**State of Maine: Notice of Agency Rulemaking – November 18, 2020**

**PROPOSALS**

AGENCY: **03-201 - Maine Department of Corrections (MDOC)**

CHAPTER NUMBER AND TITLE: **Ch. 1**, Detention and Correctional Standards for Counties and Municipalities

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P204** *(3rd publication)*

BRIEF SUMARY: The primary reason this rule is being proposed is to amend the current rule to make permanent and expand the emergency amendment governing plans to prevent and control outbreaks of coronavirus and other infectious and communicable diseases; to make the rule consistent with a recently passed statute governing visits to jail inmates; and to add provisions governing pregnancy services, medication-assisted treatment, naloxone, and use of force.

Copies of the proposed rule are available upon request by contacting the Department contact person or on the Department of Corrections website at https://www.maine.gov/corrections/about/policies-procedures-proposed-rules. Pursuant to Maine law, interested parties are publicly notified of the proposed rulemaking and are provided an opportunity for comment. Written comments may be submitted by mail, email, or fax to the contact person before the end of the comment period. To ensure the comments are considered, they must include your name and the organization you represent, if any.

PUBLIC HEARING: Monday, December 7, 2020 at 1:00 p.m. *Due to the COVID-19 pandemic, this hearing will be conducted via a Zoom virtual meeting. The Zoom meeting can be accessed* at <https://zoom.us/j/91683143841?pwd=czV1NEhFZHNMcXUyV3dDcWJaVjJLZz09> . *If needed, the Meeting ID is 916 8314 3841 and Passcode is 8uenTP. Some devices may require downloading a free app from Zoom prior to joining the public hearing event.*

*Directions on how to attend the hearing will also be posted on the Department of Corrections website and sent to the interested persons list.*

COMMENT DEADLINE: December 18, 2020 at 5:00 p.m.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / MDOC RULEMAKING LIAISON: Mary Lucia, Department of Corrections, 111 State House Station, Augusta ME 04333. Telephone: (207) 530-0983. Fax: (207) 287-4370. Email: Mary.A.Lucia@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: None

STATUTORY AUTHORITY FOR THIS RULE: 34-A MRS §§ 1208 & 1208-B

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: Federal constitutional law and 30-A MRS §§ 1556-A & 1561

MDOC WEBSITE: <https://www.maine.gov/corrections/> .

AGENCY: **02-031** – Department of Professional and Financial Regulation (PFR), **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch. 917**, Suitability in Annuity Transactions

TYPE OR FULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P215**

BRIEF SUMMARY: The purpose of the rule, originally adopted in 2007, is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. The proposed amendments adopt a best interest standard of conduct for producers and insurers and comply with Section 989J of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* by adopting standards that meet or exceed the minimum requirements of the NAIC model rule.

**DETAILED SUMMARY**: Under the amended rule, the jails will be required to have plans in place to prevent and control the outbreak of infectious and communicable diseases that are reviewed by the Department of Corrections and the Maine CDC and will be required to report any such outbreaks to the Department and the CDC. They will also be required to provide the opportunity for in-person and contact visitation to jail inmates unless one of the exceptions set out in statute exists. They will be required to provide female inmates with pregnancy prevention and management services. They will be required to provide inmates with a substance use disorder with medication assisted treatment as necessary. There will be a nonmandatory standard governing naloxone. Finally, the jails will be required to implement policies, procedures, and practices to prevent the use of excessive force, to include a prohibition on strangleholds, chokeholds, carotid holds, and other techniques that physically compromise the airway, breathing, or blood flow to the head in circumstances where non-deadly force is appropriate; duty to intervene in instances of excessive force; and lack of bias in the use of force. See new and amended standards C.28, C.29, C.30, C.31, J.10, J.11, J.15, J.18, K.18, K.19, K.20, and K.21.

