changes made by this rulemaking provide clarification and will have no impact on the amount of SNAP benefits issued.

The increases to the gross income test for broad based categorically eligible households may have a minor, indeterminate impact on the number of households receiving SNAP benefits. However, the majority of these households would be eligible for a \$0 benefit, with the primary benefit to the household being eligibility for the SNAP E&T program, the cost of which would not be impacted. Any increase in state funded SNAP benefits could be absorbed by current funding.

The clarification that SNAP benefits cannot be increased based on decreased income resulting from non-compliance with another program would result in minimal, indeterminate, savings to both the federal and state funded SNAP programs.

The modifications to the treatment of utility expenses, is not anticipated to result in any increased state funded benefits. It is expected to result in an additional \$25,000 in federal SNAP benefits being provided to Maine residents and spent at Maine businesses annually.

Very few SNAP cases include live in attendant expenses or child or adult care self-employment using a meal allowance expense. These changes may result in slight increases in federal benefits paid and an even smaller increase in state benefits provided. These minimal, indeterminate increases can be absorbed by current funding.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42(1); 3104(13), and 3104-A  
**Chapter number/title:** **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules; Section 111-7 and 999-1, Rule 228-A – FRA 2023  
**Filing number:** **2023-136**  
**Effective date:** 8/25/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The purpose of this rule is to amend the Able-Bodied Adult Without Dependents (ABA WD) work requirements in Section 111-7 pursuant to the Fiscal Responsibility Act of 2023 (FRA) and consistent with 7 U.S.C. 2015 (6)(0)2)-(3). The proposed rules, consistent with the FRA, increases the age of those subject to ABA WD time limits to age 52 on September 1, 2023, age 54 on October 1, 2023, and to age 56 on October 1, 2024. The FRA adds new exemptions for ABA WD time limits for homeless individuals, veterans, and individuals aged 24 or younger and in Foster Care up to the point that they would not be considered age eligible for Foster Care by the state that made the placement. In addition, the proposed rule would add definitions for Foster Care and Veteran in Section 999-1.

**Basis statement:**

The adopted rule incorporates the Able-Bodied Adult Without Dependents (ABA WD) work requirements in Section 111-7 pursuant to the Fiscal Responsibility Act of 2023 (FRA) and consistent with 7 U.S.C. 2015 (6)(0)2)-(3). The adopted rule is consistent with FRA 2023, which increased the age of those subject to ABA WD time limits to age 52 on September 1, 2023, age 54 on October 1, 2023, and to age 56 on October 1, 2024. FRA 2023 added new exemptions for ABA WD time limits for individuals experiencing homelessness, veterans, and individuals aged 24 or younger and in Foster Care up to the point that they would not be considered age eligible for Foster Care by the state that made the placement. In addition, the adopted rule added definitions for Foster Care and Veteran in Section 999-1.

The Department determined it necessary to make a non-substantial change to align this rule's definition of Veteran with the Fiscal Responsibility Act of 2023 and guidance provided by The U.S. Department of Agriculture, Food and Nutrition Services on June 30, 2023. The adopted rule changes the definition of Veteran to "as defined in Section 5126(f)(13){F} of the James M. Inhofe National Defense Authorization Act of 2023, means an individual who served in the United States Armed Forces (such as Army, Marine Corps, Navy, Air Force, Space Force, Coast Guard, and National Guard), including an individual who served in a reserve component of the Armed Forces, and who was discharged or released therefrom, regardless of the conditions of such discharge or release."

In addition, the Department corrected a typographical error in Section 999-1, Trafficking (6) 7 C.F.R. § 271.2 by removing "U" from (7 C.F.R. § 271.2)U as present in the proposed rule.

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

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Fiscal impact of rule:**

The Able-Bodied Adult Without Dependents (ABAWD) work requirements are currently suspended, due to the Public Health Emergency (PHE). The implementation of these new work requirements and exemptions are anticipated to decrease potential savings when the requirements are restored. The decrease to potential savings for Federal Fiscal Year 2024 is estimated to total \$15,088,188 with \$14,410,878 in federal dollars and \$677,310 in state dollars and for Federal Fiscal Year 2025 is estimated to total \$18,245,592 with \$17,564,214 in federal dollars and \$681,378 in state dollars. It is also anticipated to bring an additional \$20,567,436 into the state for SFY 2026.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42, 3104; 5 M.R.S. § 8054  
**Chapter number/title:** **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-3, Rule 231-E – FY 24 Budgeting Changes  
**Filing number:** **2023-187**  
**Effective date:** 9/29/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

Pursuant to 5 M.R.S. § 8054, the Department finds that emergency rulemaking is necessary to remain in compliance with Federal regulation 7 CFR. § 273.9 (d)(6)(iii)(B) which requires annual updates to the standard utility allowances (SUAs).

**Basis statement:**

Federal rule 7 CFR. § 273.9 (d)(6)(iii)(B) requires that standard utility allowances (SUAs) are updated each year, effective October 1. Food and Nutrition Services (FNS) annually approves standard utility allowances calculated by states. The calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2023 and June 2024.

The final values for Maine's standard/heating cooling, non-heat and phone allowances were not approved by the USDA Food and Nutrition Service until August 18, 2023. These approvals did not allow the Department to comply with the non-emergency rulemaking process and implement the changes by the required date of October 1, 2023.

Pursuant to 5 MRS § 8054, the Department finds that emergency rulemaking is necessary for the health, safety, and general welfare of SNAP recipients. Failure to make these changes by the CFR required deadline could result in individual families needing to pay back overpaid benefits and the Department being assessed financial penalties by FNS that would reduce the resources available to serve the people of Maine as a whole. By continuing to issue SNAP benefits appropriately and accurately these circumstances can be avoided.

This rule may have an adverse impact on municipalities or small businesses.

**Fiscal impact of rule:**

No fiscal impact is anticipated as these are primarily federally funded benefits. This change may result in a modest savings in state-funded benefits.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. § 42(1); 7 C.F.R. § 273.24(f)  
**Chapter number/title:** **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-2, Rule 230-A – ABAWD Geographic Exemptions  
**Filing number:** **2023-238**  
**Effective date:** 11/26/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

Federal Supplemental Nutrition Assistance Program (SNAP) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 20 hours or more per week (averaged monthly) or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 C.F.R. § 273.24(f).

The Department has submitted a request to the U.S.D.A. – Food and Nutrition Services (FNS) to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 260 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. Pending U.S.D.A. – FNS approval and the adoption of this rule, ABAWDs residing in those areas will no longer have to meet the work requirements to receive SNAP effective retroactive to October 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to nearly 2,000 SNAP recipients who meet the ABAWD definition and does not adversely impact applicants, participants, beneficiaries, or providers.

**Basis statement:**

Federal Supplemental Nutrition Assistance Program (SNAP) regulations provide that certain able-bodied adults without dependents (ABAWDs) are subject to a maximum of three months of benefits over a 36-month period, unless they work 80 hours per month or participate in and comply with requirements of a work program. Individuals who reside in certain geographic areas can qualify for an exception to this time limit under 7 C.F.R. § 273.24(f).

The Department submitted a request to the U.S.D.A. – Food and Nutrition Services (FNS) to waive these work requirements for certain ABAWDs residing in geographic areas that have unemployment rates at or above 10% or have insufficient jobs for recipients residing in those areas. The geographic areas include 260 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. U.S.D.A. – FNS approved the Department’s waiver request on September 27, 2023. ABAWDs residing in these areas will no longer have to meet the work requirements to receive SNAP effective retroactive to October 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to nearly 2,000 SNAP recipients who meet the ABAWD definition and does not adversely impact applicants, participants, beneficiaries, or providers.



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

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

**Fiscal impact of rule:**

SNAP benefits are federally funded. No fiscal impact is anticipated.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42(1), 3104  
**Chapter number/title:** **Ch. 301**, Supplemental Nutrition Assistance Program (SNAP) Rules; Section 999-3, SNAP Rule #231 – FFY24 Budgeting Changes  
**Filing number:** **2023-242**  
**Effective date:** 12/3/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

See basis statement

**Basis statement:**

Maine exercises an option for Broad Based Categorical Eligibility under [7 C.F.R. § 273.2\(j\)\(2\)](#) which includes a 200% Federal Poverty Level (FPL) test. This figure is not included in the figures updated each federal fiscal year per [7 C.F.R. § 273.9\(a\)\(4\)](#), it is updated as soon as the the FPLs are published. This year's FPLs were published at <https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines> on January 19. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 88:12 (January 19, 2023) p. 3424, <https://www.govinfo.gov/content/pkg/FR-2023-01-19/pdf/2023-00885.pdf>. The adopted rule incorporates these figures effective January 19, 2023. These changes would make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households.

