10 Department of Health and Human Services

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-009: Chapter 101, MaineCare Benefits Manual, Ch. II, § 43, Hospice Services	
Statutory Authority:	22 M.R.S. §§ 42, 3173, and 3173-J; 42 U.S.C. §§ 1396b(1), 1395x(dd)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*This proposed rulemaking is cost neutral.*
Principal purpose:	*The Department of Health and Human Services (the "Department") proposes the following changes:* *Chapter II Rule Proposed Changes:* *1. Adds a requirement for Electronic Visit Verification ("EVV"). This has been approved by CMS. The Department proposes that this provider requirement be effective on January 1, 2024, in order to give providers adequate notice and time to comply.* *2. Amends the definition of "Attending Physician" to include nurse practitioners and physician assistants. This is consistent with Section 51006 of the Bipartisan Budget Act of 2018 (P. L. 115-123), as codified in 42 U.S.C. § 1395x(dd)(3)(B), the Medicare program.* *3. Adds a definition for the term "Benefit Period" which appears multiple times throughout this rule.* *4. Section 43.07-5 (Payment for Inpatient care): Changes the date by which Hospice providers submit inpatient data to the Department, upon Department request, from January 1st to October 1st, following the end of the period ending September 30th of the previous year, in keeping with the federal fiscal year.* *5. Adds Opioid Health Home Services to the list of services that may be continued after the election of hospice.* *6. Makes minor technical edits to improve the clarity of the rule.* *7. Adds a new section – Allowances for Hospice Services – which is largely moved from the Ch. III rule, which is being repealed.*
Basis Statement:	*This letter gives adoption notice of MaineCare Benefits Manual (the "MBM") Chapter II, Section 43, Hospice Services, and repeal of MBM Chapter III, Section 43, Allowances for Hospice Services.* *Chapter II Rule Changes:* *1. Adds a requirement for Electronic Visit Verification ("EVV") for Hospice Services delivered in-home. Federal Medicaid law mandates that EVV be utilized for personal care services and home health care services that require an in-home visit by a provider (42 U.S.C. Sec. 1396b(l)). The federal EVV requirement does not explicitly include Hospice services, however, to remain consistent with MaineCare efforts to*

prevent fraud, waste, and abuse for home-based services, EVV requirements are implemented for all Hospice Services delivered in-home. The adopted rule also clarifies that Physician Services are delivered and billed separately as described in MBM Ch. II, Section 90, and are exempt from EVV requirements. On February 6, 2023, CMS approved the Maine SPA which requires EVV for in-home hospice services. CMS, Maine state Plan, TN No 22-0044, Attachment 3.1-A, #18 (Hospice Care), Page 7, Effective Date: 1/1/23 ("The state will require Electronic Visit Verification System (EVV) requirements for in-home services effective January 1, 2023."). Hence, EVV is mandated for these MaineCare Hospice Services by the Federal Government.

Facilities providing Hospice Services will not be subject to EVV, this requirement only applies to services offered within the member's home. EVV implementation for all in-home Hospice Services, including those reimbursed at a per diem rate, will support the Department's goal of improving oversight of Hospice Services and, in turn, reduce the occurrence of fraud, waste, and abuse in home settings. Providers may utilize the Department's EVV system at no cost or may procure and utilize their own EVV system, so long as the Department's EVV system can accept and integrate data from the provider-owned EVV system and the provider-owned system is otherwise compatible with the Department's system and billing guidelines.

In response to comments, the Department changed the effective date of the EVV requirement from January 1 to July 1, 2024, in order to give providers more time.

2. Amends the definition of "Attending Physician" to include Nurse Practitioners and Physician Assistants. This is consistent with Section 51006 of the Bipartisan Budget Act (BBA) of 2018 (P. L. 115-123), as codified in 42 U.S.C. § 1395x(dd)(3)(B). The BBA considers Physician Assistants to be qualified to provide Hospice Services as an Attending Physician. Nurse Practitioners were qualified Attending Physicians in Section 1861(dd)(3)(B) of the Social Security Act (SSA) prior to the passing of the BBA. The adopted rule mirrors SSA statute, stating an Attending Physician must be a medical Doctor of Medicine or Osteopathy, Nurse Practitioner, or Physician Assistant licensed in the state of Maine.

3. Adds a definition for the term "Benefit Period" which appears multiple times throughout this rule to provide clarity.

4. Section 43.07-5 (Payment for Inpatient Care): Changes the date by which Hospice providers must submit inpatient data to the Department, upon Department request, from January 1st to October 1st, following the period ending September 30th of the previous year, in keeping with the federal fiscal year. This change grants providers additional time to compile and submit reports to the Department.

5. Adds Opioid Health Home Services to the list of services that may be continued after the election of hospice. The Department recognizes treatment for Substance Use Disorder may be required through the end of a member's life. As such, MaineCare will reimburse for services under Chapter II, Section 93 Opioid Health Home Services and under Chapter II, Hospice Services provided concurrently.

6. Makes minor technical edits to improve the clarity of the rule.

7. Sec. 43.09: Adds a new section – Allowances for Hospice Services – which is largely moved from the Ch. III rule, which is being repealed. The Department will henceforth list the specific reimbursement rates on the MaineCare Fee Provider Schedule which is posted on the Department's website, as authorized by 22 M.R.S. Sec. 3173-J(7). The Department, after OAG review, added language explaining the current methodology of annual adjustments to the reimbursement for the services. CMS has approved this methodology in the Maine Medicaid state Plan, and this is the methodology that has been utilized by the Department historically. In accordance with 22 M.R.S. Section 3173-J, the Department will not have to go through rulemaking if there is no change to this methodology and the rates are posted in accordance with this law.

***Chapter III Rule Changes**:*

The Department repeals Ch. III.

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-010: Chapter 101, MaineCare Benefits Manual, Ch. III, § 43, Hospice Services	
Statutory Authority:	22 M.R.S. §§ 42, 3173, and 3173-J; 42 U.S.C. §§ 1396b(1), 1395x(dd)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*This proposed rulemaking is cost neutral.*
Principal purpose:	*The Department proposes to repeal Ch. III, and to move the Ch. III columns describing the Revenue Code, HCPC Code and Description of Services to the Ch. II rule. The Department proposes to delete the column with the specific reimbursement rate from the rule, and will post the specific reimbursement rates on the MaineCare Fee Provider Schedule which is posted on the Department's website, as authorized by 22 M.R.S. Sec. 3173-J(7).*
Basis Statement:	*This letter gives adoption notice of MaineCare Benefits Manual (the "MBM") Chapter II, Section 43, Hospice Services, and repeal of MBM Chapter III, Section 43, Allowances for Hospice Services.* *Chapter II Rule Changes:* *1. Adds a requirement for Electronic Visit Verification ("EVV") for Hospice Services delivered in-home. Federal Medicaid law mandates that EVV be utilized for personal care services and home health care services that require an in-home visit by a provider (42 U.S.C. Sec. 1396b(l)). The federal EVV requirement does not explicitly include Hospice services, however, to remain consistent with MaineCare efforts to prevent fraud, waste, and abuse for home-based services, EVV requirements are implemented for all Hospice Services delivered in-home. The adopted rule also clarifies that Physician Services are delivered and billed separately as described in MBM Ch. II, Section 90, and are exempt from EVV requirements. On February 6, 2023, CMS approved the Maine SPA which requires EVV for in-home hospice services. CMS, Maine state Plan, TN No 22-0044, Attachment 3.1-A, #18 (Hospice Care), Page 7, Effective Date: 1/1/23 ("The state will require Electronic Visit Verification System (EVV) requirements for in-home services effective January 1, 2023."). Hence, EVV is mandated for these MaineCare Hospice Services by the Federal Government.* *Facilities providing Hospice Services will not be subject to EVV, this requirement only applies to services offered within the member's home. EVV implementation for all in-home Hospice Services, including those reimbursed at a per diem rate, will support the Department's goal of improving oversight of Hospice Services and, in turn, reduce the occurrence of fraud, waste, and abuse in home settings. Providers may utilize the Department's EVV system at no cost or may procure and utilize their own EVV system, so long as the Department's EVV system can accept and integrate data from the provider-owned EVV system and the provider-owned system is otherwise compatible with the Department's system and billing guidelines.* *In response to comments, the Department changed the effective date of the EVV requirement from January 1 to July 1, 2024, in order to give providers more time.* *2. Amends the definition of "Attending Physician" to include Nurse*

Practitioners and Physician Assistants. This is consistent with Section 51006 of the Bipartisan Budget Act (BBA) of 2018 (P. L. 115-123), as codified in 42 U.S.C. § 1395x(dd)(3)(B). The BBA considers Physician Assistants to be qualified to provide Hospice Services as an Attending Physician. Nurse Practitioners were qualified Attending Physicians in Section 1861(dd)(3)(B) of the Social Security Act (SSA) prior to the passing of the BBA. The adopted rule mirrors SSA statute, stating an Attending Physician must be a medical Doctor of Medicine or Osteopathy, Nurse Practitioner, or Physician Assistant licensed in the state of Maine.

3. Adds a definition for the term "Benefit Period" which appears multiple times throughout this rule to provide clarity.

4. Section 43.07-5 (Payment for Inpatient Care): Changes the date by which Hospice providers must submit inpatient data to the Department, upon Department request, from January 1st to October 1st, following the period ending September 30th of the previous year, in keeping with the federal fiscal year. This change grants providers additional time to compile and submit reports to the Department.

5. Adds Opioid Health Home Services to the list of services that may be continued after the election of hospice. The Department recognizes treatment for Substance Use Disorder may be required through the end of a member's life. As such, MaineCare will reimburse for services under Chapter II, Section 93 Opioid Health Home Services and under Chapter II, Hospice Services provided concurrently.

6. Makes minor technical edits to improve the clarity of the rule.

7. Sec. 43.09: Adds a new section – Allowances for Hospice Services – which is largely moved from the Ch. III rule, which is being repealed. The Department will henceforth list the specific reimbursement rates on the MaineCare Fee Provider Schedule which is posted on the Department's website, as authorized by 22 M.R.S. Sec. 3173-J(7). The Department, after OAG review, added language explaining the current methodology of annual adjustments to the reimbursement for the services. CMS has approved this methodology in the Maine Medicaid state Plan, and this is the methodology that has been utilized by the Department historically. In accordance with 22 M.R.S. Section 3173-J, the Department will not have to go through rulemaking if there is no change to this methodology and the rates are posted in accordance with this law.

Chapter III Rule Changes:

The Department repeals Ch. III.

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-012: Chapter 101, MaineCare Benefits Manual, Ch. II, § 29, Support of Adults with Intellectual Disabilities or Autism Spectrum Disorder	
Statutory Authority:	22 M.R.S. §§ 42, 42(8), 3173; 42 C.F.R. § 441.301(c); 42 U.S.C. § 1396b(1)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*This Chapter II rule does not contain reimbursement rates; those are contained in MBM Chapter III, Section 29, and fiscal impact has been estimated for that companion, major substantive rulemaking.*
Principal purpose:	*This Section 29 rule provides home and community-based services (HCBS) that are authorized by a federal Medicaid Section 1915(c) HCBS waiver that meets federal standards.* *On December 18, 2020, The Centers for Medicare & Medicaid Services (CMS) approved the Department's request to renew the Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver for a five-year period, with an effective date of January 1, 2021. On April 13, 2023, the Department gave public notice of proposed amendments to the CMS-approved Section 29 waiver, to add services and enhance service delivery. Following the receipt of public comment on the proposed amended waiver, the Department will seek and anticipates receiving CMS approval of the waiver amendment.* *Through this rulemaking and in accordance with CMS approval of the renewed waiver, and the Department's proposed waiver amendment, the Department proposes to:* *1) Align similar processes, service descriptions, and similar provisions with MaineCare's four other Section 1915(c) waivers (primarily the Section 21 waiver);* *2) Make permanent certain flexibilities added under Appendix K authority during the Covid-19 Public Health Emergency (PHE), which will expire on November 11, 2023, including the additions of Individual Goods and Services, Self-Directed Services and tiered Community Support Services;* *3) Strengthen safeguards for Members by enacting the Plan of Corrective Action and Request for Exceptions processes;* *4) Incorporate the Department's proposed Global HCBS Rule (MBM Ch. I, Sec. 6-Global HCBS Waiver Person-Centered Planning and Settings Rule) by reference; and* *5) Add the opportunity for Section 29 Members to receive Increased Level of Support if they receive Shared Living services and have extraordinary need for additional support with behavioral or medical issues.* *The Department is concurrently undertaking major substantive rulemaking under the APA for MBM Ch. III, Sec. 29, to describe reimbursement procedures for the new and updated services described in this rulemaking, and is proposing retroactive application for rule provisions to November 12, 2023, pursuant to 22 M.R.S. § 42(8), following approval by the Legislature, and final adoption by the Department.* *The Department proposes the following specific changes to this rule:* • *Covered Services: updating, expansion or clarification of the descriptions for*

the following Covered Services:

- *Assistive Technology*
- *Career Planning*
- *Community Support*
- *Employment Specialist Services*
- *Home Accessibility Adaptations*
- *Home Support – Quarter Hour*
- *Home Support – Remote Support*
- *Shared Living (Foster Care Adult)*
- *Non-Medical Transportation Service*
- *Work Support – Group*
- *Work Support – Individual*

• *Revised Definitions: Updating the following definitions: Activities of Daily Living, Autism Spectrum Disorder, Intellectual Disability, Instrumental Activities of Daily Living, Person-Centered Service Plan and Shared Living.*

• *New Definitions: Addition of definitions for the following terms: Budget Authority, Community Inclusion, Competitive Integrated Employment, Community Mapping, Disability-Specific Setting, Employer Authority, Fiscal Intermediary, Home and Community Based Services, Personal Resources, Provider-Managed Service, Self-Direction, Service Implementation Plan, and Supports Broker.*

• *Self-Direction: Addition of Self-Direction Services, including Financial Management Services, Supports Brokerage Services, and Individual Goods and Services, to the list of covered services in Section 29 to expand opportunities for Members to manage and control certain services and service delivery methods. These changes make permanent new services temporarily offered under the Appendix K, Emergency Preparedness and Response amendment authority during the Covid-19 pandemic.*

• *Community Support: Separation of Community Support services into three tiers of service delivery: Community Only- Individual, Community Only- Group, and Center-Based, to support individualized needs of the participant population more broadly. The Department will seek CMS approval for this change.*

• *Exceptions from Caps on Services: Establishment of an exceptions process which provides that Section 29 Members, and Members applying to receive Section 29 benefits, may request services in excess of otherwise applicable Section 29 monetary and/or unit caps, where necessary to ensure that Section 29 Members receive adequate and appropriate services and supports in the most integrated setting appropriate to their needs, consistent with the Americans with Disabilities Act (ADA). This rulemaking proposes the Requests for Exceptions provision (See Sec. 29.14, Requests for Exceptions).*

• *Global HCBS Rule: Incorporation of the requirements of the January 19, 2022, Global HCBS Rule: see Sec. 29.15-1 [Person Centered Service Planning Process] and Sec. 29.05-1 [Home and Community Based Services Settings]), implementing the*

federal requirements for Maine's Section 1915(c) home and community-based waiver programs as required by 42 C.F.R. Sec. 441.301(c). The HCBS Global Rule includes requirements for person-centered service planning and for settings in which HCBS waiver services are provided.

- *29.07-2 (Limits): Changing the limit from $58,168.50 to $84,689.28 for the combined annual cost of Home Support (Remote or Quarter-hour), Community Support, and Shared Living Services. The Department received CMS approval for this change.*

- *29.08-3 (Termination from Participation as a MaineCare Provider): Clarification of this provision which establishes standards for providers who are disenrolling from participating as MaineCare providers. As revised, the provision expressly references the requirement in the MaineCare Benefits Manual, Ch. I, Sec. 1 that providers must give written notice to the Office of MaineCare Services of their intent to terminate participation in the MaineCare Program. In addition, this provision requires Section 29 providers to notify all Section 29 Members they serve of the provider's intent to terminate participation in the MaineCare program.*

- *29.10 (Provider Qualifications): Clarification of Provider Qualifications and Requirements for Direct Support Professionals (DSPs) and for Career Planners, Job Coaches, and Employment Specialists delivering Career Planning, Work Support, and Employment Specialist Services, to state that provider agencies may hire DSPs who are seventeen (17) years of age. The minimum age requirement for Career Planners, Job Coaches, and Employment Specialists remains eighteen (18) years of age.*

- *29.10-1 (DSP Qualifications): Requirement that all DSPs, regardless of capacity and prior to provision of services to a Member, receive training regarding the Global HCBS Rule. Moreover, within six (6) months of hire and annually thereafter, the proposed rule requires DSPs to comply with the Department's regulations: Reportable Events System (14-197 C.M.R. ch. 12) and the Adult Protective Services System (10-149 C.M.R. ch. 1).*

- *29.10-9 (Electronic Visit Verification): Requirement that providers of Home Support-Quarter Hour services comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements, in accordance with the 21st Century Cures Act (P.L. 114-255), Section 12006, as codified in 42 U.S.C. § 1396b(l).*

- *29.10-11 (POCA): Authorization for the Office of Aging and Disability Services (OADS) to issue written notices of deficiencies in service delivery, and requirement for providers to submit and implement Plans of Corrective Action (POCA) as approved by the Department. Providers have the right to appeal written notices of deficiencies. This POCA process will provide increased protections for Members and ensure that providers are in compliance with service requirements, have sufficient clinical and administrative capability to carry out the intent of the service, and have taken steps to assure the safety, quality, and accessibility of the service for Members.*

	• *29.11 (Member Appeals): Clarification that Members have the right to appeal decisions made regarding priority level and waitlist determinations.* • *29.16 (Appendix I-Shared Living Criteria for Increased Level of Support): Addition of a new appendix describing the criteria for an increased level of support if, due to extraordinary medical or behavioral needs, a Member requires Shared Living Services beyond the level of support defined in § 29.05-12.* • *29.19 (Appendix IV-Additional Requirements for Section 29 Providers of Community Support Services, Employment Specialist Services, and Shared Living): Clarification of requirements and responsibilities of the Administrative Oversight Agency and the Shared Living Provider for Shared Living Services.*
Basis Statement:	*SUPPORT SERVCIES FOR ADULTS WITH INTELLECTUAL DISABILITIES OR AUTISM SPECTRUM DISORDER* *ADOPTED RULE* *The Department is adopting comprehensive amendments of 10-144 C.M.R. Chapter 101, MaineCare Benefits Manual ("MBM"), Chapter II, Section 29, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder.* *This Section 29 rule implements and regulates a Section 1915(c) home and community-based services (HCBS) Medicaid waiver program. Under Section 29, the Department provides HCBS to support eligible adult MaineCare Members with an intellectual disability or autism living in the community. MBM Chapter II, Section 29 is a routine technical rule pursuant to 34-B M.R.S. § 5432(3).* *On December 18, 2020, The Centers for Medicare & Medicaid Services (CMS) approved the Department's request to renew the Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder waiver for a five-year period, with an effective date of January 1, 2021. On April 13, 2023, the Department gave public notice of proposed amendments to the CMS-approved Section 29 waiver, to add services and enhance service delivery. The Department is seeking and anticipates receiving CMS approval of this waiver amendment.* *On or about August 23, 2023, the Office of the Secretary of State gave notice of proposed amendments of MBM Chapter II, Section 29 to the Executive Director of the Legislative Council, published notice of the proposed rulemaking, and gave notice of the rulemaking to known interested parties. The Department then held a hybrid remote and in-person public hearing pursuant to 34-B M.R.S. § 5465(4) on September 11, 2023, conducted jointly with the public hearing on proposed amendments to MBM Chapter III, Section 29. The Department then accepted additional written public comment regarding the proposed rulemaking pursuant to 5 M.R.S. § 8057-A(3) until the close of business on September 21, 2023. A summary of public comments, the Department's responses, and changes made to the rule after it was published for public comment will be filed with the Secretary of State in conjunction with this rulemaking.*

The Department has added the following new services, effective March 1, 2024:

- *Home Support - Quarter Hour (Self-Directed)*
- *Shared Living – Two Members served*
- *Shared Living - One Member, Increased level of support (Provider Managed)*
- *Shared Living - Two Members, Increased level of support (Provider Managed)*
- *Home Accessibility Adaptations (Self-Directed)*
- *Home Accessibility Adaptations Repairs (Self-Directed)*
- *Assistive Technology - Devices (Self-Directed)*
- *Assistive Technology - Transmission (Self-Directed)*
- *Community Support - Community Only - Individual (Self-Directed)*
- *Community Support - Community Only – Individual (Provider Managed)*
- *Community Support - Community Only – Group (Provider Managed)*
- *Financial Management Services (Self-Directed)*
- *Supports Brokerage (Self-Directed)*
- *Individual Goods and Services (Self-Directed)*

The Department is seeking and anticipates approval from CMS for these newly added services with an effective date of March 1, 2024. These services will continue to be provided through February 29, 2024, under the Department's Appendix K: Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by the Centers for Medicare and Medicaid Services (CMS) but not added to MBM Chapter II, Section 29 at that time.

The Department is concurrently going through APA rulemaking for MBM Ch. III, Section 29, to identify the methodology(ies) for reimbursements for these services. MBM Chapter III, Section is a major substantive rule, will be provisionally adopted pending approval by the Legislature, and will propose a retroactive date of March 1, 2024, for the increased reimbursement rates.

The Department adopts the following specific changes to this rule:

- *Covered Services: Updates, expands, and/or clarifies the descriptions for the following Covered Services:*
  - *Assistive Technology*
  - *Career Planning*
  - *Community Support*
  - *Employment Specialist Services*
  - *Home Accessibility Adaptations*
  - *Home Support – Quarter Hour*
  - *Home Support – Remote Support*
  - *Shared Living*
  - *Non-Medical Transportation Service*
  - *Work Support – Group*
  - *Work Support – Individual*

- *Revised Definitions: Updates the following definitions: Activities of Daily Living, Autism Spectrum Disorder, Intellectual Disability, Instrumental Activities of Daily Living, Person-Centered Service Plan and Shared Living, and Services Delivered*

for the Member (formerly, "On Behalf Of" Services).

- *New Definitions: Adds definitions for the following terms: Budget Authority, Community Inclusion, Competitive Integrated Employment, Community Mapping, Disability-Specific Setting, Employer Authority, Fiscal Intermediary, Home and Community Based Services, Personal Resources, Provider-Managed Service, Self-Direction, Representative, Self-Direction, Service Implementation Plan, and Supports Broker.*

- *Self-Direction: Adds Self-Direction Services, including Financial Management Services, Supports Brokerage Services, and Individual Goods and Services, to the list of covered services in Section 29 to expand opportunities for Members to manage and control certain services and service delivery methods.*

- *Global HCBS Rule: Incorporates the requirements of the January 19, 2022, Global HCBS Rule: see §§ 29.04 [Person-Centered Service Plan (PCSP)], 29.15-1 [Self-Directed Person-Centered Service Planning Process] and 29.05-1 [Home and Community Based Services Settings]), implementing the federal requirements for Maine's Section 1915(c) home and community-based waiver programs as required by 42 C.F.R. § 441.301(c). The HCBS Global Rule includes requirements for person-centered service planning and for settings in which HCBS waiver services are provided.*

- *29.07-2 (Limits): Changes the limit from $58,168.50 to $84,689.28 for the combined annual cost of Home Support (Remote or Quarter-hour), Community Support, and Shared Living Services. The Department received CMS approval for this change.*

- *29.08-3 (Termination from Participation as a MaineCare Provider): Establishes and clarifies standards for providers who are disenrolling from participating as MaineCare providers. The provision expressly references the requirement in the MaineCare Benefits Manual, Ch. I, Sec. 1 that providers must give written notice to the Office of MaineCare Services of their intent to terminate participation in the MaineCare Program. In addition, this provision requires Section 29 providers to notify all Section 29 Members they serve of the provider's intent to terminate participation in the MaineCare program.*

- *29.10 (Provider Qualifications): Clarifies Provider Qualifications and Requirements for Direct Support Professionals (DSPs) and for Career Planners, Job Coaches, and Employment Specialists delivering Career Planning, Work Support, and Employment Specialist Services, to state that provider agencies may hire DSPs who are seventeen (17) years of age. The minimum age requirement for Career Planners, Job Coaches, and Employment Specialists remains eighteen (18) years of age.*

- *29.10-1 (DSP Qualifications): Requires that all DSPs, regardless of capacity and prior to provision of services to a Member, receive training regarding the Global HCBS Rule. Moreover, within six (6) months of hire and annually thereafter, the*

adopted rule requires DSPs to comply with the Department's regulations: Reportable Events System (14-197 C.M.R. ch. 12) and the Adult Protective Services System (10-149 C.M.R. ch. 1).

- *29.10-9 (Electronic Visit Verification): Requires that providers of Home Support-Quarter Hour services comply with Maine DHHS Electronic Visit Verification (EVV) system standards and requirements, in accordance with the 21st Century Cures Act (P.L. 114-255), Section 12006, as codified in 42 U.S.C. § 1396b(l).*

- *29.10-11 (POCA): Authorizes for the Office of Aging and Disability Services (OADS) to issue written notices of deficiencies in service delivery and requires providers to submit and implement Plans of Corrective Action (POCA) as approved by the Department. Providers have the right to appeal written notices of deficiencies. This POCA process provides increased protections for Members and ensures that providers comply with service requirements, have sufficient clinical and administrative capability to carry out the intent of the service, and have taken steps to assure the safety, quality, and accessibility of the service for Members.*

- *29.11 (Member Appeals): Clarifies that Members have the right to appeal decisions made regarding priority level and waitlist determinations.*

- *29.14, Exceptions from Caps on Services: Establishes an exceptions process which provides that Section 29 Members, and Members applying to receive Section 29 benefits, may request services in excess of otherwise applicable Section 29 monetary and/or unit caps, where necessary to ensure that Section 29 Members receive adequate services and supports in the most integrated setting appropriate to their needs, consistent with the Americans with Disabilities Act (ADA).*

- *29.16 (Appendix I-Shared Living Criteria for Increased Level of Support): Adds a new appendix describing the criteria for an increased level of support if, due to extraordinary medical or behavioral needs, a Member requires Shared Living Services beyond the level of support defined in § 29.05-12.*

- *29.16 Appendix III, Performance Measures: The Department eliminates Appendix III because the Department utilizes data available through the Department of Labor, Person Centered Service Plans, and authorization data as part of the Department's commitment to quality assurance and quality improvement system. Additionally, specific performance measures are either no longer relevant or necessary to measure the performance of specifically listed employment services or have been met.*

- *29.19 (Appendix IV-Additional Requirements for Section 29 Providers of Community Support Services, Employment Specialist Services, and Shared Living): Clarifies the requirements and responsibilities of the Administrative Oversight Agency and the Shared Living Provider for Shared Living Services.*

In conformance with the January 1, 2021, CMS-approved, renewed waiver, and the Department's pending, proposed waiver amendments, this rule also aligns similar

processes, service descriptions, and similar provisions with MaineCare's four other Section 1915(c) waivers (primarily the Section 21 waiver).

