Department of Health and Human Services
Maine People Living
Safe, Healthy and Productive Lives

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October 28, 2009

TO: Interested Parties

FROM: Anthony Marple, Director, Office of MaineCare Services

SUBJECT: Proposed Rule: 10-144 Chapter 101, MaineCare Benefits Manual, Chapters II & III, Section 28, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations and Repeal of Chapters II & III, Section 24 Day Habilitation Services.

This letter gives notice of a proposed rule: MaineCare Benefits Manual, Chapters II & III, Section 28, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations and Repeal of Chapters II & III, Section 24, Day Habilitation Services. The Department is proposing a new MaineCare section, Section 28, which will provide current Section 24 services, as well as additional services, to an expanded children's eligibility group. The Department is repealing Section 24 because it is deleting this service for adults. The Department anticipates that most adults who now receive Section 24 services will be provided this service under some institutional providers. The Department will provide advance written notice to members to inform them of this reduction and change in service.

Children will receive rehabilitation and community support services that include assessment, treatment and Specialized Services. HIPAA compliant coding will be utilized and the reimbursement codes will comport with the new MaineCare reimbursement system, Maine Integrated Health Management Solution, MIMHS. All services must be prior authorized and identified on an Individualized Treatment Plan. Qualified Staff will provide the service.

Rules and related rulemaking documents may be reviewed at and printed from the Office of MaineCare Services website at or, http://www.maine.gov/dhhs/oms/rules/provider_rules_policies.html or 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 1-800-423-4331.

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, Office of MaineCare Services

RULE TITLE OR SUBJECT: 10-144 Chapter 101, MaineCare Benefits Manual, Chapters II & III, Section 24, Day Habilitation Services, and Chapters II & III, Section 28 Rehabilitation and Community Support Services for Children with Cognitive Impairments and Functional Limitations.

PROPOSED RULE NUMBER:

CONCISE SUMMARY: The Department is proposing a new MaineCare section, Section 28, which will provide current Section 24 services, as well as additional services, to an expanded children's eligibility group. The Department is repealing Section 24 because it is deleting this service for adults. The Department anticipates that most adults who now receive Section 24 services will be provided this service under some institutional providers. The Department will provide advance written notice to members to inform them of this reduction and change in service.

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

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

STATUTORY AUTHORITY: 22 M.R.S.A., § 42, § 3173.

PUBLIC HEARING:

Date: November 17, 2009 10:30 AM to 12:30 PM
Location: Conference Room # 1A
Department of Health and Human Services
Office of MaineCare Services
442 Civic Center Drive
Augusta, ME

Any interested party requiring special arrangements to attend the hearing must contact the agency person listed below before November 2, 2009.

DEADLINE FOR COMMENTS: Comments must be received by midnight, November 27, 2009

AGENCY CONTACT PERSON: Ginger Roberts-Scott, Comprehensive Health Planner
AGENCY NAME: Office of MaineCare Services
ADDRESS: 442 Civic Center Drive
11 State House Station
Augusta, Maine 04333-0011

TELEPHONE: 207-287-9365 FAX: (207) 287-9369
TTY: 1-800-423-4331 or 207-287-1828 (Deaf or Hard of Hearing)

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28.01 DEFINITIONS

28.01-1 **Authorized Agent** shall mean the organization authorized by the Department to perform specified functions pursuant to a signed contract or other approved signed agreement.

28.01-2 **Central Enrollment** is a process of determining eligibility for treatment services. The goals of central enrollment are to determine a member's eligibility for treatment; facilitate referrals to appropriate service providers; expedite delivery of service to members in need of treatment; reliably track the service status of members enrolled in the system; and gather data that will inform DHHS of resource development needs.

28.01-3 **Child** is a person between the ages of birth through twenty (20) years of age. Children aged eighteen (18) through twenty (20) years of age and children who are emancipated minors may choose to receive children's or adult services, whichever best meets their individual needs.