Federal rule [7 C.F.R. §§ 273.9\(a\)\(3\)](#), [273.10\(e\)\(4\)](#), and [273.11\(r\)\(2\)\(ii\)](#) require that income allowances, standard shelter deductions, and minimum and maximum benefit limits, are updated each year, effective October 1<sup>st</sup>. The U.S.D.A. - Food and Nutrition Services (FNS) provides updated income allowances, standard deductions, and minimum and maximum benefit standards to states and territories, annually. The final income allowance, standard deductions, and minimum and maximum benefit levels were distributed by the U.S.D.A. - FNS on August 3, 2023. The adopted rule incorporates these figures effective October 1, 2023.

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and do not adversely impact applicants, participants, beneficiaries, or providers. These changes would make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households.

Federal rule [7 C.F.R. § 273.9\(d\)\(6\)\(ii\)](#) and [\(iii\)\(B\)](#) require that standard heating/cooling, non-heat, and phone allowances as well as excess shelter deductions are updated each year, effective October 1<sup>st</sup>. The U.S.D.A. - Food and Nutrition Services (FNS) provides the updated excess shelter deduction to states and territories, annually. The final excess shelter deduction was distributed by the U.S.D.A. - FNS on August 3, 2023. FNS annually approves standard utility allowances (SUA) calculated by states. The calculations are based on the change in the Consumer Price Index for fuel and utilities, between June 2023 and June 2024. FNS approved Maine's SUAs for FFY 2024 on August 18, 2023. These figures were adopted in emergency rule SNAP 231E on September 29, 2023. The adopted rule extends the use of these figures beyond the emergency period.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Fiscal impact of rule:**

State-Funded SNAP benefits are estimated to cost an additional \$978,000 for Federal Fiscal Year 2024. These same changes will result in an estimated additional \$3,260,000 in federal funds flowing to Maine residents and grocers.

Increases in the income thresholds for eligibility may result in additional households being eligible for state or federally funded benefits. The number of households and the amount of benefits cannot be determined. These potential increases will be absorbed by existing budgeting.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42(1); 4301(8)(B); 4301(11-A)  
**Chapter number/title:** **Ch. 323**, General Assistance Program Manual, Section IV, GA Rule #25 – Recovery Residence Participation  
**Filing number:** **2023-192**  
**Effective date:** 10/25/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The purpose of this rule is to update the General Assistance (GA) Program Manual, Section IV to provide clarity and align this manual with Public Law 2023, Chapter 133. The Department proposes amending Section IV(O), Recovery Residence to clarify that General Assistance payments may be issued to a managing operator of a certified recovery residence.

**Basis statement:**

The adopted rule updated the General Assistance (GA) Program Manual, Section IV to provide clarity and align this manual with Public Law 2023, Chapter 133. The Department amended Section IV(O), Recovery Residence, to provide clarity that General Assistance payments may be issued to a managing operator of a certified recovery residence.

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

**Fiscal impact of rule:**

No fiscal impact is anticipated with the proposed rule changes.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. § 42(1); § 3790-A(2)(E); P.L. 2023 ch. 21  
**Chapter number/title:** **Ch. 330**, Higher Opportunity For Pathways To Employment (HOPE), Rule #102A – Eligibility Criteria  
**Filing number:** **2023-193**  
**Effective date:** 10/25/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule change proposes to increase the income limit from 185% of the FPL to 225% of the FPL consistent with 22 M.R.S. § 3790-A(2)(E) (2017), amended by P.L. 2023, ch. 21 (effective June 29, 2023). The raise in FPL percentage expands program accessibility to help a broader population earn marketable credentials and help address Maine’s workforce shortages. This year’s FPLs were published at <https://aspe.hhs.gov/poverty-guidelines>. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 88:12 (January 19, 2023), pages 3424-3425, <https://www.govinfo.gov/content/pkg/FR-2023-01-19/pdf/2023-00885.pdf>. The Department proposes to incorporate these figures effective June 29, 2023.

**Basis statement:**

The adopted rule change to Part 3 aligns with Public Law 2023 Chapter 2 and is consistent with 22 M.R.S. § 3790-A(2)(E) (2017), amended by P.L. 2023, ch. 21 to increase the income limit from 185% of the Federal Poverty Limit to 225% of the FPL. The adopted rule change expanded income eligibility. In addition, the increase to gross income test for HOPE allows some HOPE applicants and participants to remain income eligible when their wages increase, some due to changes to Maine’s minimum wage and allows a wider group of parents to be deemed income eligible. This year’s FPLs were published at <https://aspe.hhs.gov/poverty-guidelines>. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 88:12 (January 19, 2023), pages 3424-3425, <https://www.govinfo.gov/content/pkg/FR-2023-01-19/pdf/2023-00885.pdf>.

The Department incorporates these figures effective October 25, 2023.

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

**Fiscal impact of rule:**

No annual fiscal impact is anticipated. Any increase in cost related to the changes in eligibility criteria can be absorbed by current funding.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS § 42(1), § 3173-J  
**Chapter number/title:** **Ch. 332**, MaineCare Eligibility Manual, MaineCare Rule #302 – Penalty Divisor Rule  
**Filing number:** **2023-077**  
**Effective date:** 6/5/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This proposed rule updates the average nursing care private rate, listed in Chart 4.3 of the MaineCare Eligibility Manual, to the most current figure available from the Department’s internal audit team. Effective June 1, 2023, the average nursing care private rate is determined from rates reported by nursing facilities on the MaineCare Cost Report. The rule also adds a description of how the rate is used to calculate penalty periods for disposing of assets for less than fair market value on or after the look-back period.

**Basis statement:**

The adopted rule updates the average nursing care private rate, listed in Chart 4.3 of the MaineCare Eligibility Manual, to the most current figure available from the Department’s internal audit team. Effective June 1, 2023, the average nursing care private rate is determined from rates reported by nursing facilities on the MaineCare Cost Report.

The adopted rule added a description of how the rate is used to calculate the penalty periods for disposing of assets for less than fair market value on or after the look-back penalty. The adopted rule ensures asset transfer penalties are based on the average of current facility rates. Because nursing care private rates increase over time, penalty periods will decrease. The adopted rule does not change any process for nursing facilities or members.

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

**Fiscal impact of rule:**

Direct costs to the Department include the cost of rulemaking activity, updates to training, and necessary technology changes such as changes to the Department’s Automated Client Eligibility System (ACES), (all of which are covered by the existing budget for such changes).

The additional cost of this rule is anticipated to equal \$18,973 for SFY 2023, with \$12,957 in federal dollars and \$6,016 in state dollars. SFY 2024 fiscal impact is anticipated to equal \$227,675, with \$145,279 in federal dollars and \$82,396 in state dollars. FFY 2023 costs are anticipated to equal \$75,892, with \$50,878 federal dollars and \$24,014 state dollars. FFY 2024 costs are anticipated to equal \$227,675, with \$143,492 in federal dollars and \$84,183 in state dollars.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office for Family Independence**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS § 42(1); and (8), 3174-G, and 3174-FFF  
**Chapter number/title:** **Ch. 332**, MaineCare Eligibility Manual, MaineCare Rule #301A – Certain MAGI and CHIP Coverage Group Changes  
**Filing number:** **2023-123**  
**Effective date:** 8/15/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The purpose of this rule is to provide continuing MaineCare coverage for parents, of children in the custody of the Office of Child and Family Services (OCFS), who are actively participating in family reunification. It also removes exclusions, lock-out periods, and premiums for Cub Care and increases the Federal Poverty Level (FPL) to 208% for all children. The proposed rule changes increase access to health insurance coverage.

The Department proposes to correct a typo in Part 2, Section 3.2(III)(B)(2)(a) and (b) from February 25, 2027 to February 25, 1927. In addition, the proposed rulemaking removes Part 2, Section 16 language regarding Cub Care ineligibility due to premium non-payment and references to a penalty for premium non-payment.

Part 3, Section 2.2, is changed to allow Parent/Caretaker Relatives to maintain coverage while actively working towards reunification with the OCFS. Parents with Substance Use Disorder (SUD) whose children have been removed from the home will maintain necessary health coverage to continue SUD treatment, which will increase the success of reunification efforts, and thus the overall health and wellness of Maine families. In addition, the Department proposes to correct a typo in Part 3, Section 3(I)(C) from quality to qualify.

