

Summary of Public Comments
MaineCare Benefits Manual
Chapters II and III, Section 65
Behavioral Health Services

The Department of Health and Human Services held a public hearing on September 4, 2012. Written comments were accepted until September 14, 2012.

- 1. Comment:** The commenters suggested that the Department omitted language regarding Functional Family Therapy under Section 65.08-9 Limitations, Collateral Contacts for Children's Home and Community Based Treatment. (1,5)

Response: The Department has corrected this technical omission and added Functional Family Therapy to 65.08-9 Limitations, Collateral Contacts as eligible for additional collateral contact hours and/or non face-to-face collateral contacts when the Department or its authorized agent grants written approval (65.08-9). The Department thanks the commenters for the notification of this omission. The Department has made changes to the rule based on this comment.

- 2. Comment:** The commenters requested that the Department confirm that non-familial face to face collateral contacts for Functional Family Therapy is a billable service. (1,5)

Response: Thank you for your comment. The Department confirms that non-familial face to face collateral contacts for Functional Family Therapy is a billable service. The Department has not made any changes to the rule based on this comment.

- 3. Comment:** The commenter requested that the Department amend the definition of Functional Family Therapy (FFT) to expand the target population for youth from ages eleven (11) to eighteen (18) to ten (10) to nineteen (19). (1)

Response: Thank you for your comment. The target population of youth from ages eleven (11) to eighteen (18) is consistent with the Evidence Based Practice Functional Family Therapy definition described in Section 65.02-19. The Department has made no change to the rule as a result of this comment.

- 4. Comment:** The commenters requested confirmation that the quarter hour rate of \$28.74 is effective June 29, 2012. (1,5)

Response: Thank you for your comment. The Department confirms H2021 HE Comprehensive Community Support Services-Functional Family Therapy quarter hour rate of \$28.74 is effective as of June 29, 2012. The Department included the correct rate in the emergency rule effective 6/29/12, but omitted the correct rate in the proposed rule on 8/15/12. The Department has made the necessary correction in the adopted rule and does not need to apply the rate retroactively, as the correct rate has been in effect via the emergency rule.

- 5. Comment :** The commenter proposed a description of Functional Family Therapy that includes a target population of ten (10) to nineteen (19). In addition, the commenter offered a lengthy description of the Functional Family Therapy model. (5)

Response: In meeting the criteria for the Evidenced Based Practice model of Functional Family Therapy the target population is eleven (11) to eighteen (18). The Department reviewed the service description suggested by the commenter and concluded the language expands on what is already stated in the rule. The Department has made no change to the rule as a result of this comment.

6. **Comment:** The commenter requested that for Children’s Home and Community Based Treatment, the Department amend the provider requirement of a bachelor’s level staff certified as a Behavioral Health Professional (BHP) be waived to accommodate the need to hire minority BHPs to serve youth and families in minority communities. (5)

Response: Thank you for your comment. The Department is required to deliver MaineCare services in accordance with 42 CFR§440.240 which requires comparability of provider qualifications. The Department has made no change to the rule as a result of this comment. 7.

7. **Comment:** The commenter requested that the Department reconsider the eligibility requirements for Behavioral Health Day Treatment and eliminate the requirement for “an evaluation using the Battelle, Bayley, Vineland or other tools approved by DHHS” and the requirement that functional impairment be measured by standard deviations on such instruments. (5)

Response: Thank you for your comment. This comment is outside of the scope of this rulemaking and cannot be addressed at this time. The Department has made no change to the rule as a result of this comment.

8. **Comment:** The commenter suggests the term Comprehensive Assessment as defined in 65.06-7 be used in place of Psychiatric Diagnostic Interview Examination and Substance Abuse Comprehensive Assessment. (2)

Response: Thank you for your comment. This term was unintentionally left in the rule. The Department has changed the term Psychiatric Diagnostic Interview back to Comprehensive Assessment. The Department has revised the rule based on this comment.