28.01-4 **Comprehensive Assessment** is used to identify strengths and needs of the member and family and develop an Individual Treatment Plan. The comprehensive assessment process determines the intensity and frequency of medically necessary services and includes utilization of instruments as may be approved or required by DHHS.

28.01-5 **Crisis Plan/Safety Plan** is a plan that must address the safety of the member and others surrounding a member experiencing a crisis.

28.01-6 **Discharge plan** is a plan incorporated in the Individualized Service Plan that describes the member's planned exit from treatment. The plan must identify discharge criteria, documentation of any after care or support services recommended at the time of discharge, and must be minimally reviewed by the treatment team every ninety (90) days .

28.01-7 **Family** means the primary caregiver(s) in a member's daily life, and may include a biological or adoptive parent, foster parent, legal guardian or designee, sibling, stepparent, stepbrother or stepsister, brother-in-law, sister-in-law, grandparent, spouse of grandparent of grandchild, a person who provides kinship care, or any person sharing a common residence as part of a single family unit.

28.01-8 **Family Participation** may include being a member of the treatment team, participation in the assessment process, and helping to develop the Individual Treatment Plan (ITP). Family participation may also mean participating in treatment, modeling, and reinforcing skills learned in the course of treatment.

28.01 **DEFINITIONS Continued**

28.01-9 **Individual Treatment Plan (ITP)** is the plan of care developed by the treatment team and includes the member, if appropriate, the parent or guardian, the provider and natural supports, and is based on a comprehensive assessment of the member. Individualized plans included in the Individual Treatment Plan are the Crisis/Safety Plan and the Discharge Plan.

28.01-10 **Natural Supports** include the relatives, friends, neighbors, and community resources that a family goes to for support. They may participate in the treatment team, but are not MaineCare reimbursable.

28.01-11 **Parent or Guardian** may be the biological, adoptive, or legal guardian. They must be a participant in the treatment team, but are not MaineCare reimbursable. They must sign the ITP.

28.01-12 **Prior Authorization** is the process of obtaining approval prior to the start of the service. All services in this Section require prior authorization.
The provider will receive a prior authorization letter containing an authorization number and a description of the type, duration and costs of the services authorized. The provider shall retain this letter in the case record for audit purposes. The provider is responsible for providing services in accordance with the prior authorization letter. The prior authorization number is required on the CMS 1500 claim form. All extensions of services beyond the original authorization must be prior authorized by this same procedure.

28.01-13 **Specialized Services** are medically necessary treatment services that utilize the process of systematically applying interventions based upon empirically derived principles of behavior to improve socially significant behaviors to a measurable degree, and to demonstrate that interventions employed are responsible for improvements in behavior. Assessment includes systematic information gathering regarding factors that influence occurrence of a behavior including interview, direct observation and experimental analysis.

28.01-14 **Treatment Team** is the group of people responsible for developing and reviewing a member's ITP. The team may include the member, to the extent possible, and must include the parent/guardian and provider. The member's family, case manager, any other professionals, and those who provide natural supports may also be included, at the discretion of the Department**.**

28.01-15 **Utilization Review** is a formal assessment by the Department of the medical necessity, efficacy and appropriateness of services and treatment plans minimally on an annual basis.

28.02 ELIGIBILITY FOR SERVICE

To be found eligible for Rehabilitative and Community Support Services For Children With Cognitive Impairments and Functional Limitations, a member must be under twenty-one years of age and meet all of the following criteria:

28.02-1 General Eligibility Criteria

A. Individuals must meet the financial eligibility criteria as set forth in the MaineCare Eligibility Manual (MEM). Some members may have restrictions on the type and amount of treatment services they are eligible for.

B. All Section 28 Services must meet requirements of central enrollment and will be subject to prior authorization and ongoing utilization review by the Department of Health and Human Services or Authorized Agent.

C. All services must be medically necessary pursuant to Chapter I, Section 1.02-4.D. of the MaineCare Benefits Manual and identified in the ITP.