As a result of public comments and further review by the Department and the Office of the Attorney General, the adopted rule includes clarifying language for §29.02-12 (E), Services that Support Personal Well-being, §29.04, Person-Centered Service Plan, §29.05-4 Community Support, and §29.05-8, Home Support-Quarter Hour.

Additionally, as a result of public comment, the adopted rule adds a provision allowing providers of Assistive Technology-Assessments to conduct evaluations via telehealth so long as the provider ensures that the assessment via telehealth meets the requirements of the scope of the service.

Further, as a result of public comment, the Department has revised §29.19 Appendix IV, Additional Requirements for Section 29 Providers of Community Support Services, Employment Specialist Services, and Shared Living, replacing the requirement that the Administrative Oversight Agency (AOA) train the Shared Living Provider with a requirement for the AOA to maintain and retain documentation that the Shared Living Provider meets the requirements to deliver Shared Living Services. The Department has also added a provision that Shared Living Providers must comply with training and certification requirements and to provide proof of current trainings to the AOA.

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

Additionally, as a result of review and guidance from the Centers for Medicare and Medicaid Services (CMS), the Department has replaced the term "On Behalf Of" within the rule with
"Services Delivered for the Member (formerly "On Behalf Of")". The Department has revised § 29.18 Appendix III, Additional Guidance for Home Support, Community Support, Work Support, Career Planning, and Employment Specialist Covered Services that are Delivered Directly for the Member (formerly, On Behalf Of Covered Services) by clarifying the billable and non-billable activities that constitute the same.

Finally, the Department anticipates that CMS will approve newly added services with an effective date of March 1, 2024. In the interim, the Department will continue to implement these flexibilities under the Appendix K: Emergency Preparedness and Response authority in accordance with State Medicaid Director (SMD) Letter # 23-004.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-013: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8), 3104
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The fiscal impact of the proposed rule changes is minimal and will be absorbed through the existing budget.*
Principal purpose:	*Pursuant to the Consolidated Appropriations Act 2023 (CAA 2023), Public Law 117-328, Division HH, Title IV § 501, EBT Benefit Fraud Prevention requirements, the Department proposes to amend the SNAP Manual, Section 777-4 to align with the requirements of the CAA 2023. The proposed rule changes will provide clarity on the Department's procedure and timeframes for replacement of SNAP benefits determined to have been stolen through card skimming, card cloning, or similar fraudulent methods. The U.S.D.A. – Food and Nutrition Services approved the Department's Plan for the Replacement of Electronically Stolen EBT Benefits on August 10, 2023, retroactive to October 1, 2022. This rule change would be effective retroactive to October 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.*
Basis Statement:	*Pursuant to the Consolidated Appropriations Act 2023 (CAA 2023), Public Law 117-328, Division HH, Title IV § 501, EBT Benefit Fraud Prevention requirements, the Department adopts changes to the SNAP Manual, Section 777-4 to align with the requirements of the CAA 2023. The adopted rule changes provide clarity on the Department's procedure and timeframes for replacement of SNAP benefits determined to have been stolen through card skimming, card cloning, or similar fraudulent methods. The U.S.D.A. – Food and Nutrition Services approved the Department's Plan for the Replacement of Electronically Stolen EBT Benefits on August 10, 2023, retroactive to October 1, 2022. This rule change is effective retroactive to October 1, 2022. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to SNAP recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.* *In addition, definitions for Card Cloning, Card Skimming, and Phishing are added to Section 999-1.* *The Department determined it necessary to make non-substantial changes to the final rule. The changes provide clarity to PROCEDURES FOR REPLACING BENEFITS STOLEN ELECTRONICALLY. These non-substantial changes include:* • *777-4 (3)(B) replaces must with shall.* • *777-4 (3)(D) removes appropriate and adds if applicable.* • *777-4 (3)(H) is a typo and is corrected to 777-4 (3)(G).* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-018: Chapter 333, Low Cost Drugs for Elderly and Disabled (DEL) - Eligibility	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8), 254-D(4)(B)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department anticipates this rulemaking will cost approximately $414,414 in state dollars in SFY 2024 and $2,616,798 in SFY 2025. In SFY 2026 and each subsequent year, the anticipated cost of this rulemaking is $2,983,920 in state dollars.*
Principal purpose:	*The proposed rule change would remove the asset test, Section 2.1, effective retroactive to January 1, 2024. The proposed rule change is based on a legislative change to 22 M.R.S. § 254-D(4)(B) made by P.L. 2023, ch. 412, Part EEEEE. This rule change is consistent with a recent MaineCare Eligibility Manual proposed rule change which would remove the asset test for all Medicare Savings Plan coverage types. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule change removed the asset test, Section 2.1, effective retroactive to January 1, 2024. The adopted rule change is based on a legislative change to 22 M.R.S. § 254-D(4)(B) made by P.L. 2023, ch. 412, Part EEEEE. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to recipients and applicants.* *The Department determined it necessary to make a non-substantial change to the final rule. Section 2.1, Assets, "Liquid assets are defined in 10-144 CMR Ch. 332 Part 16, MaineCare Eligibility Manual." is removed from the adopted rule as this sentence is irrelevant and unnecessary.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-019: Chapter 242, Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone	
Statutory Authority:	22 M.R.S. § 42(1) and (3-A); 22-A M.R.S. § 205(2); 30-A M.R.S. § 4212 and 4215(2) and (5)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*These proposed rule changes pose no fiscal impact to the Department, counties or municipalities.*
Principal purpose:	*The Department is proposing the repeal of (Ch. 242) at the same time as it is adopting amendments to Maine's Subsurface Wastewater Disposal Rule, 10-144 CMR Ch. 241 (Ch. 241). Within Section 8(B)(1) of Ch. 241, the Department has amended language in Section 8 to align the criteria for seasonal conversion permits to the criteria of first-time systems. The Department's adopting of Ch. 241 allows for all subsurface wastewater disposal regulations to be placed in one rule and avoids outdated conflicting rules under Ch. 242; therefore, the Department is proposing to repeal the stand-alone Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone.* *The Department originally proposed the repeal of Ch. 242 concurrently with the proposing of amendments to Ch. 241. In the rulemaking for Ch. 241, the Department considered it necessary to engage in a second round of Public Comments for Ch. 241. As a result, the rulemaking for Ch. 242 lapsed as the Department did not want to repeal the requirements for Ch. 242 until these requirements were formally merged into an adopted amendment of Ch. 241.*
Basis Statement:	*The Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised rulemaking for the repeal of 10-144 CMR Ch. 242, the Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone, on September 27, 2023, with a 30-day public comment period. The comment period ended on October 27, 2023. The Department received no comments related to the rulemaking.* *The Department is repealing this rule, due to its recent adoption of amendments to Maine's Subsurface Wastewater Disposal Rule at 10-144 CMR Ch. 241 (Chapter 241) which became effective September 23, 2023. Within Section 8(B) of Chapter 241, the Department adopted amended language that aligns the criteria for seasonal conversion permits to the criteria of replacement systems. These amendments to Chapter 241 allow for all subsurface wastewater disposal requirements to be placed within one rule, to avoid confusion with any conflict between this Chapter 242 and the newly amended Chapter 241; therefore, the Department is repealing this stand-alone Chapter 242 - Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone.* *The Department originally proposed the repeal of Ch. 242 concurrently with the proposing of amendments to Ch. 241. In the rulemaking for Ch. 241, the Department, upon the advice of the Office of the Attorney General, advertised to the public a second round of Public Comments for Ch. 241. As a result, the rulemaking for Ch. 242*

	lapsed, due to the Department wanting to wait to finalize Chapter 241 before moving forward with repealing Ch. 242. *The repeal of the Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone, as well as the update to the Subsurface Wastewater Disposal Rule (10-144 CMR Ch. 241), mean that Municipalities, Licensed Plumbing Inspectors, and property owners subject to subsurface wastewater disposal rules, are now able to find all applicable subsurface wastewater disposal system requirements within the same rule. Any requirements for the conversion of seasonal dwellings into a principal dwelling or year-round residence are included with all other subsurface wastewater disposal requirements, which provides clearer understanding, due to the fact that all such conversions would need to meet the criteria of replacement criteria for subsurface wastewater disposal systems.*

10-144 Department of Health and Human Services, Division of Licensing and Certification	
2024-026: Chapter 123, Behavioral Health Organizations Licensing Rule	
Statutory Authority:	5 M.R.S. §§ 2001-2007(A), 22 M.R.S. § 42(1), 22 M.R.S. §§ 1501-1507, 22 M.R.S. §§ 7801-7807, 22 M.R.S. §§ 8001-8005, 22-A M.R.S. § 205(2), 34-B M.R.S. §§ 1001-1953
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The fiscal impact of the fee changes will be minimal since current operational practice is to collect a fee per regulated site each licensing year. These fees will be part of the biennial fee ($250.00) which translates to a provider with 5 locations/modules. The average provider has 5 modules now so increased fees will be minimal from ongoing operations. The smallest provider will see an increase of approximately $50 per licensing cycle. The charging of a fee for adding locations to a current license increases by $25 per unit and there are less than 100 such changes on average per year. This amounts to approximately $2,500 in additional funds each year. The increase from initial fees should be limited to less than $1,000 annually in increase since the number of new providers annually (estimate 20 new providers annually – start with two locations (Approx. fee $75 currently, fee will increase to $125 for the first year. Annual licensing costs are significantly greater than funds received from fees.* *Financial costs of the operational changes to the programs will be minimal since a significant benefit of adding clarity to the numerous rules being condensed will offset the inclusion of new regulatory parameters.*
Principal purpose:	*The Department proposes rulemaking to adopt 10-144 CMR Ch. 123, Behavioral Health Organizations Licensing Rule.* *The Department is proposing to repeal three existing licensing rules and replace them with one single rule. This proposed change will provide a comprehensive one-stop licensing rule for behavioral health programs. The rules proposed for repeal and replacement include community and residential licensing standards for mental health and substance use disorder treatment services, including Licensing of Mental Health Facilities, 14-193 CMR Ch.6; Licensing of Mental Health Facilities, PNMI, 14-193 CMR Ch. 6A; and Regulations for Licensing and Certifying of Substance Abuse Treatment Programs, 14-118 CMR Ch. 5.* *This proposed rule also updates and clarifies language to reflect current practice in application and licensing requirements. Major updates to this rule will:* *Add, update, and remove outdated definitions;* *Add more clarity to the licensing application and renewal process;* *Include a licensing fee schedule for all license types;* *Modify licensing fees, remaining within allowed limits by statute;* *Update the Department's role and responsibility for the enforcement and inspection of licensed organizations, including language that regulated behavioral health organizations must submit to regular and unannounced inspection surveys and complaint investigations to receive and maintain a license;* *Describe sanctions, and include a schedule of fines available to the Department, to address administrative violations;*

	Update policy to address and minimize potential client barriers including: communication needs; eligibility criteria; screening practices; and notices of denial and referral; *Clarify and update requirements for client assessments, crisis plans, service plans and discharge plans to ensure a more client driven process;* *Update the requirements for the composition of the client's service planning team;* *Add requirements for an organization to have a closure policy: when an organization plans to close a service, the Department must be promptly notified and clients need to be referred for appropriate services with minimal disruption;* *Add standards and qualifications necessary for the use of teleservices and distant site practioners to improve client choice and access to medical and behavioral care;* *Add requirements for managing adverse events to maintain services in the event of an emergency;* *Include a risk management section, to reduce the use of restrictive behavioral interventions, grievances and accidents;* *Update and clarify the requirements for a clinical supervisor and clinical supervision;* *Add a section on the use of independent contractors;* *Update and clarify medication management requirements to improve the safety and security of medications, including PRN orders of psychotropic medications; diversion control of schedule II controlled substances; and medication storage, administration and record keeping;* *Update client record management policies required by an organization;* *Add clarity to the requirements of an organization's quality improvement plan to ensure that services governed by this rule are accessible and effective;* *Update organization requirements for budgets and annual financial audits;* *Add requirements for organizations that manage client money, and add clarity to fees charged by the organization to clients served;* *Add requirements for building leases, safety and maintenance;* *Add requirements for assertive community treatment;* *Update requirements for crisis services;* *Add mobile substance use treatment services;* *Add a requirement that a substance use treatment program must maintain a waiting list;* *Add a requirement that a substance use treatment program must have 24-hour a day, phone availability to a physician, physician assistant or nurse;* *Require all organizations providing opioid treatment services to comply with 42 CFR §§ 8.11 through 8.12;* *For residential programs:* *clarify requirements for community involvement and add that when feasible, allow clients to attend religious activities of their choosing;* *include the requirement that clients may have visitors and access to private telephone calls at any time;* *add clarity to resident rights, including the right for a resident to access food and beverages 24-hours per day;* *add clarity to client rights on the use of restraints and aversive conditioning;*

	include standards for a daily census and add standards for maintaining a record of client absences from a residential facility; and *add requirements to enhance client nutrition.*
Basis Statement:	*The Department proposes rulemaking to adopt 10-144 CMR Ch. 123, Behavioral Health Organizations Licensing Rule.* *10-144 CMR Ch. 123 repeals and replaces three former chapters of the Code of Maine Rules: 14-118 CMR Ch. 5, Regulations for Licensing and Certifying of Substance Abuse Treatment Programs; 14-193 CMR Ch. 6, Licensing of Mental Health Facilities; and 14-193 CMR Ch. 6A, Licensing of Mental Health Facilities: Private Non-Medical Institutions. The rules that being repealed are very outdated and do not reflect best practices for the services being delivered under those rules:* • *14-193 CMR Ch. 6, Licensing of Mental Health Facilities was adopted on October 20, 1993, and has not been revised since that date.* • *14-193 CMR Ch. 6A, Licensing of Mental Health Facilities: Private Non-Medical Institutions was adopted on June 201 [sic], 2005, and has not been revised since that date.* • *14-118 CMR Ch. 5, Regulations for Licensing and Certifying of Substance Abuse Treatment Programs has not been revised since February 29, 2008.* *In addition, the Department has included licensure of children's mental health treatment services that are funded by MaineCare, 10-144 CMR Chapter 101, Section 28, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations.* *The Department of Health and Human Services is taking this action for several reasons:* • *The unification of substance use disorder and mental health facility licensing under one rule better reflects the current service delivery system, as many providers offer both types of service, and many service recipients utilize both service types.* • *The new rule adopts standards for residential treatment programs, absent from the rules currently in force, that are equivalent to the standards in place for other licensed residential settings.* • *The new rule clarifies and elaborates on the content of the rules being replaced.* *The rule consolidates requirements for the licensing of mental health and substance use disorder programs and related residential treatment services. Because behavioral health programs often deliver a variety of mental health, substance use disorder, and integrated treatment services provided in diverse settings by an array of qualified professionals, one consolidated licensing rule for behavioral health programs will assist providers who are licensed to provide a variety of services.*

The rule is applicable to community support and integration mental health services, community support and integration substance use disorder services, crisis mental health services, crisis substance use disorder services, outpatient mental health services, outpatient substance use disorder services, residential mental health services for adults, residential substance use disorder services for adults, integrated treatment services, and rehabilitative and community services for children with cognitive impairments and functional limitations funded under 10-144 CMR Ch. 101 of the MaineCare Benefits Manual.
The rule requires organizations to be licensed. License types include a mental health license, substance use disorder license, or an integrated license. The license will indicate which modules or programs within each license type the organization is licensed to provide. The organization will also need to identify the sites and service locations where services may be delivered. Adding modules/programs or sites/service locations to an organization's license will require an additional fee.

Part 1 of the rule includes Sections 1 through Section 22 are the "core standards," designed to apply to all licensees. Of course, there will be provisions that are not applicable to some licensees, for example Section 21 will apply only to licensees that operate a residential program. But unless otherwise indicated, Part 1 is appliable to all licensees. Part 2 includes the program specific standards for mental health programs, substance use disorder treatment programs, and integrated mental health and substance use disorder treatment programs.

A section-by-section summary of significant changes is provided below:

PART ONE: CORE STANDARDS SECTIONS 1 - 21

SECTION 1. DEFINITIONS

- *Clarifies and adds additional definitions as required by the content changes listed below.*

SECTION 2. LICENSING AND CERTIFICATION REQUIREMENTS

- *Licensing requirements: Adds a requirement for notification to other DHHS offices prior to application.*

- *Initial or renewal application for a license: Adds a deadline by which license application must be completed and clarifies requirements for expired licenses.*

- *Documents required with initial application: Adds required supplemental documents to rule, to reflect current process. Adds requirement for a close of business plan, due to frequency of such actions which result in emergency responses by the Department.*

- *Conditional license: Adds a restriction on adding services during the term of a conditional license.*

- *Amended license required when changes occur: extends the notification of the Department from 30 to 90 days prior to changing the location of a provider.*

- *Issued license extends to identified physical sites: Added section to reflect current practice.*

- *National accreditation and deeming Added section to reflect statutory requirements, which will allow accredited organizations to be deemed in compliance with provisions of the licensing rule that are identical, almost identical, or serve an equivalent purpose to the accreditation standards..*

- *Approval for occupancy: Added to include Maine CDC Drinking Water Program recommendations.*

SECTION 3. FEES

- *Revised section to reflect new licensing structure and to incorporate fees schedule from statutes.*

SECTION 4. ENFORCEMENT AND INSPECTIONS

- *Organizational cooperation: Adds additional detail to standardize practices, based on site survey experience, to increase cooperation with Department surveys and investigations.*

- *Informal conference: New section added to create a process parallel to that offered to Nursing Facilities under the State Operations Manual for DLC and the licensee to discuss and potentially resolve certain deficiencies cited in a statement of deficiencies.*

- *Plan of correction: Updated to clarify what constitutes an acceptable plan of correction using Centers for Medicare & Medicaid Services standards as guidance.*

- *Refusal to issue a license: Clarifies Department procedures and the bases for the Department to refuse to issue or renew a license.*

- *Revocation or suspension of a license: Various statutes identify the process for license revocation and suspension, which often require a court order. The rule adheres to those statutory requirements*

- *Operating without a license: enter and inspect: The Department is authorized to enter and inspect an organization that it believes is operating without a license only with the permission of the owner or an administrative warrant from the District Court.*

- *Grounds for intermediate sanctions: Language updated using similar rule as a guidance to clarify the misconduct that may result in imposition of intermediate*

sanctions.

- *Intermediate sanctions: Language updated using similar rule as a guidance to clarify which Department actions constitute intermediate sanctions..*

SECTION 5. COMPLAINT INVESTIGATION

- *Section added to describe existing Department procedures and authority. Provides clarification of existing rules, and mirrors existing Assisted Housing rule provisions. Provides a clearer inventory of provider roles and Department processes.*

SECTION 6. CLIENT RIGHTS

- *Added to and clarified client rights, with consideration of the Rights of Recipients of Mental Health Services. The organization must have a written policy concerning the rights and responsibilities of clients and clients must be notified of these rights. .*

SECTION 7. ELIGIBILITY AND ACCESS TO SERVICES

- *Access to services: Clarification of existing rule- and adds some new requirements for mental health agencies that are already applicable to substance use disorder treatment agencies.*

SECTION 8. COMPREHENSIVE CLIENT ASSESSMENT

- *Client assessment: Added requirement for a client assessment within 30 days of admission, which merges existing rule requirements.*

SECTION 9. CLIENT SERVICE PLAN

- *Personal responsibility and self-determination: Expanded to clarify current rule by identifying ways to involve the client.*

- *Service plan: Extensively revised to clarify existing rule, adopt a whole-person approach, and to enhance client safety.*

- *Crisis plan revisions are based on Department experience in crisis response.*

SECTION 11. GOVERNING AUTHORITY

- *Legal authority to operate: Expanded to clarify existing rule.*

- *Governance: Clarified to enhance provider comprehension of expectations around advisory boards and boards of directors.*

- *Closure policy: Expanded to address inadequacy of current rules in force regarding client protection in the event of an agency closure.*

SECTION 12. PROGRAM ADMINISTRATION

- *Administrator: Added provisions to address current gaps in reporting.*

- *Evidence-based practice: New provision added to assure quality of care.*

- *Teleservices and distant site practitioners: New section added to improve access to services, reflective of current service delivery approaches.*

- *Reporting adverse events: Added to mirror client safety measure adopted under similar rule (see 10-144 CMR Ch. 113.)*

- *Continuity of operation plan: Added based on Department experience. Necessary to assure client safety.*

- *Annual program evaluation: Expansion of current Quality Assurance activities.*

SECTION 13. PERSONNEL

- *Background check: Updated to incorporate current rule and statute regarding the Maine Background Check Center.*

- *Qualifications: Expanded to clarify existing rule provisions.*

- *Job descriptions: Adds requirements for periodic updates to incorporate best practice.*

- *Staffing: Clarified to identify staffing pattern requirements.*

- *Nurse Consultant: Applicability to mental health agencies added (currently applies to Substance Use Treatment agencies.)*

- *Clinical supervisor: Significantly clarifies and expands on current rule.*

SECTION 14. INDEPENDENT CONTRACTORS

- *This is a new section added to reflect the business practices of many current licensees.*

SECTION 15. MEDICATION ADMINISTRATION

- *Many subsections are modeled after existing rule provisions in 10-144 CMR Ch. 113 in order to create consistent standards across similar settings.*

- *Lab testing: New subsection added to include Clinical Laboratory Improvements (CLIA) rule requirements.*

- *Availability of medicine during emergencies: New subsection added to require planning in the event of power outages (based on Division experience.) The emergence of electronic medical records requires backup systems.*

- *Diversion control plan: Currently in 14-118 CMR Ch. 5. Expansion of medication-assisted treatment requires this provision to support best practice.*

SECTION 16. RECORDS MANAGEMENT AND RETENTION

- *Record management policy: New provision added to reflect requirements of the federal Health Information Portability and Accountability Act.*

- *Client access to client's record: Provisions added to reflect requirements of the federal Health Information Portability and Accountability Act.*

- *Client record: Expanded to clarify the content of existing rules.*

SECTION 17. QUALITY IMPROVEMENT

- *Policy: Clarifies existing rule provisions.*

- *Operational plan: Expands and clarifies existing rule provisions and adopts best business practices.*

- *Focus of data collection: Adopts best business practices.*

- *Incident Analysis: adopts best business practices.*

- *Periodic reports to personnel: Added to promote availability of information to stakeholders.*

SECTION 18. FINANCIAL MANAGEMENT

- *Management systems; Expands existing rule provisions in response to ongoing recurrent crises within provider organizations.*

- *Annual financial audit: added to provide flexibility for smaller organizations that may lack the financial resources for a full audit.*

- *Client's money: Added protections for client's funds.*

- *Fees paid by clients: Added provisions for clarification.*

SECTION 19. RISK MANAGEMENT

- *Risk prevention and management practices: New provision based on best business practices.*

- *Annual risk assessment: Added for additional client safety.*

- *Quarterly review: Added provision in response to past history of licensee failures to protect clients.*

SECTION 20. NON-RESIDENTIAL BUILDING STANDARDS

- *Building design: Expanded for clarification.*

- *Local laws and codes: Expanded for clarification.*

- *Building lease: New provision, added for compliance with the Life Safety Code.*

- *Building security: Added to ensure compliance with Section 20 (A).*

SECTION 21. STANDARDS FOR ALL RESIDENTIAL PROGRAMS

- *Program manager: This section has been expanded to clarify the roles and duties of a person responsible for each service delivery site, analogous to an administrator of a nursing or residential care facility.*

- *General Program Requirements: merged existing rules and incorporates elements of Assisted Housing programs.*

- *Disaster, hazard, and evacuation plans: Clarified content of existing rule provisions.*

- *Food service and safety: These provisions are additions designed to mirror the expectations in other licensed residential settings.*

- *Physical plant: This subsection adds provisions to current mental health rule and expands the current provisions in place for substance use disorder programs based on the Division's survey experience with these settings.*

- *Policies for residential programs: New provision added to ensure client safety.*

- *Diabetes management training: These provisions are additions designed to mirror the expectations in other licensed residential settings.*

- *Infection prevention and control: These provisions are additions designed to mirror the expectations in other licensed residential settings that were adopted by emergency rulemaking in response to the global pandemic.*

PART TWO: PROGRAM-SPECIFIC STANDARDS SECTIONS 22 - 24

SECTION 22. MENTAL HEALTH PROGRAMS

- *Personnel: New provision added to clarify existing rule.*

- *Community support services module: Clarifies the services that fall under this module.*

- *Crisis services module: New subsection added to reflect the current system of service provision. This type of service is referred to as "emergency services" in rule in force.*

- *Outpatient services module: Updated to reflect the current system of service provision.*

- *Mental health residential services module: Updated for clarification and to reflect the current system of service provision.*

SECTION 23. SUBSTANCE USE DISORDER TREATMENT PROGRAMS

- *Admission criteria: Subsection adds specificity about criteria and procedures for linkages to other providers, reflecting that clients may have other service needs. Incorporates "ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" by reference.*

- *Personnel: Expansion of current rule to be more specific, based on Division experience with errors related to medication administration.*

- *Community support services module: New subsection added to include services that are required to be licensed by statute that are not currently licensed under the rule in force.*

- *Crisis services module: New subsection added to reflect changes in service delivery modules.*

- *Outpatient services module: Added a new provision to reflect addressing needs identified in the client's assessment; clarified existing rule provision;. amended to incorporate feedback from the Office of Behavioral Health; and amended in consultation with the State opioid treatment authority.*

- *Substance use disorder residential services module: Clarifies rule in force.*

SECTION 24. INTEGRATED MENTAL HEALTH AND SUBSTANCE USE DISORDER TREATMENT PROGRAMS

- *New section added to reflect the structure of the system as many providers offer both mental health and substance use disorder treatment. Allowing this integrated license will streamline the licensing process for many providers.*

14-193 Department of Health and Human Services, Division of Licensing and Certification	
2024-027: Chapter 6, Licensing Mental Health Facilities	
Statutory Authority:	5 M.R.S. §§ 2001-2007(A), 22 M.R.S. § 42(1), 22 M.R.S. §§ 1501-1507, 22 M.R.S. §§ 7801-7807, 22 M.R.S. §§ 8001-8005, 22-A M.R.S. § 205(2), 34-B M.R.S. §§ 1001-1953
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	This rule was repealed.
Principal purpose:	This rule was repealed.
Basis Statement:	This rule was repealed.

