MaineCare Services
An Office of the
Department of Health and Human Services

Department of Health and Human Services
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Paul R. LePage *Mary C. Mayhew*

DATE: July 5, 2011

TO: Interested Parties

FROM: Patricia Dushuttle, Director, Division of Policy, MaineCare Services

SUBJECT: Proposed Rule: Chapter 101, MaineCare Benefits Manual, Chapters II & III, Section 68, Occupational Therapy Services

This letter gives notice of a proposed rule: Chapter 101, MaineCare Benefits Manual, Chapters II & III, Section 68, Occupational Therapy Services.

This proposed rule will remove any differing requirements for school based providers, and require them to meet all other requirements of comparable community based providers. In addition the Department clarifies that pursuant to 42 CFR 440.110, MaineCare occupational therapy services must be prescribed by a physician or other licensed practitioner of the healing arts within the scope of practice under Maine law and must be provided by or under the direction of a qualified licensed occupational therapist. Medical necessity for and the provision of these services to MaineCare members requires appropriate documentation. Each member's written progress note must contain the start and stop time of the service. The Department is correcting that adult members are responsible for copayments up to $20 per month for Occupational Services. In Chapter III of this Section, billing modifiers TL and TM will be required for all services that are delivered under a Maine Department of Education Individualized Family Service Plan (IFSP) or an Individualized Education Plan (IEP), respectively.

Rules and related rulemaking documents may be reviewed and printed from the Office of MaineCare Services website at http://www.maine.gov/dhhs/oms/rules/provider_rules_policies.html or for a fee, interested parties may request a paper copy of rules by calling 207-287-9368. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 1-800-606-0215.

A concise summary of the proposed rule is provided in the Notice of Agency Rule-making Proposal. This notice also provides information regarding the rule-making process. Please address all comments to the agency contact person identified in the Notice of Agency Rule-making Proposal.

Notice of Agency Rule-making Proposal

AGENCY: Department of Health and Human Services, MaineCare Services

RULE TITLE OR SUBJECT: Chapter 101, MaineCare Benefits Manual, Chapters II & III, Section 68, Occupational Therapy Services

PROPOSED RULE NUMBER:

CONCISE SUMMARY: This proposed rule will remove any differing requirements for school based providers, and require them to meet all other requirements of comparable community based providers. In addition the Department clarifies that pursuant to 42 CFR 440.110, MaineCare occupational therapy services must be prescribed by a physician or other licensed practitioner of the healing arts within the scope of practice under Maine law and must be provided by or under the direction of a qualified licensed occupational therapist. Medical necessity for and the provision of these services to MaineCare members requires appropriate documentation. Each member's written progress note must contain the start and stop time of the service. The Department is correcting that adult members are responsible for copayments up to $20 per month for Occupational Services. In Chapter III of this Section, billing modifiers TL and TM will be required for all services that are delivered under a Maine Department of Education Individualized Family Service Plan (IFSP) or an Individualized Education Plan (IEP), respectively.

SEE http://www.maine.gov/dhhs/oms/rules/provider_rules_policies.html **for rules and related rulemaking documents.**

THIS RULE WILL __ WILL NOT X HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 22 MRSA §§ 42, 3173

PUBLIC HEARING:

Date:	Monday, August 8, 2011, 9:00 a.m.
Location:	Conference Room #4 Department of Health and Human Services MaineCare Services 442 Civic Center Drive Augusta, ME

The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed above before August 1, 2011.

DEADLINE FOR COMMENTS: Comments must be received by midnight, August 18, 2011.

AGENCY CONTACT PERSON:	Delta Cseak, Comprehensive Health Planner
E-MAIL:	Delta.Cseak@maine.gov
AGENCY NAME:	MaineCare Services
ADDRESS:	442 Civic Center Drive 11 State House Station Augusta, Maine 04333-0011
TELEPHONE:	207-287-6348 FAX: (207) 287-9369 TTY: 1-800-606-0215 or 207-287-1828 (Deaf or Hard of Hearing)

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SECTION 68 **OCCUPATIONAL THERAPY SERVICES** LAST UPDATED 9/1/10

68.01 PURPOSE

The purpose of this rule is to provide medically necessary occupational therapy services to MaineCare members who are adults (age twenty-one (21) and over) who are not residing in a Nursing Facility or ICF-MR, and who have rehabilitation potential; and to provide medically necessary occupational therapy services to MaineCare members who are under age twenty-one (21).

68.02 DEFINITIONS

68.02-1 Functionally Significant Improvement: demonstrable, measurable increase in the member's ability to perform specific tasks or motions that contribute to independence outside the therapeutic environment.