**PUBLIC HEARING**: December 10, 2020, at 2:00 p.m. from the Department of Professional and Financial Regulation, Bureau of Insurance, 76 Northern Avenue, Gardiner, ME 04345. *Instructions for attending the hearing remotely will be posted on the Bureau’s website before the hearing.*

COMMENT DEADLINE: 4:30 p.m., January 8, 2021, by mail or email to the Contact Person.

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION: Brittnee Greenleaf, 34 State House Station, Augusta, ME 04333-0034. Telephone: (207) 624-8491. Email: Brittnee.L.Greenleaf@Maine.gov .

IMPACT ON MUNICIPALITIES OR COUNTIES: None.

STATUTORY AUTHORITY FOR THIS RULE: 24-A MRS §§ 212, 2517.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: n/a

AGENCY WEBSITE: <https://www.maine.gov/pfr/insurance/> .

AGENCY RULEMAKING LIAISON: Benjamin.Yardley@Maine.gov .

AGENCY: **09-137 – Department of Inland Fisheries and Wildlife (IFW)**

CHAPTER NUMBER AND TITLE: **Ch. 13**, Watercraft Rules: **13.07**, Motor Size Restrictions on Certain Inland Waters

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P216**

BRIEF SUMMARY: The Department of Inland Fisheries and Wildlife has been petitioned to consider the following watercraft regulations: Long Pond, Great Pond Plt. & Aurora Twp., Hancock County – motorboats with more than 25 horsepower prohibited. A complete copy of the proposed rule is available from the agency contact person. Members of the public who wish to comment are encouraged to provide written comments by mail or email to the contact person for this filing or by participating in the virtual public hearing. Note: Written comments are given equal consideration to testimony given at the virtual public hearing.

PUBLIC HEARING: December 7, 2020 @ 4:00 p.m. – via video conference (Microsoft Teams). *Contact the Agency Contact Person by close of business on Friday, December 4, 2020 for details.*

COMMENT DEADLINE: December 17, 2020

CONTACT PERSON FOR THIS FILING / SMALL BUSINESS IMPACT INFORMATION / IFW RULEMAKING LIAISON: Becky Orff, Inland Fisheries and Wildlife, 284 State Street - 41 State House Station, Augusta, ME 04333. Telephone: (207) 287-5202. Fax: (207) 287-6395. Email: Becky.Orff@Maine.gov .

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: No fiscal impact anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS §13051

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED:

IFW WEBSITE: [www.maine.gov/ifw](http://www.maine.gov/ifw) .

**ADOPTIONS**

AGENCY: **02-031** - Department of Professional & Financial Regulation (PFR), **Bureau of Insurance**

CHAPTER NUMBER AND TITLE: **Ch. 175**, “Private Passenger Motor Vehicle” Definition for Rental Vehicle Coverage

ADOPTED RULE NUMBER: **2020-232** *(New)*

CONCISE SUMMARY: The purpose of the rule is to clarify the types of vehicles that a personal motor vehicle policy must cover when the vehicle is rented by an authorized driver under the policy.

EFFECTIVE DATE: November 17, 2020

AGENCY CONTACT PERSON: Benjamin Yardley, Senior Staff Attorney, Department of Professional & Financial Regulation - Bureau of Insurance, 76 Northern Avenue – 34 State House Station, Gardiner, ME 04345. Telephone: (207) 624-8537. Email: Benjamin.Yardley@Maine.gov .

BUREAU WEBSITE: <https://www.maine.gov/pfr/insurance/> .

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

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. III**, Principles of Reimbursement, **Section 45**, Hospital Services

ADOPTED RULE NUMBER: **2020-233**

CONCISE SUMMARY: The Department adopts the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. III Section 45, “Principles of Reimbursement, Hospital Services”: as directed by PL 2019 ch. 530, *An Act to Prevent and Reduce Tobacco Use with Adequate Funding and by Equalizing the Taxes on Tobacco Products and To Improve Public Health*, the Department adopts the following changes:

**1.** Pursuant to Sec. C-2, the Department establishes two subsets of Private Acute Care Non-Critical Access Hospitals; Rural Hospitals and Non-Rural Hospitals. The Department’s definition of “Rural Hospital” follows the Legislative directive so that the definition reflects the regional access to hospital care and the population density of the public health district in which the hospital is located. The definition of a private Acute Care Non-Critical Access “Rural” Hospital is a hospital, as reported on the hospital’s Medicare cost report, which is either: a “Sole Community Hospital”, OR a “Medicare-Dependent Hospital”, OR is a hospital participating in the Medicare “Rural Community Hospital Demonstration”. As required by the law, the following hospitals meet the “Rural Hospital” definition: Northern Light A.R. Gould Hospital in Presque Isle; Cary Medical Center in Caribou; Franklin Memorial Hospital in Farmington; Northern Light Inland Hospital in Waterville; Northern Light Maine Coast Hospital in Ellsworth; and Northern Maine Medical Center in Fort Kent.

**2.** Pursuant to Sec. C-2, the Department will reimburse Private Acute Care Non-Critical Access Rural Hospitals at 100% of inpatient hospital-based physician costs, outpatient emergency room hospital-based physician costs, outpatient non-emergency room hospital-based physician costs, and graduate medical education costs. Pursuant to Legislative directive and funding, this provision is effective retroactive to January 1, 2020. The retroactive application of this provision is authorized pursuant to 22 MRS §42(8), which allows retroactive application where there is a benefit to a provider, as is the case with this rule.

**3.** Pursuant to Sec. C-2, the Department will reimburse Private Acute Care Non-Critical Access Non-Rural Hospitals at 93.3% of inpatient hospital-based physician costs, 93.4% of outpatient emergency room hospital-based physician costs, and 83.8% of outpatient non-emergency room hospital-based physician costs. Pursuant to Legislative directive and funding, this provision is effective retroactive to January 1, 2020. The retroactive application of this provision is authorized pursuant to 22 MRS §42(8), which allows retroactive application where there is a benefit to a provider, as is the case with this rule.

4. Pursuant to Sec. C-3, the Department will reimburse Acute Care Critical Access Hospitals for 100% for all hospital-based physician costs. Pursuant to Legislative directive and funding, this provision is effective retroactive to January 1, 2020. The retroactive application of this provision is authorized pursuant to 22 MRS §42(8), which allows retroactive application where there is a benefit to a provider, as is the case with this rule.

As directed by PL 2019 ch. 343, *An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund, and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years ending June 30, 2019, June 30, 2020, and June 30, 2021*, *Part A, Sec. 129*, the Department is adopting the following change:

The Supplemental Pool for the Acute Care Critical Access Hospitals, and also for Non-Critical Access Hospitals, Hospitals Reclassified to a Wage Area Outside Maine, and Rehabilitation Hospitals was increased.

**In addition**: The Department has clarified that each hospital’s year, as used for the calculation, is the hospital’s fiscal year that ended during calendar year 2016.

The Department updated Appendix B by removing invalid ICD-10 codes for non-emergency use of the emergency department.

Between the filing of the proposed rule and the adoption of this final rule, in June 2020, the Department obtained CMS approval of various SPA requests. As such, various changes to the rule from what was proposed were made to remove references to CMS approval of SPA changes. Where references to CMS remain in the rule, in order to be consistent, the Department updated the language to reflect current standard format for such references that is being used in all MaineCare rules.

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

EFFECTIVE DATE: November 23, 2020

AGENCY CONTACT PERSON: Anne E. Labonte, Comprehensive Health Planner, OMS - Division of Policy, 109 Capitol Street - 11 State House Station, Augusta, Maine 04333-0011. Telephone: (207) 624-4082. Fax: (207) 287-6106. TTY users call Maine relay 711. Email: Anne.Labonte@Maine.gov .

OMS WEBSITE: <https://www.maine.gov/dhhs/oms> .

OMS RULEMAKING LIAISON: Thomas.Leet@Maine.gov .

DHHS RULEMAKING LIAISON: Kevin.Wells@Maine.gov .