Part 5, Section 4(A) removes “Federally Facilitated Marketplace” as Maine’s State Based Marketplace is utilized. In addition, Chart 7, Cub Care, is removed to align with the proposed rule changes to Cub Care.

The following changes shall be retroactive. Part 3, Section 3(III) aligns with federal requirements for coverage of Former Foster Care Children that are effective retroactive to January 1, 2023. Part 4, Section 4(D and E) updates the FPL limit for children under age 19 effective retroactive to March 1, 2023. Part 5, Section 3 removes exclusions and wait periods for Cub Care eligibility, and Part 5 is further amended to remove premium payments for Cub Care effective retroactive to March 1, 2023. Removing exclusions, wait periods, and premiums for Cub Care eases financial burdens for programs and beneficiaries.

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

**Basis statement:**

This adopted rule provides continuing MaineCare coverage for parents, of children in the custody of the Office of Child and Family Services (OCFS), who are actively participating in family reunification. It also removes exclusions, lock-out periods, and premiums for Cub Care

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

and increased the Federal Poverty Level (FPL) to 208% for all children. The adopted rule changes increase access to health insurance coverage.

The Department corrected a typo in Part 2, Section 3.2(III)(B)(2)(a) and (b) from February 25, 2027 to February 25, 1927. In addition, the adopted rule removed Part 2, Section 16 language regarding Cub Care ineligibility due to premium non-payment and references to a penalty for premium non-payment. Further, the adopted rule corrected a typo in Part 3, Section 3(I)(C).

Part 3, Section 2.2, is changed to allow Parent/Caretaker Relatives to maintain coverage while actively working towards reunification with the OCFS. Parents with Substance Use Disorder (SUD) whose children have been removed from the home will maintain necessary health coverage to continue SUD treatment, which will increase the success of reunification efforts, and thus the overall health and wellness of Maine families.

Part 5, Section 1, Definitions replaced “Federally Facilitated Marketplace” with State-Based Marketplace as Maine’s State-Based Marketplace is utilized. In addition, website addresses have been added for the State-Based Marketplace and MyMaineConnection. Part 5, Section 2, CubCare added clarifying language. Part 5, Section 3, Basic Eligibility Requirements removed exclusions for children residing in a public institution or an inpatient psychiatric facility. In addition, Part 5 removed Section 3(B), Children with a Three Month Waiting Period, Section 8, Changes in Household, and Section 12, Premiums. Part 5, Section 6, Income Standard (A-C) increased the Federal Poverty Level to 208% of the FPL. Part 5, Section 9, Eligibility Periods added clarification regarding retroactive coverage and renewal notice time frames. Part 5, Section 10, Notices(D) added clarification regarding case closings. Further, Part 5, Section 10, Administrative Hearings directs readers to Part 1, Section 7 for rules regarding hearings.

In addition, Chart 7, CubCare, is removed to align with the adopted rule changes to CubCare.

The following adopted changes shall be retroactive. Part 3, Section 3(III) aligns with federal requirements for coverage of Former Foster Care Children effective retroactive to January 1, 2023. Part 4, Section 4(D and E) updates the FPL limit for children under age 19 effective retroactive to March 1, 2023. Part 5, Section 3 removed exclusions and wait periods for Cub Care eligibility, and Part 5 is further amended to remove premium payments for Cub Care effective retroactive to March 1, 2023. Removing exclusions, wait periods, and premiums for Cub Care eases financial burdens for programs and beneficiaries. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these changes afford this benefit to more residents of the State of Maine and does not adversely impact applicants, participants, beneficiaries, or providers.

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

**Fiscal impact of rule:**

**ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:**

Premium Reductions are anticipated to cost an additional \$60,126 in General Funds for State Fiscal Year 2023 (4 months), \$207,775 for SFY 2024 and \$214,419 for SFY 2025. The additional cost of Premium Reductions for FFY 2023 (7 months) is anticipated to total \$478,492 with \$373,272 in federal dollars and \$105,220 in state dollars. The additional cost of Premium Reductions for FFY 2024 is anticipated to total \$820,272 with \$607,986 in federal dollars and \$212,286 in state dollars. It is also expected to bring in an additional \$213,298 in federal funds into the state for SFY 2023, \$612,497 for SFY 2024 and \$605,853 for SFY 2025.



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

The 2025 Premium Reduction costs are anticipated to be \$820,272 with \$605,853 federal dollars and \$214,419 state dollars.

In addition, the anticipated costs in raising the FPL to 208% from 158% for uninsured individuals under 19 years old has an estimated fiscal impact of \$146,468 in General Funds for SFY 2023 (4 months), \$1,957,588 for SFY 2024 and \$2,580,002 in SFY 2025. The additional cost of raising the FPL to 208% from 158% for FFY 2023 (7 months) is anticipated to total \$1,305,668 with \$879,890 federal dollars and \$425,778 state dollars. It is, also, expected to bring an additional \$319,842 in federal funds into the state for SFY 2023, \$3,451,608 for SFY 2024 and \$4,206,862 for SFY 2025. Fiscal impact for FFY 2024 is estimated to total \$6,248,554, \$3,938,464 in federal dollars and \$2,310,090 in state dollars.

**INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED:** It is not anticipated that individuals, major interest groups and businesses will be affected by this rule change.

**BENEFITS OF THE RULE:** This rule allows for continuing MaineCare coverage for parents, with children in the custody of OCFS, who are actively working towards family reunification. In addition, proposed changes remove exclusions, lock-out periods, and premiums for Cub Care and increases the Federal Poverty Level (FPL) to 208% for all children.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Office for Family Independence, Division of Support Enforcement and Recovery

**Umbrella-Unit:** **10-144**

**Statutory authority:** 22 M.R.S. § 42(1); 19-A M.R.S, § 2011

**Chapter number/title:** **Ch. 351.** Chapter 6, Child Support Guidelines

**Filing number:** **2023-019**

**Effective date:** 1/30/2023

**Type of rule:** Routine Technical

**Emergency rule:** No

**Principal reason or purpose for rule:**

Federal regulations (45 C.F.R. § 302.56) require that each state review its child support guidelines at least every four years. The primary purpose of this requirement is to ensure that the guidelines result in the determination of appropriate child support award amounts. Federal requirements additionally specify that the review must include an assessment of the economic data on child-rearing costs and a review of case data to analyze the application of the guideline and to ensure that deviations from the guideline are limited. The Department contracted with the Center for Policy Research (CPR) to assist with the preparation of Maine's child support guideline review. In October 2022, the Department completed its written report which included an updated guidelines table that incorporates current economic data. This rule replaces the existing table with the updated table.

**Basis statement:**

These rules will not have an impact on municipalities or small businesses.

**Fiscal impact of rule:**

There will be minimal direct costs to the Department associated with this rulemaking activity. There are minor implementation costs (such as system or indirect costs) to implement the amended rule such updating calculations performed electronically by the Child Support Enforcement Maine (CSEME) system.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Office for Family Independence  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 M.R.S. §§ 42(1) and (8), 3737(3)  
**Chapter number/title:** **Ch. 609**, Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) #6 – Name Change and Other Clarifications  
**Filing number:** **2023-116**  
**Effective date:** 8/6/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The proposed rule would update the program name and references to the Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) from FSET to reflect recent updates for the SNAP program. The proposed changes are consistent with the terminology used in federal law, state laws and regulation. Further, P.L. 2021 c. 398 Part OO made this change throughout Maine’s revised statutes.

The proposed rule clarifies federal requirements for case management and job retention services and makes other minor updates to clarify wording. Each of these changes more closely aligns the rule with 7 C.F.R. § 273.7.

In addition, the proposed rule seeks to update Section 8(I) Support Service Limits - Mileage Reimbursement to .46 cents per mile to align with the rate afforded to those covered under the Maine State Employee Association (MSEA) contract. This change would be effective retroactive to March 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP E&T recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.

**Basis statement:**

The adopted rule updates the program name and references to the Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) from FSET to reflect recent updates for the SNAP program. The adopted rule is consistent with terminology used in federal law, state laws and regulation. Further, the adopted rule is consistent with Maine revised statutes pursuant to P.L. 2021 c. 398 Part OO.