28.02-2 Specific Eligibility Criteria

In addition to General Eligibility criteria the member must meet the following medical necessity criteria to be eligible for services:

a. Have a comprehensive assessment documenting behavioral functional impairment measured as two (2) standard deviations below the mean on the composite score of the most current version of the Vineland Adaptive Behavior http://psychcorp.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=Vineland-II , the Adaptive Behavioral Assessment Scales http://www.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=015-8004-507&Mode=summary, Battelle Developmental Inventory http://www.riverpub.com/products/bdi2/index.html, Bayley Scales of Infant and Toddler Development http://www.pearsonassessments.com/haiweb/cultures/en-us/productdetail.htm?pid=015-8027-264 or other tools approved by DHHS and other clinical assessment information obtained from the member and family; AND

b. Family Participation is required in treatment services to the greatest degree possible given the individual needs as well as family circumstances.

28.03 DURATION AND INTENSITY OF SERVICES

Eligible MaineCare members are entitled to receive up to the approved number of hours of services under this Section as are medically necessary, approved by DHHS or its Authorized Agent, and described in an approved treatment plan. DHHS or its Authorized Agent will review member records and the proposed treatment plan in approving services.

28.04 COVERED SERVICES

A covered service is a service provided to a member for which payment may be made under the MaineCare Program, and through contract with DHHS. Assessment and treatment are covered services when provided to an eligible member by an approved staff so long as the services are medically necessary as defined in this section. Treatment is provided in the home and/or community in individual in either individual or group settings and requires prior authorization and utilization review.

28.04-1 **Treatment Services for Children With Cognitive Impairments And Functional Limitations** are medically necessary treatment services for members under the age of twenty one (21). Treatment services are designed to retain or improve functional abilities which have been negatively impacted by the effects of cognitive impairment and are focused on behavior modification and management, social development, and acquisition and retention of developmentally appropriate skills. Services include problem solving activities in order to help the member develop and maintain skills and abilities necessary to manage his or her behavioral health treatment needs, learning the social skills and behaviors necessary to live with and interact with other community members and independently, and to build or maintain satisfactory relationships with peers or adults, learning the skills that will improve a member's self awareness, environmental awareness, social appropriateness and support social integration, and learning awareness of and appropriate use of community services and resources.

28.04-2 **Specialized Services for Children With Cognitive Impairments And Functional Limitations** are medically necessary, evidence based treatment services for members under the age of twenty one (21), that utilize behavioral interventions designed to improve socially significant behaviors to a measurable degree. Services include problem solving activities in order to help the member develop and maintain skills and abilities necessary to manage his or her behavioral health treatment needs, learning the social skills and behaviors necessary to live with and interact with other community members and independently, and to build or maintain satisfactory relationships with peers or adults, learning the skills that will improve a member's self awareness, environmental awareness, social appropriateness and support social integration, and learning awareness of and appropriate use of community services and resources.

28.05 **MEMBER RECORDS**

28.05-1 Written Record

The provider must keep a specific written record for each member, which must include:

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

B. A written copy of the member's comprehensive assessment including

C. Individual Treatment plan (ITP), including the strengths and needs identified in the planning process;

D. Written, signed, credentialed with licensure or certification, if applicable, and dated progress notes, kept in the member's records;

E. DHHS, or its authorized agent, must approve changes regarding intensity and duration of treatment services provided. The Provider must document the approval of the changes in the ITP and in the member's record.

28.05-2 Comprehensive Assessment

A. A supervisor or staff with qualifications comparable to a supervisor must complete a comprehensive assessment within thirty (30) days of acceptance of the referral by the provider agency and must be included in the members record. The comprehensive assessment process must include a direct encounter with the member, if appropriate, and parents or guardians. The comprehensive assessment must be updated as needed, annually at a minimum.