14-193 Department of Health and Human Services, Division of Licensing and Certification	
2024-028: Chapter 6A, Licensing Mental Health Facilities (PNMI)	
Statutory Authority:	5 M.R.S. §§ 2001-2007(A), 22 M.R.S. § 42(1), 22 M.R.S. §§ 1501-1507, 22 M.R.S. §§ 7801-7807, 22 M.R.S. §§ 8001-8005, 22-A M.R.S. § 205(2), 34-B M.R.S. §§ 1001-1953
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	This rule was repealed.
Principal purpose:	This rule was repealed.
Basis Statement:	This rule was repealed.

14-118 Department of Health and Human Services, Division of Licensing and Certification	
2024-029: Chapter 5, Regulations for Licensing and Certifying of Substance Abuse Treatment Programs	
Statutory Authority:	5 M.R.S. §§ 2001-2007(A), 22 M.R.S. § 42(1), 22 M.R.S. §§ 1501-1507, 22 M.R.S. §§ 7801-7807, 22 M.R.S. §§ 8001-8005, 22-A M.R.S. § 205(2), 34-B M.R.S. §§ 1001-1953
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	This rule was repealed.
Principal purpose:	This rule was repealed.
Basis Statement:	This rule was repealed.

10-144 Department of Health and Human Services, Division of Licensing and Certification	
2024-081: Chapter 111, Temporary Nurse Agency Registration Rule	
Statutory Authority:	22 M.R.S. §§ 42, 2131, and 2136 - 2139
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The new registration fee and mandated annual reporting requirements will have a minor financial impact on Temporary Nurse Agencies.* *The rulemaking will require funding one new position within the Department for the tracking of registrations, conducting complaint investigations, gathering data, and producing an annual report; at an anticipated cost of $108,698 for Fiscal Year 2023-2024 and $114,331 for Fiscal Year 2024-2025.*
Principal purpose:	*The new routine technical rule is required due to the statutory changes in 22 MRS §2131 enacted by PL 2023 Ch. 434.*
Basis Statement:	*This new rule operationalizes the changes made to 22 MRS § 2313 under PL 2023 Ch 434.* *The rule reflects the following requirements of statute:* • *Increases the registration fee;* • *Places requirements for annual reporting on registered Temporary Nurse Agencies (TNAs);* • *Authorizes the Department to issue financial penalties to TNAs in certain circumstances;* • *Places record-keeping and access to records requirements on TNAs; and* • *Establishes employee quality assurance measures for TNAs.* *The proposed routine technical rule also incorporates the statutory restrictions on predatory hiring practices and makes violation of 22 MRS § 2131 a violation of the Maine Unfair Trade Practices Act.* *In addition to incorporating these statutory requirements and including the deadlines for submission of the annual reports, the rule explains what types of practices by agencies are covered under the rule.* *TNAs will use the Maine Background Check Center prior to hiring, employing or placing an individual in Maine to adhere to statutory requirements and to protect the public safety.*

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-087: Chapter 101, MaineCare Benefits Manual, Ch. II, § 94, Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT)	
Statutory Authority:	22 M.R.S. §§ 42, 3173
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department anticipates that this rulemaking will cost approximately $2,018,906 in SFY 2024, which includes $328,608 in state dollars and $1,690,298 in federal dollars; and $1,345,937 in SFY 2025, which includes $30,149 in state dollars and $1,315,788 in federal dollars.*
Principal purpose:	*In order to codify telehealth visits allowable during the Public Health Emergency, to add the service of immunization counseling, and to add eligibility for MaineCare to pregnant individuals of any age who but for their immigration status would be eligible for MaineCare, this proposed rulemaking seeks to make the following changes:* *Addition of well-child visit: In response to the COVID-19 pandemic, on May 13, 2020, the Department adopted on an emergency basis MaineCare Benefits Manual, Ch. I, Section 5, COVID-19 Public Health Emergency Services, which allowed members to receive a second well-child visit when an initial visit was completed via telehealth. This proposed rule codifies that extra visit allowed during the public health emergency in Section 94.06-1.* *Immunizations: The proposed rule adds coverage for immunization counseling in Section 94.04-4.* *Eligibility: In Section 94.02-02, the proposed rule adds eligibility for EPSDT services. In accordance with the MaineCare Eligibility Manual, 10-144 Ch. 332 Part 3, Section 2.3, III, Coverage for Pregnant Individuals for the Health of Unborn Children, a pregnant individual of any age who is eligible for Medicaid but for noncitizen status and is covered under MaineCare's Children's Health Insurance Program (CHIP) is eligible for the services described in this Section.* *Changes to the rule also include minor technical changes such as replacing the outdated Bright Futures periodicity schedule with the website address for the most updated schedule, instructing providers to use the EP modifier when billing, and replacing a telephone number with the name of the office.*
Basis Statement:	*The Department of Health and Human Services (Department) finally adopts the rule changes in 10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter II, Section 94, Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT).* *This adopted rulemaking makes the following changes:* • *Addition of well-child visit: In response to the COVID-19 pandemic, on May 13, 2020, the Department adopted on an emergency basis MaineCare Benefits Manual, Ch. I, Section 5, COVID-19 Public Health Emergency Services, which*

allowed members to receive a second well-child visit when an initial visit was completed via telehealth. This adopted rule permanently adds that extra visit as a new service in Section 94.06-1 to expand access to services.

- *Immunizations: The adopted rule adds coverage for immunization counseling in Section 94.04-4 in response to the Center for Medicare & Medicaid Services State Health Official letter #22-002.*

- *Bright Futures Periodicity Schedule: The adopted rule deletes Appendix I – Recommendations for Preventive Pediatric Health Care Committee on Practice and Ambulatory Medicine. After conferring with the Office of the Attorney General, the adopted rule provides that MaineCare has adopted the 2022 4th edition of the American Academy of Pediatrics Bright Futures Recommendations for Preventive Pediatric Health Care (Bright Futures Periodicity Schedule) and incorporates it by reference in the rule. The Bright Futures Periodicity Schedule is available online at the American Academy of Pediatrics website and upon request from the Office of MaineCare Services at https://www.maine.gov/dhhs/oms and a copy of such was filed with the Secretary of State's office with this rulemaking, in accord with 5 M.R.S. 8056(B).*

Section 94.02-2 (Eligibility for Services): The Department has decided to not adopt the proposed provision which would have added a certain group of pregnant individuals as being eligible for EPSDT services, after conferring with the Office of the Attorney General. That group of pregnant individuals, eligible under what is also known as the "Unborn Child Option", is eligible for services under the Maine CHIP program. See 67 Fed. Reg. 61974 (Oct. 2, 2002)(42 C.F.R. Sec. 457.10, amending the definition of "child"). Maine offers medical services to this group under its CHIP program, see MaineCare Eligibility Manual, 10-144 CMR Ch. 332, Part 3, Section 2.3(III)(Coverage for Pregnant Individuals for the Health of Unborn Children), including EPSDT-like services.

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-104: Chapter 101, MaineCare Benefits Manual, Ch. III, § 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder	
Statutory Authority:	22 M.R.S. §§ 42, 42(8), 3173, 3173-J, and 7401 to 7404; Resolves 2023, ch. 133
Type:	Major Substantive
Emergency?:	No
Fiscal impact:	*The Department anticipates that this rulemaking will cost approximately $2,600,395.00 in SFY 2023 ($6,166,299.00 in SFY 2024), which includes $907,009.00 ($2,373,827) in state dollars and $1,693,386.00 ($3,792,472) in federal dollars.*
Principal purpose:	*The Department is proposing to make the following changes to this major substantive rule:* *The Department is adding new services which will be reimbursed pursuant to this rule:* • *Home Support - Quarter Hour (Self-Directed)* • *Shared Living - One member, Increased level of support* • *Shared Living - Two members, Increased level of support* • *Community Support - Community Only - Individual* • *Community Support - Community Only - Group* • *Community Support - Community Only - Individual (Self-Directed)* • *Home Accessibility Adaptations (Self-Directed)* • *Home Accessibility Adaptations Repairs (Self-Directed)* • *Assistive Technology - (Monitoring feature/device, stand alone or integrated, any type, includes all accessories, components and electronics, not otherwise classified) (Self-Directed)* • *Financial Management Service* • *Supports Brokerage* • *Individual Goods and Services* *Provision of these services was originally implemented through the Appendix K: Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by CMS but was not added to the Ch. II, Sec. 29 rule at that time. Appendix K expires on November 11, 2023, and the Department is concurrently going through APA rulemaking for Ch. II, Section 29, to add these services to that rule. The Ch. II, Section 29 rule is a routine technical rule and is being proposed separately in anticipation of its being legally effective on or before November 12, 2023. The Department is proposing a retroactive application date of November 12, 2023, for the rates for the new services in this Chapter III rulemaking, so that both the new services and their rates share the same legal effective date. This retroactive application is authorized by 22 M.R.S. 42(8), as having the retroactive rates for the new services will benefit, and does not harm MaineCare members or providers.* *In accordance with 22 M.R.S. §7402, the Department proposes to implement annual rate adjustments every January 1st. Specifically, Section 29 services that have standard unit rates and that did not receive a rate adjustment within the prior twelve months will receive an annual increase equal to the annual increase in the Consumer*

	Price Index for Urban Wage Earners and Clerical Workers (CPI-W), for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency. This increase will ensure that rates are sufficient to allow reimbursement for services provided by essential support workers to equal to at least 125% of the minimum wage established in 26 M.R.S. Section 664. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 M.R.S. § 7401. The Department proposes that this annual rate adjustment have a retroactive application date of January 1, 2024. This retroactive application is authorized by 22 M.R.S. Sec. 42(8), as this benefits, and does not harm, any MaineCare member or provider. *As authorized by 22 M.R.S. §3173-J, the Department proposes to remove reimbursement rates from the rule. The Department proposes that all Section 29 reimbursement rates will now be solely listed on the MaineCare Provider Fee Schedule, which is posted on the Department's website.* *The Department intends to seek permanent approval from the Centers for Medicare & Medicaid Services (CMS) for the added services and for the increased reimbursement rates.* *Pursuant to 5 M.R.S. Sections 8071 and 8072, the Department expects that the Commissioner will provisionally adopt this rule after the public hearing and responses to public comments, and then submit the rule to the Legislature for approval. This rule will have legal effect only after review by the Legislature followed by final adoption by the Commissioner.*
Basis Statement:	*The Department is finally adopting the following changes to this major substantive rule:* *The Department has added new services, effective March 1, 2024, which will be reimbursed pursuant to this rule:* • *Home Support - Quarter Hour (Self-Directed)* • *Shared Living – Two Members served* • *Shared Living - One Member, Increased level of support* • *Shared Living - Two Members, Increased level of support* • *Home Accessibility Adaptations (Self-Directed)* • *Home Accessibility Adaptations Repairs (Self-Directed)* • *Assistive Technology – Devices (Self-Directed)* • *Assistive Technology – Transmission (Self-Directed)* • *Community Support - Community Only – Individual (Self-Directed)* • *Community Support - Community Only - Individual (Provider-Managed)* • *Community Support - Community Only – Group* • *Financial Management Services (Self-Directed)* • *Supports Brokerage (Self-Directed)* • *Individual Goods and Services (Self-Directed)* *Provision of these services was originally implemented through the Appendix K:*

Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by the Centers for Medicare & Medicaid Services (CMS) but was not added to MBM Chapter II, Section 29 at that time. The Department has permanently added these services to the Chapter II, Section 29 rule, when it adopted the rule amendment, which was legally effective on January 24, 2024. The Department received approval from CMS for the added services and for the increased reimbursement rates, in the Section 29 § 1915(c) home and community-based services waiver. MBM Chapter II, Section 29 had a prospective legal application date of March 1, 2024, for the new services.

The reimbursement provisions in this rule, for the new services listed above, have a retroactive effective date of March 1, 2024, while the annual cost of living increase provision is effective retroactive to January 1, 2024. Other changes in Chapter III, Section 29 are effective upon final adoption of this rule. As a result, both the new services and provisions for their reimbursement share the same legal effective date. Retroactive application, authorized by 22 M.R.S. § 42(8), benefits and does not harm MaineCare Members or providers.

The Department received CMS approval of provisions for reimbursing the newly added services in this rule with an effective date of March 1, 2024.

In accordance with 22 M.R.S. §§ 7402 and 3173-J, the Department implements annual rate adjustments every January 1st. Specifically, Section 29 services that have standard unit rates and that did not receive a rate adjustment within the prior twelve months will receive an annual adjustment equal to the annual increase in the Maine minimum wage, in accordance with 26 M.R.S. § 664(1).

The rule language provides that rates are sufficient to allow reimbursement for services provided by essential support workers to equal to at least 125% of the minimum wage established in 26 M.R.S. § 664. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 M.R.S. § 7401. This annual rate adjustment is effective retroactive to January 1, 2024. This retroactive application is authorized by 22 M.R.S. § 42(8), as this benefits and does not harm any MaineCare member or provider.

After this rule was approved by the Legislature, it was brought to the attention of the Department that the precise statutory directive in 22 M.R.S. Sec. 7402(1), was that the Department needed to ensure that the COLA increase would be sufficient to ensure that the labor components of the reimbursement rates (not the entire reimbursement rate) for essential support workers equaled at least 125% of the minimum wage established in 26 M.R.S. Sec. 664. After conferring with the Office of the Attorney General, the Department determined it would not make a change to the rule language, but rather inserted a "NOTE" into the rule. The Department will enforce the precise statutory directive in 22 M.R.S. Sec. 7402(1).

	The Department removed reimbursement rates from the rule in accordance with 22 M.R.S. § 3173-J. All Section 29 reimbursement rates are now solely listed on the MaineCare Provider Fee Schedule, which is posted on the Department's website. *The Maine State Legislature authorized final adoption of this Ch. III major substantive rule. Resolves 2023, ch. 133 was approved by Governor Mills on March 6, 2024. The final adopted rule makes the permanent changes to this rule as required by the Maine State Legislature. The Resolve contained an emergency clause, so that the legislation took effect when approved, on March 6, 2024. Pursuant to the Maine Administrative Procedure Act, this final major substantive rule shall become effective thirty days after filing with the Secretary of State's Office. 5 M.R.S. §8072(8).*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-117: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rule	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3104(13)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*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.* *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.*
Principal purpose:	*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://aspe.hhs.gov/poverty-guidelines on January 17. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 89:11 (January, 17, 2024) pages. 2961-2963, https://www.govinfo.gov/content/pkg/FR-2024-01-17/pdf/2024-00796.pdf. The Department proposes to incorporate these figures effective retroactive to January 11, 2024. 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. The changes to Section 999-3 Chart 4 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) requires that FPL tests are updated each year, effective October 1st. The U.S. Department of Health and Human Services provided the updated Federal Poverty Guidelines on January 17, 2024. These figures are included in the figures updated each federal fiscal year per 7 C.F.R. § 273.9(a)(4). The Department proposes to incorporate these figures effective October 1, 2024. Incorporating these changes to Section 999-3 Chart 1, Chart 2, and Chart 3 will make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households and reduce rulemaking effort and improve efficiency.*
Basis Statement:	*The adopted rule make the following changes:* *1) Federal Poverty Level: 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://aspe.hhs.gov/poverty-guidelines on January 17. See also, Annual Update of the HHS Poverty Guidelines, Federal Register 89:11 (January, 17, 2024) pages. 2961-2963, https://www.govinfo.gov/content/pkg/FR-2024-01-17/pdf/2024-00796.pdf. The adopted rule effectuates these figures retroactive to January 11, 2024. 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. The changes to Section 999-3 Chart 4 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) requires that FPL tests are updated each year, effective October 1st. The U.S. Department of Health and Human Services provided the updated Federal Poverty Guidelines on January 17, 2024. These figures are included in the figures updated each federal fiscal year per 7 C.F.R. § 273.9(a)(4). The adopted rule effectuates these figures October 1, 2024. Changes to Section 999-3 Chart 1, Chart 2, and Chart 3 will make SNAP benefits and the related SNAP Employment and Training (E&T) services available to more Maine households and reduce rulemaking effort and improve efficiency.

2) SNAP Utility Allowances:The Department determined it necessary to make a non-substantial change to Chart 8 to correct a clerical error that occurred with SNAP Rule #231 as the adopted redline rule pages differed from the clean adopted rule pages. SNAP Rule #231 went through the Maine Administrative Procedures Act rulemaking process pursuant to 5 M.R.S. §§ 8051-8064. SNAP Rule #231 was noticed correctly pursuant to 5 M.R.S. § 8053 on October 4, 2023 and the comment deadline ran through November 6, 2023. No comments were received. SNAP Rule #231 was adopted by the Commissioner on November 28, 2023, filed with the Secretary of State on November 28, 2023, and became effective on December 3, 2023. The rule package filed with the Secretary of State had the correct red lined rule, which correctly showed the Commissioner's adopted changes. Unfortunately, the "clean" rule filed with the Secretary of State did not contain the Commissioner's adopted changes to the rule. The Office of the Attorney General provided guidance that the Department had adopted the rule with changes, and it was a clerical error that the rule was not posted on the Secretary of State website. To correct the clerical mistake in SNAP Rule #231, this adopted rule implements the Full Standard Utility Allowance (FSUA), Non-Heat Standard Utility Allowance (NHUA) and Phone Standard Utility Allowance (PHUA) figures listed in Chart 8, for FFY 2024 consistent with the adopted SNAP Rule #231 which was effective December 3, 2023.

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

10-144 Department of Health and Human Services, Office for Family Independence	
2024-118: Chapter 609, Supplemental Nutrition Assistance Program – Employment and Training (SNAP E&T) Rule	
Statutory Authority:	22 M.R.S. § 42(1) and (8)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The transportation reimbursement is limited to $50 per week, unless otherwise approved by the Department. The proposed rule change will have no financial impact on the amount of SNAP benefits issued.*
Principal purpose:	*The proposed rule would update Section 8(I) Support Service Limits – Mileage Reimbursement to be consistent with the rate afforded to those covered under the Maine Service Employees Association (MSEA) contract. The proposed rule change would refer readers to the State of Maine rate found on the DHHS, Department of Administrative and Financial Services, Office of State Controller at https://www.maine.gov/osc/travel/mileage-other-info. In addition, the proposed rule would add DHHS, Divisions of Contract Management and Audit requirements for distribution of gift cards when E&T Participant Reimbursements are issued.* *The proposed rule change would be effective retroactive to January 1, 2024. 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 Section 8(I) Support Service Limits – Mileage Reimbursement to align with the rate afforded to those covered under the Maine Service Employees Association (MSEA) contract. The adopted rule refers readers to the State of Maine rate found on the Department of Administrative and Financial Services, Office of State Controller at https://www.maine.gov/osc/travel/mileage-other-info. In addition, the adopted rule adds DHHS, Divisions of Contract Management and Audit requirements for distribution of gift cards when E&T Participant Reimbursements are issued.* *For clarification, the Fact Sheet filed with the State of Maine's Secretary of State's Office indicated an effective retroactive date of January 1, 2024, which was an error and was inconsistent with the proposed rule which stated March 1, 2024. The adopted rule change is consistent with the proposed rule and is effective retroactive to March 1, 2024. 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 correct two typographical errors in the third paragraph of Section 8. The sentence reads "Providers must follow their approved policies and procedures which includes abiding by all prior authorizations and Participant Reimbursement caps in their contract in issuing gift cards for the purpose of Participant Reimbursements."* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-119: Chapter 330, Higher Opportunity for Pathways to Employment (HOPE) Program Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3790-A(6)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The HOPE Program limits total mileage reimbursement at one hundred forty dollars ($140) weekly for transportation necessary for Participants to engage in Training or Education activities or a combination of Training or Education and employment activities. This rule does not change that weekly limit. The proposed rule change will have no financial impact on the amount of HOPE benefits issued.*
Principal purpose:	*The proposed rule change would update Section 4(B)(3) – Transportation to be consistent with the rate afforded to those covered under the Maine Service Employees Association (MSEA) contract. The proposed rule change would refer readers to the MSEA rate found at https://www.maine.gov/osc/travel/mileage-other-info.* *The proposed rule change would be effective retroactive to March 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to HOPE recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.*
Basis Statement:	*The adopted rule updates Section 4(B)(3) – Transportation to align with the rate afforded to those covered under the Maine Service Employees Association (MSEA) contract. The adopted rule refers readers to the State of Maine rate found on the Department of Administrative and Financial Services, Office of State Controller at https://www.maine.gov/osc/travel/mileage-other-info. The Department determined it necessary to make a non-substantive change to provide clarity to the final rule. Section 4(3) is updated to read "Effective March 1, 2024, mileage will be paid at the State of Maine mileage reimbursement rate set by the Department of Administrative and Financial Services Office of the State Controller found at https://www.maine.gov/osc/travel/mileage-other-info for the most direct route up to the weekly limit."* *The adopted rule change is effective retroactive to March 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update provides a benefit to HOPE recipients or beneficiaries and does not adversely impact applicants, participants, beneficiaries, or providers.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-127: Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and 8; 3174-G(1); 3174-FFF; and 3174-LLL
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department anticipates this rulemaking will cost approximately $733,726 in SFY 2024, which includes $194,969 in state dollars and $538,757 in federal dollars, and $4,255,259 in SFY 2025, which includes $1,133,592 in state dollars and $3,121,649 in federal dollars. In SFY 2026 and each subsequent year, the anticipated cost of this rulemaking is $4,827,612, which includes $1,286,859 in state dollars and $3,540,753 in federal dollars.*
Principal purpose:	*In addition, the Department submitted and received approval from the Center for Medicaid and CHIP Services for a CHIP State Plan Amendment to establish a Health Services Initiative (HSI) to provide comprehensive coverage during the 12-month postpartum period for individuals whose newborns had been eligible as targeted low-income children under the from-conception-to-end-of-pregnancy (FCEP) option. The benefits provided during this postpartum period are identical to the benefits provided to pregnant individuals enrolled in MaineCare. The Department's recently approved SPA is consistent with Social Security Act § 2105(a)(1)(D)(ii) and 42 C.F.R. § 457.10. The proposed rule changes would increase access to health insurance coverage.* *The Department proposes to amend Part 2, Section 1, Cub Care, to "This program provides coverage for children under the age of 19 within certain income limits and different eligibility rules than Medicaid."* *Part 3, Section 4.2.1 and Section 4.3 are changed to allow Transitional MaineCare (TM) coverage to begin the month after the individual becomes ineligible for MAGI coverage. In addition, the Department proposes to change the examples in these sections to show that the 12 months of TM coverage begins the month after the MAGI coverage closes due to the report of increased earnings or increased alimony.* *The Department proposes to change pregnant woman to pregnant individual in Part 3, Section 2.2(II) and Part 3, Section 4.1.1(IV).* *The Department proposes to amend Part 2, Section 13.1(III) to include "Effective December 1, 2023, pregnant individuals who are found eligible for Children's Health Insurance Program (CHIP), and enrolled in CHIP while pregnant, under Part 3, Section 2.3(III) are continuously eligible for 12 months beyond the date the pregnancy ends."* *Part 3, Section 2.3(III) would be updated to "Effective December 1, 2023, pregnant individuals who are found eligible for the Children's Health Insurance Program (CHIP), and enrolled in CHIP while pregnant, eligibility from conception to end of pregnancy extends 12 months beyond the month in which the pregnancy ends, regardless of any subsequent changes in household income." In addition, the Department proposes to change the countable income section to state: "Countable*

	income is equal to or less than 208% FPL." *Part 8, Section 4 would remove the asset test for all Medicare Savings Plan coverage types effective retroactive to January 1, 2024.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule removes the asset test for the Medicare Savings Program (MSP) based on a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412.* *In addition, the Department submitted and received approval from the Center for Medicaid and CHIP Services for a CHIP State Plan Amendment to establish a Health Services Initiative (HSI) to provide comprehensive coverage during the 12-month postpartum period for individuals whose newborns had been eligible as targeted low-income children under the from-conception-to-end-of-pregnancy (FCEP) option. The benefits provided during this postpartum period are identical to the benefits provided to pregnant individuals enrolled in MaineCare. The Department's recently approved SPA is consistent with Social Security Act § 2105(a)(1)(D)(ii) and 42 C.F.R. § 457.10. The adopted rule changes increase access to health insurance coverage.* *The adopted rule amends Part 2, Section 1, Cub Care, to "This program provides coverage for children under the age of 19 within certain income limits and different eligibility rules than Medicaid."* *Part 3, Section 4.2.1 and Section 4.3 are changed to allow Transitional MaineCare (TM) coverage to begin the month after the individual becomes ineligible for MAGI coverage. In addition, the Department proposes to change the examples in these sections to show that the 12 months of TM coverage begins the month after the MAGI coverage closes due to the report of increased earnings or increased alimony.* *The adopted rule updates Part 3, Section 2.2(II) and Part 3, Section 4.1.1(IV) with pregnant individual replacing pregnant woman.* *The adopted rule amends Part 2, Section 13.1(III) to include "Effective December 1, 2023, pregnant individuals who are found eligible for Children's Health Insurance Program (CHIP), and enrolled in CHIP while pregnant, under Part 3, Section 2.3(III) are continuously eligible for 12 months beyond the date the pregnancy ends."* *Part 3, Section 2.3(III) is updated to "Effective December 1, 2023, pregnant individuals who are found eligible for the Children's Health Insurance Program (CHIP), and enrolled in CHIP while pregnant, eligibility from conception to end of pregnancy extends 12 months beyond the month in which the pregnancy ends, regardless of any subsequent changes in household income." In addition, the adopted rule updates the countable income section to state: "Countable income is equal to or less than 208% FPL."* *Part 8, Section 4 removes the asset test for all Medicare Savings Plan coverage types*

