

## Summary of Comments

### OFFICE OF ELDER SERVICES PROPOSED CHANGES TO POLICY MANUAL SECTIONS 63 AND 69

The Office of Elder Services (OES) held a public hearing on proposed amendments to 10-149 CMR Ch. 5: Section 63, In-home and Community Support Services and Section 69, Office of Elder Services Independent Support Services. The public hearing was held on Thursday, August 6, 2009 at 10:00 AM, Conference Room 1-A, 442 Civic Center Drive in Augusta ME. OES staff, Elizabeth Gattine and Romaine Turyn, attended. No member of the public attended. The deadline for written comments from the public was 5:00 PM on Monday, August 17, 2009. Comments made in writing by the deadline were made by:

1. Deb Poulton on behalf of Eastern Area Agency on Aging; The Wardwell; The Inn at City Hall; Mayflower Place; and The Iris Network.

All comments below were made by Commenter #1.

**1. Section 63.01(F):** Commenter recommended adding Licensed Assisted Living Agency as an Authorized Agent as defined in Section 63.01(F).

*OES Response: No change will be made to the rules in response to this comment. Both the Assessing Services Agency and the Home Care Coordinating Agency are authorized agents under Section 63. These agents serve an administrative function and, unlike a Licensed Assisted Living Agency, do not act as a provider of personal care services.*

**2. Section 63.01 (U):** Commenter recommends adding language as part of the definition of Home Care Coordinating Agency that “the Licensed Assisted Living Agency provides the home care coordination/case management for those individuals receiving services under Level V” since commenter states that the majority of tasks outlined in this section (case management) are all significant tasks currently being provided by the qualified program Directors and meet the requirements under Section 63.07.

*OES Response: No change will be made to the rule in response to this comment. Section 63.01(U) defines the responsibilities of the Home Care Coordinating Agency (HCCA) under Section 63, which differs from those of a Licensed Assisted Living Agency. Unlike the Licensed Assisted Living Agency, the HCCA is not a provider of direct personal care service.*

**3. Section 63.02(A)(3):** Commenter recommends changing financial eligibility for consumers accessing Level V services. Commenter states that individuals living in a home setting outside of an assisted living community may have extensive expenses and need for asset sums currently in rules but commenter believes it is not reasonable for an

individual moving into a comprehensive service model (affordable rent, meals, 24/7 staffing, personal support services, etc) to need to maintain these sums and then draw down limited state subsidies. Commenter states that individuals with assets in excess of \$10,000 can contribute to the full cost of their service until spent down and suggests the following language: “For those individuals receiving Level V services, assets of no more than \$10,000 for 1 and \$15,000 for a couple.”

*OES Response: There was no change proposed in this section as part of rulemaking; however, OES will take this comment into consideration for future rulemaking.*

**4. 63.03(F) Duration of Service:** Commenter asks for clarification of language that states that the total monthly cost of services for Level V consumers may not exceed the lesser of the monthly plan of care authorized by the Assessing Services or the “Level V” cap established by the Department. Commenter states that the rule is not clear as to its intent, nor do “caps” appear anywhere in the section.

*OES Response: The “cap” is the limit, or maximum, on the total monthly cost of services to a consumer established by the Department. The cost of authorized services for some consumers may be less than the cap but in no event may not exceed the cap. The current monthly cap for Level V is \$1436.00.*

**5. 63.03(G) Suspension:** Commenter states that given the nature of the move from community to an assisted living site, consumers at the assisted living level experience numerous hospitalizations and skilled care needs, often in excess of 30 days and that to terminate and require an additional Goold assessment would be wasteful of limited state dollars unless there is a significant change need to get a re-authorized plan. Commenter suggests making an exception (services would suspend but not terminate) for those consumers receiving Level V services unless there is a need for a significant change assessment. The same comment was made for similar language in Section 63.06(C).

*OES Response: There was no change proposed in this section as part of rulemaking. This requirement is consistent with other MaineCare and State funded long term care programs.*

**6. Section 63.04 Covered Services:** Commenter asks for clarification of third sentence in second paragraph regarding the Department’s authority to recoup payment from the Home Care Coordinating Agency or Licensed Assisted Living Agency for inappropriate services provision, as determined through post payment review. Commenter states that the intent of this statement is not clear. As a Licensed Assisted Living Agency, all service needs of a consumer must be met by virtue of the licensing requirements, many of

which are not approved in the authorized ASA care plan. Commenter asks what might be considered “inappropriate service provision.”

*OES Response: This section applies to services provided and reimbursed for under Section 63. An example for an inappropriate service provision is seeking reimbursement under Section 63 for services that are non-covered under this Section of policy or not authorized under Section 63 by a consumer’s plan of care. These rules do not govern the licensing requirements for assisted living programs.*

**7. Section 63.04(A) Care Management:** Commenter states that care management tasks outlined in 63.04(A), subsections 1 through 14, which apply to the Home Care Coordinating Agency, are all the true case management duties and tasks performed by the licensed Directors of the Assisted Living Programs and occur daily. As a major function of the management of these programs and a coverable service, commenter recommends that care management be a reimbursable item for the Licensed Assisted Living Agency. For those individuals covered under Level V.