68.02-2 Maintenance Care: occupational services provided to a member whose condition is stabilized after a period of treatment or for whom no further functionally significant improvement is expected.

68.02-3 Occupational Therapy Practitioner: an individual who is licensed as an Occupational Therapist, Registered/Licensed (OTR/L), Occupational Therapist, Licensed (OT/L), Certified Occupational Therapy Assistant, Licensed (COTA/L) or Occupational Therapy Assistant, Licensed (OTA/L).

68.02-4 Occupational Therapy: services ordered by a practitioner of the healing arts or if the member is enrolled in MaineCare managed care, by the member's primary care provider (PCP), and provided by or under the supervision of a licensed occupational therapist for the purposes of evaluating a member's condition, and planning and implementing a program of purposeful services to develop or maintain adaptive skills necessary to achieve the maximum physical and mental functioning of the member in his or her daily pursuits.

68.02-5 Rehabilitation Potential: documented expectation of measurable functionally significant improvement in the member's condition in a reasonable, predictable period of time as the result of the prescribed treatment plan. The physician's documentation of rehabilitation potential must include the reasons used to support the physician's expectation.

68.02-6 Practitioner of the Healing Arts: physicians and all others registered or licensed in the healing arts, including, but not limited to, nurse practitioners, podiatrists, optometrists, chiropractors, physical therapists, occupational therapists, speech therapists, dentists, psychologists and physicians' assistants.

~~68.02-7 School: a program that has been approved by the Department of Education as either a Special Purpose Private School under Chapter 101, § (1,2) and 20-A M.R.S.A. §7251-7258, or a Regular Education Public School under 20-A M.R.S.A. § 1 item # 26.~~

68.03 ELIGIBILITY FOR CARE

Members must meet the financial eligibility criteria as set forth in the MaineCare Eligibility Manual. Some members may have restrictions on the type and amount of services they are eligible to receive. It is the responsibility of the provider to verify a member's eligibility for MaineCare prior to providing services, as described in Chapter I.

68.04 SPECIFIC ELIGIBILITY FOR CARE

Services for members of all ages must be medically necessary. The Department or its authorized agent has the right to perform eligibility determination and/or utilization review to determine if services provided are medically necessary.

Adult members (age twenty-one (21) and over) in an outpatient setting must have rehabilitation potential documented by a physician or PCP. Adult members are specifically eligible only for:

1. Treatment following an acute hospital stay for a condition affecting range of motion, muscle strength and physical functional abilities; and/or

2. Treatment after a surgical procedure performed for the purpose of improving physical function; and/or

3. Treatment in those situations in which a physician or PCP has documented that the patient has, at some time during the preceding thirty (30) days, required extensive assistance in the performance of one or more of the following activities of daily living: eating, toileting, locomotion, transfer or bed mobility;

4. Medically necessary treatment for other conditions including maintenance and palliative care, subject to the limitations in Section 68.07; and/or

5. Maintenance care to prevent a deterioration in function that would result in an extended length of stay or placement in an institutional or hospital setting, as documented by physician or PCP.

68.05 DURATION OF CARE

Covered services must be medically necessary and must not exceed the limitations set in Section 68.07. The Department or its authorized agent reserves the right to request additional information to evaluate medical necessity.

68.06 COVERED SERVICES

MaineCare will reimburse for covered medically necessary services in all outpatient settings, including the home. Services must be of such a level, complexity, and sophistication that the judgment, knowledge, and skills of a licensed therapist are

68.06 **COVERED SERVICES** (Cont.)

required. All services must be in accordance with acceptable standards of medical practice and be a specific and effective treatment for the member's condition. Services related to activities for the general good and welfare of members (for example, general exercises to promote overall fitness and flexibility, and activities to provide diversion or general motivation) are not MaineCare covered occupational therapy services.

Pursuant to 42 CFR 440.110, MaineCare occupational therapy services must be prescribed by a physician or other licensed practitioner of the healing arts within the scope of practice under Maine law and must be provided by or under the direction of a qualified licensed occupational therapist.

MaineCare reimburses providers for the following occupational therapy services:

68.06-1 Evaluations or re-evaluations: For adults, one evaluation or re-evaluation per member per condition is a covered service.

68.06-2 Modalities: Modalities are any physical agents applied to produce therapeutic changes to biologic tissues; including but not limited to thermal, acoustic, light, mechanical, or electric energy. Except when performing supervised modalities, the therapist is required to have direct (one-on-one) continuous patient contact.

68.06-3 Therapeutic Procedures: Therapeutic procedures effect change through the application of clinical skills and/or services that attempt to improve function.