	effective retroactive to January 1, 2024. *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.* *The Department determined it necessary to make non-substantial changes to the final rule to align the MaineCare Eligibility Manual with legislative changes to 22 M.R.S. §§ 2127 (2 & 6), 3173-K, and 3174-B(3), 3174-G(1B),(D &E), 3174-T, 3174-U, 3174-X(A), 3174-BB(1), 3174-NNN and 24 M.R.S. § 2332-A(2), 24-A MRSA §§ 2844(2) and 2849-B (3, C-1) made by P.L. 2024, Ch. 597, An Act to Correct Language Related to Medicaid Coverage for Children. Throughout the open Parts of this rule, CHIP replaces Cub Care. The final rule is consistent in substance with the rule that was proposed.* *An additional non-substantial change was made to Part 2, Section 13.1(II) "It does not apply to those enrolled in Katie Beckett or those receiving coverage under Transitional MaineCare." The adopted rule removed "enrolled in Katie Beckett or those" as individuals enrolled in Katie Beckett receive 12 months of continuous coverage consistent with Section 1902(e)(12) of the Act and 42 C.F.R. § 435.225. Further, Part 3, Section 2.3(III) removed "prenatal care and pregnancy related." Covered services are detailed in 10-144 C.M.R. Ch. 101, § 106-3(B).* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-132: Chapter 269, Rules Governing Self-Contained Breath Alcohol Testing Equipment	
Statutory Authority:	29-A M.R.S. § 2524(6)
Type:	Routine Technical
Emergency?:	Yes
Fiscal impact:	*None anticipated*
Principal purpose:	*The Department is adopting amendments to this rule to allow for the use of the new breath testing instruments that use a dry gas standard, effective immediately, ensuring new instruments qualify under the rule to be admissible in court for prosecuting Maine's criminal OUI cases. This rule aligns with industry standards (National Highway Traffic Safety Administration ("NHTSA") and National Institute of Standards and Technology ("NIST")).*
Basis Statement:	*The Department of Health and Human Services Maine Center for Disease Control and Prevention ("Department") is adopting, on an emergency basis, partial amendments to 10-144 CMR Chapter 269, Maine's Self-Contained Breath Alcohol Testing Equipment Rule. Adopted amendments update breath testing instruments to allow for the use of a dry gas standard, keeping current with industry standards, (National Highway Traffic Safety Administration ("NHTSA") and National Institute of Standards and Technology ("NIST")). The dry gas method uses an alcohol gas mixture in a sealed pressurized tank or cylinder and an approved gauge. Such a method requires very little maintenance, is more stable, and is less sensitive to temperature than wet bath standards.* *Emergency Justification:* *The dry gas standard for breath alcohol testing is currently being used in the field to perform accuracy checks and calibration adjustments on most evidential breath alcohol testing instruments. Maine Criminal Justice Academy's 2023 Breath Testing Device Operation and Certification Student Manual introduced dry gas standard as a replacement of the wet bath simulator. There are approximately 8,000 breath tests performed each year at law enforcement agencies throughout Maine. These new instruments need to be added to the rule in order for the results they generate to be admissible in court. Without this dry gas standard addition, legal challenges are likely imminent.* *Records generated by Department personnel are critical to establishing a foundation for admissibility of breath test evidence. Due to the anticipated legal challenges for the cases coming up in Maine's courts, the amended rule is implemented on an emergency basis to ensure the potential admissibility of the current model specifications for calibrating units, reducing future challenges of forensic breath alcohol evidence in the prosecution of criminal OUI cases.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-133: Chapter 201, Health Inspection Program Administration Rule	
Statutory Authority:	22 M.R.S. §§ 2491, 2496 and 1551-A; 32 M.R.S. §§ 1242, 4251, 4313 and 4326
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*In 2010-2011, HIP worked with its stakeholders on a four-year graduated fee schedule based on the size of the establishment. Municipal license fees were not increased at that time, nor have they been increased for the previous 18 years. HIP is now proposing to establish a $100 license fee, an increase of $40. PL 125 became effective October 19, 2022, which allows the Department to charge $100 for establishments located in delegated municipalities which currently include Portland, South Portland and Lewiston 22 MRS §2494. There are approximately 868 active municipal licenses, which should result in a revenue increase of $34,720.*
Principal purpose:	*The Department's Health Inspection Program is proposing changes to its rule in order to clarify requirements that are consistent with recent legislative changes to 22 MRS § 2491, as well as reflect improvements in its regulatory oversight of eating establishments, lodging places, campgrounds, recreational and sporting camps, youth camps, public pools and spas, as well as body artists. The Department is proposing to increase licensing fees for delegated municipalities as well as increase administrative fine amounts for non-compliant licensees, to more accurately cover the work performed by the Health Inspection Program, in performing this work. The Department is also proposing to rename this rule from Administration and Enforcement of Establishments Licensed by the Health Inspection Program Rule to the Health Inspection Program Administration Rule.*
Basis Statement:	*The Maine Department of Health and Human Services (Department) proposed rulemaking changes to partially amend its Rules Relating to the Administration and Enforcement of Establishments Regulated by the Health Inspection Program on December 27, 2023. The Department held a public hearing on the proposed rule,(renamed Health Inspection Administration Rule) on January 8, 2024. Written comments were accepted by the Department through January 28, 2024.* *This Health Inspection Administration Rule is administered by the Department's Maine CDC Health Inspection Program, for the licensing and the regulation of establishments governed by 22 MRS Chapter 562, which authorizes the Department to license eating establishments, lodging places, campgrounds, youth camps, sporting/recreational camps, and public pools and spas. The Department amended this rule by adding new definitions and sections, clarifying rule language, rearranging existing sections, and updating formatting elements, to align with Maine CDC rulemaking conventions.* *Additionally, the Department clarified the requirements for a Certified Food Protection Managers' proof of certification and added that a pest infestation will now require an establishment to hire a CFPM.* *A new requirement was added to application and licensing for the underpayment, or the return of payment by a license applicant due to insufficient funds. Youth camp applicants must now include a site plan as part of a license application. Additionally,*

a new updated license application must be submitted for any new construction or extensive renovation at the youth camp. For Campground licenses and event/temporary camping licenses, the amended rule adds the requirement for a license when a commercial property receives compensation for five (5) or more tents or recreational vehicles. The Department also clarified when a campground or event/temporary camping license is required.

This rule change clarified that those licensed by the Health Inspection Program are also responsible for complying with all other applicable rules and statutes. This clarification mirrors language already in statute, which states that the issuance of a license does not provide exemption from other state or local laws, ordinances or rules or any other provision of law, 22 MRS § 2495. The Department also updated an application requirement if alcohol is served on the premises, so that a copy of the applicant's liquor license must be included with an application for an eating and lodging license. Additionally, the Department clarified in the amended rule that Bed and Breakfasts (B&B) may only serve alcoholic beverages to its guests.

Under fees, the Department added a license category: Eating Place – Mobile Base Kitchen, to the License Fee Schedule that carries a $100 licensing fee. Applicants and licensees within municipalities with delegated authority are now required to pay $40 more for license fees, an increase from $60 to $100, based on recent public law (October 19, 2022, PL 2021, ch.125, Section 12), which amended 22 MRS § 2494 (2). The Department's Health Inspection Program currently licenses approximately 868 active municipal establishments, resulting in a projected revenue increase of $34,720.

The Department clarified language in the rule regarding inspections for licensed establishments, including the Department's right of entry as well as inspection intervals. This adopted rule also shortens the correction period for non-critical violations from 90 days to 30 days.

The Department removed the allowance for any entity other than the Department to conduct youth camp inspections, to increase protection of the health and safety of campers. Additionally, the Department clarified that a new license application is required upon a change in member ownership of an LLC. The Department added a section regarding detained/embargoed goods to ensure that the Department's authority under 22 MRS § 2503 is enforceable in rule.

The Department also clarified its authority to temporarily suspend a license of any non-compliant establishment. Such establishments may now be subject to higher administrative fines, to increase deterrence of continued or increased violations. All administrative fines may be avoided by remaining in compliance or returning to compliance by working with the Department within the specified timeframe. The Department also updated penalty schedules for rule violations that include but are not limited to operating without a license, operating during a temporary suspension, repeated violations, and failing to hire a Food Safety Consultant.

In the amended adopted rule, the Department has added two new decisions to the list of actions subject to appeal. They include the Department's voiding of an

	erroneously issued license and the Department's determination that a variance was violated. The rule also includes a new section describing the Department's process for addressing any licenses issued in error.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-135: Chapter 331, Public Assistance Manual (TANF)	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3762(3)(A) and (8)(C); 3763(1) and (1-A); 3769-A; 3769-C(1)(D); and 3786; P.L. 2021, ch. 97, §§ 1 and 2
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The increased benefit amounts will result in an anticipated additional expenditure of $4,715,653 per year from the Federal TANF Block Grant for federally funded benefits and $449,568 per year from in state General Funds for state funded benefits. These expenditures will primarily be realized as income for Maine businesses where they are spent.*
Principal purpose:	*The proposed rulemaking seeks to clarify program requirements in Chapters I, II, IV and V for applicants and the Department as they relate to non-citizen eligibility. These requirements are consistent with 42 U.S.C. § 602 and 45 C.F.R. § 260. Proposed Asset limit changes in Chapter III are consistent with P.L. 2023 Ch. 366, An Act to Allow Maine Families to Increase Their Savings by Changing the Asset Limits for Eligibility for the Temporary Assistance for Needy Families Program. Throughout the proposed rule's affected sections "Noncitizens" replaces "aliens."* *This rulemaking proposes additions to the Table of Contents to provide ease in locating updated language in the affected sections of the rule.* *The definition of "Elderly" has been updated in the Introductions and General Definitions consistent with 22 M.R.S. § 3762(3)(B)(2)(a). The definition of Federal Poverty Level (FPL) includes reference to periodic updates in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).* *This rulemaking proposes Chapter I updates to the hardship extension categories and eligibility criteria for clarity and consistency, including:* • *Consistent with 20 C.F.R. § 404.1505 incapacity would be replaced with impairment in Ch. I (J)(3)(g)(ii)(a)(2)(a) and (b) and Ch. V(A)(1)(a)(ii);* • *(J)(3)(g)(ii)(a)(2)(a) and (b): Disability is defined consistent with that of the Social Security Administration;* • *(J)(3)(g)(ii)(4): Participation in a Training or Education Program proposes to remove the requirement that an individual is only eligible for this extension if they are participating in a training or education program "in the 60th month of receipt of TANF/PaS". J(4)(a) through (d) are removed as these are identified elsewhere (10-144 C.M.R. Ch. 60, ASPIRE-TANF Program Rules, Section (3)(IV)(A)(3)(a));* • *(J)(3)(g)(ii)(5): Working Families proposes to remove the requirement that an individual is only eligible for this extension if they are participating in paid employment "for at least 35 hours a week" and proposes to add (a) through (e) to provide clarification regarding paid employment standards consistent with 42 U.S.C. § 607(c)(B)(i);* • *(J)(3)(g)(ii)(6): Pregnancy proposes to remove "in the 60th month of TANF/PaS receipt." And proposes to add "This extension is limited to one occurrence in the adult's lifetime;*

- *(J)(3)(g)(ii)(7)(c): Loss of Job proposes to remove "and would be eligible except that they have not worked for a sufficient length of time". In addition, "provided there is a break in TANF for at least 12 months between the two extension periods" is intended to be removed;*
- *(J)(3)(g)(ii)(8): Occurrence of an Emergency Situation "This extension must be approved by the TANF Program Manager" is proposed to be removed. In addition, b through e would be added to provide clarification regarding homelessness, inadequate or unavailable childcare or transportation required to engage in substantial gainful activity, and a delay caused by a third-party in obtaining non-financial verifications required to make a hardship extension eligibility determination beyond the verification due date. In addition, "additional incremental extensions of up to six months each may be granted" is proposed; and*
- *(J)(3)(i)(v)(c)(3) "DSER or QC" is added for clarification to "fails to cooperate with their Family Contract Amendment during the temporary hardship extension period."*

Consistent with 8 U.S.C. Ch. 12, the Department proposes significant Chapter II updates which provide clarification for program citizenship and noncitizen eligibility requirements, verification requirements and application processing timeframes.

The Department proposes to clarify Chapter V (3)(c) by waiving the Parent Fee Requirement for any family with a gross weekly income equal to or less than 250%. Ch. V (4)(c)(ii) calculation of the parent fee is updated to align with Ch. V (3)(c) as permitted by 22 M.R.S. § 3762(8)(C).

All the above proposed changes would be effective upon adoption.
The proposed rule would remove "Escalating Sanctions" and associated language from Ch. II (F)(1)(d), (H)(3), and (H)(3)(a)(i and ii). Ch. II (H)(3) proposes clarification to benefits termination due to failure to comply with program requirements. In addition, this rule proposes to remove Chapter II (H)(3)(f). The Department proposes this provision with a retroactive application to October 18, 2021, as required by P.L. 2021, ch. 97, §§ 1 and 2.

Pursuant to 22 M.R.S. § 3762(8)(C), Appendix Charts page 3, Worksheet For Calculating TCC Parent Fees and Subsidy Payments, would be updated based on Federal Poverty Level (FPL) figures published in the Annual Update of the HHS Poverty Guidelines, 88 Fed. Reg. 3424. https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines. The Department proposes this provision with a retroactive application to February 5, 2023.
Chapter III, Asset limit changes consistent with P.L. 2023 Ch. 366 would be effective retroactive to October 25, 2023.
22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 2, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration. This rulemaking would apply these changes effective retroactive to October 1, 2023.
Retroactive rulemaking is authorized by the Legislature in accordance with 22 M.R.S. § 42(8) because the rule provides a benefit to recipients and beneficiaries and does

	not have an adverse financial effect on either providers or recipients.
Basis Statement:	*The adopted rule clarifies program requirements in Chapters I, II, IV and V for applicants and the Department as they relate to non-citizen eligibility. These requirements are consistent with 42 U.S.C. § 602 and 45 C.F.R. § 260. Asset limit changes in Chapter III are consistent with P.L. 2023 Ch. 366, An Act to Allow Maine Families to Increase Their Savings by Changing the Asset Limits for Eligibility for the Temporary Assistance for Needy Families Program.* *The adopted rule clarifies Chapter V (3)(c) by waiving the Parent Fee Requirement for any family with a gross weekly income equal to or less than 250%. Ch. V (4)(c)(ii) calculation of the parent fee is updated to align with Ch. V (3)(c) as permitted by 22 M.R.S. § 3762(8)(C).* *The adopted rule removes "Escalating Sanctions" and associated language from Ch. II (F)(1)(d), (H)(3), and (H)(3)(a)(i and ii). Ch. II (H)(3) provides clarification to benefits termination due to failure to comply with program requirements. In addition, this rule removes Chapter II (H)(3)(f). This provision has a retroactive application to June 1, 2022, as required by P.L. 2021, ch. 97, §§ 1 and 2.* *Pursuant to 22 M.R.S. § 3762(8)(C), Appendix Charts page 3, Worksheet For Calculating TCC Parent Fees and Subsidy Payments, is updated based on Federal Poverty Level (FPL) figures published in the Annual Update of the HHS Poverty Guidelines, 88 Fed. Reg. 3424. https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines. This provision has retroactive application dates to February 5, 2023 and February 4. 2024.* *Chapter III, Asset limit changes consistent with P.L. 2023 Ch. 366 are effective retroactive to October 25, 2023.* *22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 2, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration. This rulemaking applies these changes effective retroactive to October 1, 2023.* *Retroactive rulemaking is authorized by the Legislature in accordance with 22 M.R.S. § 42(8) because the rule provides a benefit to recipients and beneficiaries and does not have an adverse financial effect on either providers or recipients.* *The following changes have been made to the adopted rule:* *Table of Contents:* *Chapter X - The Department determined it necessary to make a non-substantial change to the outline of Chapter X - Parents as Scholars for consistency with the Table of Contents Chapter outlines. The adopted rule removed the reference to PaS in the Table of Contents.* *Introduction and General Definitions:* • *Page 1 adds "In a trauma informed and linguistically appropriate manner. Applicants and recipients" to the last paragraph;* • *The definition for Alien is removed and a Noncitizen definition is added;* • *The definition for Alien Sponsor is removed and a Noncitizen Sponsor*

definition is added;

- *A definition for Executive Office for Immigration Review (EOIR) is added;*
- *A definition for Immigration Court is added; and*
- *A definition for United States Department of Justice (DOJ) is added.*

Chapter I:

- *(C)(1)(b)(iii)(g) updates Immigration and Naturalization Service to United States Citizenship and Immigration Services (USCIS).*
- *D)(4)(a)(iii) is added as "A sworn statement from the applicant may be provided attesting to the circumstances that make the individual unable to attend orientation; or"*
- *(D)(4)(a)(iv) is added as "A department issued form may be completed and signed, attesting to the circumstances that make the individual unable to attend orientation. Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided self-attested statements or forms."*
- *(J)(3)(g)(ii)(a)(1)(a) is updated to include sexual assault and assault.*
- *(J)(3)(g)(ii)(a)(1)(b) adds (iii) "A sworn statement from the applicant or recipient may be provided attesting to the circumstances that provide the basis for the Domestic Violence extension; or"*
- *(J)(3)(g)(ii)(a)(1)(b) adds (iv) "A department issued form may be completed and signed by the applicant or recipient, attesting to the circumstances that provide the basis for the Domestic Violence extension. Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided statements or forms.*
- *(J)(3)(g)(ii)(a)(1)(b) adds (v) "Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided statements or forms."*
- *(J)(3)(g)(ii)(a)(2)(a)(i) adds "or a signed statement from a medical professional (see note below regarding minimum requirements)."*
- *()J(3)(g)(ii)(a)(2) is updated with "NOTE: Statements from medical professional must be signed, dated and provided on company or provider letterhead. The letter must at a minimum contain the adult's name, date of birth, diagnoses, information regarding any work or functional limitation(s), date of last exam, date for when the limitations began and estimated amount of time the limitation(s) are expected to last."*
- *(J)(3)(g)(ii)(a)(2)(b)(i) adds "or signed statement from a medical professional (see note above regarding minimum requirements)".*
- *(J)(3)(g)(ii)(a)(3) adds "and is unable to engage in substantial gainful activity."*
- *(J)(3)(g)(ii)(a)(3)(c) removes "full-time".*
- *(J)(3)(g)(ii)(a)(8) removes "other than citizenship or alien status."*
- *(J)(3)(g)(ii)(a)(8)(b) is updated to "Homelessness or have an active eviction not caused by misuse of property by the tenant, tenant's family or invitee of the tenant, including: criminal activity, substantial damage caused to the premises, or nuisance within the premises; or"*
- *(J)(3)(g)(ii)(a)(8)(e) adds "when the applicant, or recipient, initiated attainment of the required documentation prior to the verification due date."*

Chapter II:

- *(C)(3)(a)(ii) adds "All requests for verification will be made in writing in accordance with the "Verification and Documentation" standards as defined in Chapter 1, Section D(5)."*
- *(C)(3)(a)(ii) adds clarifying language for Supplemental Verification in (a)(1-2), (b)(1-2), (b)(3)(a-d). In addition, throughout Chapter II proposed "Supplemental Verifications" have been removed.*
- *(C)(3)(a)(ii)(b)(1) and (C)(4)(a)(ii)(b)(1) adds "noncitizen" to status.*
- *Throughout Chapter II Lawful Permanent Resident replaces Legal Permanent Resident.*
- *Throughout Chapter II, unexpired has been removed from "the most current unexpired version of a letter or other document from DHS stating that they have received an application for asylum or a document…"*
- *(C)(3)(a)(3)(b) adds "the individual's immigration related A-Number. Throughout Chapter II, A-Number replaces an individual's USCIS number.*
- *(C)(3)(b)(v)(a)(1-2) 8 U.S.C. § 1641 replaces 8 U.S.C. § 1522.*
- *(C)(3)(b)(v) updates "c. Supplemental Verification" to "Additional Supplemental Verification."*
- *(C)(3)(b)(viii) Afghan Special Immigrants replaces Afghani Special Immigrants.*
- *(C)(3)(b)(x)(c) "Additional Supplemental Verification" replaces "Acceptable Verification of this type".*
- *(C)(3)(b)(xi)(c) is rewritten as "Additional Acceptable Verification of this type is—Verification through the trafficking victims' verification toll-free number, (866) 401-5510".*
- *(C)(3)(a)(ii)(a)(2) and (C)(4)(ii)(a)(2) are updated to "In instances where a response from DHS indicates that DHS cannot yet provide a definitive result due to a technical error, the Department shall honor the attested to status on the supplemental verification until such time that a data match response is received from DHS."*
- *(C)(4) adds "An individual who is not a citizen or national of the United States must present proof of immigration registration from the U.S. Citizenship and Immigration Services (USCIS), Department of Justice (DOJ) or other documents indicating the individual's noncitizen status."*
- *(C)(4)(a)(i) adds "or electronic verification through the Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) are the controlling verification types."*
- *(C)(4)(a)(ii) adds "with DHS or DOJ," "Supplemental Verifications" may be provided to aid in the data match verification process. All requests for verification will be made in writing in accordance with the "Verification and Documentation" standards as defined in Chapter I, Section (D)(5)."*
- *(C)(4)(a)(ii)(a)(1-2) is added beginning with "Supplemental Verification serves two purposes:" for further clarity.*
- *(C)(4)(a)(ii)(b) is added "Unless detailed otherwise within the type below, Supplemental Verification is the most current version of a letter or other documents from DHS or DOJ or a signed affidavit from an attorney that includes". In addition, (4)(a)(ii)(b)(1-3) are added.*
- *(C)(4)(a)(v)(b) adds "Acceptable verification of this condition is a letter or*

other document that indicates the household member is experiencing domestic violence or the effect thereof from:"

- *(C)(4)(a)(v)(b)(g) is added "A sworn statement from the applicant or recipient may be provided, or a department issued form can be completed, attesting to the circumstances that provide the basis for the exception. Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided statements or forms."*
- *(C)(5)(a)(ii) removes "with DHS."*
- *(C)(5)(b)(2)(a) "A-Number" replaces Alien number or USCIS registration number.*
- *(C)(5)(b)(2)(g) is added "Any documentation that would serve as acceptable or supplemental verification of the declared citizenship, noncitizen status or special conditions as defined in Sections 3 and 4 above for the respective declaration of status or special conditions."*
- *(C)(5)(b)(2)(ii) adds "initial" application.*
- *(C)(5)(b)(iv)(a)(2)(b)(iv) adds "If otherwise eligible, benefits will be granted until the data match has been completed."*
- *(C)(5)(b)(iv)(a)(2)(c) is updated to "If documentary verification has been provided, the Department shall attempt a data match in a period not to exceed 7 calendar days from the date the documentary verification is received by the Department. The attested status or special conditions are honored until such time that the data match provides the Department with a response based on the documentary verification provided by the applicant. If otherwise eligible, benefits will be granted until the data match response is received.*
- *(G)(3)(b) adds "orally or in writing" and "Good cause can be requested at any time."*
- *(G)(3)(b)(ii)(f) removes "In the absence of all potential documentation listed in a. through e. above." And adds "A sworn statement from the applicant or recipient may be provided" and "Supporting documentation may be required if articulable doubt exists regarding the credibility of the provided statements or forms."*
- *(G)(3)(b)(iii) removes "would be against the best interest of the child or other family" and adds "may result in physical or emotional harm to one or more of the household" members.*

Chapter III:

- *(B) and (B)(1)(c) noncitizens replaces aliens. Chapter IV, D(5)(a)(i) USCIS replaces INS.*

The Department finds that it is necessary to update the Charts: Appendix – Weekly Gross Income by Family Size effective February 4, 2024 to remain in compliance with corresponding federal standards set by the U.S. Department of Health and Human Services. This update is consistent with the 2024 Federal Poverty Levels published in the Annual Update of the HHS Poverty Guidelines, 89 Fed. Reg. 2961. https://www.federalregister.gov/documents/2024/01/17/2024-00796/annual-update-of-the-hhs-poverty-guidelines, updated at https://aspe.hss.gov/poverty-guidelines on January 17, 2024. This is a retroactive change to cover the period from February 4, 2024 through until June 3, 2024.