The adopted rule clarifies federal requirements for case management and job retention services and other minor updates made to clarify wording. Each of these updates more closely aligns the rule with 7 C.F.R. § 273.3.

The adopted rule updates Section 8(I) Support Service Limits – Mileage Reimbursement to .46 cents per mile to align with the rate afforded to those covered under the Maine State Employee Association (MSEA) contract. This change is effective retroactive to March 1, 2023. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP E&T recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.

The Department determined it necessary to make a non-substantial change to the adopted rule to align the rule with age and work requirements for Able-bodied Adult

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

without Dependent (ABAWD) pursuant to the Fiscal Responsibility Act 2023 (FRA 2023). To ensure consistency with 10-144 C.M.R. Ch. 301 Supplemental Nutrition Assistance Program (SNAP) Rules Manual and this rule, a non-substantial change was made to the definition of Able-bodied Adult without Dependent (ABAWD), Section 1(I). The adopted rule changes the ABAWD definition to “a recipient as defined in 10-144 C.M.R. Ch. 301 Supplemental Nutrition Assistance Program (SNAP) Rules Manual, Section 111-7.”

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

**Fiscal impact of rule:**

Direct costs to the Department include the cost of rulemaking activity and updates to training which are covered by the existing budget for such changes. The proposed rule changes provide clarification and will have no impact on the amount of SNAP benefits issued.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office of Child and Family Services**  
**Umbrella-Unit:** **10-148**  
**Statutory authority:** 22 M.R.S. §§ 42, 3737  
**Chapter number/title:** **Ch. 6**, Child Care Subsidy Rules  
**Filing number:** **2023-121**  
**Effective date:** 08/10/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

Maine's Department of Health and Human Services (Department) administers the Child Care Subsidy Program (CCSP), which includes the administration of funds from the federal Child Care and Development Block Grant, state funds, and other federal funds. The purpose of CCSP is to increase the availability, affordability, and quality of Child Care Services. In order to maximize parental choice for purchasing child care, Maine provides a system of financial support for eligible families with low incomes and other designated client groups through the use of Child Care Subsidy.

The Department has maintained a Quality Rating and Improvement System (QRIS) since 2008. On February 13, 2023, the Department adopted 10-148 C.M.R. Chapter 31, Quality Rating and Improvement System (QRIS) Rules: Rising Stars for ME. Rising Stars for ME changed Maine's QRIS from a 4 level to a 5-star rating system. The proposed amendments to 10-148 C.M.R. ch. 6, Child Care Subsidy Program Rules (CCSP Rules) in this rulemaking aligns the CCSP Rules' provisions regarding reduction in parent fees for children attending higher quality child care programs and increased reimbursement for providers with higher quality rating with Rising Stars for ME. Moreover, Rising Stars for ME changed Maine's prior QRIS by including CCSP License-Exempt Providers. The proposed rule amends the CCSP Rules to reflect this change by requiring nonrelative License-Exempt Child Care Providers to enroll in, and maintain a minimal level under, Rising Stars for ME.

**Basis statement:**

In this rulemaking, the Department of Health and Human Services (the "Department") adopts the following amendments to 10-148 C.M.R. Chapter 6, Child Care Subsidy Program Rules (CCSP Rules).

The Department determines that adoption of this rulemaking is necessary to comply with Maine statute 22 M.R.S. §3737(3). The Department is adopting this rule now because the Department continues its efforts to meet all Federal and State rules and regulations.

Maine's Department of Health and Human Services (Department) administers the Child Care Subsidy Program (CCSP), which includes the administration of funds from the federal Child Care and Development Block Grant, state funds, and other federal funds. The purpose of CCSP is to increase the availability, affordability, and quality of Child Care Services. In order to maximize parental choice for purchasing child care, Maine provides a system of financial support for eligible families with low incomes and other designated client groups through the use of Child Care Subsidy.

The Department has maintained a Quality Rating and Improvement System (QRIS) since 2008. On February 13, 2023, the Department adopted 10-148 C.M.R. Chapter 31, Quality Rating and Improvement System (QRIS) Rules: Rising Stars for ME. Rising Stars for ME changed Maine's

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

QRIS from a 4 level to a 5-star rating system. The proposed amendments to CCSP Rules in this rulemaking aligns the CCSP Rules' provisions regarding reduction in parent fees for children attending higher quality child care programs and increased reimbursement for providers with higher quality rating with Rising Stars for ME. Moreover, Rising Stars for ME changed Maine's prior QRIS by including CCSP License-Exempt Providers. The proposed rule amends the CCSP Rules to reflect this change by requiring nonrelative License-Exempt Child Care Providers to enroll in, and maintain a minimal level under, Rising Stars for ME.

The rule proposed will:

- Align the CCSP Rules' provisions regarding reduction in parent fees for children attending higher quality child care programs and increased reimbursement for providers with higher quality rating with Rising Stars for ME.
- Consistent with Rising Stars for ME's addition of License-Exempt Child Care Providers to Maine's QRIS, the proposed rulemaking amends the CCSP Rules to require nonrelative License-Exempt Child Care Providers to enroll in, and maintain a minimal level under, Rising Stars for ME.

**Fiscal impact of rule:**

None.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Office of Child and Family Services  
**Umbrella-Unit:** **10-148**  
**Statutory authority:** 22 M.R.S. §§ 42, 3737-A, 5 M.R.S. Sec. 8054  
**Chapter number/title:** **Ch. 30**, Early Childhood Educator Workforce Salary Supplement Program Rules  
**Filing number:** **2023-245**  
**Effective date:** 12/1/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

This is a new rule and a new Department program. In 2022, the Maine Legislature enacted P.L. 2021, ch. 635, Sec. RR-1, codified as 22 M.R.S. Sec. 3737-A (Early childhood educator workforce salary supplements). Pursuant to the law, the Department was required to establish a new program to provide salary supplements to child care providers and early childhood educators who provide direct services to children in a licensed child care facility or who are licensed family child care providers. The Department implemented this program in 2022, but the standards and requirements were never established in rule. The law directs the Department to establish a rule beginning July 1, 2023. On October 11, 2023, the Department published a notice for a proposed rule for this program. On October 30, 2023, the Department held a public hearing and accepted public comments until November 9, 2023.

Pursuant to 5 M.R.S. Sec. 8054, the Department has determined it needs to adopt this emergency rule, as it continues to complete the rulemaking process on the proposed rule. This emergency rule implements the tiered system for supplemental payments the Legislature required. Raising the pay of child care workers in Maine is critical to recruit and retain essential child care workers and will allow Maine families to have the stability and support they need to be able to take jobs, start new businesses, move to rural communities and will also provide critical developmental care for children. The Department anticipates the Commissioner will finalize and adopt the final rule early in 2024, but the tiered system of payments provided by the emergency rule needs immediate implementation. Given the urgent need to address this critical need for child care workers in Maine, the Department has determined that immediate adoption is necessary to avoid an immediate threat to public health, safety or general welfare.

This emergency rule provides:

- Outlines procedures for Early Childhood Educator Workforce Salary Supplements;
- Provides that the Department will provide monthly Salary Supplements to the Programs.
- Complies with 22 M.R.S. Sec. 3737-A by providing a three tier system for salary supplements, based on the education and experience level of child care providers and early childhood educators.
- Complies with 22 M.R.S. 3737-A by providing that the 2<sup>nd</sup> tier provides a salary supplement that is 50% greater than the first tier, and the 3<sup>rd</sup> tier provides a salary supplement that is 50% great than the 2<sup>nd</sup> tier.
- Complies with 22 M.R.S. Sec. 3737-A by requiring that the child care facility or family child care provider is required to pay the supplement to the employee who provides direct services to children.
- Explains how a program can enroll in the Early Childhood Educator Workforce Supplement Program.
- Describes an appeal process for overpayments and underpayments.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

The Department will continue to process and finalize the proposed rulemaking and anticipates adopting a final rule early in 2024, prior to the expiration of this emergency rule. This emergency rule can be effective for up to 90 days.

**Basis statement:**

The Department of Health and Human Services (the “Department”) adopts this Emergency Rule, 10-148 C.M.R. Chapter 30, *Early Childhood Educator Workforce Salary Supplement System Rules*

This is a new rule, and a new Department program. In 2022 the Maine Legislature enacted P.L. 2021, ch. 635, Sec. RR-1, codified as 22 M.R.S. Sec. 3737-A (Early childhood educator workforce salary supplements). Pursuant to the law, the Department was required to establish a new program to provide salary supplements to child care providers and early childhood educators who provide direct services to children in a licensed child care facility or who are licensed family child care providers. The Department implemented this program in 2022, but the standards and requirements were never established in rule. The law directs the Department to establish a rule beginning July 1, 2023. On October 11, 2023, the Department published a notice for a proposed rule for this program. On October 30, 2023, the Department held a public hearing, and accepted public comments until November 9, 2023.