B. The comprehensive assessment must contain documentation of the following:

1. the member's identifying information, including the reason for referral,

2. family history relevant to family functioning including, but not limited to, concerns regarding mental health, developmental disabilities, substance abuse, domestic violence and trauma,

3. the member's developmental history, if known, educational history and current status, and transition planning if age appropriate, and

28.05 **MEMBER'S RECORDS (continued)**

4. identification of the member's strengths and needs regarding functioning in the areas of behavior, social skills, activities of daily living and for members fourteen (14) years of age or older, independent living skills.

C. The assessment must be summarized, signed, credentialed with licensure or certification, if applicable, and dated by the staff conducting the assessment, the parent or guardian and the member, if appropriate, and include the source and date of the diagnosis.

D. The assessment must contain documentation if information is missing and the reason the information cannot be obtained.

28.05-3 Individual Treatment Plan (ITP)

A. Within thirty (30) days of initiation of services, the treatment team must develop an ITP. The ITP is based on the comprehensive assessment and is appropriate to the developmental level of the member.

B. The ITP must contain the following:

1. The member's diagnosis and reason for receiving the service.

2. Specific medical treatment services to be provided with methods, frequency and duration of services and designation of who will provide the service.

3. Objectives with target dates that allow for measurement of progress toward meeting identified developmentally appropriate goals.

4. Discharge plan must:

a. identify discharge criteria that are related to the goals and objectives described in the ITP; and

b. identify the individuals responsible for implementing the plan; and

c. identify natural and other supports necessary for the member and family to maintain the safety and well-being of the member, as well as sustain progress made during the course of treatment; and

28.05 **MEMBER'S RECORDS (continued)**

d. Be reviewed by the treatment team every ninety (90) days as part of the required review of the ITP.

5. Crisis/Safety Plan

The plan must:

a. Identify the cause of the crisis;

b. Identify the strategies and techniques that may be utilized to stabilize the crisis;

c. Identify the individuals responsible for the implementation of the plan including any individuals identified by the member (or parents or guardian, as appropriate) as significant to the member's stability and well-being; and

d. Be reviewed every ninety (90) days by the treatment team as part of the required review of the ITP.

6. Special accommodations needed to address barriers to provide the service.

7. The parent or guardian and the member, if applicable, must sign and date the ITP.

8. Be reviewed every ninety (90) days by the treatment team as part of the required review of the ITP.

9. If indicated, the member's needs may be reassessed and the ITP revised.

10. The provider will provide the member with a copy of the initial and reviewed ITP within ten (10) days of signing.

28.05-4 Progress Notes

1. Providers must maintain written progress notes for all treatment services, in chronological order.

2. All entries must include the treatment service provided, the provider's signature, the date on which the service was provided, the duration of the service, the time the provider arrived and left, and the progress the member is making

28.05 **MEMBER'S RECORDS (continued)**

toward attaining the goals or outcomes identified in the ITP.

3. For in-home services, the provider should ask the member, or an adult responsible for the member, to sign off on the progress note documenting the date, time of arrival, and time of departure of the provider.

28.06 **LIMITATIONS**

The following limitations apply to reimbursement of services:

28.06-1 MaineCare will limit reimbursement for services under this Section to those covered services documented and approved in the treatment plan that are developmentally appropriate. Reimbursement is also contingent upon the provider's adherence to any applicable licensing standards and contractual agreements set forth by DHHS or its Authorized Agent. MaineCare will not reimburse for services provided during the child's regular sleeping hours.

28.06-2 Non-Duplication of Services

Services as defined under this Section are not covered if the member is receiving comparable or duplicative services under this or another Section of the MaineCare Benefits Manual. A member may not receive services if they are in a residential treatment facility or if they are receiving services in an institution, including, but not limited to Section 45, Hospital Services, Section 46, Psychiatric Facility Services, Section 50, ICF-MR, Section 67, Nursing Facilities and Section 97, Appendix D, Private Non-Medical Institutions except that this service may be provided while a member is receiving Treatment Foster Care provided by a Private Non-Medical Institution.