9. **Comment:** The commenter requested that the Department define the terms Continuing Education Unit and NTA/Psychometrician. (2)

Response: The Department thanks the commenter for his comment and offers the following definitions to clarify the terms:

Continuing Education Unit (CEU) is a measure used in continuing education programs, particularly those required in a licensed profession. The Maine Department of Education recognizes CEUs as approved continuing education credits that teachers, education technicians and others can apply to licensure or certification requirements. DOE recognizes 4.5 CEUs as equal to 3 semester hours.

NTA/Psychometrician is a Neurobehavioral Testing Assistant/Psychometrician. Psychometrics is the field of study concerned with the theory and technique of psychological measurement, which includes the measurement of knowledge, abilities, attitudes, personality traits, and educational measurement.

The Department will amend this rule to include this clarifying information.

10. **Comment:** The commenter offered comments regarding the reduction in the Methadone Treatment reimbursement and Maine’s ability to meet the federal Medicaid requirements that rates be “reasonable” and consistent with “efficiency, economy and quality of care and services”. A specific comment questioned the possible reduction in the quality of care specific to the elimination of individual counseling in favor of group counseling, per testimony at the rulemaking hearing. (3, 8)

Response: Thank you for your thoughtful comments and concern for the affected members. The reduction in the methadone treatment reimbursement was implemented in accordance with the Department of Health and Human Services Supplemental Budget enacted by Public Law, Chapter 477, LD 1816 by the 125th Maine State Legislature. The Department will conduct regular reviews to

assure that MaineCare reimbursement is in compliance with federal Medicaid requirements. The Department has not made any changes to the rule based on this comment.

- 11. Comment:** The commenter suggested that the staff certification requirement for Crisis Residential Services (65.06-2) that are licensed as residential child care facilities be changed from Mental Health Rehabilitation Technician (MHRT) to Other Qualified Mental Health Professional (OQMHP). (4)

Response: Thank you for your comment. This comment is outside of the scope of this rulemaking and cannot be addressed at this time. The Department has not made any changes to the rule as a result of this comment.

- 12. Comment:** The commenter inquired, “Is a licensed clinician required to obtain certification as a Behavioral Health Professional (BHP) in order to provide Children’s Home and Community Based Treatment?” (6)

Response: Thank you for your comment. A clinician is not required to obtain a BHP certification in order to provide this service. The Department has not made any changes to the rule as a result of this comment.

- 13. Comment:** The commenter asked if staff hired under 68.06-9, a provision that recognized certain fourth year university students as qualified staff, be grandfathered until the staff has completed the requirements for a bachelor’s degree. (6)

Response: Thank you for your comment. Staff qualified to provide this service under 68.06-9 will be grandfathered as a qualified provider until the requirements for a bachelor’s degree have been met. The Department has not made any changes to the rule as a result of this comment.

- 14. Comment:** The commenter asked if Children’s Home and Community Based Treatment (HCT) can be delivered across all relevant community settings, including educational and vocational settings.” (6)

Response: Thank you for your comment. This comment is outside of the scope of this rulemaking and cannot be and cannot be addressed at this time. The Department has not made any changes to the rule as a result of this comment.

- 15. Comment:** The commenter requested a list of the Department approved evaluation tools as specified in Section 65.06-13-A. (6)

Response: Thank you for your comment. This comment is outside of the scope of this rulemaking and cannot be and cannot be addressed at this time. The Department has not made any changes to the rule as a result of this comment.

- 16. Comment:** The commenter asked for clarification regarding the type of staff that is required to obtain Behavioral Health Professional (BHP) certification and how many hours of training are required. (6)

Response: Thank you for your comment. A licensed clinician is not required to be certified as a Behavioral Health Professional (BHP). A BHP delivering Children’s Behavioral Health Day Treatment is required to obtain the twenty eight (28) hour BHP certification. Provider requirements (65.06-13.B) include staff certified as a BHP who has completed ninety (90) documented college credit hours or Continuing Education Units (CEU’s). The Department has not made any changes to the rule as a result of this comment.

17. Comment: The commenter suggested that the Department consider allowing a Board Certified Behavior Analyst (BCBA) to be reimbursed as a clinician providing Children’s Behavioral Health Day Treatment to a member with a diagnosis of Autistic Disorder when the evidence-based treatment model, applied behavior analysis, is employed? (6)

Response: Thank you for your question; however, this question is beyond the scope of this rule making. The Department has not made any changes to the rule as a result of this comment.