**Findings of Emergency:** Pursuant to 5 M.R.S. Sec. 8054, the Department has determined it needs to adopt this emergency rule, as it continues to complete the rulemaking process on the proposed rule. This emergency rule implements the tiered system for supplemental payments the Legislature required. Raising the pay of child care workers in Maine is critical to recruit and retain essential child care workers, and will allow Maine families to have the stability and support they need to be able to take jobs, start new businesses, move to rural communities and will also provide critical developmental care for children. The Department anticipates the Commissioner will finalize and adopt the final rule early in 2024, but the tiered system of payments provided by the emergency rule needs immediate implementation. Given the urgent need to address this critical need for child care workers in Maine, the Department has determined that immediate adoption is necessary to avoid an immediate threat to public health, safety or general welfare.

This emergency rule provides:

- Outlines procedures for Early Childhood Educator Workforce Salary Supplements;
- Provides that the Department will provide monthly Salary Supplements to the Programs.
- Complies with 22 M.R.S. Sec. 3737-A by providing a three tier system for salary supplements, based on the education and experience level of child care providers and early childhood educators.
- Complies with 22 M.R.S. 3737-A by providing that the 2<sup>nd</sup> tier provides a salary supplement that is 50% greater than the first tier, and the 3<sup>rd</sup> tier provides a salary supplement that is 50% great than the 2<sup>nd</sup> tier.
- Complies with 22 M.R.S. Sec. 3737-A by requiring that the child care facility or family child care provider is required to pay the supplement to the employee who provides direct services to children.
- Explains how a program can enroll in the Early Childhood Educator Workforce Supplement Program.
- Describes an appeal process for overpayments and underpayments.



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

The Department will continue to process and finalize the proposed rulemaking and anticipates adopting a final rule early in 2024, prior to the expiration of this emergency rule. This emergency rule can be effective for up to 90 days.

**Fiscal impact of rule:**

The Department anticipates that the total cost of the proposed rule will be \$31,126,854 in SFY 2024 and \$31,126,854 in SFY 2025, all in state dollars.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, **Office of Child and Family Services**  
**Umbrella-Unit:** **10-148**  
**Statutory authority:** 22 M.R.S. §§ 42, 3737  
**Chapter number/title:** **Ch. 31**, Quality Rating and Improvement System: Rising Stars for ME  
**Filing number:** **2023-020**  
**Effective date:** 2/13/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

Signed into law June 10, 2021, P.L. 2021, ch. 138, An Act to Improve Maine’s Quality Rating System for Child Care Services, to the extent permitted by federal law, requires the Maine Department of Health and Human Services (the Department) pay a differential rate for child care services that meets or that makes substantial progress toward meeting nationally recognized quality standards, such as those standards required by the Head Start program or required for accreditation by the National Association for the Education of Young Children, and shall do so from the Child Care Development Fund 25% Quality Set-aside funds or by other acceptable federal practices. 22 M.R.S. § 3737(3). Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 11 2-A. The rules must establish a child care quality rating system with a minimum of three (3) steps and must provide for graduated quality differential rates for steps that demonstrate that a child care provider meets or makes substantial progress toward meeting nationally recognized quality standards.

Nothing in this statute requires the Department to pay a quality differential rate for child care services provided through the Temporary Assistance for Needy Families block grant (TANF).

The Department proposes this rule, Quality Rating and Improvement System Rules: Rising Stars for ME, to recognize early care and education programs that provide quality care, encourage program owners to increase their level of quality, and provide parents with identifiable standards of quality. The rule:

- Outlines procedures for Early Care & Education Programs’ enrollment with Rising Stars for ME,
- Establishes standards and requirements for each Star Rating by program type,
- Explains how a program can attain a Star Rating,
- Explains how a program can maintain its Star Rating or advance to the next Star Rating, and
- Explains how to appeal their Star Rating.

The QRIS Rules Rising Stars for ME will accomplish this by implementing the following strategies:

- Incorporating Rising Stars for ME Inclusive Practices Checklist into QRIS as a component of a program’s annual continuous quality improvement plan;
- The electronic submission of Program portfolios of evidence;
- Conducting random on-site monitoring of portfolios by OCFS;

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- Allowing License-Exempt nonrelative providers participating with the Child Care Subsidy Program (CCSP) to join Rising Stars for ME at Star 1;
- Ratings for licensed programs beginning at Star 2. To receive a Star 4 rating, a licensed program must first meet all requirements for Stars 2, 3, and 4;
- Continuing to require registry membership for all staff (including License-Exempt Providers); and
- A Star 5 Rating (the highest rating) will continue to require national accreditation through:
  - The National Association for Family Child Care (NAFCC);
  - The National Association for the Education of Young Children (NAEYC);
  - The American Montessori Society (AMS);
  - The Council on Accreditation (COA).

**Basis statement:**

The Department of Health and Human Services (the “Department”) adopts 10-148 C.M.R. Chapter 33, *Quality Rating and Improvement System Rules: Rising Stars for ME*.

The Department determines that adoption of this rule is necessary to comply with Maine statute 22 M.R.S. §3737(3). The Department is adopting this rule now in order to maintain compliance with all Federal and State rules and regulations.

Maine has operated a Quality Rating and Improvement System (QRIS) for child care providers and other early care and education programs since 2008, but the standards and requirements were never established in rule. Adopting a rule governing QRIS benefits families and providers by having a clear system that shows the importance of high-quality early care and education for all Maine children. The rule further shows the Department’s commitment and investments to the programs in early care and education and the families that utilize their service.

The Department launched a pilot project in the summer of 2020 with 41 participants across program types that included licensed child care facilities, family child care and licensed facilities serving only school-aged children. During the Rising Stars for ME Pilot, programs received the revised Standards appropriate to their setting and completed a version of the application process to receive a rating on the new system. The program owner, director, or designated staff person provided feedback on:

- The Standards;
- The application process;
- Potential barriers to participation and/or to moving up in the system; and
- Necessary supports for helping programs join and move up with Rising Stars for ME.

The Department solicited feedback and incorporated participants suggestions by:

- Revising language in the Standards;
- Including the revised language in the proposed rules; and
- Updating the application.

In 2021, the Department adopted routine technical provisions to its child care licensing rules (10-148 C.M.R. ch. 32, *Child Care Facility Licensing Rule - Child Care Centers, Nursery Schools, Small Child Care Facilities, Other Programs* and ch. 33, *Family Child Care Provider Licensing Rule*) requiring child care facilities and family child care providers to enroll with Maine’s Quality Rating and Improvement System. This rule, 10-148 C.M.R. Chapter 31, *Quality Rating*

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

*and Improvement System Rules: Rising Stars for ME*, is not a licensing rule, but establishes the standards and requirements of Maine's QRIS in rule for the first time.

The adopted rule will:

- Recognize Early Care & Education Programs that provide quality care;
- Encourage Program Owners to increase their level of quality;
- Provide parents with identifiable standards of quality;
- Outline procedures for Early Care & Education Programs' enrollment with Rising Stars for ME;
- Establish standards and requirements for each Star Rating by program type;
- Explain how a program can attain a Star Rating;
- Explain how a program can maintain its Star Rating or advance to the next Star Rating;  
and
- Explain to a program how to appeal their Star Rating.

The adopted rule substantively improves on the current QRIS program by:

- Strengthening the alignment between Department's programs relating to child care, i.e. Childrens Licensing and Investigation Services (CLIS) and the Child Care Subsidy Program (CCSP).
- Holding both the Department and early care and education programs accountable by providing procedures for programs to appeal their Star Rating.

**Fiscal impact of rule:**

None.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Office of Child and Family Services  
**Umbrella-Unit:** **10-148**  
**Statutory authority:** 22 M.R.S. §§ 42(1), 4099-E, 4099-G, 7802(7); P.L. 2021, ch. 98  
**Chapter number/title:** **Ch. 8**, Rules for the Licensure of Shelters for Homeless Children (Repeal); **Ch. 9**, Rules for the Licensing of Emergency Shelters for Children (Repeal); **Ch. 37**, Emergency Children’s Shelter, Shelter for Homeless Children, and Transitional Living Program Licensing Rule.  
**Filing number:** **2023-080 to 082**  
**Effective date:** 6/14/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
See basis statement.