28.06-3 Group Treatment

Reimbursement for group treatment must be prior authorized and is limited to a maximum of five (5) hours per week. Group Treatment requires a minimum of four (4) members and is limited to no more than ten (10) members in a group. When group treatment is provided to a group of more than four (4) members it must be provided by up to two (2) qualified staff at a time. Reimbursement for group treatment is allowed if four (4) or more members are schedule for the session by fewer members attend due to unavoidable circumstances such as illness.

28.06 **LIMITATIONS Continued**

When group treatment is provided by more than one qualified staff at the same time, they can bill as follows:

a. One qualified staff seeks reimbursement for the provision of services to the total number of members in the group; or

b. Each qualified staff bills for services provided to a portion of the total number of members in the group. Each qualified staff may bill only for the members for whom the other staff has not billed. The total amount submitted by both staff for MaineCare reimbursement must not exceed the total number of members in the group. For example, if there are eight (8) members in the group each staff may bill for the session, accounting for four (4) members each.

The staff billing for the member is responsible for maintaining all clinical records.

28.07 **NON-COVERED SERVICES**

Non-covered services are described in Chapter I of the MaineCare Benefits Manual (MBM). MaineCare does not cover services that are primarily academic, vocational, social, recreational, or custodial in nature.

28.08 **POLICIES AND PROCEDURES**

28.08-1 Provider Agency Requirements

All providers of services under this Section must be enrolled and approved as MaineCare providers by the Office of MaineCare Services (OMS) and Office of Child and Family Services (OCFS), Children's Behavioral Health Services (CBHS) and must meet all applicable provider requirements of this Section. Providers are also subject to all requirements of MaineCare Benefits Manual (MBM), Chapter I, General Administrative Policies and Procedures.

A. Rehabilitative and Community Support Services for Children with Cognitive Impairments And Functional Limitations Provider Contract

All providers must have a current contract with DHHS. The content of this contract must stipulate that the provider will Comply with Rider A specifications including: 1) reporting requirements; 2) service specifications/performance guidelines; and 3) process objectives.

28.08 **POLICIES AND PROCEDURES (continued)**

B. Prior Authorization through DHHS or its Authorized Agent must be given prior to the start of all services. Utilization Review will be conducted by DHHS or its Authorized Agent.

28.08-2 Staff Requirements

A. Qualification Requirements for Direct Care Staff:

1. a. Direct care staff must meet the following minimum requirements:

- Be at least 18 years of age;
- Have a high school diploma or equivalent;
- All direct care staff must obtain a Behavioral Health Professional (BHP) certification within one (1) year of hire. OR

b. Grandfathering: Staff who are employed at the time this rule goes into effect as direct care professionals in Day Habilitation Services for Persons with Mental Retardation, Chapter II, Section 24 are considered qualified to provide this service and must complete BHP certification within one (1) year of the effective date of this rule;

AND

2. Supervision of direct care staff:

Provider agencies must identify qualified professional supervisors for each direct care position. Direct care

28.08 **POLICIES AND PROCEDURES (continued)**

staff employed full time must be supervised a minimum of four (4) hours per month. Direct care staff employed part time must receive a prorated amount of supervision, with a minimum requirement of one hour per month.

B. Requirements for Supervisors of Direct Care Staff

Supervisors of direct care staff must meet the following professional qualifications:

a. Grandfathering: Staff who are employed at the time this rule goes into effect as a Supervisor to direct care professional in Day Habilitation Services for Persons with Mental Retardation, Chapter II, Section 24; or

b. Have a Bachelor's degree in a human services or related field and at least (two) 2 years related experience; or

c. Have a Master's degree in a human services or related field and at least (one) 1 year of related experience; or

d. Be a licensed social worker (LSW) with at least (one) 1 year of related experience; or

e. Be a licensed social worker (LSW) who has attained a related Master's degree; or

f. Be a licensed professional counselor (LPC), licensed clinical professional counselor (LCPC), licensed clinical social worker (LCSW), a Board Certified Behavior Analyst (BCBA), psychologist, physician, or advanced practice registered nurse; or

g. Be a registered professional nurse with 3 years related experience.