18. Comment: The commenter asked the Department to define the term “educational program” as it is used in explained that section 65.06-13-Children’s Behavioral Health Day Treatment. Additionally, the commenter also asked the Department to clarify if a member’s eligibility Children’s Behavioral Health Day Treatment is contingent upon participation in an “educational program.” (6)

Response: Thank you for your comment. Section 65.06-13-Children’s Behavioral Health Day Treatment includes the requirement that Behavioral Health Day Treatment Services must be delivered in conjunction with an educational program in a School as defined in 65.03-4 “School is a program that has been approved by the Department of Education, as either a Special Purpose Private School or a Regular Education Public School Program under 05-071 C.M.R., Chapter 101, § XII and 20-A MRSA §7204 (4), 7252-A and 7253, and 05-071 C.M.R., Chapter 101, §12, or a program operated or contracted by the Child Development Services System 20-A MRSA § 7001(1-A) that has enrolled as a provider and entered into a provider agreement, as required by MaineCare...” The Department has not made any changes to the rule as a result of this comment.

19. Comment: The commenter asked if a member will be found eligible for Behavioral Health Day Treatment if the member meets all eligibility guidelines outlined in 65.06-13-A but does not have an Individualized Education Plan or an Individualized Family Service Plan. (6)

Response: Thank you for your comment. Section 65, Chapter III specifies that Children’s Behavioral Health Day Treatment –BHP Level Services in an early intervention/Individualized Family Service Plan (IFSP) H2012 HN TL and Children’s Behavioral Health Day Treatment –BHP Level Services in an Individualized Education Plan (IEP) service plan (IFSP) H2012 HN TL. The Department plans on amending Chapter II to include this language in future rule making. The Department has not made any changes to the rule as a result of this comment

20. Comment: The commenter asked if Children’s Behavioral Health Day Treatment can be provided to pre-school aged members who meet the eligibility requirements for the service outlined in section 65.06-13-A-Eligibility for Behavioral Health Day Treatment. The commenter suggested that if this is correct that the Department should specify the correct Provider Type in the rule. (6)

Response: Thank you for your comment. Children age twenty (20) or less who meet the eligibility requirements of 65.06-13-A are eligible to receive the service from qualified providers as specified in 65.06-13.B -Provider Requirements for Behavioral Health Day Treatment and 65.06-13.C - Provisional Approval of Providers of Behavioral Health Day Treatment. The Provider Type used to bill MaineCare is 92 -Early Childhood Provider. Provider types are not listed in the MaineCare Benefits Manual but can be found at <https://mainecare.maine.gov/Default.aspx>. The Department has not made any changes to the rule as a result of this comment

21. Comment: The commenter asked if a referral from Child Development Services (CDS) required for a pre-school aged member to be considered eligible for Children’s Behavioral Health Day Treatment. (6)

Response: Thank you for your comment. A referral for Children’s Behavioral Health Day Treatment Services is not limited to CDS. In order to receive this service a child must meet the

eligibility requirements described in 65-06-13-A-Eligibility for Behavioral Health Day Treatment which includes a referral by the qualified staff defined in 65.06-13B. The Department has not made any changes to the rule as a result of this comment

- 22. Comment:** The commenter requested clarification regarding whether a licensed Mental Health Agency that is NOT a school (as defined in 65.03-4) can provide Children’s Behavioral Health Day Treatment. The commenter suggested that if this is true that the Department should specify the correct Provider Type to be used when seeking reimbursement for this service.” (6)

Response: Thank you for your comment. A licensed Mental Health Agency that is NOT a school (as defined in 65.03-4) can provide Children’s Behavioral Health Day Treatment. The Provider type is 38-Mental Health Clinic. The Department has not made any changes to the rule as a result of this comment

- 23. Comment:** The commenter commented on the addition of the TL-IFSP and TM-IEP modifiers to Children’s Behavioral Health Day Treatment as stated in Section 65, Chapter III. The commenter asked for clarification regarding which eligible members these modifiers are required for. The commenter also asked for clarification regarding why the TL and TM modifiers are not required for procedure code H2012 HN/O can be used without the addition of the second modifiers, TL and TM. (6)