68.06-4 Tests and measurements: The therapist is required to have direct (one-on-one) continuous patient contact in performing testing and measurement.

68.06-5 Supplies: Providers may bill for supplies necessary for the provision of occupational therapy services. Covered supplies under this Section include items such as splinting. Providers may not bill for supplies under other Sections of the MaineCare Benefits Manual, unless they are enrolled as providers and comply with the appropriate Section requirements. Covered supplies under this Section must be billed at acquisition cost and be documented by an invoice in the member's file. Routine supplies used in the course of treatment are not separately reimbursable. Take-home supplies are not reimbursable.

68.07 **LIMITED SERVICES**

68.07-1 All ages:

A. MaineCare will not reimburse for more than two (2) hours of occupational therapy services per day.

B. Supervised modalities (those without direct one-to-one continuous contact) that are provided on the same day as modalities requiring

68.07 **LIMITED SERVICES** (cont.)

constant attendance or on the same day as any other therapeutic procedure are not billable. Billing for supervised modalities as stand-alone treatment is limited to one (1) unit per modality per day.

68.07-2 Adults (age twenty-one (21) and over):

A. Services for adults who meet the specific eligibility requirements in 68.04 must be initiated within sixty (60) days from the date of physician or PCP certification.

B. Services for palliative care and maintenance care are limited to one (1) visit per year to design a plan of care, to train the member or caretaker of the member to implement the plan, or to reassess the plan of care, except that this limitation does not apply to maintenance care for members who would otherwise experience a deterioration in function as described in Section 68.04(5).

C. Services for adults with documented rehabilitation potential who do not meet the criteria in 68.04(1)-(3) must be medically necessary as documented by a certification by a physician or PCP. Such treatment is limited to no more than one (1) visit per condition by qualified staff.

D. Services for sensory integration are limited to a maximum of two (2) visits per year.

68.08 **NON-COVERED SERVICES**

Refer to Chapter I of the MaineCare Benefits Manual for additional non-covered services, including academic, vocational, socialization or recreational services.

68.09 **POLICIES AND PROCEDURES**

68.09-1 Qualified Professional Staff

All professional staff must be conditionally, temporarily, or fully licensed as documented by written evidence from the appropriate governing body. All professional staff must provide services only to the extent permitted by licensure. The following professionals are qualified professional staff:

Occupational Therapist, Registered, Licensed (OTR/L);
Occupational Therapy, Licensed (OT/L);
Certified Occupational Therapy Assistant, Licensed (COTA/L); and
Occupational Therapy Assistant, Licensed (OTA/L).

68.09 **POLICIES AND PROCEDURES** (cont.)

An OTR/L or an OT/L may be self-employed or employed by an agency or business. Agencies~~, schools~~ or businesses may enroll as a provider of service and bill directly for services provided by qualified staff. A COTA/L or an OTA/L may not enroll as an independent billing provider.

68.09-2 Member's Records

Providers must maintain a specific record for each member, which shall include, but not necessarily be limited to:

A. Member's name, address, birthdate, and MaineCare ID number;

B. The member's social and medical history, and medical diagnoses indicating the medical necessity of the service or services;

C. A personalized plan of service including (at a minimum):

1. Type of occupational therapy needed;

2. How the service can best be delivered, and by whom the service shall be delivered;

3. Frequency of services and expected duration of services;

4. Long and short range goals;

5. Plans for coordination with other health service agencies for the delivery of services;

6. Any medical supplies for which a Practitioner of the Healing Arts' order is necessary; and

7. Practitioner of the Healing Arts' orders including, for adults, their documentation of the member's rehabilitation potential.

The physician or primary care provider must review, sign and date the member's plan of care at least once every three (3) months for adult members (age twenty-one (21) and over). The plan of care must be kept in the member's record and is subject to Departmental review along with the contents of the member's record.

68.09 **POLICIES AND PROCEDURES** (cont.)

D. Written progress notes shall contain:

1. Identification of the nature, date and provider of any service given;

2. The start time and stop time of the service, indicating the total time spent in delivering the service;

3. Any progress toward the achievement of established long and short range goals;

4. The signature of the service provider for each service provided; and

5. A full account of any unusual condition or unexpected event, including the date and time when it was observed and the name of the observer.

Entries are required for each service billed. When the services delivered vary from the plan of care, entries in the member's record must justify why more, less, or different care than is specified in the plan of care was provided.

68.09-3 Utilization Review

The Department or its authorized agent has the right to perform utilization review. If at any point of an illness or disabling condition, it is determined that the expectation for measurable functionally significant improvement will not be realized, or if they are already realized and no more services are needed, the services are no longer considered reasonable and necessary, and will not be covered.