C. Requirements for Behavioral Health Professional providing Specialized Services

28.08 **POLICIES AND PROCEDURES (continued)**

1. Grandfathering: Staff who have met training, experience and supervision requirements set forth in Section 28.08-2.A. and 28.08-8-2.B as of the effective date of these rules and as approved by the Department are grandfathered Behavioral Health Professionals with Specialized Services.

2. Behavioral Health Professional providing Specialized Services must meet all of the certification requirements as stated for the Certification as Behavioral Health Professional or equivalent as determined by the Department and must:

    a. Be under the Supervision of a Licensed Psychologist, Board Certified Behavior Analyst or equivalent as determined by the Department, and

    b. Be able to demonstrate specific competencies required to provide Specialized Services including but not limited to the basic principles of behavior; and

    c. Be able to apply, under the direction of the supervisor, an array of procedures specific to Specialized Services.

4. Supervision of Behavior Health Professional with Specialized Services Endorsement

    a. Behavioral Health Professionals with Specialized Services Endorsement employed full time must be supervised a minimum of four (4) hours per month. Behavioral Health Professionals with Specialized Services employed part time must receive a prorated amount of supervision, with a minimum requirement of one (1) hour per month.

5. Professional Qualifications for Supervisors of Behavioral Health Professionals with Specialized Services Endorsement

    a. Supervisors of Behavioral Health Professionals with Specialized Services Endorsement must minimally meet the following professional qualifications:

    Licensed as a Psychologist Board Certified Behavior Analyst or equivalent as determined by the Department with at least one (1) full calendar year in providing Specialized Services directly to children.

28.08 **POLICIES AND PROCEDURES (continued)**

b. Supervisors of Behavioral Health Professionals with Specialized Services Endorsement must be able to minimally:

1. Plan, direct and monitor the interventions;

2. Develop, approve and/or review behavior plans;

3. Collect and analyze data;

4. Analyze individual and aggregate outcome measurement(s);

5. Supervise/directly observe on site for at least one (1) hour weekly as determined by the needs of the child, family, and/or direct treatment staff; and

6. Attend and participate in monthly team meetings

28.08-3 Program Integrity

The Program Integrity Unit monitors MaineCare reimbursed treatment services provided and determines the appropriateness and necessity of the services, including duplication of services. All Program Integrity requirements apply as defined in the MaineCare Benefits Manual, Chapter I, General Administrative Policies and Procedures for more detail.

28.09 **BILLING**

The documentation must demonstrate only one staff person's time is billed for any specific activity provided to the member. Billing must be accomplished in accordance with the Department's “Billing Instructions for Services for Children with Cognitive Impairments and Functional Limitations” provided by the Office of MaineCare Services, Division of Customer Service:

(http://www.maine.gov/dhhs/oms/providerfiles/billing_instructions.html)

28.10 REIMBURSEMENT

28.10-1 **Rates.** Reimbursement is specified in the MaineCare Benefits Manual, Chapter III, Section 28.

28.10-2 **Reimbursement Allowances.** In accordance with Chapter I of the MaineCare Benefits Manual, it is the responsibility of the provider to seek payment from every other source that is available for payment of a rendered service before billing MaineCare.

MaineCare will pay the lowest of the following:

A. The fee established by MaineCare;

B. The lowest payment allowed by Medicare; or

C. The provider's usual and customary charge.

SECTION 28

ALLOWANCES FOR REHABILITATIVE AND COMMUNITY SUPPORT SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS

PROC CODE	MOD	DESCRIPTION	UNIT OF SERVICE	MAXIMUM ALLOWANCE
H2021	HI	SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) 1:1	15 MINUTES	$5.39
H2021	HI HQ	SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) GROUP	15 MINUTES	$1.75
H2021	HK	SPECIALIZED SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS(COMMUNITY BASED WRAP AROUND SERVICES) 1:1	15 MINUTES	$7.50
H2021	HK HQ	SPECIALIZED SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) GROUP	15 MINUTES	$2.00