*OES Response: No change will be made at this time in response to this comment. Please see OES responses #1 and #2 above.*

**8. Section 63.04(B) Care Monitoring.** Commenter states that the tasks outlined in this section are inherent in the role of the Assisted Living qualified and licensed Directors and should be reimbursed. Commenter recommends adding language that makes the Licensed Assisted Living Agency the dual provider of both Home Coordination as well as the Care Monitor.

*OES Response: No change will be made at this time in response to this comment. Please see OES responses #1 and #2 above.*

**9. Section 63.04(E) Personal Care Services:** Commenter states that there has been an interpretation that “meal preparation” was to be provided in each individual resident apartment unit. Since this is not the nature of an Assisted Living program, nor is it an economical or realistic practice, we would suggest adding language such as “meal preparation or receipt of meals” for consistent interpretation and more in line with the congregate rules. Commenter also notes that there is a reference to “cap and appendix”, but that this is not located in this Section 63. Commenter asks for direction to mentioned appendix.

*OES Response: No change will be made in response to this comment regarding meal preparation since meal cost, other than meal preparation, are not reimbursable under Section 63. The appendix refers to the Task Time*

*Allowances which is located at the end of Section 63. The caps are referenced in Section 63.03(F).*

**10. Section 63.06 Policies and Procedures:** Commenter quotes Section 63.06(D)(2) as stating that an individual's specific needs for Home Based Care Services must be reassessed at least "every six months" and states that Goold would need to return for a reassessment at six month intervals. Commenter asks for clarification to the intent of this rule and if it applies to Level V.

*OES Response: OES refers commenter to these rules as proposed since the section referred to, and the language regarding every six months, has been changed to "twelve months, or earlier if indicated by the clinical judgment of the nurse assessor."*

**11. Section 63.07 Professional and other qualified staff:** Commenter states that at least 7 of the 12 items listed in Section 63.07(C) pertaining to the Home Care Coordinating Agency are duties performed by the Licensed Assisted Living Agency and recommends adding language to have the Licensed Assisted Living Agency provide items (3), (5), (6), (7), (8) and (10) for those receiving Level V services.

*OES Response: No change will be made to the rules in response to this comment. Please see OES Response to #1 and #2.*

**12. 63.08(A) Consumer Records and Program Reports:** Commenter notes that a licensed Assisted Living Agency is required to fulfill all of the consumer documentation required by licensure, which exceeds what the care plan calls for. In order not to create an additional record keeping requirement, commenter suggests adding an additional section and language, such as "(AA) For those consumers receiving services under Level V, the consumer record will comply with the record-keeping requirements contained in licensing rule and in contract with OES."

*OES Response: No change will be made at this time in response to this comment. These rules do not govern the licensing requirements for assisted living programs. In addition, some of the services covered by the contract with OES go beyond the scope of Section 63 and therefore not all reporting required by the contract may be applicable to Section 63.*

**13. Section 63.08(C) Program Reports:** Commenter states that reporting is part of licensing requirements for Assisted Living programs and the contract with OES and recommends adding a (D) section and language to the effect: "For Licensed Assisted Living Agencies, program reports will meet licensing requirements and those specified in contract with OES."

*OES Response: No change will be made at this time in response to this comment. These rules do not govern the licensing requirements for assisted living programs. In addition, some of the services covered by the contract with OES go beyond the scope of Section 63 and therefore not all reporting required by the contract may be applicable to Section 63.*

**14. 63.09 (A): Selection of Authorized Agent.** Commenter states that if the current Licensed Assisted Living Agencies and future agencies to be considered are given the same tasks as the Home Care Coordination Agency, then these should be added as an agent of the OES and subject to RFP. Commenter suggests adding Licensed Assisted Living Agency to this section.

*OES Response: Please see OES Response to Comment #1 and #2. No change will be made to the definition of authorized agent. OES complies with all state laws and regulations regarding RFP requirements.*

**15. Section 69:** Commenter recommends similar language changes to Sections 69, Independent Support Services Program where appropriate and to Section 96, Private Duty Nursing and Personal Care Services.

*OES Response: Since no specific references to Section 69 were provided, OES is unable to provide a meaningful response to this comment. Section 96 is part of the MaineCare Benefits Manual which is not covered by the OES rulemaking process.*

**Pursuant to 5 M.R.S.A. §§ 8056 (1)(A), (10), the Department made minor technical, non-substantive corrections to this Final Rule including changes to grammar, punctuation, citation, and format. Additional non-substantive changes were made in response to required legal review.**