	Retroactive rulemaking is authorized by the Legislature in accordance with 22 M.R.S. § 42(8) because the rule provides a benefit to recipients and beneficiaries and does not have an adverse financial effect on either providers or recipients. *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services	
2024-153: Ch. 101, MaineCare Benefits Manual, Ch. II, § 23, Developmental and Behavioral Clinic Services	
Statutory Authority:	22 M.R.S. §§42, 3137-J, 4063-A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that this rulemaking will cost approximately $852,421 in SFY 2025, which includes $310,530 in state dollars and $541,891 in federal dollars, and approximately $852,421 in SFY 2026 and forward, which includes $311,768 in state dollars and $540,653 in federal dollars.*
Principal purpose:	*The Department of Health and Human Services (the "Department") proposes the following changes to 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter II, Section 23, Developmental and Behavioral Evaluation Clinic Services.* *The proposed rule adds "Foster Care Comprehensive Health Assessments" (CHA) as a covered service in accordance with P.L. 2019, ch. 162 (An Act To Ensure the Provision of Medical Assessments for Youth in Foster Care), codified at 22 MRSA §4063-A. The new service will provide timely, comprehensive evaluations for children in foster care that align with the Child Welfare League of America (CWLA) and the American Academy of Pediatrics Standards for Health Care Services for Children in Out of Home Care.* *This service includes an initial comprehensive assessment that includes a medical exam, a psychosocial evaluation, and a final report that is submitted to the Department. The service also includes a six (6) to eight (8) month follow-up comprised of another medical evaluation and a psychosocial evaluation. Providers who meet the criteria to provide the CHA do not have to hold a Developmental and Behavioral Evaluation Clinic contract with the Department.* *The rule adds a cost of living adjustment in accordance with 22 MRSA §3137-J (2)(D)(3). Each July 1st the Department will apply an annual cost of living adjustment proportional to the percentage increase in the Maine minimum wage, as determined by the Maine Department of Labor, so long as the service has not received any other adjustments within the previous twelve months. The Maine Department of Labor determines the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Northeast Region, as published by the United States Department of Labor, Bureau of Labor Statistics, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢.* *Other proposed changes to the rule include adding a definition of "trauma-informed care," which is a requirement to provide CHAs, making structural changes, removing unnecessary provisions, and making minor technical changes.* *MaineCare Benefits Manual, Chapter III, Section 23, Allowances for Developmental and Behavioral Evaluation Clinic Services*

	The Department proposes to repeal 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 23, and list the specific reimbursement rates for the three services in the Chapter II and on the MaineCare Provider Fee Schedule available on the Department's website in accordance with 22 MRS §3173-J. *This rulemaking complies with 22 M.R.S. §3173-J. The Department issued a Rate Determination Initiation Notice on October 14, 2022. The Department held a public rate forum on November 23, 2022, to collect stakeholder input and comments to inform the Rate Determination process and accepted written comments through December 2, 2022.*
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 23, Developmental and Behavioral Health Services, and Chapter III, Section 23, Developmental and Behavioral Health Clinic Services.* ***MaineCare Benefits Manual, Chapter III, Section 23, Developmental and Behavioral Evaluation Clinic Services*** *The Department repeals this regulation.* ***MaineCare Benefits Manual, Chapter II, Section 23, Developmental and Behavioral Evaluation Services*** *Sec. 23.02-2 (Eligibility for Care). This rule lists out two separate categories of children, defining which Sec. 23 services the children are eligible for:* *(1) Members from birth through age 20 are eligible for the Developmental and Behavioral Evaluations and also Child Abuse Evaluations; and* *(2) Children in the care and custody of the Department are eligible for Developmental and Behavioral Evaluations, Child Abuse Evaluations, and a Foster Care Comprehensive Health Assessment (CHA).* *Sec. 23.04-2 (Child Abuse Evaluation). The rule eliminates the limit of eleven units per evaluation.* *Sec. 23.04-3 (Foster Care Comprehensive Health Assessment). The rule adds CHAs as a new covered service in accordance with 22 MRSA §4063-A(3). The new service will provide timely, comprehensive evaluations for children in foster care that align with the Child Welfare League of America (CWLA) and the American Academy of Pediatrics Standards for Health Care Services for Children in Out of Home Care.* *This service includes an initial comprehensive assessment that includes a medical exam, a psychosocial evaluation, and a final report that is submitted to the Department. The service also includes a six (6) to eight (8) month follow-up comprised of another medical evaluation and a psychosocial evaluation. Providers who meet the criteria to provide the CHA do not have to hold a Developmental and Behavioral Evaluation Clinic contract with the Department.* *Sec. 23.07 (Reimbursement). The now-repealed Ch. III rate table has been moved to*

Ch. II. Changes to the rate table include adding two new covered services for the CHA assessment/evaluation. In a change from the proposed rule, the rate table in the adopted rule includes the July 3, 2024, effective date for the rates. The rule also adds a cost-of-living-adjustment (COLA) provision in accordance with 22 MRSA §3137-J (2)(D)(3). The Department will apply a COLA to the rates annually every July 1, unless the rate has been adjusted during the previous twelve months. The Department will not do rulemaking to reflect the new rates every year, but, rather, new rates will be listed on the MaineCare Provider Fee Schedule, posted on the Department's website, in accordance with 22 M.R.S. Sec. 3173-J(7).

The 7/3/24 rate for the Developmental and Behavioral Evaluation services was increased from the proposed rate, reflecting the 7/1/24 COLA adjustment. The Child Abuse Evaluation services rate does not reflect a 7/1/24 COLA adjustment as this rate was adjusted in the past twelve months.

23.08(B) (Billing Instructions). This rule adds three provisions – the CHA Initial Assessment Bundled Payment; the CHA Follow-Up Evaluation Bundled Payment; and the CHA Psychosocial Evaluation Component Reimbursement. Each provision details what services are reimbursed.

Note that for the CHA Psychosocial Evaluation Component Reimbursement, CHA providers deliver and bill for the services that make up the psychosocial component of the CHA in accordance with the applicable section of the MaineCare Benefits Manual.

This rulemaking complies with 22 M.R.S. §3173-J. For the CHA, the Department issued a Rate Determination Initiation Notice on October 14, 2022. The Department held a public rate forum on November 23, 2022, to collect stakeholder input and comments to inform the Rate Determination process and accepted written comments through December 2, 2022.

Other Changes Made to the Adopted rule:

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:

As a result of comment 1, the Department clarified in Section 23.04-3(B)(1)(b) that the appointment must occur within fourteen (14) "calendar" days of the referral "unless there are unforeseen and uncontrollable circumstances, such as inclement weather or illness, that prevent the appointment from occurring. If the appointment occurs after fourteen calendar days from the referral, the provider must document the justification for the delay in the member's record."

As a result of comment 2, the Department has added to Section 23.04-3(B)(3)(a)(i) that "The provider may conduct the psychosocial evaluation virtually if it is for the benefit of the child, and providers must document the justification in the member's record. Providers cannot conduct a virtual psychosocial evaluation for their own

benefit or convenience."

As a result of comment 2, the Department added to Section 23.04-3(B)(5) that "the follow-up medical examination may only be conducted virtually if the findings from the initial examination indicate that a virtual follow-up is appropriate."

As a result of comment 2, the Department has removed "face-to-face" from Section 23.04-3(B)(5)(a).

As a result of comments 6 and 8, the Department corrected the final rate for the CHA to $1,462.48 in Section 23.07.

As a result of comment 9, the Department increased the rate for child abuse evaluations in Section 23.07; removed the larger, inaccurate list of providers who may conduct child abuse evaluations and replaced it with the team of three providers that conduct the evaluations together in Section 23.04-2: child abuse pediatricians, nurse practitioners, and licensed clinical social workers; expanded the list of components included in the evaluation in Section 23.04-2; and removed the unnecessary 11-hour service limit in Section 23.04-2.

As a result of comment 10, the Department clarified the CHA provider must submit the final report no later than 21 "calendar" days after CHA is complete.

As a result of the OAG legal review, the Department deleted the definition of trauma-informed care in Section 23.01-3 because the Sec. 23 services are evaluation services, and not medical services.

As a result of the OAG legal review, the Department removed Section 23.04-3(B)(3)(b)(iv) (which stated that the psychosocial evaluation may include "other services as medically necessary") because the psychosocial evaluation is an evaluation service. Other MaineCare services that are identified as medically necessary for a child are delivered and billed in accordance with the applicable section of the MaineCare Benefits Manual.

As a result of the OAG legal review, the Department removed "Providers that determine that additional services are required to complete the services described in this Section must deliver or coordinate the additional services with appropriately licensed providers acting within the scope of their licensure or qualifications, as appropriate" in Section 23.06-2 because it is duplicative of another provision and is not particularly clear in this provision. The Department revised the provision to its original intent to clarify that "Developmental and Behavioral Evaluation, Child Abuse Evaluation, and CHAs are reimbursable services when provided by appropriately licensed providers acting within the scope of their licensure."

As a result of the OAG legal review, the Department deleted Section 23.06-3 CHA Providers because the provision was duplicative of the CHA requirements set forth in Section 23.04-3(B).

	As a result of the OAG legal review, the Department added the effective date of the rates to the rate table in Section 23.07(A). *With the approval of the OAG legal review, the Department updated the cost-of-living-adjustment language in Section 23.07(B).* *As a result of the OAG legal review, the Department edited the headers and language in Section 23.08(B) to clarify precisely what the three different types of CHA payments are.* *As a result of the OAG legal review, the Department removed "Other services delivered as part of the CHA, but not included in the bundled payments, must be delivered and billed in accordance with the applicable Section of the MBM" in Section 23.08(B)(3) because the first sentence states clearly that services which make up the psychosocial component of the CHA are delivered and billed in accordance with the applicable section of the MaineCare Benefits Manual.*

10-144 Department of Health and Human Services	
2024-154: Ch. 101, MaineCare Benefits Manual, Ch. III, § 23, Developmental and Behavioral Evaluation Clinic Services	
Statutory Authority:	22 M.R.S. §§42, 3137-J, 4063-A
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	This rule was repealed.
Principal purpose:	This rule was repealed.
Basis Statement:	*See* "Basis Statement" at 2024-153, *supra*.

10-144 Department of Health and Human Services	
2024-155: Chapter 101, MaineCare Benefits Manual, Ch. II, § 25, Dental Services and Reimbursement Methodology	
Statutory Authority:	22 M.R.S. §§ 42, 3173; 22 M.R.S. § 3173-J(D); 5 M.R.S. § 8054
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*The Department anticipates that this will result in a cost neutral fiscal impact.*
Principal purpose:	*The Department adopts this emergency rule, which amends 10-144 CMR ch 101, MaineCare Benefits Manual (the "MBM") Chapter II, Section 25 Dental Services and Reimbursement Methodology.* *This emergency rulemaking makes the following changes:* *Section 25.06(A)(1)(Commercial Median Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* *Section 25.06(A)(2)(Medicaid State Average Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* *Section 25.06(B)(3)(Temporary Exceptions): These exceptions are being extended from June 30, 2024 to June 30, 2026; and* *Section 25.03 on page 18 has been corrected to: Section 25.06.* ***Background**:* *The current rule requires the Department to update the Commercial Median Benchmark and the Medicaid State Average Benchmark every two years, and the updated Benchmarks were to take effect on July 1, 2024. In accordance with 22 M.R.S. §3173-J(2), the Department provided notice of the rate determination for dental services on October 13, 2023, by posting it on the MaineCare Rate System Reform website. The Department conducted a review of data from the Maine Health Data Organization All Payer claims Database as well as utilizing data from other State's Medicaid dental service rates. The result of this rate determination process for dental services rates was that the rebasing or updating would result in an estimated $2.2 million dollar reduction in total reimbursement to providers of MaineCare dental services. In accordance with Title 22 M.R.S. §3173-J, the Department held an online public meeting to present the results of the benchmark rebasing efforts and draft rates on April 12, 2024, and provided opportunities for stakeholder input and comment. Comments are still under review and the Department has not yet issued a written response to the comments.* ***Findings of Emergency**:* *The Department finds that immediate adoption of this rule is necessary to avoid an immediate threat to public health, safety, or general welfare. The Department's findings with respect to the existence of an emergency are as follows:* *Dental services are critical to the physical well-being of adults and children;* *A decrease in the MaineCare dental reimbursement could lead to a loss in dental*

	providers, which could lead to a loss in access to dental services for MaineCare members; *Maintaining the current MaineCare reimbursement rates mitigates this emergency; and* *Extending the temporary exceptions in Section 25.06(B)(3) ensures that reimbursement rates for those excepted services will not be reduced.* *Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes*
Basis Statement:	*The Department adopts this emergency rule, which amends 10-144 CMR ch 101, MaineCare Benefits Manual (the "MBM") Chapter II, Section 25 Dental Services and Reimbursement Methodology.* *This emergency rulemaking makes the following changes:* *Section 25.06(A)(1)(Commercial Median Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* *Section 25.06(A)(2)(Medicaid State Average Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* *Section 25.06(B)(3)(Temporary Exceptions): These exceptions are being extended from June 30, 2024 to June 30, 2026; and* *Section 25.03 on page 18 has been corrected to: Section 25.06.* ***Background**:* *The current rule requires the Department to update the Commercial Median Benchmark and the Medicaid State Average Benchmark every two years, and the updated Benchmarks were to take effect on July 1, 2024. In accordance with 22 M.R.S. §3173-J(2), the Department provided notice of the rate determination for dental services on October 13, 2023, by posting it on the MaineCare Rate System Reform website. The Department conducted a review of data from the Maine Health Data Organization All Payer claims Database as well as utilizing data from other State's Medicaid dental service rates. The result of this rate determination process for dental services rates was that the rebasing or updating would result in an estimated $2.2 million dollar reduction in total reimbursement to providers of MaineCare dental services. In accordance with Title 22 M.R.S. §3173-J, the Department held an online public meeting to present the results of the benchmark rebasing efforts and draft rates on April 12, 2024, and provided opportunities for stakeholder input and comment. Comments are still under review and the Department has not yet issued a written response to the comments.* ***Findings of Emergency**:* *The Department finds that immediate adoption of this rule is necessary to avoid an*

	immediate threat to public health, safety, or general welfare. The Department's findings with respect to the existence of an emergency are as follows: *Dental services are critical to the physical well-being of adults and children;* *A decrease in the MaineCare dental reimbursement could lead to a loss in dental providers, which could lead to a loss in access to dental services for MaineCare members;* *Maintaining the current MaineCare reimbursement rates mitigates this emergency; and* *Extending the temporary exceptions in Section 25.06(B)(3) ensures that reimbursement rates for those excepted services will not be reduced.* *Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.*

10-144 Department of Health and Human Services, MaineCare Services, Division of Policy	
2024-179: Chapter 101, MaineCare Benefits Manual, Ch. III, § 25, Principles of Reimbursement for Hospital Services	
Statutory Authority:	5 M.R.S. § 8054; 22 M.R.S. §§ 42, 3173-J; P.L. 2023, ch. 643
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*The Department anticipates that this rulemaking will cost approximately $30,584,514 in SFY 2024, which includes $8,440,233 in state dollars and $22,144,281 in federal dollars, and $122,338,057 in SFY 2025, which includes $34,716,249 in state dollars and $87,621,808 in federal dollars.*
Principal purpose:	*The Department of Health and Human Services adopts these emergency rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services.* *The Department's principal purpose of this emergency rulemaking is to establish new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented a new reimbursement methodology.* *In compliance with 22 M.R.S. Sec. 3173-J(2), the Department conducted a rate determination process: a Rate Determination Initiation Notice was issued on June 23, 2023. MaineCare presented the draft reimbursement methodology and definitions to providers and interested stakeholders on December 11, 2023; February 16, 2024; and June 11, 2024. The Department accepted public comments through June 25, 2024 and responded in writing to comments with an explanation of whether and how feedback was incorporated into the final reimbursement methodology and rates.* *These changes include improved alignment with Medicare, greater consistency in reimbursement methodology across hospitals, and ensuring that reimbursement for services better reflects patient acuity. The Department adopts methodology which aligns reimbursement for facilities with similar delivery systems and cost structures, recognizing three distinct hospital peer groups that recognize distinct Maine Base Rates for inpatient services: Acute Care Non-Critical Access, Non-State Government Owned, and Rehabilitation. The Department's updated methodology introduces mechanisms to keep pace with inflation and improve the relationship between the quality of service outcomes and payment.* *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for State Plan Amendments related to these provisions.* *Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).* *This emergency rulemaking makes the following changes:*

- *Introduction:*

- *Removes specific mention of private classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.*

- *Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.*

Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.

- *Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.*

- *Section 45.01- Definitions:*

- *Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.*

- *Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).*

- *Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital Reimbursement Methodology.*

- *Section 45.02 – General Provisions*

- *45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.*

- *45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.*

- *45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.*

- *45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and*

triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.

- *45.02-9 – Claims Billing: Adds new section to introduce links to the Department's billing instructions and new supplemental Hospital Billing Guidance.*

- *45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions "window" from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.*

- *<u>Section 45.03 – Acute Care Non-Critical Access Hospitals</u>*
- *Removes Department's Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.*

- *45.03-1 –Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for cost settlement of capital costs from July 1, 2025 to September 1, 2024.*

- *45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.*

- *Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.*

- *Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement*

- *Removes Prospective Interim Payment (PIP) for Outpatient Services as Public Acute Care Non-Critical Access Hospitals will no longer receive PIPs.*

- *Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end*

dated. DRG and APC payments will not be cost settled.

- *Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008*

- *Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.*

- *Section 45.06 – Rehabilitation Hospitals*

- *Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.*
- *Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the Department.*
- *Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department's larger hospital investment initiative.*

- *Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool*

- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).*

- *Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals*

- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).*

- *Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement*

- *Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024.*

	• *Appendix A – DRG-Based Payment Methodology* • *Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:* o *This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.* o *The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.* o *The Department calculates a hospital's DRG payment for a covered inpatient service by summing the assigned peer group's Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital's FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital's DRG payment. The rule updates the MS-DRG weights to the current year's Medicare weights to account for cost differences in services delivered and patient acuity.* o *Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.*
Basis Statement:	*The Department of Health and Human Services adopts these emergency rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services.* *The Department's principal purpose of this emergency rulemaking is to establish new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented a new reimbursement methodology.* *In compliance with 22 M.R.S. Sec. 3173-J(2), the Department conducted a rate determination process: a Rate Determination Initiation Notice was issued on June 23, 2023. MaineCare presented the draft reimbursement methodology and definitions to providers and interested stakeholders on December 11, 2023; February 16, 2024; and June 11, 2024. The Department accepted public comments through June 25, 2024 and responded in writing to comments with an explanation of whether and how feedback was incorporated into the final reimbursement methodology and*

rates.

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

The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for State Plan Amendments related to these provisions.
Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).

This emergency rulemaking makes the following changes:

- *<u>Introduction:</u>*
- *Removes specific mention of "private" classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.*

- *Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.*

- *Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.*
- *Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.*

- *<u>Section 45.01- Definitions:</u>*
- *Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.*

- *Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).*

- *Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital*

Reimbursement Methodology.

- *Section 45.02 – General Provisions*

- *45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.*

- *45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.*

- *45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.*

- *45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.*

- *45.02-9 – Claims Billing: Adds new section to introduce links to the Department's billing instructions and new supplemental Hospital Billing Guidance.*

- *45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions "window" from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.*

- *Section 45.03 – Acute Care Non-Critical Access Hospitals*

- *Removes Department's Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.*

- *45.03-1 – Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for*

cost settlement of capital costs from July 1, 2025 to September 1, 2024.

- *45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.*

- *Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.*
- *Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement*

- *Removes Prospective Interim Payment (PIP) for Outpatient Services as Non-State Government Owned Hospitals will no longer receive PIPs.*

- *Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end dated. DRG and APC payments will not be cost settled.*

  - *<u>Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008</u>*
- *Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.*

  - *<u>Section 45.06 – Rehabilitation Hospitals</u>*
- *Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.*
- *Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the*

Department.

- *Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department's larger hospital investment initiative.*

  - *<u>Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool</u>*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).*

  - *<u>Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals</u>*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).*

  - *<u>Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement</u>*
- *Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024.*

  - *<u>Appendix A – DRG-Based Payment Methodology</u>*
- *Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:*

  - *This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.*

  - *The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.*

  - *The Department calculates a hospital's DRG payment for a covered inpatient service by summing the assigned peer group's Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital's FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital's DRG payment. The rule updates the MS-DRG weights to the current year's Medicare weights to account for cost differences in services delivered and patient acuity.*

- *Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.*

Findings of Emergency:

The Maine Legislature granted the Department of Health and Human Services authority to adopt emergency rules under 5 M.R.S. Sec. 8054, if determined necessary by the Department to implement those provision of the Supplemental Budget Act over which the Department has subject matter jurisdiction, without the requirement that it demonstrate that immediate adoption is necessary to avoid a threat to public health, safety or general welfare. P.L. 2023, ch. 643, PART VV, Sec. VV-1. The Department has determined that it is necessary to adopt this emergency rule to implement provisions of the Supplemental Budget Act regarding hospital reimbursement set forth in PART A, Sec. A-14.

Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-183: Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3174-G; 3174-FFF and 3174-LLL
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates this rulemaking will cost approximately $24,521.33 in SFY 2025, which includes $10,387.691 in state dollars and $14,133,41 in federal dollars, and in SFY 2026 $32,382,204, which includes $13,896,148 in state dollars and $18,486,056 in federal dollars.*
Principal purpose:	*The proposed rule changes would increase the Federal Poverty Levels (FPLs) in the MaineCare Eligibility Manual, Part 8, Medicare Savings Program (Buy-In) and are based on a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Part 8, Section 4.1(I)(B) would increase the FPL to 185% from 150% FPL. Part 8, Section 4.2 would add "The rules in this Section apply through June 30, 2024."* *In addition, Section 4.3(I)(B) would increase the Federal Poverty Level to 250% from 185%. The proposed rule changes would increase access to health insurance. The proposed rule changes would be effective July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule effectuates the Federal Poverty Level (FPL) increases in the MaineCare Eligibility Manual, Part 8, Medicare Savings Program (Buy-In) and are based on a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Part 8, Section 4.1(I)(B) increases the FPL to 185% from 150% FPL. Part 8, Section 4.2 adds "The rules in this Section apply through June 30, 2024."* *In addition, Section 4.3(I)(B) increases the Federal Poverty Level to 250% from 185%. The adopted rule increases access to health insurance. The adopted rule changes are effective July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-184: Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3173-G; 3173-NNN and 3174-T
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The anticipated costs of raising the Federal Poverty Level from 208% of the FPL to 300% of the FPL for individuals under 21 years old has an estimated fiscal impact of $4,783,545 in SFY 2024, which includes $3,034,511 in federal dollars and $1,749,034 in state dollars, and SFY 2025 a total cost of $15, 803,983, which includes $10,025,578 in federal dollars and $5,778,353 in state dollars.*
Principal purpose:	*The purpose of this rule is to increase the Federal Poverty Level (FPL) to 300% from 208% of the FPL for all children. The proposed rule changes would align the MaineCare Eligibility Manual with a legislative change to 22 M.R.S. § 3174-G(B) made by P.L. 2024 ch. 597, §5. The proposed rule changes would increase access to health insurance coverage.* *Part 4, Section 4(B, D and E) would update the Federal Poverty Level (FPL) for children under age 21 to 300% of the FPL from 208% of the FPL effective retroactive to October 1, 2023 and consistent with Maine's State Plan Amendment approved by the Center for Medicaid & CHIP Services. In addition, the Department proposes to remove language from D and E that indicates uninsured children, with income between a certain FPL, may be covered under CHIP.* *Part 4, Section 1, Family Definition would make the following changes:* *1) "individual" would replace "woman"* *2) "one individual" would replace "herself" and "1 person"* *3) "they are" would replace "she is"* *CHIP would replace Cub Care throughout the open parts of this rule consistent with legislative changes to 22 M.R.S. §§ 3173-G, 3173-NNN and 3174-T made by P.L. 2024, Ch. 597, An Act to Correct Language Related to Medicaid Coverage for Children.* *In order to comply with Medicaid rules at 42 C.F.R. § 433.147, Part 5, Section 3 would remove "There is no requirement to refer the non-custodial parent without health insurance to the Division of Support Enforcement and Recovery (DSER)."* *Part 5, Section 6, Income Standard would increase the household income for all children from 208% of the Federal Poverty Level (FPL) to 300% of the FPL effective retroactive to October 1, 2023.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule increased the Federal Poverty Level (FPL) to 300% from 208% of the FPL for all children. The adopted rule aligns the MaineCare Eligibility Manual with a legislative change to 22 M.R.S. § 3174-G(B) made by P.L. 2024 ch. 597, §5. The adopted rule is anticipated to increase access to health insurance coverage.*

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

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

1) *"individual" would replace "woman"*
2) *"one individual" would replace "herself" and "1 person"*
3) *"they are" would replace "she is"*

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

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

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

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

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

10-144 Department of Health and Human Services, Office for Family Independence	
2024-185 Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3173; and 3174-AA
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department has determined the cost of implementation would be minor and able to absorbed in existing budgets.*
Principal purpose:	*The proposed rule changes would update the MaineCare Eligibility Manual, Part 16, Section 4.6 consistent with amendments made by Resolves 2023, Ch. 34, Resolve to Update Allowable Limits on Mortuary Trusts for the Purposes of MaineCare Eligibility.* *The proposed rule change would update Section 4.6(A)(2) to "Prepaid burial contracts (mortuary trusts) established on or after March 1, 2006 but prior to April 1, 2024 are excluded as long as either the contract is less than or equal to the statewide average for burial and funeral costs of $12,000. If the contract is for more than $12,000 then the estate of the Medicaid recipient must be named the beneficiary of any funds remaining after payment of funeral and burial charges."* *The proposed rule would add Section 4.6(A)(3) as "Prepaid burial contracts (mortuary trusts) established on or after April 1, 2024, that are irrevocable, are excluded so long as either the contract is less than or equal to the statewide average for burial and funeral costs of $18,000. If the contract is for more than the excluded amount, then the estate of the Medicaid recipient must be named the beneficiary of any funds remaining after payment of funeral and burial charges. Effective January 1, 2025, the excluded contract amount will increase annually, by the same percentage as the percentage increase of the Consumer Price Index for the preceding year. The Consumer Price Index is updated periodically in the Federal Register by the U.S. Department of Labor under the authority of 49 U.S.C. § 33105(c). The Consumer Price Index is found at https://www.bls.gov/cpi. To calculate the increased excluded contract amount, the Department shall multiply the current excluded amount by the percentage increase of the Consumer Price Index, for the preceding year, and then add that amount to the current excluded contract amount, with effective dates of January 1, and posted online at https://www.maine.gov/dhhs/ofi/programs-services/health-care-assistance.* *The proposed rule changes are effective retroactive to April 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.* *In addition, the proposed rule would correct a typographical error in Section 4.25 to "For settlements associated with the replacement of an excluded asset, see Section 4.43 of this Part."*
Basis Statement:	*The adopted rule updated the MaineCare Eligibility Manual, Part 16, Section 4.6 consistent with amendments made by Resolves 2023, Ch. 34, Resolve to Update Allowable Limits on Mortuary Trusts for the Purposes of MaineCare Eligibility.*