**Basis statement:**

The Department of Health and Human Services (the “Department”) proposed rulemaking to repeal 10-148 C.M.R Ch. 8 Rules for the Licensure of Shelters for Homeless Children and 10-148 C.M.R. Ch. 9 Rules for the Licensing of Emergency Shelters for Children and replace the two rules with one consolidated rule, 10-148 C.M.R Ch. 37 Emergency Children’s Shelter, Shelter for Homeless Children, and Transitional Living Programs that are Children's Homes Licensing Rule on February 8, 2023. A public hearing using the zoom platform was held on February 28, 2023, and written comments were accepted through March 10, 2023.

The Department has determined that adoption of this rule, 10-148 C.M.R Ch. 37 Emergency Children’s Shelter, Shelter for Homeless Children, and Transitional Living Programs that are Children's Homes Licensing Rule is necessary to fully comply with the Family First Prevention Service Act (FFPSA) requirements for comprehensive background checks. The background check requirements include fingerprinting with a search of the Federal Bureau of Investigation (FBI) and State Bureau of Identification (SBI) and specify disqualifying offenses. Additionally, FFPSA requires checks of Maine’s child abuse and neglect registry, as well as for each State in which prospective employees have resided during the preceding five years. Shelter providers have been adhering to the state and federal statutory requirements for the comprehensive background checks for over a year; the Department here adopts the requirement in rule.

The adoption of this rule is also necessary to meet the requirements of P.L 2021, ch.98, which directs the Department to amend its rule regarding notification requirements in current 10-148 C.M.R.Ch. 9 to make consistent with 10-148 C.M.R.Ch. 8 and specifically to allow the admission of a child into care for up to 3 hours without first notifying the child’s guardian and to require a facility to allow the admission of a child into care at an Emergency Children’s Shelter for up to 48 hours without the permission of the child’s guardian. The rule significantly updates and consolidates provisions to reflect the current needs of today’s population of homeless youth and adds requirements to afford greater health and safety protection. The rules were last updated in 1987 and 1989. Consolidating the rules provides consistency for all homeless youth programs. Further, the rule includes licensing requirements for Transitional Living Programs that are Children’s Homes, currently licensed as Children’s Residential Care Facilities (CRCF) but statutorily defined as a program for homeless youth and programmatically

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

more closely aligned with emergency and homeless shelters. This change will require routine technical rulemaking to remove Transitional Living Programs from 10-148 C.M.R Ch. 35 Children's Residential Care Facilities Licensing Rule. This will be a separate consecutive rulemaking.

Significant specific changes from repealed Chapter 8: Rules for the Licensure of Shelters for Homeless Children and Chapter 9: Rules for the Licensing of Emergency Shelters for Children in adopted Chapter 37: Emergency Children's Shelter, Shelter for Homeless Children, and Transitional Living Programs that are Children's Homes Licensing Rule include:

- Removing Introduction from Rules for the Licensing of Emergency Shelters for Children;
- Specifying exemptions or modifications applicable to specific program type (Emergency Shelters for Children, Shelter for Homeless Children, Transitional Living Programs) throughout the rule;
- Removing obsolete, outdated and unused terms from definitions;
- Adding and clarifying definitions;
- Removing the phrase "For the purpose of these rules the meaning of all adjectives and adverbs such as "adequate", "competent", "substantial", "qualified", "necessary", "reasonable", "satisfactory", "sufficient", "effective", "appropriate" or "suitable" used to qualify a person, procedure, equipment or building shall be determined by the licensing authority";
- Updating length of stay to 90 consecutive days instead of 30 consecutive days;
- Changing the term children to youth throughout rule and specifying in definition that they have the same meaning;
- Specifying staff members must be at least 21 years old;
- Updating language to be gender inclusive throughout the rule, changed "his/her" to "their";
- Reorganizing and updating language regarding program administration and organization;
- Removing requirement from Rules for the Licensure of Shelters for Homeless Children for the board of directors to conduct an annual evaluation on the director. Adding language regarding the program administrator demonstrating an ability to manage affairs of facility;
- Removing requirements for insurance/bonding;
- Removing list of non-waivable items;
- Clarifying requirements for licensure application to include the requirement for all policies to be submitted;
- Adding the requirement for facilities to comply with requests for records;
- Alphabetizing and consolidating all required policies into one location;
- Adding required policies, including: conflict of interest, diversion control, inclusion, infectious disease, record management, reportable event, rights, smoking, and weapons. Renaming admission policy to eligibility and access to services. Removing specific requirements for personnel policies. Adding language for policies to incorporate LGBTQ+ inclusive terminology;
- Consolidating and clarifying records required by the facility;
- Updating language regarding youth access to records;
- Adding requirement for Homeless Shelter and Emergency Shelter staff to sign a statement regarding adult abuse and neglect;
- Adding reporting requirements including requirement to report adult abuse and neglect;

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- Adding section for youth rights for Homeless Shelters and Emergency Shelters;
- Adding requirement for release of information for Homeless Shelters;
- Removing requirement for policy in confidentiality from Homeless Shelters and Emergency Shelters as youth confidentiality is covered in other sections of rule;
- Updating requirements for intake assessment to better account for the needs of youth;
- Modifying requirements and timeframes for completion of assessments and care plans;
- Modifying requirements for discharge summary completion;
- Adding requirement to assess for human trafficking;
- Adding requirement for one CPR-trained staff per shift;
- Updating language regarding first aid kits and adding the requirement for a first aid kit in vehicles;
- Adding safety precautions to medication administration including requirement to keep medication locked at all times, securing staff medications and counting schedule II medications;
- Updating medication administration section to allow for youth to self-administer and to be able to store youth medication as appropriate;
- Removing isolation and restraint as approved practices;
- Changing terminology of detrimental practices to prohibited practices to include practices that are cruel, severe or unusual, verbal abuse, ridicule or humiliation, any type of physical punishment in any manner upon the body, administration of psychotropic medication as a means of punishment or discipline, group punishment, physical restraint, seclusion, and isolation;
- Adding water testing requirements;
- Updating and clarifying terminology regarding sleeping areas and bedding;
- Updating language regarding supervision and amending staff to youth ratios;
- Simplifying requirements regarding youth attending religious services;
- Adding requirements for searches to ensure safety of youth;
- Updating language regarding food service and safety. Removing requirement for Emergency Shelters to keep a menu;
- Adding requirement for seatbelts and child safety seats;
- Adding and updating requirement for emergency preparedness plan. Adding requirement for continuity of operation plan;
- Specifying requirements for each service type;
- Specifying requirements for daily notes;
- Specifying that certain items do not need to be locked in some transitional living programs;
- Updating guardian notification requirements;
- Adding health and safety requirements for transitional living programs serving pregnant and parenting youth;
- Updating language regarding staff qualifications, judgement, and boundaries;
- Specifying education requirements for program administrator and direct care workers;
- Changing specific requirements for employee evaluations;
- Adding requirements for comprehensive background checks and inclusion of specific disqualifying conditions aligning with Family First Prevention Services Act;
- Adding additional background check requirements to include professional registries and Adult Protective Services;
- Adding disqualifying driving offenses that prohibit a staff member from transporting residents;

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- Removing requirement for employee physical examination and TB test;
- Removing medical statement required for staff prior to employment;
- Adding staff trainings to include medication administration (including psychotropic medications and naloxone), professionalism and boundaries, sexual orientation and expression, cultural competency and diversity, effects of alcohol and drug use, impact of trauma on homeless youth, human trafficking;
- Specifying training needs to be completed annually;
- Clarifying language regarding enforcement to reflect current practice; and
- Adding requirement to notify guardians of current and prospective residents of licensing action.

**Fiscal impact of rule:**

The Department does not anticipate any fiscal impact as the changes proposed are cost neutral.