Response: Thank you for your comment. The Procedure Code Modifier TL must be utilized for the BHP Level Services in an early intervention/individualized family service plan (IFSP) and the Procedure Code Modifier TM must be utilized for the BHP Level Services in an IEP. The IFSP is the education plan for children identified with special needs ages birth through age two. The individual education plan is the education plan for children identified with special needs ages three (3) through twenty (20). The Department has not made any changes to the rule as a result of this comment

- 24. Comment:** The commenter explained that the Department of Education (DOE) is required to provide the state match for Children’s Behavioral Health Day Treatment. The commenter requested clarification regarding the requirement of DOE to fund the match for a medical service. The commenter also requested information regarding other MaineCare covered medical services for which DOE is required to provide funding? (6)

Response: Thank you for your inquiry; however, this request is beyond the scope of this rule making. The Department has not made any changes to the rule as a result of this comment

- 25. Comment:** The commenter asked, if a member is found to meet all of the eligibility criteria outlined in section 65.06-13-A, but does not have an IEP or IFSP is the Department of Education still responsible for the state match for this medical service? (6)

Response: Thank you for your inquiry; however, this request is beyond the scope of this rule making. The Department has not made any changes to the rule as a result of this comment

- 26. Comment:** The commenter requested clarification as to the requirements for Behavioral Health Certification and asks the following:

- Will students in their final year of study for a Bachelor degree be eligible for BHP certification to work in Home and Community Treatment (HCT) services? (9)
- Will undergraduate interns be eligible for BHP certification to work in HCT services? (9)
- Will current BHPs who do not meet the new requirements be grandfathered? (9)

- Some university programs do not offer a Bachelor degree, but have an advanced standing format that continues only to a Masters. At what point in this process will the student be eligible for BHP certification to work in HCT services? (9)

Response: Thank you for your comment. The BHP minimum age and education requirement is 18 years old and a high school or equivalent diploma. The minimum education requirement for a non-licensed staff delivering Home and Community Based Treatment is a bachelor's level degree. Fourth year university students, who had been approved as qualified staff (undergraduate interns), will be grandfathered until the staff has completed their bachelor's program. The Department has not made any changes to the rule as a result of this comment

- 27. Comment:** The commenter suggested naming the Youth Outcome Questionnaire (YO-Q) as the approved tool for the determination of the appropriate level of care for Children's Home and Community Based Treatment. (7)

Response: Thank you for your comment. This is outside of the scope of this rulemaking and cannot be addressed at this time. The Department has not made any changes to the rule as a result of this comment.

- 28. Comment:** The commenter suggested it would be beneficial to clarify language specific to the Multi-Systemic Therapy (MST) practice model. (7)

Response: Thank you for your comment. This is outside of the scope of this rulemaking and cannot be addressed at this time. The Department has made no change to the rule as a result of this comment.

The Department made several changes that were not included in the proposed rule. The changes made to the rule are summarized below:

- Update to the rate for functional family therapy, this change was made in the emergency rule but was inadvertently rejected in the proposed rule, this change will assure that the adopted rule matches the rate that was included in the emergency rule which is the rate the Department intended to use originally; and
- Addition of functional family therapy within the limitations for collateral contacts. This change was made based on a comment received during the open comment period for the adopted rule; and
- Update to include Independent practitioners (i.e. LCSW) as qualified providers for group therapy. This line was inadvertently deleted during the proposed rulemaking; and
- Addition of definitions for continuing education units and NTA/psychometrician. This change was made based on comments received during the open comment period.
- Two grammatical changes were made to section 65.08-6 and 65.09(3).

Table of Commenters

MaineCare Benefits Manual Chapters II and III, Section 65 *Behavioral Health Services*

1. Jeffrey T. Tiner, Catholic Charities Maine
2. Daniel Courter, Maine State Billing
3. Jack Comart, Maine Equal Justice Partners
4. Robert Jay White, Sweetser
5. Al Durgin, Spurwink Services
6. Bart Beattie, Providence Service Corporation of Maine
7. Kimberly Foskett, Tri-County Mental Health Services
8. Brent Scobie, Acadia Hospital
9. John Beaman, Kids Peace New England