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

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

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

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

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

10-144 Department of Health and Human Services, Office for Family Independence	
2024-186: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1); 3104(16)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None.*
Principal purpose:	*The proposed rule change would update Section 444-12 based on a legislative change to 22 M.R.S. § 3104(16) made by P.L. 2024, ch. 501. These changes align Maine law with the Code of Federal Regulations as it relates to disqualifications based on gambling or lottery winnings. Applying one standard instead of two clarifies requirements for recipients and the Department without having an adverse impact on program integrity.*
Basis Statement:	*The adopted rule updates Section 444-12 based on a legislative change to 22 M.R.S. § 3104(16) made by P.L. 2024, ch. 501. The adopted rule change aligns Maine law with the Code of Federal Regulations as it relates to disqualifications based on gambling or lottery winnings. Applying one standard instead of two clarifies requirements for recipients and the Department without having an adverse impact on program integrity.* *In addition, the Department determined it necessary to make non-substantial changes in FS 444-12 for consistency within the rule. These changes include:* • *The header of FS 444-12 is updated to Section 444-12.* • *Section 999-3 replaces FS 999-3.* • *FS is removed from Sections FS 333, 444 and 555.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Division of Licensing and Certification	
2024-188: Chapter 129, Rules and Regulations Governing In-Home Personal Care and Support Workers	
Statutory Authority:	22 M.R.S. §§ 42, 1717
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The licensing fee established by statute will have a minor financial impact on a Personal Care Agency.*
Principal purpose:	*This rule repeals and replaces an existing rule due to the statutory changes in 22 MRS §1717.*
Basis Statement:	*This routine technical rulemaking operationalizes the statutory requirements of PL 2023 Ch. 309, An Act to Authorize the Department of Health and Human Services to License and Ensure the Quality of Personal Care Agencies. This rulemaking repeals and replaces 10-144 CMR Ch. 129, Rules and Regulations Governing In-Home Personal Care and Support Workers, which became effective on January 1, 1999.* *The new rule replaces the existing requirement for registration with a licensing process, as required by the underlying legislation. The new rule also incorporates a new statutory definition for Personal Care Agency (PCA), establishes standards and fees for the licensing of personal care agencies, establishes types and terms of licenses, creates quality assurance and technical assistance mechanisms, and establishes right of entry, penalties, and enforcement actions for failure to comply with the rule. The new rule also creates an appeal process for PCAs aggrieved by the department's decisions.* *Among the standards established in the rule are minimum qualifications for PCA staff who assist clients with activities of daily living and documentation requirements. Although this rule imposes more requirements on PCAs than the prior rule, the Department has eliminated or modified many of the proposed rule provisions that commenters identified as burdensome or too costly. What remains are rules that are consistent with the statutory directive and that promote public health and safety.* *The Division considered the content of the changes to 22 MRS §1717 enacted by PL 2023, c. 309 and the Department's prior experience with the registration of Personal Care Agencies under the authority of 22 MRS §1717. The Division has sought the input of the Office of Aging and Disability Services and the Office of MaineCare Services in the development of this rule.* *This rule will have a minimal fiscal impact on Personal Care agencies through increased administrative requirements, staff training, and licensing fees.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-191: Chapter 269, Rules Governing Self-Contained Breath Alcohol Testing Equipment	
Statutory Authority:	17-A MRS §1057; 22 MRS §42(1); 22-A MRS §205(2); and 29-A MRS §2524(6)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated*
Principal purpose:	*The Department is proposing this routine technical rule change, to coincide with the rule recently adopted by emergency and effective for 90 days, starting on May 28, 2024, which provides for the use of the new breath testing instruments that use a dry gas standard. This dry gas standard is consistent with industry practice for performing accuracy checks and calibration adjustments on most evidential breath alcohol testing instruments. The Department's proposed rule change is necessary to retain this standard in rule beyond the 90-day period afforded by the current emergency rule in effect. (5 MRS § 8054(3)). Additionally, the Department proposes amendments to update the rule title and structure, make non-substantive formatting changes to conform to agency standards and improve the clarity and readability of the rule.*
Basis Statement:	*The Department of Health and Human Services has adopted routine technical rule changes amending Chapter 269, a rule administered by the Maine Center for Disease Control and Prevention governing self-contained breath alcohol testing equipment. The rule adoption coincides with the expiration of the current rule which was adopted on an emergency basis and effective on May 28, 2024.* *The final adoption of this routine technical rule change ensures that the allowance for dry gas units continues beyond the 90-day period afforded by the current emergency rule. (5 MRS § 8054(3)). The dry gas standard, which is in addition to the wet bath simulators, is consistent with industry practice for performing accuracy checks and calibration adjustments on most evidential breath alcohol testing instruments.* *All self-contained breath alcohol testing equipment must be approved by the U.S. Department of Transportation in accordance with 49 CFR Part 40. There are approximately 8,000 breath tests performed each year at law enforcement agencies throughout the State of Maine impacted by this rule. The new instruments must qualify under 10-144 CMR Chapter 269, Maine's Self-Contained Breath Alcohol Testing Equipment Rule in order for their results to be considered potentially admissible in court.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-208: Chapter 331, Maine Public Assistance Manual (TANF - Temporary Assistance for Needy Families)	
Statutory Authority:	22 M.R.S. §§ 42(1); 3769-C
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that any additional costs from this rulemaking will fall within the current available federal funding for the TANF program.*
Principal purpose:	*The proposed rule change would update the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with legislative changes made to 22 M.R.S. § 3769-C made by P.L. 2024, Ch. 622, An Act to Reduce the Number of Children Living in Deep Poverty by Adjusting Assistance for Low-income Families.* *The proposed rule change would update the Maximum Benefit and Standard of Need Chart by increasing the maximum amount of monthly TANF assistance by an amount equal to 20% of the maximum payments that were in effect on January 1, 2024. In addition, 22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 3, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration.* *It is the intent of the Department that proposed changes to this rule will be in effect as of October 1, 2024 consistent with SSA COLA increases.*
Basis Statement:	*The adopted rule updates the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with legislative changes made to 22 M.R.S. § 3769-C made by P.L. 2024, Ch. 622, An Act to Reduce the Number of Children Living in Deep Poverty by Adjusting Assistance for Low-income Families.* *The adopted rule effectuates the Maximum Benefit and Standard of Need Chart by increasing the maximum amount of monthly TANF assistance by an amount equal to 20% of the maximum payments that were in effect on January 1, 2024. In addition, 22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 3, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration for that year.* *The adopted rule updates are effective October 1, 2024 as required by statute.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-209: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and 3104 and 5 M.R.S. § 8054
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This rulemaking is anticipated to result in loss up to but not to exceed federal revenue of $6,852,00.00 and state revenue of $829,000.00 per year of the PHE. This loss will be distributed over an indeterminate number of years.*
Principal purpose:	*This rule change would halt collection of SNAP overpayments that resulted from errors originating from March 1, 2020 through May 11, 2023, the end of the Federal Public Health Emergency related to CoViD-19 (the PHE), unless they were the result of an Intentional Program Violation (IPV) on the part of the household. The ongoing ramifications of the PHE dictate that Department staff focus their efforts on issuing the correct benefits going forward rather than devote time and effort to recouping benefits that were inadvertantly over paid during the PHE. This rule change allows Maine's Overpayment Unit and Eligibility Staff to operate more effectively and efficiently. Maine residents are positively impacted as Eligibility Specialists will have more time to process applications, recertifications and reported changes.* *OFI resources were strained during the PHE due to implementation of Pandemic EBT, online purchasing, and Maximum Emergency Allotments. Emergency allotments require many manual supplements that are both error prone and time consuming. Benefits offered by other state agencies including increased unemployment benefits added to the probability of increased errors. Maine was approved for waivers of interview at application and recertification andimplemented telephonic signatures for the first time. Maine extended certification periods and delayed periodic reports for some months. All of these rapid paced changes allowed us to serve the residents of Maine more effectively and efficiently. The swift and drastic nature of these changes and changes to other programs led to pandemic caused SNAP benefit errors.* *Maine's SNAP caseload jumped 7%, from 89,398 households and 165,097 individuals on SNAP in February 2020 to 95,494 and 176,094 respectively in April 2020. The increase in applications, new programs and the myriad of fast paced changes for OFI and Maine residents are the root causes of pandemic payment errors. It is in the best interest of our applicants and recipients to waive pandemic related claims that are not the result of an IPV. This waiver would improve the effective and efficient administration of SNAP and not further harm Maine residents during a period of economic healing and restoration.* *Additional changes are part of an ongoing effort to modernize the chapter and improve its readability. This section would be reorganized to better match the flow of the process of determining, collecting and closing overpayments. Wording would be updated to provide a universal description of rights and requirements rather than instructions for Department staff. "Food Supplement" and related appreciations would be modernized to "Supplemental Nutrition Assistance Program" or "SNAP". Redundancies would be removed.*
Basis Statement:	*The adopted rule updates the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with legislative changes made to 22 M.R.S. § 3769-*

	C made by P.L. 2024, Ch. 622, An Act to Reduce the Number of Children Living in Deep Poverty by Adjusting Assistance for Low-income Families. *The adopted rule effectuates the Maximum Benefit and Standard of Need Chart by increasing the maximum amount of monthly TANF assistance by an amount equal to 20% of the maximum payments that were in effect on January 1, 2024. In addition, 22 M.R.S. § 3769-C(1)(D) requires that the Department increase Appendix Chart, page 3, Standard of Need and Maximum Grant, each October based on the Cost-of-Living Increase used by the Social Security Administration for that year.* *The adopted rule updates are effective October 1, 2024 as required by statute.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-214: Chapter 175, Amyotrophic Lateral Sclerosis Incidence Registry Rule	
Statutory Authority:	22 MRS § 1415
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*No fiscal impact is anticipated.*
Principal purpose:	*The Department's proposal implements the statewide amyotrophic lateral sclerosis (ALS) incidence registry (Registry) and the reporting requirements for health care practitioners, hospitals and other health care facilities that screen for, diagnose or treat patients with ALS, pursuant to 22 MRS Chapter 255-A. This proposed rule includes provisions specific to annual reporting of Registry data and data sharing with external partners, including registries and researchers. Registry data disclosure and release, reports and bidirectional data exchanges must be in accordance with this rule and State and federal confidentiality laws and policies and may require a data sharing agreement or Institutional Review Board (IRB) approval or exemption determination letter. This rule outlines the form and manner prescribed by the Department for reporting reportable cases. Data required for reportable cases include the date of diagnosis, residential and occupational history, risk factors and other information about reportable cases that will inform epidemiologic studies on the causes of ALS, trend analysis, and geographic and demographic patterns.*
Basis Statement:	*This rule implements the data collection requirements and data release protocols established by the State of Maine Department of Health and Human Services Maine Center for Disease Control Prevention's Data Research and Vital Statistics (Department) for the purposes of the Statewide amyotrophic lateral sclerosis (ALS) incidence registry, pursuant to 22 MRS § 1411. This rule is adopted in accordance with Title 5 MRS Chapter 375, Subchapter 2.* *Physicians, surgeons, nurse practitioners, physician assistants or other health care practitioners and hospitals or other health care facilities that screen for, diagnose or provide therapeutic services to patients with ALS must collect and report required data concerning a reportable case in the form and manner prescribed by the Department, including information that may otherwise not be included in an electronic medical record. As authorized by 22 MRS § 1412, the Department's rule requires information, including, but not limited to, diagnostic information, residential and occupational history, and reported known risk factors, that may be used to inform epidemiologic studies on the causes of ALS and in evaluating of trends over time and identifying geographic and demographic patterns. The ALS reporting form collects personal information. Because the transmission is not urgent, the forms may be submitted securely via U.S. mail or facsimile, as permitted for similar health-related data collection form submissions.* *The Department may follow-up with reporters for information held by the provider and determined to be important for ALS research or inclusion in the national ALS registry. The rule outlines data sharing protocols that ensure patient confidentiality and confirm that the release of registry information is for legitimate purposes.*

10-144 Department of Health and Human Services, MaineCare Services	
2024-215: Chapter 101, MaineCare Benefits Manual, Ch. II, § 25, Dental Services and Reimbursement	
Statutory Authority:	22 M.R.S. §§ 42, 3173, 3173-J(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that this rulemaking will result in a cost neutral fiscal impact.*
Principal purpose:	*The Department proposes to amend 10-144 CMR ch. 101, MaineCare Benefits Manual (the "MBM") Chapter II, Section 25 Dental Services and Reimbursement Methodology, specifically Section 25.06 Reimbursement Methodology. On July 1, 2024, the Department enacted changes to this policy through emergency rulemaking pursuant to Title 5, M.R.S. §8054.* *This proposed rulemaking seeks to make permanent the updates in the reimbursement methodology described in Section 25.06(A). In accordance with 22 M.R.S. §3173-J(2), the Department provided notice of its initiation of the process to update the benchmarked rates for dental services to the most current year of data for the payer source on October 13, 2023, by posting it on the MaineCare Rate System Reform website. The Department conducted a review of data from the Maine Health Data Organization All Payer Claims Database as well as utilizing data from other states' Medicaid dental service rates. The result of this process to update the benchmarked rates for dental services was that the updated benchmarks would result in an estimated 2.2 million dollar reduction in total reimbursement to providers of MaineCare dental services. In accordance with Title 22 M.R.S. §3173-J, the Department held an online public meeting to present the results of the benchmark updating efforts and draft rates on April 12, 2024, and provided opportunities for stakeholder input and comment.* *In addition, to ensure reimbursement is not decreased, and in an effort to ensure continued access to services, this rulemaking will also amend Section 25.06(B)3 to extend the temporary exceptions for services defined as extraction of an erupted or exposed root and medicament application for an additional two years, through June 30, 2026. This change enables the Department to maintain the rates for these services in an effort to prevent further loss of enrolled dental providers and to ensure access to medically necessary services for MaineCare members.*
Basis Statement:	*The Department of Health and Human Services ("the Department") adopts this rule to amend 10-144 CMR ch. 101, MaineCare Benefits Manual (the "MBM") Chapter II, Section 25, Dental Services and Reimbursement Methodology.* *On June 28, 2024, the Department adopted an emergency rule, pursuant to 5. M.R.S. §8054, that made the following changes:* • *Section 25.06(A)(1)(Commercial Median Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* • *Section 25.06(A)(2)(Medicaid State Average Benchmark): This benchmark will be "assessed" rather than "updated" every two years;* • *Section 25.06(B)(3(Temporary Exceptions): These exceptions are being extended from June 30, 2024 to June 30, 2026.*

	The June 28, 2024 Emergency Rule expires on September 26, 2024. This rulemaking makes permanent the three reimbursement methodology changes described above. The changes to the two benchmarks ensure that reimbursement to Providers will not decrease. The Department conducted a review of data from the Maine Health Data Organization All Payer Claims Database as well as utilizing data from the other states' Medicaid dental service rates. As a result, the Department concluded that updating the benchmarks would result in an estimated $2.2 million net reduction in reimbursement. The extension for the methodology for Temporary Exceptions for services defined as extraction of an erupted or exposed root and medicament application will continue for another two years. The Department will submit a State plan Amendment to CMS to these changes and anticipates CMS approval of such.

10-144 Department of Health and Human Services, Office for Family Independence	
2024-232: Chapter 333, Low Cost Drugs for the Elderly and Disabled (DEL) Eligibility	
Statutory Authority:	22 M.R.S. § 42(1) and (8); 254-D, 3174-LLL
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The proposed rule change would update Section 2, APPLICATION PROCESS, consistent with a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Effective retroactive to July 1, 2024, individuals who are enrolled in Medicaid and/or Medicare Buy-In (MSP), who are eligible for Medicare Part D, and meet the income criteria in Section 2.2, are deemed to be eligible for and enrolled in DEL. These individuals do not need to file a separate application.* *In addition, the proposed rule would make the following changes:* *"10-144" would replace the "MaineCare Eligibility Manual" throughout the rule.* *"Noncitizen" would replace "alien" and "noncitizens" would replace "aliens" throughout the rule.* *Section 1 "their" would replace "his/her" control.* *Section 1(III)(B)(3) "United" would replace "Unites."* *The proposed rule changes would be retroactive to July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule updated Section 2, APPLICATION PROCESS, consistent with a legislative change to 22 M.R.S. § 3174-LLL made by P.L. 2023, ch. 412. Effective retroactive to July 1, 2024, individuals who are enrolled in Medicaid and/or Medicare Buy-In (MSP), who are eligible for Medicare Part D, and meet the income criteria in Section 2.2, are deemed to be eligible for and enrolled in DEL. These individuals do not need to file a separate application.* *In addition, the adopted rule effectuates the following changes:* • *"10-144" replaced the "MaineCare Eligibility Manual" throughout the rule.* • *"Noncitizen" replaced "alien" and "noncitizens" would replace "aliens" throughout the rule.* • *Section 1 "their" replaced "his/her" control.* • *Section 1(III)(B)(3) "United" replaced "Unites."* *The adopted rule changes are effective retroactive to July 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.* *The Department determined it necessary to make non-substantial changes to the final rule to ensure consistency throughout the rule. Throughout the open sections of this rule, 10-144, C.M.R. Ch. 332 replaces MaineCare Eligibility Manual.* *The final rule is consistent in substance with the rule that was proposed.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-233: Chapter 331, Public Assistance Manual (TANF)	
Statutory Authority:	22 M.R.S. §§ 42(1); 3762(3)(A)-(B)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates any additional costs from this rulemaking are expected to be minor and can be absorbed within existing budgeting resources.*
Principal purpose:	*The proposed rule changes would update the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with a legislative change to 22 M.R.S. § 3762 made by P.L. 2023, Ch. 29, An Act to Improve Family Economic Security Under the Temporary Assistance for Needy Families Program.* *The proposed rule changes would update Chapter IV, B, INCOME DISREGARDS as follows:* *B(3) would remove "one of"* *B(3)(a) would add "A current recipient with new employment that was obtained while actively participating in, and in compliance with, the TANF/PaS and ASPIRE programs; or"* *B(3)(b) would add "an increase in" and replace "or" with "and"* *B(3)(c) The increase in earned income occurred while actively participating in, and in compliance with, the TANF/PaS program" would replace "An applicant with earned income and the assistance group has passed the income eligibility test located below in (F)(1)."* *B(3)(c)(i) would add "applicable" and "or they meet the conditions included in (d) below."* *B(3)(e) "Supplemental Nutrition Assistance Program (SNAP)" would replace "Food Supplement Program."* *It is the intent of the Department that proposed changes to this rule will be in effect as of October 1, 2024 consistent with P.L. 2023 Ch. 29.*
Basis Statement:	*The adopted rule effectuates changes to Chapter IV of the Public Assistance Manual Temporary Assistance for Needy Families (TANF) consistent with a legislative change to 22 M.R.S. § 3762 made by P.L. 2023, Ch. 29, An Act to Improve Family Economic Security Under the Temporary Assistance for Needy Families Program.* *The adopted rule updated Chapter IV, B, INCOME DISREGARDS as follows:* • *B(3) removed "one of"* • *B(3)(a) added "A current recipient with new employment that was obtained while actively participating in, and in compliance with, the TANF/PaS and ASPIRE programs; or"* • *B(3)(b) added "an increase in" and replace "or" with "and"* • *B(3)(c) The increase in earned income occurred while actively participating in, and in compliance with, the TANF/PaS program" replaced "An applicant with earned income and the assistance group has passed the income eligibility test located below in (F)(1)."* • *B(3)(c)(i) added "applicable" and "or they meet the conditions included in (d) below."*

- *B(3)(e) "Supplemental Nutrition Assistance Program (SNAP)" replaced "Food Supplement Program."*

The adopted rule changes are effective retroactive to October 1, 2024 consistent with P.L. 2023 Ch. 29. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as this update is a benefit to recipients or beneficiaries and does not have an adverse financial effect on either providers or beneficiaries or recipients.

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

10-144 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-234: Chapter 265, Substance Use Testing For The Workplace Rule	
Statutory Authority:	26 MRS §§ 683(11) and 687 (1)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This rule change permits labs to, again, conduct the appropriate confirmation tests for employers, eliminating any impact associated with changes in allowable testing for THC implemented November 2023.*
Principal purpose:	*This rule change is needed to ensure that licensed testing laboratories serving Maine employers with approved testing policies can continue to apply appropriate confirmation test methods for tetrahydrocannabinol (THC). This proposed rule corrects the unintended conflict resulting from a recent change adopted November 2023 in Section 1 (B)(8), to allow licensed testing laboratories to continue to conduct confirmation tests for tetrahydrocannabinol (THC) and/or metabolites that may include non-psychoactive components as an indicator of use of THC. Additionally, the Department proposes changes to clarify that, when an applicant or employee requests a portion of the sample for that person's own testing, the sample must be segregated at the time the sample is taken (Section 2(B)(2)); and that all non-negative specimens must be retained in the original containers and stored at appropriate temperature for preservation for at least 12 months, and that lab reports showing the presence or absence of that substance relative to the cutoff level only are sent to the employer or designee. Proposed changes also relocate provisions related to sample collection and storage to Section 2 and remove those provisions in Section 4 related to licensing and oversight that are no longer applicable, due to capacity and infrastructure changes impacting the inspections conducted by the Department for testing labs subject to this rule. Under this rule, licensed labs must be approved by the Substance and Mental Health Services Administration's National Laboratory Certification Program or College of American Pathologist Laboratory Accreditation Program.*
Basis Statement:	*The Maine Department of Health and Human Services (Department) has adopted routine technical rule changes amending 10-144 CMR Chapter 265, Substance Use Testing For The Workplace Rule, a rule administered by the Department's Maine Center for Disease Control and Prevention that governs testing of employees working in the State of Maine and applicants applying for employment in the State of Maine, for substances of use for the workplace. The adopted rule reflects changes finalized after consulting with the Maine Department of Labor (DOL), considering public comments received for this rulemaking, and receiving the review performed by the Office of the Attorney General for form and legality.* *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 incidents 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. (26 MRS §681).* *Following reports of a conflict resulting from Chapter 265 rule amendments adopted*

	in November 2023, the Department filed notice of proposed changes on May 15, 2024, to address the conflict in Chapter 265 that inadvertently restricted laboratories from testing non-psychoactive components of cannabis as an indicator of use of tetrahydrocannabinol (THC), which inadvertently impacted testing laboratories and employers' workplace substance use testing policies across the State of Maine. *This rule change is critical to ensure that licensed testing laboratories serving Maine employers with approved testing policies are allowed to continue to apply appropriate confirmation test methods that may include non-psychoactive components of cannabis as an indicator of use of THC. Additionally, adopted amendments further clarify statutory provisions, update language to align with industry standards, and reflect infrastructure changes that impacted the inspections conducted by the Department for labs subject to this rule.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-240: Chapter 332, MaineCare Eligibility Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8); 3174
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The proposed rule changes are not anticipated to have a fiscal impact.*
Principal purpose:	*The Department proposes rule changes to the MaineCare Eligibility Manual, Part 2, Basic Eligibility Criteria consistent with the Centers for Medicaid and Medicare Services' "2023 Streamlining Medicare Savings Program Enrollment" final rule (89 FR 22780). The proposed rule removes the requirement that applicants apply for other benefits as a condition of MaineCare eligibility. Additionally, it removes the limit on the number of reasonable opportunity periods for individuals verifying their citizenship and immigration status.* *The proposed rule would make the following changes to Part 2:* • *Section 3.1, (III)(B) would remove "not" from "A reasonable opportunity period will not be provided on subsequent applications submitted by or on behalf of the applicant or household members."* • *Section 3.4, (H) would capitalize Batterer(s).* • *Section 10, "APPLICATION FOR MEDICARE" would replace "APPLICATION FOR OTHER BENEFITS"* • *Section 10 would remove "Individuals must apply for other benefits to which they may be entitled. This includes applying for the benefit and providing the Department with necessary information to determine eligibility."* • *Section 10 would remove I. "Other benefits include but are not limited to, Social Security, Railroad Retirement, Veteran's Pension/Compensation, Worker's Compensation, and Unemployment Insurance. This provision does not apply to SSI, State Supplement, TANF cash benefits and other Federal, State, local or private programs which make payments based on need."* • *Section 10 would remove V. "The Department will not require an individual:"* • *Section 10 would remove V.A. "To file for other benefits when applying for them would result in no additional benefits which affects the individual's eligibility."* • *Section 10 would V.B. "To pursue a claim for other program benefits through the appeals process."* • *Section 10 would remove V.C. "Who is not applying for or covered by Medicaid to pursue a claim for other program benefits, for example, an ineligible spouse, parent or child."* *The proposed rule changes would be effective June 1, 2024. Retroactive rulemaking is permissible under 22 M.R.S. § 42(8) as these updates provide a benefit to recipients and applicants.*
Basis Statement:	*The adopted rule updates the MaineCare Eligibility Manual, Part 2, Basic Eligibility Criteria, consistent with the Centers for Medicaid and Medicare Services' "2023 Streamlining Medicare Savings Program Enrollment" final rule (89 FR 22780). The adopted rule removes the requirement that applicants apply for other benefits as a condition of MaineCare eligibility. Additionally, the adopted rule removes the limit*

on the number of reasonable opportunity periods for individuals verifying their citizenship and immigration status.

The adopted rule effectuates the following changes to Part 2, Basic Eligibility Criteria:

- *Section 3.1, (III)(B) removes "not" from "A reasonable opportunity period will not be provided on subsequent applications submitted by or on behalf of the applicant or household members."*
- *Section 3.4, (H) capitalizes Batterer(s).*
- *Section 10, "APPLICATION FOR MEDICARE" replaces "APPLICATION FOR OTHER BENEFITS"*
- *Section 10 removes "Individuals must apply for other benefits to which they may be entitled. This includes applying for the benefit and providing the Department with necessary information to determine eligibility."*
- *Section 10 removes I. "Other benefits include but are not limited to, Social Security, Railroad Retirement, Veteran's Pension/Compensation, Worker's Compensation, and Unemployment Insurance. This provision does not apply to SSI, State Supplement, TANF cash benefits and other Federal, State, local or private programs which make payments based on need."*
- *Section 10 removes V. "The Department will not require an individual:"*
- *Section 10 removes V.A. "To file for other benefits when applying for them would result in no additional benefits which affects the individual's eligibility."*
- *Section 10 updates V.B. "To pursue a claim for other program benefits through the appeals process."*
- *Section 10 removes V.C. "Who is not applying for or covered by Medicaid to pursue a claim for other program benefits, for example, an ineligible spouse, parent or child."*

Changes were made to the adopted rule as a result of public comment and intended to provide clarity and reduce confusion. The adopted rule is consistent in substance with the rule was proposed.