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Office of Aging and Disability Services  
**Umbrella-Unit:** **10-149**  
**Statutory authority:** 22 M.R.S. §§ 42, 5106  
**Chapter number/title:** **Ch. 5**, Introduction, Table of Contents, Rule History (Amend); **Ch. 5, Section 65**, Nutrition Services (Repeal); **Ch. 6, Section 5**, Nutrition Services Program (New, to replace 10-149, Ch. 5, Section 65)  
**Filing number:** **2023-021, 2023-022**  
**Effective date:** 2/14/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

Repeal and Replace of 10-149 C.M.R. ch 5, § 65, Nutrition Services with 10-149 C.M.R. ch. 6 § 5, Nutrition Services Program

The Department proposes to repeal and replace 10-149 C.M.R. Chapter 5, Section 65 with 10-149 C.M.R. Chapter 6, Section 5. The purpose of this proposed rulemaking is to update the Department's nutrition services rule in accordance with the requirements outlined in the 2020 reauthorization of the Older Americans Act, 42 U.S.C. §§ 3001, *et seq.* This proposed rule also removes outdated references to the Bureau of Elder and Adult Services and provides additional clarity around eligibility requirements for older adults to receive nutrition services.

Nutrition services authorized by the rule are provided by Area Agencies on Aging (AAAs) that are under contract with the Department's Office of Aging and Disability Services (OADS), or by their subcontractors. Nutrition services regulated under this rule are funded by block grants from the Administration for Community Living ("ACL") in the U.S. Department of Health and Human Services.

The proposed rule states operational requirements for providers, including:

- maximizing the number of eligible individuals who are provided an opportunity to receive nutrition services;
- outreach, intake, and information and assistance/referral services in conformance with 10-149 C.M.R. ch. 5, § 67;
- the creation and maintenance of wait lists for nutrition services, if necessary;
- when and how providers may seek voluntary contributions from recipients for the cost of meals;
- why and how providers of nutrition services may deny, reduce, or terminate nutrition services for individuals;
- minimum nutritional requirements for meals and compliance with the State of Maine Food Code, 10-144 C.M.R. ch. 200;
- reporting of food borne illness;
- menu planning and the provision of special meals when possible to meet recipients' dietary, religious, and cultural requirements and preferences;
- recipient satisfaction surveys;
- group purchasing and other cost-saving measures;
- necessary contents of subcontracts for nutrition services;

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- designation of full-time Nutrition Directors and consultation with registered dietitians;
- preparation and distribution of nutrition manuals establishing procedures relating to sanitation, food handling and storage, reporting of food borne illness and handling medical and other emergencies; and
- data collection and reporting.

Imposing these requirements on AAAs and their subcontractors enables OADS to comply with the Older Americans Act and with the Department's block grants from the ACL.

10-149 C.M.R. Chapter 5, Introduction, Table of Contents, Rule History:

The Department proposes to (1) update the Introduction; (2) delete the Section 65 Table of Contents from the Chapter 5 Table of Contents; and (3) update the Rule History.

**Basis statement:**

With this rulemaking, the Department of Health and Human Services (Department) is repealing its current Nutrition Services rule, codified as 10-149 C.M.R. ch. 5, Sec. 65, and replacing it with a new Nutrition Services Program rule, to be codified as 10-149 C.M.R. ch. 6, Sec. 5. Both the repealed and replacement rules are routine technical rules. The Department is also amending the Table of Contents for its Elder Services Policy Manual to reflect these changes.

Maine's Nutrition Services Program (NSP) are overseen by the Department's Office of Aging and Disability Services (OADS) and are administered through the Area Agencies on Aging (AAAs) and their subcontractors. The Nutrition Services Program, outlined in the Older Americans Act (42 U.S.C. §§ 3001, *et seq.*), assists older and other dependent or incapacitated adults in remaining healthy and active in their communities and in avoiding premature or inappropriate institutionalization, by providing nutrition services to adults with the greatest social and economic need, including low-income older individuals, low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.

In 2020, Congress reauthorized the Older Americans Act. As part of this reauthorization, updates were made to the Nutrition Services Program. To comply with the reauthorized Older Americans Act, the Department is adopting a replacement rule to remove outdated guidance on nutrition programming and to better reflect current terminology and the practices of the programs.

The new, adopted rule defines key terms used in the rule and in the administration of the Nutrition Services Program; requires participating AAAs to provide Congregate Nutrition Services, Home Delivered Nutrition, Nutrition Counseling, and Nutrition Education; sets forth eligibility and prioritization standards; and states provider and program requirements. The rule states operational requirements for providers, including:

- Maximizing the number of eligible individuals who are provided an opportunity to receive nutrition services;
- Outreach, intake, and information and assistance/referral services in conformance with 10-149 C.M.R. ch. 5, § 67;
- The creation and maintenance of wait lists for nutrition services, if necessary;
- When and how providers may seek voluntary contributions from recipients for the cost of meals;

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

- Why and how providers of nutrition services may deny, reduce, or terminate nutrition services for individuals;
- Minimum nutritional requirements for meals and compliance with the State of Maine Food Code, 10-144 C.M.R. ch. 200;
- Reporting of food borne illness;
- Menu planning and the provision of special meals when possible to meet recipients' dietary, religious, and cultural requirements and preferences;
- Recipient satisfaction surveys;
- Group purchasing and other cost-saving measures;
- Necessary contents of subcontracts for nutrition services;
- Designation of full-time Nutrition Directors and consultation with registered dietitians;
- Preparation and distribution of nutrition manuals establishing procedures relating to sanitation, food handling and storage, reporting of food borne illness and handling medical and other emergencies; and
- Data collection and reporting.

Imposing these requirements on AAAs and their subcontractors enables OADS to comply with the Older Americans Act and with the Department's block grants from the Administration for Community Living in the U.S. Department of Health and Human Services.

OADS drafted the rule by relying on stakeholder input, the Department's knowledge of and experience with administering Nutrition Services Program, and the administration's guidance and vision for Nutrition Services for these populations.

The Department does not anticipate that this rule will have any impact on municipalities, counties, or small businesses.

**Fiscal impact of rule:**

There are no costs associated with this rule.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Office of Aging and Disability Services  
**Umbrella-Unit:** **10-149/14-197**  
**Statutory authority:** 22 M.R.S. § 7303(2); 34-B M.R.S. § 5439(9); Resolves 2011, ch. 71  
**Chapter number/title:** **Ch. 5**, Introduction, Table of Contents, Rule History; **Ch. 5, Section 63**, In-Home and Community Support Services for Elderly and Other Adults (Repeal); **Ch. 11**, Consumer Directed Personal Assistance Services (Repeal); **Ch. 5, Section 63**, Home Based Supports and Services for Older and Disabled Adults (new)  
**Filing number:** **2023-12, 2023-096, 2023-097**  
**Effective date:** 10/1/2023  
**Type of rule:** Routine Technical/Major Substantive  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Department is proposing an effective date of July 1, 2023, for the amendment of the Chapter 5 Introduction rule, for the repeal of the current Chapter 11 and Section 63 rules, and for the replacement of those repealed rules with the new Section 63 rule. The current Chapter 11 rule and Section 63 rule will remain in effect through June 30, 2023.

10 149 C.M.R. Chapter 5, Introduction, Table of Contents, Rule History: The Department is updating the Introduction, delete the Section 63 Table of Contents from the Chapter 5 Table of Contents, and updates the Rule History.

Section 63 and Chapter 11 rulemakings:

Resolves 2011, ch. 71 directed the Department to adopt a long-term services and supports plan, known as the "Lean Implementation Plan," and make its action items a work priority. One of the action items listed in the plan required the Department to prioritize the consolidation of two state-funded in-home care and community support services programs for elderly and other adults, currently codified as Section 63 and Chapter 11.

Stakeholder Engagement: In May 2019, the Department hosted a "Convening on Aging and Long-Term Services and Supports" with stakeholders to establish priorities for aging and long-term services and supports (LTSS) reform. This rulemaking implements one of the priorities recommended by stakeholders which was to update LTSS policies to bring programmatic inconsistencies into alignment where appropriate.