68.09-4 Program Integrity

Requirements of Program Integrity are detailed in Chapter I of the MaineCare Benefits Manual.

68.10 **REIMBURSEMENT**

The amount of payment for services rendered shall be the lowest of the following:

1. The amount listed in Chapter III, Section 68, "Allowances for Occupational Therapy Services" of the MaineCare Benefits Manual.

2. The lowest amount allowed by the Medicare carrier.

68.10 **REIMBURSEMENT** (cont.)

3. The provider's usual and customary charge.

In accordance with Chapter I of the MaineCare Benefits Manual, it is the responsibility of the provider to seek payment from any other resources that are available for payment of a rendered service prior to billing MaineCare.

68.11 **COPAYMENT**

Requirements regarding copayment disputes and exemptions are contained in Chapter I of the MaineCare Benefits Manual.

A. A copayment will be charged to each MaineCare member receiving services, with the exception of those exempt, as specified in the MaineCare Eligibility Manual, such as children. The amount of the copayment shall not exceed $2.00 per day for services provided, according to the following schedule:

MaineCare Payment for Service	Member Copayment
$10.00 or less	$ .50
$10.01 - 25.00	$1.00
$25.01 or more	$2.00

B. The member is responsible for copayments up to $2~~3~~0.00 per month whether the copayment has been paid or not. After the $2~~3~~0.00 cap has been reached, the member will not be required to make additional copayments and the provider will receive full MaineCare reimbursement for covered services.

68.12 **BILLING INSTRUCTIONS**

A. Providers must bill in accordance with the Department's billing instructions for the CMS 1500 claim form.

B. All services provided on the same day must be submitted on the same claim form.

SECTION 68 OCCUPATIONAL THERAPY SERVICES LAST UPDATED 7-1-11

MaineCare coverage of Occupational Therapy Services is limited. Refer to Chapter II, Section 68.07 for specific limitations.

Use the following modifiers when appropriate:

TF – Intermediate Level of care – used for Certified Occupational Therapy Assistants and priced 10% below the Allowance rate

GO – Services delivered under an outpatient therapy plan of care

TL - Services delivered under an Individualized Family Service Plan (IFSP)

TM - Services delivered under an Individualized Education Plan (IEP)

CODE	SERVICE	UNIT	MAXIMUM ALLOWANCE
97003	Occupational Therapy Evaluation	per evaluation	$38.36
97004	Occupational Therapy Re-evaluation (Ongoing therapy)	per session	$22.55
97150 GO	Therapeutic procedure(s), group (2 or more individuals)	per member per session	$12.79
	THERAPEUTIC MODALITIES SUPERVISED		
97012	Application of a modality to one or more areas; traction, mechanical	per service	$6.93
97014	Application of a modality to one or more areas; electrical stimulation (unattended)	per service	$6.23
97016	Application of a modality to one or more areas; vasopneumatic devices	per service	$6.98
97018	Application of a modality to one or more areas; paraffin bath	per service	$3.39
97022	Application of a modality to one or more areas; whirlpool	per service	$7.84
97024	Application of a modality to one or more areas; diathermy (e.g. microwave)	per service	$2.33
97026	Application of a modality to one or more areas; infrared	per service	$2.16
97028	Application of a modality to one or more areas; ultraviolet	per service	$2.91

CODE	SERVICE	UNIT	MAXIMUM ALLOWANCE
	THERAPEUTIC MODALITIES CONSTANT ATTENDANCE		
97032	Application of a modality to one or more areas; electrical stimulation (manual)	15 minutes	$7.64
97033	Application of a modality to one or more areas; iontophoresis	15 minutes	$11.00
97034	Application of a modality to one or more areas; contrast baths	15 minutes	$6.67
97035	Application of a modality to one or more areas; ultrasound	15 minutes	$5.43
97036	Application of a modality to one or more areas; Hubbard tank	15 minutes	$11.75
	THERAPEUTIC PROCEDURES		
97110	Therapeutic procedure, one or more areas; therapeutic exercises to develop strength and endurance, range of motion and flexibility	15 minutes	$13.25
97112	Neuromuscular re-education of movement, balance, coordination, kinesthetic sense, posture, and proprioception for sitting and/or standing activities	15 minutes	$13.84
97113	Aquatic therapy with therapeutic exercises	15 minutes	$15.93
97116	Gait training (includes stair climbing)	15 minutes	$11.62
97124	Massage, including effleurage, petrissage and/or tapotement (stroking, compression, percussion)	15 minutes	$10.65
97140	Manual therapy techniques (e.g., mobilization/manipulation, manual lymphatic drainage, manual traction), one or more regions	15 minutes	$12.39