Section 10: Application for Medicare:

- *The title of Section 10 is changed to "Requirement to Apply for Medicare"*
- *I. and II. add "through the Social Security Administration,"*

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

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

10-144 Department of Health and Human Services, Office of MaineCare Services – Policy Division	
2024-245: Chapter 101, MaineCare Benefits Manual, Ch. II, § 43, Hospice Services	
Statutory Authority:	22 M.R.S. §42 and 42(8); P.L. 2023, ch. 576 (LD 2055).
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*This proposed rulemaking is cost neutral.*
Principal purpose:	***Background**: In January 2024, the Department adopted changes to the Ch. II, Section 43 (Hospice Services), which included adding a new provision (Section 43.06-7) adding an Electronic Visit Verification (EVV) requirement for hospice services that are delivered in-home, with a prospective effective date of July 1, 2024 for that EVV requirement.* *After the Ch. II Section 43 rule was adopted, the Maine Legislature enacted legislation which provided that the Department may not implement EVV for hospice providers earlier than March 1, 2025, and that rules providing for such EVV requirements are major substantive rules. P.L. 2023, ch. 576 (LD 2055). This Public Law became law without the Governor's signature on March 27, 2024. The law is codified at 22 M.R.S. Sec. 3174-NNN.* ***The Department's rule proposal:** In accordance with P.L. 2023 ch. 576, the Department of Health and Human Services (the "Department") proposes to repeal the Ch. II, Sec. 43.06-7 provision (with the EVV requirement). Because this routine technical rule will likely not be adopted until after July 1, 2024, the Department proposes a retroactive effective date of June 30, 2024 for the repeal of the provision.* *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for a State Plan Amendment related to this provision.*
Basis Statement:	*The Department of Health and Human Services (the "Department") adopts this rule to amend MaineCare Benefits Manual (the "MBM") Chapter II, Section 43, Hospice Services.* ***Background**: In January 2024, the Department adopted a rule to amend Ch. II, Section 43: Hospice Services by adding a new provision (Section 43.06-7) to implement an Electronic Visit Verification (EVV) requirement for hospice services that are delivered in-home, with a prospective effective date of July 1, 2024 for that EVV requirement.* *After the Ch. II Section 43 rule was adopted, the Maine Legislature enacted legislation which provided that the Department may not implement EVV for hospice providers earlier than March 1, 2025, and that rules providing for such EVV requirements are major substantive rules. P.L. 2023, ch. 576 (LD 2055). This Public Law became law without the Governor's signature on March 27, 2024. The law is codified at 22 M.R.S. Sec. 3174-NNN.* ***The Department's changes to Chapter II, Section 43:** In accordance with P.L. 2023 ch. 576, the Department repeals the Ch. II, Sec. 43.06-7 provision (with the EVV requirement). Since this routine technical rule repealing Ch. II, Sec. 43.06-7 was not*

	adopted prior to July 1, 2024, the date Ch. II, Sec. 43.06-7 was intended to go into effect, the Department adopts a retroactive effective date of June 30, 2024, for the repeal of the provision. *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for a State Plan Amendment related to this provision.* *Rules and related rulemaking documents may be reviewed at and printed from MaineCare Services website at http://www.maine.gov/dhhs/oms/rules/index.shtml or, for a fee, interested parties may request a paper copy of rules by calling 207-624-4050. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 711.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-247: Chapter 323, Maine General Assistance Manual	
Statutory Authority:	22 M.R.S. §§ 42(1) and 4308(2); 5 M.R.S. § 8054; P.L. Ch. 643 Section VV
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*The Department anticipates that any additional costs to implement the adopted rule changes are expected to be minor and can be absorbed within existing budgeted resources.*
Principal purpose:	*The Department adopts this emergency rule, which amends10-144 C.M.R. Ch. 323, Maine General Assistance (GA) Manual, Section V, MAXIMUMS, CATEGORIES AND LEVELS OF ASSISTANCE, to align with a legislative change to 22 M.R.S. §§ 4308(2) made by P.L. 2024 Ch. 643.* *This emergency rule makes the following change to Section V, MAXIMUMS, CATEGORIES AND LEVELS OF ASSISTANCE:* • *(D)(5) "The maximum duration that an applicant may receive housing assistance for hotel, motel, inn or in a similar place of lodging in excess of the municipality's budgeted maximum levels is 30 days in a 12-month period. This does not preclude an applicant from receiving housing assistance less than or equal to the municipality's budgeted maximum levels for the remainder of the 12-month period as long as the applicant meets requirements."* ***Findings of Emergency:*** *The Maine Legislature granted the Department of Health and Human Services authority to adopt emergency rules under 5 M.R.S. Sec. 8054, if determined necessary by the Department to implement those provision of the Supplemental Budget Act over which the Department has subject matter jurisdiction, without the requirement that it demonstrate that immediate adoption is necessary to avoid a threat to public health, safety or general welfare. P.L. 2023, ch. 643, PART VV, Sec. VV-1. The Department has determined that it is necessary to adopt this emergency rule to implement provisions of the Supplemental Budget Act regarding hospital reimbursement set forth in PART A, Sec. A-14.* *Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.* *This rule will not have an impact on municipalities or small businesses.*
Basis Statement:	*The Department adopts this emergency rule, which amends10-144 C.M.R. Ch. 323, Maine General Assistance (GA) Manual, Section V, MAXIMUMS, CATEGORIES AND LEVELS OF ASSISTANCE, to align with a legislative change to 22 M.R.S. § 4308(2) made by P.L. 2024 Ch. 643.* *This emergency rule makes the following change to Section V, MAXIMUMS, CATEGORIES AND LEVELS OF ASSISTANCE:* • *(D)(5) "The maximum duration that an applicant may receive housing*

assistance for hotel, motel, inn or in a similar place of lodging in excess of the municipality's budgeted maximum levels is 30 days in a 12-month period. This does not preclude an applicant from receiving housing assistance less than or equal to the municipality's budgeted maximum levels for the remainder of the 12-month period as long as the applicant meets requirements."

Findings of Emergency:

The Maine Legislature granted the Department of Health and Human Services authority to adopt emergency rules under 5 M.R.S. Sec. 8054, if determined necessary by the Department to implement those provision of the Supplemental Budget Act over which the Department has subject matter jurisdiction, without the requirement that it demonstrate that immediate adoption is necessary to avoid a threat to public health, safety or general welfare. P.L. 2023, ch. 643, PART VV, Sec. VV-1. The Department has determined that it is necessary to adopt this emergency rule to implement provisions of the Supplemental Budget Act regarding hospital reimbursement set forth in PART A, Sec. A-14.

Pursuant to 5 M.R.S §8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

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

10-144 Department of Health and Human Services, MaineCare Services	
2024-248: Chapter 101, MaineCare Benefits Manual, Ch. III, § 45, Hospital Services	
Statutory Authority:	22 M.R.S. §§ 42, 3173-J; P.L. 2023, ch. 643.
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that this rulemaking will cost approximately $122,338,057 in SFY 2025, which includes $34,716,249 in state dollars and $87,621,808 in federal dollars, and $$122,338,057 in SFY 2026, which includes $34,805,689 in state dollars and $87,532,368 in federal dollars.*
Principal purpose:	*The Department of Health and Human Services proposes these rule changes in 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 45, Principles of Reimbursement for Hospital Services. On August 9, 2024, the Department enacted changes to this policy through emergency rulemaking pursuant to Title 5, M.R.S. §8054.* *The Department's principal purpose of this rulemaking is to make permanent the establishment of a new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented a new reimbursement methodology.* *In compliance with 22 M.R.S. Sec. 3173-J(2), the Department conducted a rate determination process: a Rate Determination Initiation Notice was issued on June 23, 2023. MaineCare presented the draft reimbursement methodology and definitions to providers and interested stakeholders on December 11, 2023; February 16, 2024; and June 11, 2024. The Department accepted public comments through June 25, 2024 and responded in writing to comments with an explanation of whether and how feedback was incorporated into the final reimbursement methodology and rates.* *These changes include improved alignment with Medicare, greater consistency in reimbursement methodology across hospitals, and ensuring that reimbursement for services better reflects patient acuity. The Department adopts methodology which aligns reimbursement for facilities with similar delivery systems and cost structures, recognizing three distinct hospital peer groups that recognize distinct Maine Base Rates for inpatient services: Acute Care Non-Critical Access, Non-State Government Owned, and Rehabilitation. The Department's updated methodology introduces mechanisms to keep pace with inflation and improve the relationship between the quality of service outcomes and payment.* *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval, for State Plan Amendments related to these provisions.* *Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).*

This rulemaking proposes to make permanent the following changes:

- *Introduction:*

- *Removes specific mention of private classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.*

- *Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.*

Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.

- *Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.*

- *Section 45.01- Definitions:*

- *Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.*

- *Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).*

- *Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital Reimbursement Methodology.*

- *Section 45.02 – General Provisions*

- *45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.*

- *45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.*

- *45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.*

- *45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and*

reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.

- *45.02-9 – Claims Billing: Adds new section to introduce links to the Department's billing instructions and new supplemental Hospital Billing Guidance.*

- *45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions "window" from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.*

- *<u>Section 45.03 – Acute Care Non-Critical Access Hospitals</u>*
- *Removes Department's Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.*

- *45.03-1 –Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for cost settlement of capital costs from July 1, 2025 to September 1, 2024.*

- *45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.*

- *Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.*

- *Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement*

- *Removes Prospective Interim Payment (PIP) for Outpatient Services as Public Acute Care Non-Critical Access Hospitals will no longer receive PIPs.*

- *Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end dated. DRG and APC payments will not be cost settled.*

  - *Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008*
- *Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.*

  - *Section 45.06 – Rehabilitation Hospitals*
- *Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.*
- *Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the Department.*
- *Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department's larger hospital investment initiative.*

  - *Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).*

  - *Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).*

  - *Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement*
- *Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective*

	Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024. • *Appendix A – DRG-Based Payment Methodology* • *Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:* o *This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.* o *The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.* o *The Department calculates a hospital's DRG payment for a covered inpatient service by summing the assigned peer group's Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital's FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital's DRG payment. The rule updates the MS-DRG weights to the current year's Medicare weights to account for cost differences in services delivered and patient acuity.* o *Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.*
Basis Statement:	*The Department of Health and Human Services (the "Department") 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 Department's principal purpose of this rulemaking is to establish new reimbursement methodology for Acute Care and Rehabilitation Hospitals, with the exception of Distinct Psychiatric and Substance Use Disorder Unit services for which the Department recently implemented a new reimbursement methodology.* *On August 9, 2024, the Department adopted an emergency rule implementing these and other changes in Chapter III, Section 45. That emergency rule expires after 90 days, pursuant to 5 M.R.S. § 8054(3); this rulemaking makes permanent those emergency adopted changes.*

This rulemaking makes the following changes:

- *Introduction:*

- *Removes specific mention of "private" classification from Acute Care Non-Critical Access Hospitals and adds the subset of Non-State Government Owned Hospitals.*

- *Updates Public Acute Care Non-Critical Access Hospitals to Non-State Government Owned Hospitals and specifies they will be reimbursed as Acute Care Non-Critical Access Hospitals.*

- *Removes Hospitals Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB) as the classification is no longer relevant to this updated reimbursement methodology.*

- *Effective July 1, 2024, updates Rehabilitation Hospital summary to reflect adoption of Medicare Severity Diagnosis Related Group (MS DRG)-based reimbursement methodology in lieu of the current set discharge rate.*

- *Section 45.01- Definitions:*

- *Updates definitions of Ambulatory Payment Classifications (APC); Discharge; Acute Care Non-Critical Access Hospital; and Rural Hospital.*

- *Removes the definition of Hospital Reclassified to a Wage Area Outside Maine by the Medicare Geographic Classification Review Board (MGCRB).*

- *Defines Provider-Based Department, Non-State Government Owned Hospital, and Acute Care Hospitals converting from Critical Access Hospital Reimbursement Methodology to Acute Care Non-Critical Access Hospital Reimbursement Methodology.*

- *Section 45.02 – General Provisions:*
- *45.02-1 – Inflation: Includes application of annual inflation adjustments for MS DRG-based reimbursement rates.*

- *45.02-5(F) – Adds reimbursement information pertaining to Upper Payment Limits and related compliance measures. Adds the separate UPL required by CMS for Non-State Government Owned Hospitals.*

- *45.02-6 – Data for PIP Calculation: Adds cost report data requirements for hospitals approved for conversion to critical access hospital category and resulting reimbursement methodology. This requirement is added to ensure timely PIP determination and payment for converting hospitals.*

- *45.02-8 – Effective July 1, 2024, Days Awaiting Placement: Updates expired*

provision to reintroduce the provision with new methodology which removes the 10-day waiting period, establishes a new annual cap of $1,500,000, and reimburses Acute Care Non-Critical Access Hospitals at 75% of the statewide average per diem NF rate. The Department reintroduces this provision and triples the amount of the previous cap in recognition of the fiscal impact on hospitals for delivering such care. Utilizing a percentage of the per diem NF rate is an approach consistent with methodology utilized in other state Medicaid Programs and recognizes level of care constraints within the hospital setting.

- *45.02-9 – Claims Billing: Adds new section to introduce links to the Department's billing instructions and new supplemental Hospital Billing Guidance.*

- *45.02-10 – Readmissions Penalty: To more closely align with Medicare, the Department incorporates existing operational processes and components of the former Discharge definition to enhance Readmissions Penalties applied to qualifying DRG payments effective August 9, 2024. This adjustment moves away from exact DRGs in favor of clinically related criteria, clarifies when a member is considered to be readmitted, extends the readmissions "window" from 14 days to 30 days, and describes scenarios excluded from Readmissions Adjustment review.*

- *<u>Section 45.03 – Acute Care Non-Critical Access Hospitals</u>:*
- *Removes Department's Total Obligation to the Hospital narrative as the formula is now described elsewhere within the rule.*

- *45.03-1 – Inpatient Services: References updates to MS DRG-based payment methodology detailed in Appendix A, effective July 1, 2024. For Distinct Psychiatric Units and Substance Use Disorder Units: Moves the end date for cost settlement of capital costs from July 1, 2025 to September 1, 2024.*

- *45.03-C – Effective July 1, 2024, Outpatient Services, Including Laboratory and Imaging: Aligns outpatient methodology across acute care non-critical access hospitals by transitioning Non-State Government Owned Hospitals from a cost reimbursement system to the Medicare Outpatient Prospective Payment System (OPPS) that also applies to Acute Care Non-Critical Access Hospitals. Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. Fully aligns with Medicare by, effective August 9, 2024, adopting Medicare adjustments to reduce reimbursement at certain Provider Based Departments through use of the PO modifier.*

- *Effective July 1, 2024, removes reference to Public Hospitals as they are now absorbed in other areas of the rule.*

- *Removes reference to Capital and Graduate Medical Education Costs as those are now addressed in Appendix A and are no longer subject to cost settlement*

- *Removes Prospective Interim Payment (PIP) for Outpatient Services as Non-*

State Government Owned Hospitals will no longer receive PIPs.

- *Effective July 1, 2024, Interim and Final Cost Settlement: Specifies cost settlement now only applies to hospital-based physician services; expired provisions are end dated. DRG and APC payments will not be cost settled.*

  - *<u>Section 45.05 – Hospitals Reclassified to a Wage area Outside of Maine by the Medicare Geographic Classification Review Board (MGCRB) Prior to October 1, 2008</u>:*
- *Removes section as the Hospitals Reclassified to a Wage area Outside of Maine criteria will no longer be utilized by the Department to determine hospital classification. Such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals to assure hospital fiscal stability.*

  - *<u>Section 45.06 – Rehabilitation Hospitals</u>:*
- *Effective July 1, 2024, updates section to reflect adoption of MS DRG-based payment methodology. The Department adopts this updated reimbursement methodology as the current flat discharge rate does not capture changes in patient mix or costs related to patient acuity. Unlike the stagnant flat discharge rate which was last updated in 2018, the DRG-based payment methodology will receive annual inflation adjustments and updates to the Medicare MS-DRG relative weights. Rehabilitation Hospitals are a distinct peer group and will receive their own Maine Base Rate.*
- *Effective July 1, 2024, Interim and Final Cost Settlement is added to specify cost settlement only applies to hospital-based physician services; DRG and APC payments will not be cost settled. The discontinuation of cost settlement for these services will reduce administrative burden for both providers and the Department.*
- *Updates the percent of Medicare OPPS Ambulatory Payment Classifications (APC) rates the Department pays to 109%. The Department will also pay the updated 109% of Medicare outlier payments. This increase is a result of the Department's larger hospital investment initiative.*

  - *<u>Section 45.07 – Value-Based Purchasing for Supplemental Sub-Pool</u>:*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will now be reimbursed as Acute Care Non-Critical Access Hospitals).*

  - *<u>Section 45.08 – Supplemental Pool for Acute Non-Critical Access Hospitals and Rehabilitation Hospitals</u>:*
- *Removes mention of Hospitals Reclassified to a Wage area Outside of Maine (as such hospital types will be reimbursed as Acute Care Non-Critical Access Hospitals).*

  - *<u>Section 45.09 – Supplemental Payments for Acute Care Hospitals converting from Acute Care Critical Access Hospital Reimbursement to Acute Care Non-Critical Access Hospital Reimbursement</u>:*

- *Adds this new section to address the supplemental payment for Acute Care Non-Critical Access Hospitals reimbursed by Medicare under the Prospective Payment System and reimbursed by MaineCare like a Critical Access Hospital for outpatient services on or before January 1, 2024.*

  - *<u>Appendix A – DRG-Based Payment Methodology</u>:*
- *Effective July 1, 2024, updates language addressing components of the updated MS DRG-Based Payment Methodology:*

    - *This rule also removes cost settlement provisions for Capital and GME costs for hospitals subject to the DRG-Based Payment Methodology.*

    - *The Department updates its DRG-Based Payment Methodology. The rule incorporates updated Maine Base Rates that reflect FY22 costs; recognize different costs of inpatient care for Acute Care Non-Critical Access and Rehabilitation hospitals; and are inclusive of capital and operating costs.*

    - *The Department calculates a hospital's DRG payment for a covered inpatient service by summing the assigned peer group's Maine Base Rate plus, for teaching hospitals, a hospital-specific GME add-on rate determined using the hospital's FY 2022 As-filed Medicare cost report data. This sum is multiplied by the Medicare DRG relative weight, and the resulting value equals the hospital's DRG payment. The rule updates the MS-DRG weights to the current year's Medicare weights to account for cost differences in services delivered and patient acuity.*

    - *Outlier Adjustment: The Department establishes a new DRG-based outlier payment methodology which will observe updates to hospital-specific cost-to-charge ratios (CCRs) and fixed reimbursement percentages, as well as introduce a standard outlier threshold, updated in this rule to account for cost growth, for all eligible hospitals. Effective July 1, 2024 through December 31, 2024, the Department will increase the percentage it reimburses from 80% to 90% of estimated costs based on charges that exceed the threshold. This differs from previous methodology in that a new fixed reimbursement percentage is applied, a standard outlier threshold used, and hospital-specific CCRs are updated.*

Other Changes Made to the Adopted rule:

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 change in the adopted rule:

- *As a result of comment 11, the Department has replaced the term "cap" with "floor" in Section 45.02-7 and renamed this subsection "PIP Payment Floor" for clarity.*

These changes include improved alignment with Medicare, greater consistency in

	reimbursement methodology across hospitals, and ensuring that reimbursement for services better reflects patient acuity. The Department adopts methodology which aligns reimbursement for facilities with similar delivery systems and cost structures, recognizing three distinct hospital peer groups that recognize distinct Maine Base Rates for inpatient services: Acute Care Non-Critical Access, Non-State Government Owned, and Rehabilitation. The Department's updated methodology introduces mechanisms to keep pace with inflation and improve the relationship between the quality of service outcomes and payment. *Some of the rule changes have a retroactive application date of July 1, 2024, and the rule indicates the July 1, 2024 effective date for those provisions. The Department certifies that the retroactive changes comply with, and thus are authorized by, 22 M.R.S. Sec. 42(8).* *The Department shall submit to the Centers for Medicare & Medicaid Services, and anticipates approval of, a State Plan Amendment related to these provisions.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-257: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. § 42(1) and (8)(C); 7 C.F.R. § 273.24(f)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*SNAP benefits are federally funded. No fiscal impact is anticipated.*
Principal purpose:	*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 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 213 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, 2024.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8)(C) as this update provides a benefit to 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 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's 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 was approved on September 17, 2024. The geographic areas include 213 qualifying cities, towns, unorganized territories, townships, and reservations that qualify individually or as part of a federally defined labor market area. With the U.S.D.A. – FNS' waiver 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, 2024.* *The Department determined it necessary to make a non-substantial change to the proposed rule after the public comment period ended and modified Section 999-2 by adding the following geographic areas that qualify for an exception to the ABAWD work requirements as approved by the U.S.D.A. - FNS:*

- *Winterville*
- *Woodville*

Retroactive rulemaking is permissible under 22 M.R.S. § 42(8)(C) as this update provides a benefit to SNAP recipients who meet the ABAWD definition and does not adversely impact applicants, participants, beneficiaries, or providers.

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

10-144 Department of Health and Human Services, Office for Family Independence	
2024-258: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8)(A); 3104
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*State-Funded SNAP benefits are estimated to cost an additional $294,120 for Federal Fiscal Year 2025. These same changes will result in an estimated additional $10,058,400 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.*
Principal purpose:	*Federal rules 7 C.F.R. §§ 273.9(a)(3), 273.10(e)(4), and 273.11(r)(2)(ii) require that income and asset allowances, standard shelter deductions, and minimum and maximum benefit limits, are updated each year, effective October 1st. The U.S.D.A. - Food and Nutrition Services (FNS) provides updated income and asset allowances, standard deductions, and minimum and maximum benefit standards to states and territories, annually. The final income and asset allowances, standard deductions, and minimum and maximum benefit levels were distributed by the USDA FNS on August 2, 2024. The Department proposes to incorporate these figures effective October 1, 2024. 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) requires that standard heating/cooling, non-heat, and phone allowances as well as excess shelter deductions are updated each year, effective October 1st. 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 USDA FNS on August 2, 2024. FNS annually approves 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. FNS approved Maine's SUAs for FFY 2025 on August 15, 2024.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8)(A) as this update is necessary to comply with federal requirements, provides a benefit to SNAP recipients and does not adversely impact applicants, participants, beneficiaries, or providers.*
Basis Statement:	*Federal rules 7 C.F.R. §§ 273.9(a)(3), 273.10(e)(4), and 273.11(r)(2)(ii) require that income and asset allowances, standard shelter deductions, and minimum and maximum benefit limits, are updated each year, effective October 1st. The U.S.D.A. - Food and Nutrition Services (FNS) provides updated income and asset allowances, standard deductions, and minimum and maximum benefit standards to states and territories, annually. The final income and asset allowances, standard deductions, and minimum and maximum benefit levels were distributed by the U.S.D.A. FNS on August 2, 2024. The Department adopts these figures effective retroactive to October 1, 2024. 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) requires that standard heating/cooling, non-heat, and phone allowances as well as excess shelter deductions are updated each year, effective October 1st. 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 2, 2024. FNS annually approves 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. FNS approved Maine's SUAs for FFY 2025 on August 15, 2024.* *Retroactive rulemaking is permissible under 22 M.R.S. § 42(8)(A) as this update is necessary to comply with federal requirements, provides a benefit to SNAP recipients and does not adversely impact applicants, participants, beneficiaries, or providers.* *This rule will not have an adverse impact on municipalities or small businesses.*

10-144 Department of Health and Human Services, Center for Disease Control and Prevention	
2024-260: Ch. 223, Rules Relating to Tanning Facilities	
Statutory Authority:	22 MRS § 689-A(10)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*There are no additional costs associated with this rule.*
Principal purpose:	*Maine CDC is proposing amendments to its Rules Relating to Tanning Facilities to comply with Public Law Chapter 275, § 2, An Act to Reduce Youth Cancer Risk, signed into law on June 13, 2019, at 22 MRS § 689-A. These proposed amendments align with Section 689-A(2), to further protect individuals from the harmful effects of exposure to UV radiation from indoor tanning, by prohibiting minors from using indoor ultraviolet tanning facilities. Maine CDC also proposes to add new customer safety requirements in Sections 4 and 6 that provide more extensive customer consent and notification requirements, restrict exposure- time controls to facility personnel, limit tanning-facility use to every 24 hours, require facilities to provide free eye-protective wear, and ensure stricter controls for checking that customers are at least 18 years of age. Maine CDC also proposes to update the rule title by changing it to "Tanning Facilities Rule", to align with its Maine CDC rule formatting convention, and add a definition for Phototherapy device and Tanning facility, for clarity. In addition, Maine CDC proposes to clarify two existing definitions: Tanning equipment and Tanning facility.*
Basis Statement:	*The Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention (Department), advertised proposed changes to its Tanning Facilities Rule, previously titled Rules Relating to Tanning Facilities, (10-144 CMR Ch. 223), on May 29, 2024. In lieu of a public hearing, the Department held a 30-day public comment period, which ended on June 28, 2024. The Department received no comments related to the rulemaking.* *These rule amendments enable the Department's Maine CDC Radiation Control Program to enforce the recent statute (22 MRS § 689-A) that prohibits minors from using tanning equipment in Maine. The United States Food and Drug Administration (FDA) also warns persons under the age of 18 against using tanning beds or lamps.* *The amended rule contains other new customer safety additions that include further customer consent and notification requirements, restrictions to exposure-time controls for facility personnel, limitations of tanning-facility use to every 24 hours, requirements for facilities to provide free eye protective wear, and stricter controls to ensure customers are at least 18 years of age. The amendments to the rule also add a definition for Phototherapy device, for clarity, as well as update two existing definitions: Tanning equipment and Tanning facility. Maine CDC also updated the rule title to "Tanning Facilities Rule", to align with Maine CDC rule formatting convention.*

10-144 Department of Health and Human Services, Division of Licensing and Certification	
2024-261: Chapter 500, Rules Governing the Maine Certification of Healthcare Cooperative Agreements	
Statutory Authority:	PL 2023, c. 37
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The enactment of PL 2023 c. 37, which repealed the statute creating the Hospital and Health Care Provider Cooperation Act, resulted in a total deallocation of $183,812 to the Office of the Attorney General and $204,446 to the Department of Health and Human Services in FY 2023-2024 and a total deallocation of $192,567 to the Office of the Attorney General and $204,446 to the Department of Health and Human Services in FY 2024-2025. This fiscal impact was tied to the repeal of the statute, and repealing the associated rule should have no further independent fiscal impact.*
Principal purpose:	*This rule is necessary to comply with PL 2023 c. 37, An Act to Repeal the Hospital and Health Care Provider Cooperation Act. Because the statute has been repealed, there is no longer the authority nor the need for a rule to implement the statute.*
Basis Statement:	*This repeal is necessary due to PL 2023 c. 37, An Act to Repeal the Hospital and Health Care Provider Cooperation Act, which repealed 22 MRS Ch. 405-A, effective 10/25/23. With the repeal of the statute, there is no need for rules to implement that statute and there is no longer any statutory authority for the Department to have rules in place.*

10-144 Department of Health and Human Services, Office for Family Independence	
2024-272: Chapter 301, Supplemental Nutrition Assistance Program (SNAP) Rules	
Statutory Authority:	22 M.R.S. §§ 42(1) and (8)(C); 3104
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The Continuing Appropriations and Extensions Act, 2025, Public Law 118-83, Division B, Title I § 105, EBT Benefit Fraud Prevention Requirements will expire December 20, 2024. The Department proposes to update Section 777-4 of the Supplemental Nutrition Assistance Program (SNAP) Rules consistent with the end of the federal authorization for replacement of EBT benefits stolen through card skimming, card cloning, or similar fraudulent methods. The proposed rule change would limit the replacement of electronically stolen SNAP benefits to periods that such replacement is federally authorized.* *The proposed rule would update Section 777-4, Administration Procedures Replacement of Benefits as follows:* • *(1)(A) "Beginning December 20, 2024, the Department will only replace benefits pursuant to the process in Section 777-4(3)(B)-(F), as described below, if the replacement of benefits is federally authorized. If replacement of benefits lacks federal authorization, the Department will also suspend replacement of state funded benefits for the same period. If replacement of benefits is suspended due to a lack of federal authorization, the Department shall promptly notify a claimant of the suspension upon receiving an Electronically Stolen Benefits Application (EBSA) and deny that request.* • *(3) "Benefits used unlawfully for non-household members can only be replaced when the benefits were accessed as a result of card skimming, card cloning, phishing or other electronic acquisition of the EBT card number and PIN."* *The proposed rule changes are consistent with the expiration of the Continuing Appropriations and Extensions Act, 2025, P.L. 118-83, Division B, Title I § 105. Should the federal authority be extended or reimplemented prior to the adoption of this rule, the timeframes articulated therein will be adjusted accordingly.*
Basis Statement:	*The Continuing Appropriations and Extensions Act, 2025, Public Law 118-83, Division B, Title I § 105, EBT Benefit Fraud Prevention Requirements will expire December 20, 2024. The Department adopts Section 777-4 of the Supplemental Nutrition Assistance Program (SNAP) Rules consistent with the end of the federal authorization for replacement of EBT benefits stolen through card skimming, card cloning, or similar fraudulent methods. The adopted rule limits the replacement of electronically stolen SNAP benefits to periods that such replacement is federally authorized. In addition, clarity was added that the policy applies to instances where electronic theft of information leads to the theft of benefits, not the other way around.* *The adopted rule updated Section 777-4, Administration Procedures Replacement of*

Benefits as follows:

- *(1)(A) "Beginning December 20, 2024, the Department will only replace benefits pursuant to the process in Section 777-4(3)(B)-(F), as described below, if the replacement of benefits is federally authorized. If replacement of benefits lacks federal authorization, the Department will also suspend replacement of state funded benefits for the same period. If replacement of benefits is suspended due to a lack of federal authorization, the Department shall promptly notify a claimant of the suspension upon receiving an Electronically Stolen Benefits Application (EBSA) and deny that request.*
- *(3) "Benefits used unlawfully for non-household members can only be replaced when the benefits were accessed as a result of card skimming, card cloning, phishing or other electronic acquisition of the EBT card number and PIN."*

The adopted rule changes are consistent with the expiration of the Continuing Appropriations and Extensions Act, 2025, P.L. 118-83, Division B, Title I § 105.