In July 2022, the Department held a "listening session" with various stakeholders to receive comments and suggestions on the merging of the two rules. Stakeholders included providers, consumers, the service coordination agencies, prospective sub-contractors, and the Long-Term Care Ombudsman Program. Stakeholders expressed support for the Department's plan to merge the rules but recommended that the Department "grandfather" Chapter 11 consumers so that these consumers would not be subject to the household asset limits in Section 63. Furthermore, stakeholders shared concerns that merging the rules could negatively impact consumers and urged the Department to maintain the same services wherever possible.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

The differences between the proposed Section 63 rule and the current Section 63 and Chapter 11 rules include the following:

- 1) Updates the title of the rule to "Home Based Supports and Services (HBSS) for Older and Disabled Adults" to reflect current terminology;
- 2) Updates the definition of "Liquid Asset" in Section 63.02-25 to include revocable and irrevocable trusts;
- 3) Updates the eligibility section of the rule, Section 63.03-1(B), to require an eligible consumer to be "a resident of Maine";
- 4) Clarifies in rule that only the Department may terminate HBSS in Section 63.04-2;
- 5) Adds Section 63.04-4 which lists the reasons that an Assessing Service Agency, Service Coordination Agency or the Department can deny or terminate the consumer from receiving Consumer-Directed Services;
- 6) Removes diagnostic services under Section 63.05;
- 7) Clarifies the list of non-covered services in Section 63.06;
- 8) Creates a new subsection titled "Limits" (Section 63.07) to outline the total monthly costs of services for consumers receiving each level of care;
- 9) Creates a new subsection, Section 63.10, titled "Responsibilities of the Assessing Services Agency and the Service Coordination Agency" to organize all Assessing Services Agency and Service Coordination Agency responsibilities in one subsection of the rule;
- 10) Streamlines Section 63.10-4 to specify that program reports must align with the provisions in the contract between the Department and the Service Coordination Agencies;
- 11) § 63.03-1(C) continues the current Section 63 requirements for liquid assets, except that Chapter 11 Consumers who are receiving Chapter 11 services on June 30, 2023, are exempt from this liquid asset requirement.
- 12) § 63.12-2 (Consumer Payment Formula for Former Chapter 11 Consumers), proposes a separate consumer payment formula for those Chapter 11 Consumers who were receiving Chapter 11 services on June 30, 2023.
- 13) § 63.12-3(A)(1)(a) (Waiver of Consumer Payment) proposes a separate household asset amount for determining eligibility for waiver of consumer payment for those Chapter 11 Consumers who were receiving Chapter 11 services on June 30, 2023.
- 14) Removes unnecessary and unused definitions and references to the Office of Elder Services.

**Basis statement:**

In this rulemaking, the Department of Health and Human Services (DHHS) finally repeals the major substantive provisions of the Section 63 rule and the Chapter 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 Chapter 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 Chapter 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.*

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

In 2011 DHHS was directed by the Legislature to consolidate the Section 63 rule and the Chapter 11 rule into a single rule. *Resolves 201 I, ch. 71*. This rulemaking accomplishes that Legislative directive. The benefits of consolidating Section 63 and Chapter 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 Chapter 11 consumers. The new Section 63 rule continues financial eligibility requirements for liquid assets. Chapter 11 consumers, however, who are receiving Chapter 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 Chapter 11 consumers who were receiving Chapter 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 Chapter 11 consumers who were receiving Chapter 11 services on September 30, 2022.

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

**Fiscal impact of rule:**

The Department does not anticipate a fiscal impact of this rule because of the increased funding by the 2022 supplemental budget.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Office of Aging and Disability Services  
**Umbrella-Unit:** 14-197  
**Statutory authority:** 34-B M.R.S. §§ 5201(9), 5605  
**Chapter number/title:** **Ch. 5**, Regulations Governing Behavioral Support, Modification and Management with Intellectual Disabilities or Autism in Maine  
**Filing number:** **2023-044**  
**Effective date:** 3/16/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

In January 2014, the federal Centers for Medicare and Medicaid Service (CMS) published new Medicaid requirements, in 42 C.F.R. § 441.301(c), regarding Section 1915(c) waiver Home and Community-Based Services (HCBS). The federal rule requires that people who receive HCBS funded through Medicaid must receive those services and supports in settings that meet specific standards. Though 14-197 C.M.R. ch. 5 (Chapter 5) is not a MaineCare rule, most or all of the persons protected by the rule receive MaineCare services – often in the form of HCBS waiver services. The Department adopted and CMS approved a State Transition Plan guiding Maine’s transition to compliance with the federal HCBS rule, and in that Plan the Department agreed to assure that Chapter 5 is not inconsistent with federal HCBS requirements because of its impact on some MaineCare HCBS waiver recipients. To come into compliance with this State Transition Plan, the Office of Aging and Disability Services is proposing to update Chapter 5 to acknowledge this rule’s interaction with 10-144 C.M.R. ch. 101 (MaineCare Benefits Manual), Ch. I, Section 6 – Global HCBS Waiver Person-Centered Planning and Settings Rule (Global HCBS Waiver Rule), which implements the new federal HCBS waiver requirements in MaineCare.

Specifically, the amended rule will clarify that when a Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under the Global HCBS Waiver Rule, the provision of supports authorized under this Chapter 5 shall comply with the Global HCBS Waiver Rule.

The Department plans to further amend Chapter 5 in 2023, with a comprehensive and stakeholder-informed update to the rule.

**Basis statement:**

In January 2014, the federal Centers for Medicare and Medicaid Service (CMS) released a new rule regarding Home and Community-Based Services waiver programs authorized under Section 1915(c) of the Social Security Act. The federal rule requires the Department of Health and Human Services (the “Department”) to assure that people who receive home and community-based waiver services and supports funded through Medicaid (MaineCare) must receive those services and supports in settings that meet specific standards no later than March 17, 2023. The Department implemented these new federal requirements in MaineCare by adopting a new rule, Global HCBS Waiver Person-Centered Planning and Settings Rule (the “Global HCBS Waiver Rule”) as Chapter I, Section 6 in the MaineCare Benefits Manual (“MBM”), 10-144 C.M.R. ch. 101, effective. “HCBS” refers to home- and community-based services provided to MaineCare waiver members.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

Some persons with an Intellectual Disability or Autism Spectrum Disorder benefitted by the processes and protections of 14-197 C.M.R. ch. 5, Behavioral Support, Modification and Management (“Chapter 5”), also receive MaineCare waiver services subject to the Global HCBS Waiver Rule. The Department agreed, in its HCBS State Transition Plan, to amend Chapter 5 so as to assure it is not inconsistent with the Global HCBS Waiver Rule. To remind providers and other participants in behavioral support planning for MaineCare waiver members, the Office of Aging and Disability Services is adding a new subsection, § 5.01-3 in Chapter 5 to state explicitly when the Global HCBS Waiver Rule applies.

Specifically, the amended rule clarifies that when a Person experiencing Challenging Behavior receives MaineCare HCBS waiver services regulated, in part, under MBM, Ch. I, Sec. 6, the provision of supports authorized under this Chapter 5 shall comply with that Global HCBS Waiver Rule.

The Department is further amending Chapter 5 by stating, in § 5.01-1, that the principles underlying supports authorized under Chapter 5 must be in conformance with 34-B M.R.S. § 5605, Rights and Basic Protections of a Person with an Intellectual Disability, Autism or an Acquired Brain Injury.

Third, the Department has amended Appendix Three of the rule to assure that after a period of In-Home Stabilization, the Person is supported to have full access to the greater community; including opportunities to interact with people in the community, to seek employment and work in competitive, integrated settings; and to engage in community life to the same degree as individuals not receiving services.

Though not included in this rulemaking, the Department anticipates conducting a stakeholder-informed, comprehensive update of Chapter 5 in the near future.

OADS drafted the rule by relying on stakeholder input, CMS guidance, the Department’s knowledge of and experience with reviewing behavior management plans, and the administration’s guidance and vision for behavioral regulations for these populations.

The Department does not anticipate that this rule will have any impact on municipalities, counties, or small businesses.

**Fiscal impact of rule:**

None.



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** Department of Health and Human Services, Office of Aging and Disability Services  
**Umbrella-Unit:** **14-197**  
**Statutory authority:** 22 M.R.S. §§ 42(1); 34-B M.R.S. § 5609(3)  
**Chapter number/title:** **Ch. 7**, Pilot Program for Transitional Services (Repeal)  
**Filing number:** **2023-237**  
**Effective date:** 11/22/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

Chapter 7 is no longer in effect and will be repealed. The intent of the rule was to carry out a Pilot Program for Transitional Services, offering a method of funding for innovative services which were otherwise unavailable or not reimbursable under then-existing funding systems.

**Basis statement:**

This rule change repeals a pilot program that was established in 1988 to provide transitional services for adults aged 20-26 that were clients of the Office of Aging and Disability Services, formerly the Office of Adults with Cognitive and Physical Disabilities. The program offered a method of funding that was otherwise unavailable or not reimbursable under existing funding systems and has not been operational for several years as redundant and similar services have since been adopted and implemented federally and statewide to support the target population.

**Fiscal impact of rule:**

There will be no cost to municipalities or counties associated with this rule.