CODE	SERVICE	UNIT	MAXIMUM ALLOWANCE
97760	Orthotic(s) management and training (including assessment and fitting when not otherwise reported), upper extremity(s), lower extremity(s) and/or trunk	15 minutes	$14.94
97761	Prosthetic training, upper and/or lower extremities	15 minutes	$13.43
97530	Therapeutic activities, direct (one-on-one) patient contact by the provider (use of dynamic activities to improve functional performance)	15 minutes	$14.00
97532	Development of cognitive skills to improve attention, memory, problem solving, (includes compensatory training,) direct (one-on-one) patient contact by the provider	15 minutes	$11.53
97533	Sensory integrative techniques to enhance sensory processing and promote adaptive responses to environmental demands, direct (one-on-one) patient contact by provider	15 minutes	$12.24
97535	Self/care/home management training (e.g. activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in use of assistive technology devices/adaptive equipment) direct one-on-one contact by provider	15 minutes	$14.20
97542	Wheelchair management (eg, assessment, fitting, training)	15 minutes	$12.96
	ACTIVE WOUND CARE MANAGEMENT		
97597	Removal of devitalized tissue from wound(s), selective debridement, without anesthesia (e.g. high pressure water jet with/without suction, sharp selective debridement with scissors, scalpel and forceps), with or without topical application(s), wound assessment, and instructions(s) for ongoing care, may include use of a whirlpool, per session; total wound(s) surface area less than or equal to 20 square centimeters	per service	$26.15

CODE	SERVICE	UNIT	MAXIMUM ALLOWANCE
97598	Removal of devitalized tissue from wound(s), selective debridement, without anesthesia (e.g. high pressure water jet with/without suction, sharp selective debridement with scissors, scalpel, and forceps), with or without topical application(s), wound assessment, and instruction(s) for ongoing care, may include use of a whirlpool, per session; total wound(s) surface area greater than 20 square centimeters	per service	$26.15
97602	Removal of devitalized tissue from wound(s), non-selective debridement, without anesthesia (e.g., wet-to-moist dressings, enzymatic, abrasion), including topical applications(s), wound assessment, and instructions(s) for ongoing care	per service	$18.73
	TESTS AND MEASUREMENTS		
97762	Check out for orthotic/prosthetic use, established patient	15 minutes	$14.79
97750	Physical performance test or measurement (e.g., musculoskeletal, functional capacity), with written report	15 minutes	$13.77
97755	Assistive technology assessment (e.g. to restore, augment or compensate for existing function, optimize functional tasks and/or maximize environmental accessibility), direct one-on-one contact by provider, with written report	15 minutes	$16.04
92605	Evaluation for prescription of non-speech-generating augmentative and alternative communication device	per evaluation	$38.07
92607	Evaluation for prescription for speech-generating augmentative and alternative communication device, face-to-face with patient; first hour	60 minutes	$68.52
92608	Evaluation for prescription for speech-generating augmentative and alternative communication device, face-to-face with patient; each additional 30 minutes	30 minutes	$13.23

CODE	SERVICE	UNIT	MAXIMUM ALLOWANCE
	MUSCLE AND RANGE OF MOTION TESTING		
95831	Muscle testing, manual (separate procedure) with report; extremity (excluding hand) or trunk	per service	$12.63
95832	Muscle testing, manual (separate procedure) with report; extremity – hand, with or without comparison with normal side	per service	$11.53
95833	Muscle testing, manual (separate procedure) with report; – total evaluation of body, excluding hands	per service	$17.85
95834	Muscle testing, manual (separate procedure) with report; extremity (excluding hand) or trunk – total evaluation of body, including hands	per service	$21.04
95851	Range of motion measurements and report (separate procedure); each extremity (excluding hand) or each trunk section (spine)	per service	$8.34
95852	Range of motion measurements and report (separate procedure); each extremity – hand, with or without comparison with normal side	per service	$6.49
	CENTRAL NERVOUS SYSTEM ASSESSMENTS/TESTS (e.g. NEURO-COGNITIVE, MENTAL STATUS, SPEECH TESTING)		
96110	Developmental testing; limited (e.g. Developmental Screening Test II, Early Language Milestone Screen) with interpretation and report	per service	$5.16
96111	Developmental testing; limited (e.g. Developmental Screening Test II, Early Language Milestone Screen) with interpretation and report – extended (includes assessment of motor, language, social, adaptive and/or cognitive functioning by standardized developmental instruments) with interpretation and report	per service	$62.66