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

10 Department of Health and Human Services

10-146 Department of Health and Human Services, Maine Center for Disease Control and Prevention	
2024-226: 10-146 CMR Ch 4, Disclosure of Vital Statistics Data, Reports and Records	
Statutory Authority:	5 MRS §90-B; 22 MRS §§42, 1596, 2706, 2706-A, 2710, 2768, 2803, and 22 MRS §§2841-2842
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*None anticipated.*
Principal purpose:	*The Department is mainly proposing these rule changes to align this rule with Maine law (22 MRS § 2706) and to further specify who may apply and how applicants may demonstrate direct and legitimate interest in the records they wish to receive from the State Registrar.*
Basis Statement:	*The Department of Health and Human Services (Department) adopted amendments to 10-146 CMR Chapter 4 - Disclosure of Vital Statistics Data, Reports and Records, to implement Public Law 2023 chapter 110, introduced to the 131st Maine Legislature as LD 982, "An Act to Allow the Disclosure of Death Certificate Data to Hospitals and Health Care Practitioners", and to specify criteria for the disclosure of vital records data to licensed hospitals and health care practitioners and administrators of Maine's qualified tuition plans, also referred to as 529 funds.* *In accordance with 22 MRS §2706, Chapter 4 details who may apply for access to vital records data and how applicants may demonstrate direct and legitimate interest and qualify to receive requested records from the State Registrar. This rulemaking adds the following two groups that may have direct and legitimate interest and eligible to apply: health care practitioners seeking to update their patient records by requesting death certificate data and organizations and foundations for the purpose of administering 529 funds. The Department acknowledges that vital records data will help record-keeping for these groups, though disclosure is not without limitation. PL 2023 chapter 110, enacted as amended, retains a level of discretion for the Maine CDC - Data, Research, and Vital Statistics (DRVS) in receipt of a request for vital record data, ensuring the Department's stewardship of the restricted information contained in vital records, including death certificates. This rule may not be construed to circumvent the Department's protocols in place to verify the legitimacy of vital record data requests and direct the appropriate release of records maintained in the State's vital record system.* *PL 2023 chapter 110 and this rule serve to address the challenge for health care providers to maintain an active patient list by requiring Department to make death certificate data available to licensed hospitals and health care practitioners. Accurate patient lists are necessary for determining capacity for accepting new patients and for ensuring that mailings issued by the healthcare provider are current with active patients served by the provider and consider the sensitivity of a family's recent loss. Additionally, under this rule, information contained in vital records can be released to organizations administering 529 plans to identify those who may benefit from these educational resources and to further disseminate information to better service those who are eligible. Consistent with existing*

	Department policy to share only the minimal amount necessary to satisfy a valid request, this rule directs the Department to provide the data sufficient to update and purge patient records and for maintaining systems current, as it relates to dispersing information about higher educational 529 plans available to eligible Mainers.

10 Department of Health and Human Services

10-148 Department of Health and Human Services, Office of Child and Family Services	
2024-050: Chapter 30, Early Childhood Educator Workforce Salary Supplement System	
Statutory Authority:	22 M.R.S. §§ 42, 3737-A; 5 M.R.S. § 8054
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*The Department anticipates that the total cost of the proposed rule will be $ $30,000,000 in SFY 2024 and $30,000,000 in SFY 2025, all in state dollars.*
Principal purpose:	*Pursuant to 5 M.R.S. § 8054, the Department determines that immediate adoption of this rule is necessary to comply with Maine statute 22 M.R.S. §3737(3). The Department proposes this rule, Early Childhood Educator Workforce Salary Supplement System Rules, to develop and implement the system to provide salary supplements to child care providers and early childhood educators who provide direct services to children as provided in 22 M.R.S. § 3737-A.* *An Act To Build a Child Care System by Recruiting and Retaining Maine's Early Childhood Educators Workforce, codified at 22 M.R.S. § 3737-A, requires the Maine Department of Health and Human Services (the Department) to develop and implement a system 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. Any salary supplement funding provided by the Department to a child care facility or family child care provider must be paid by that child care facility or family child care provider in order to increase wages for any child care provider or early childhood educator who provides direct services to children. 22 M.R.S. § 3737-A further requires the department to establish by rule and implement a three-tiered system for salary supplements based on the education and experience levels of child care providers and early childhood educators. The 2nd tier must provide a salary supplement that is at least 50% greater than the first tier and the 3rd tier must provide a salary supplement that is at least 50% greater than the 2nd tier. 22 M.R.S. § 3737-A directs the Department to implement a tiered system for salary supplements beginning July 1, 2023. Funding for the additional supplement for employees at a higher tier will be available to the Department October 25, 2023.* *The proposed rule establishes eligibility requirements for Early Childhood Educators to receive salary supplements, explains how licensed child care programs register through the Department's online registration portal to receive funding from the Department for paying out salary supplements to eligible educators, describes the Department's role in providing funding to licensed child care programs and licensed child care programs' responsibility to actually pay out salary supplements to eligible educators and sufficiently document it through maintenance of payroll records, establishes three tiers for salary supplements based on an educator's level in Maine's Professional Development Network Registry, explains how the Department will conduct compliance monitoring to ensure compliance with rule and 22 M.R.S. § 3737-A, provides a process for the determination of overpayment or underpayment of salary supplement funding paid to licensed programs and the recoupment of overpayments, and allows licensed programs to request an administrative hearing to appeal a Department*

	determination of overpayment or underpayment.
Basis Statement:	*The Department of Health and Human Services (the "Department") adopts 10-148 C.M.R. Chapter 30, Early Childhood Educator Workforce Salary Supplement System Rules.* *The Department determines that adoption of this rule is necessary to comply with Maine statute 22 M.R.S. § 3737-A.* *In 2022, the Maine Legislature enacted P.L. 2021, ch. 635, Sec. RR-1, codified as 22 M.R.S. § 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.* *On December 1, 2023, the Department adopted a substantively similar emergency rule (that was essentially identical to the proposed rule) to establish tiered payments starting in December 2023. The final rule adopted today will continue tiered payments as required under section 3737-A.* *The adopted rule benefits families and providers by increasing wages through monthly salary supplements, incentivizing continuing education for the early childhood workforce, encouraging workforce retention by increasing supplement amounts based on years of experience, and raising the overall quality of 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 adopted rule:* • *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. § 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 2nd tier provides a salary supplement that is 50% greater than the first tier, and the 3rd tier provides a salary supplement that is 50% great than the 2nd tier.* • *Complies with 22 M.R.S. § 3737-A by requiring the child care facility or family child care provider to pay the supplement to employees who provide direct services to children.* • *Explains how a program enrolls in the Early Childhood Educator Workforce Supplement Program.* • *Describes an appeal process for overpayments and underpayments.*

10-148 Department of Health and Human Services	
2024-156: Chapter 6, Child Care Affordability Program Rules	
Statutory Authority:	22 M.R.S. §§ 3731-A to 3740-D
Type:	Routine Technical
Emergency?:	Yes
Fiscal Impact:	*The Department anticipates that the total cost of the proposed rule will be $10,272649 in SFY 2025 in state dollars.*
Principal purpose:	*This rule is necessary to comply with Maine statute. P.L. 2023, ch. 412, pt. VVV and P.L. 2024, ch. 643, pt. SS and TT, which made multiple amendments to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:* *Changing the name of the program to "Child Care Affordability Program,"* *Changing the timeline for eligibility determinations for 30 to 15 days,* *Requiring the Department to inform child care providers within 2 business days of when a recipient's eligibility changes,* *Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice,* *Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period, and* *Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.* *The Department has also revised language to clarify parent eligibility determinations and the requirements for a child care provider to qualify to receive CCAP payments.*
Basis Statement:	*This rule is necessary to comply with Maine statute. P.L. 2023, chapter 412, pt. VVV and P.L. 2024, chapter 643, pt. SS and TT, which made multiple changes to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:* *Changing the name of the program to "Child Care Affordability Program (CCAP),"* *Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.* *Changing the timeline for eligibility determinations for 30 to 15 days,* *Requiring the Department to inform child care providers within 2 business days of when a recipient's eligibility changes,* *Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice, and* *Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period.* ***Findings of Emergency*** *Early care and education programs serve a vitally important role in supporting children, families, and the Maine economy. The cost of care, however, is among the complex set of problems the system faces. Increased investment from State General Funds and this emergency Rule will allow hundreds of families and thousands of*

children to access child care through child care financial assistance.

With the current income eligibility up to 85% of State Median Income, a family of 4 with a household income of $89,000 or less may qualify for child care assistance. With the new expanded income eligibility up to 125% SMI, a family of 4 with a household income of $130,000 or less may qualify for child care assistance. This new eligibility will be incredibly helpful to families in Maine, who often pay more for child care than tuition at a state college or university. It may also allow parents to return to the workforce, knowing that child care will make up a smaller percentage of their expenses. With this emergency Rule, families will also benefit from faster eligibility determination, allowing them to secure the child care they need so they can go to work or school.

This emergency Rule will allow child care providers to receive CCAP payments more quickly. Providers may also receive payments retroactive to at least the date that a family's completed application was submitted to the Child Care Affordability Program. This will allow child care programs to support families immediately who they know are likely to qualify for CCAP, and to be reimbursed for the care they are providing once the application is approved.

Pursuant to the Legislative determination regarding the urgent need for a shortened timeline for eligibility determinations and subsidy payments, and increased income eligibility for families in the Child Care Affordability Program, the requirements of 5 M.R.S. § 8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, a July 1, 2024, effective date is necessary to implement these changes as soon as possible and to comply with P.L. 2024, ch. 643, pt. SS.

Pursuant to 5 M.R.S. § 8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

10-148 Department of Health and Human Services	
2024-216: Chapter 6, Child Care Affordability Program Rules	
Statutory Authority:	22 M.R.S.§§ 3731-A–3740-D
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*The Department anticipates that the total cost of the proposed rule will be $10,272649 in SFY 2025 in state dollars.*
Principal purpose:	*This rule is necessary to comply with Maine statute. P.L. 2023, ch. 412, pt. VVV and P.L. 2024, ch. 643, pt. SS and TT, which made multiple amendments to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:* *Changing the name of the program to "Child Care Affordability Program,"* *Changing the timeline for eligibility determinations for 30 to 15 days,* *Requiring the Department to inform child care providers within 2 business days of when a recipient's eligibility changes,* *Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice,* *Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period, and* *Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.* *The Department has also revised language to clarify parent eligibility determinations and the requirements for a child care provider to qualify to receive CCAP payments.*
Basis Statement:	*This rule is necessary to comply with Maine statute. P.L. 2023, chapter 412, pt. VVV and P.L. 2023, chapter 643, pt. SS and TT, which made multiple changes to the statutory authority for what was formerly known as the Child Care Subsidy Program, including:* • *Changing the name of the program to "Child Care Affordability Program (CCAP),"* • *Increasing eligibility for child care subsidies from 85% of State Median Income (SMI) to 125% SMI.* • *Changing the timeline for eligibility determinations from 30 to 15 days,* • *Requiring the Department to inform child care providers within 2 business days of when a recipient's eligibility changes,* • *Requiring the Department to reimburse providers within 15 days of receipt of a complete and accurate invoice, and* • *Requiring the Department to provide retroactive reimbursement to a child care program that provided tuition assistance to an applicant during the application period.* *Early care and education programs serve a vitally important role in supporting children, families, and the Maine economy. The cost of care, however, is among the complex set of problems the system faces. Increased investment from State General Funds and this Rule will allow hundreds of families and thousands of children to*

	access child care through child care financial assistance. *With income eligibility up to 85% of State Median Income, a family of 4 with a household income of $89,000 or less may qualify for child care assistance. With the new expanded income eligibility up to 125% SMI, a family of 4 with a household income of $130,000 or less may qualify for child care assistance. This new eligibility is incredibly helpful to families in Maine, who often pay more for child care than tuition at a state college or university. It may also allow parents to return to the workforce, knowing that child care will make up a smaller percentage of their expenses. With this Rule, families benefit from faster eligibility determination, allowing them to secure the child care they need so they can go to work or school.* *This Rule allows child care providers to receive CCAP payments more quickly. Providers may also receive payments retroactive to at least the date that a family's completed application was submitted to the Child Care Affordability Program. This allows child care programs to support families immediately who they know are likely to qualify for CCAP, and to be reimbursed for the care they are providing once the application is approved.*

10 Department of Health and Human Services

10-149 Department of Health and Human Services, Office of Aging and Disability Services	
2024-085: Chapter 1, Adult Protective Services System	
Statutory Authority:	22 M.R.S. §§ 42(1), 3473(2)(D), 3493; 34-B M.R.S. § 5604-A(4)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*There is no cost to municipalities or counties associated with this rule.*
Principal purpose:	*The Adult Protective Services System Rule implements the Adult Protective Services Act, 22 M.R.S. § § 3470, et seq. The rule states who must and may report suspected abuse, neglect, or exploitation of incapacitated or dependent adults; how such reports are to be investigated by the Department; and the substantiation and appeal process for caregivers found to have abused, neglected, or exploited clients who are incapacitated or dependent adults.*
Basis Statement:	*This rulemaking repeals 10-149 C.M.R. Chapter 1 – Adult Protective Services System and replaces it with 10-149 C.M.R. Chapter 2, Section 1 – Adult Protective Services System, and adopts comprehensive revisions to the rule.* *In March 2020, the Legislature adopted Public Law Chapter 661, An Act to Strengthen Protections for Incapacitated and Dependent Adults from Abuse, Neglect, and Exploitation. This law authorized the Department of Health and Human Services (the "Department") to maintain and list on a Substantiation Registry care workers who have been found under the Adult Protective Services Act, 22 M.R.S. §§ 3470, et seq. (the "APS Act") to have Abused, Neglected, or Exploited one or more Incapacitated or Dependent Adults.* *Provisions for maintaining this Substantiation Registry are found in § 1.02 – Definitions, and § 1.08 – Substantiation Registry. The rule states who may be listed on the registry, outlines notice and appeal rights triggered by a substantiation, and states when a substantiated person may be removed from the registry. In § 1.08(2)(G), the rule states that persons found to have abused, neglected, or exploited an incapacitated or dependent adult in another adjudicatory or quasi-adjudicatory forum may also be listed on the Substantiation Registry.* *In this rulemaking, the Department also engaged in a comprehensive amendment and reorganization of the Adult Protective Services System rule. Resulting changes better align the system for investigating and substantiating reports of abuse, neglect, or exploitation with the APS Act. These amendments include:* ** consistent with the Adult Protective Services Act, this rulemaking broadens the category of caregivers who may be substantiated for having abused, neglected, or exploited their clients, from those who assist adults with intellectual disabilities or autism to those who support any incapacitated or dependent adult;* ** amends the definitions of "Dependent Adult" and "Incapacitated Adult" to better align with definitions provided in Maine law;* ** In § 1.04, describes the responsibility of APS staff for documentation, review, determinations, and report closures;* ** requires the Department to provide APS records to Maine's Protection and Advocacy Agency when requested;*

	** eliminates the distinction between Level I and Level II substantiations, in § 1.07 (previously, § 1.06); and* ** lists potential findings following investigations as "Substantiated," "Substantiated – Other," "Not Substantiated," and "Unable to Determine".* *Section 1.08 was added to the rule for organizational clarity. This section now includes (1) the Department's responsibility to provide written notice to the alleged perpetrator of a substantiation; (2) due process and appeal rights of the alleged perpetrator; and (3) hearing procedures as described in the Administrative Hearings Regulations, 10-144 C.M.R. ch. 1. Subsection 1.08 also states when a registry listing may be made based on a determination in another proceeding.* *The rules of the Office of Aging and Disability Services (OADS) are currently codified in two Titles in the Code of Maine Rules: 10-149 (formerly the Office of Elder Services) and 14-197 (formerly the Office of Adults with Cognitive and Physical Disability Services). OADS is in the process of combining the rules of these two former State agencies into one Title, by eliminating use of 14-197 and creating a single comprehensive OADS Policy Manual under 10-149.* *The rule also contains many formatting corrections, ensures use of gender-neutral language, and includes many clarifying edits.* *Though the Adult Protective Services System rule is a routine technical rule, the Department held a public hearing on the proposed rulemaking in conformance with 34-B M.R.S. § 5203(3)(B).* *The Department does not anticipate that this rule will have any impact on municipalities, counties, or small businesses.*

10-149 Department of Health and Human Services, Office of Aging and Disability Services	
2024-086: Chapter 2, Adult Protective Services System	
Statutory Authority:	22 M.R.S. §§ 42(1), 3473(2)(D), 3493; 34-B M.R.S. § 5604-A(4)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	*There is no cost to municipalities or counties associated with this rule.*
Principal purpose:	*The Adult Protective Services System Rule implements the Adult Protective Services Act, 22 M.R.S. § § 3470, et seq. The rule states who must and may report suspected abuse, neglect, or exploitation of incapacitated or dependent adults; how such reports are to be investigated by the Department; and the substantiation and appeal process for caregivers found to have abused, neglected, or exploited clients who are incapacitated or dependent adults.*
Basis Statement:	*See* Basis Statement at 2024-085, *supra.*

10-149 Department of Health and Human Services, Office of Aging and Disability Services	
2024-275: Chapter 5, Office of Aging and Disability Services Policy Manual	
Statutory Authority:	22 M.R.S. § 42(1), 22 M.R.S. § 7303, 34-B M.R.S. § 5439
Type:	Routine Technical rule components were the subject of this rulemaking initiative.
Emergency?:	No
Fiscal Impact:	*There is no cost to municipalities or counties associated with this rule. PL 2023, Chapter 412 approved General Fund of $2,286,048 in SFY 2024 and $3,189,351 annually beginning in SFY 2025 to operationalize home-delivered meal services for certain eligible older adults.*
Principal purpose:	*This proposed rulemaking is necessitated by the adoption of Public Law 2023, Chapter 412, which is the biennium budget for July 1, 2023, through June 30, 2025 that was signed into law by the Governor during the 2023 special legislative session. The budget allocated $5,475,399 for Home-Delivered Meals for certain eligible older adults, and this rule operationalizes this service. Additionally, this proposed rule clarifies the monetary cap on the annual cost of respite services for older adults, and it clarifies the limit at which monthly service hour caps can be exceeded for adults receiving Adult Day Services reimbursable by Home Based Supports and Services (HBSS) funds. It also makes formatting adjustments for consistency.* *Section 63 is a hybrid routine technical / major substantive rule. However, no changes to the major substantive part of the rule – subsection 63.12 – are proposed. As a result, this rulemaking follows the provisions for routine technical rulemaking in the Maine Administrative Procedure Act.*
Basis Statement:	*This proposed rulemaking is necessitated by the adoption of Public Law 2023, Chapter 412, which is the biennium budget for July 1, 2023, through June 30, 2025 that was signed into law by the Governor during the 2023 special legislative session . The budget allocated $5.5 million for Home-Delivered Meals for certain eligible older adults, and this rule operationalizes this service. Additionally, this proposed rule clarifies the monetary cap on the annual cost of respite services for older adults, and it clarifies the limit at which monthly service hour caps can be exceeded for adults receiving Adult Day Services reimbursable by Home Based Supports and Services (HBSS) funds. It also makes formatting adjustments for consistency.* *Section 63 is a hybrid routine technical / major substantive rule. However, no changes to the major substantive part of the rule – subsection 63.12 – are proposed. As a result, this rulemaking follows the provisions for routine technical rulemaking in the Maine Administrative Procedure Act.*

14 Department of Health and Human Services

14-118 Department of Health and Human Services, Office of Behavioral Health	
2024-276: Chapter 20, Housing First Program Administrative Responsibility Rule	
Statutory Authority:	22 M.R.S. § 20-A (2023); 22 M.R.S. § 42(1)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	*PL 2023, c. 412 establishes one Public Service Manager III position and one Social Services Program Manager position effective January 1, 2024 in the Housing First Program, General Fund to provide initial planning and administration for the delivery of support and stabilization services to residents of properties established or developed to provide permanent housing to end chronic homelessness in the State.* ***GENERAL FUND*** ***2023-24*** ***2024-25*** *POSITIONS - LEGISLATIVE COUNT* *2.000* *2.000* *Personal Services* *$125,755* *$265,355* *All Other* *$6,537* *$13,074* *GENERAL FUND TOTAL* *$132,292* *$278,429*
Principal purpose:	*This is a new joint rule by the State of Maine Department of Health and Human Services, Office of Behavioral Health and Maine State Housing Authority setting forth the responsibilities of each agency and their joint responsibilities in administering the State of Maine's Housing First Program. The Housing First Program provides funding for support and stabilization services for residents of properties in the State of Maine that provide permanent housing for persons who are experiencing chronic homelessness.*
Basis Statement:	*The Housing First Program Administrative Responsibility Rule is a joint rule by the State of Maine Department of Health and Human Services, Office of Behavioral Health (the "Department") and Maine State Housing Authority ("MaineHousing") setting forth the responsibilities of each agency and their joint responsibilities in administering the State of Maine's Housing First Program (the "Program"). The Program provides funding for support and stabilization services for residents of properties in the State of Maine that provide permanent housing for persons who are experiencing chronic homelessness.* *The Department is responsible for administering the funding under the Program. The funding is primarily for 24-hour on-site supportive services, except for an annual amount that is set aside for housing stability services available for residents at least 20 hours each week but not necessarily on site or 24 hours per day. Any funding that is not used for these supportive services and the Department's costs of administering the Program will be transferred to MaineHousing to develop affordable permanent housing with 24-hour on-site supportive services, which initially will be the majority of the funding to produce the housing where these services will be provided.* *The Department is also responsible for establishing and administering the requirements for the two types of supportive services that are eligible for funding under the Program, the payment models for the services, and the qualifications of the providers of the services. The Department is obligated to maximize eligibility*

for reimbursement under existing and future federal programs that provide funding for the supportive services, such as MaineCare, to supplement and expand the use of the funding and to provide technical assistance to providers in navigating these federal programs.

MaineHousing will work with the Department to administer the permanent housing with 24-hour on-site services. The Department and MaineHousing will identify the areas in the State where the properties should be located to best serve persons who are chronically homeless. The funding under the Program will only be available to teams that are selected under one or more competitive processes and consist of a service provider that the Department has determined is qualified through its procurement process together with an experienced affordable housing developer and property manager that MaineHousing, in consultation with the Department as needed, determines can work together to successfully develop, own and operate permanent housing with 24-hour on-site services for persons who are chronically homeless. MaineHousing will provide technical assistance, approve specific sites, develop construction standards to ensure successful operation and delivery of services at the properties, and offer financing for the development of the properties, including Program funding transferred to MaineHousing, other capital funding, and low-income housing tax credits.

The rule delegates oversight of the service providers to the Department, but the Department and MaineHousing will work together to develop, administer, and enforce the operational guidelines for the permanent housing with 24-hour on-site supportive services to effectively address chronic homelessness and ensure long-term viability of these properties. The rule also addresses other administrative responsibilities of the Department and MaineHousing, including recordkeeping and reporting requirements.