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March 20, 2012

Richard R. McGreal, Associate Regional Administrator
Department of Health and Human Services
Centers for Medicare and Medicaid Services
JFK Federal Building, Government Center
Room 2275
Boston, Massachusetts 02203

Dear Mr. McGreal:

Please find enclosed a Corrective Action Plan (CAP) addressing Bundled Rates for Private Non-Medical Institution (PNMI) Services, as requested in a CMS letter dated December 23, 2011. Please note that this Corrective Action Plan only addresses PNMI services. The Department notes that CMS requested information for other bundled rates on the same page, and will respond separately for Bundled Rates for these other services.

As referenced in the enclosed CAP, The Department is currently remodeling program and reimbursement design for residential services referenced as PNMI. A number of coverage and reimbursement methodologies are being considered for these services.

We wish to also express our gratitude for the technical assistance your staff have provided, particularly in recent conversations around the development of a composite rate. This technical assistance will remain crucial as the Department moves toward a new model for these residential services that addresses all CMS concerns. We thank you in advance for your continued support.

Sincerely,

Mary C. Mayhew
Commissioner

MCM/klv

cc: Bonnie Smith, Deputy Commissioner
Christopher Pierce, Deputy Commissioner
Stefanie Nadeau, MaineCare Director
Patricia Dushuttle, Coordinator of Strategic Initiatives

Corrective Action Plan

Maine Private Non-Medical Institution Services-

An Overview of the Current System and Potential Funding Alternatives That Eliminate Bundled Payments

Overview of the Current System

This document summarizes services called Private Non-Medical Institution Services (PNMI) currently reimbursed under the State's MaineCare (Medicaid) program, and identifies a Corrective Action Plan for CMS for future reimbursement. The Corrective Action Plan is developed in response to a December 23, 2011 Companion letter from Richard McGreal regarding bundled payment and discusses alternative funding options for PNMI services, noting some key decisions points still being analyzed as part of a corrective action plan.

Background: Current Status of Private Non-Medical Institution Services (PNMI) under MaineCare Benefits Manual (MBM), Section 97:

MaineCare PNMI services and reimbursement are detailed in the MaineCare Benefits Manual, Chapters II and III. MaineCare currently pays a capitated per diem rate for these residential services. Private Non-Medical Institutions include: Substance Abuse Treatment Facilities (Appendix B), Case Mix Facilities (Appendix C), Child Care Facilities (Appendix D), Community Residences for People with Mental Illness (Appendix E), and Non-Case Mixed Facilities (Appendix F). PNMI services serve individuals who would require a higher level of institutional care if such residential treatment was not available. MaineCare primarily funds two categories of Medicaid reimbursable services in this setting, Personal care and Rehabilitation Services. These services are approved under Maine's state plan in both personal care and rehabilitation. Since Medicaid funds cannot be used to pay for room and board, the room and board components are reimbursed by State dollars only.

Maine Department of Health and Human Services (DHHS) funds the following five categories of PNMI services:

- **Appendix B- Substance Abuse Facilities-** In 2010, there were 18 PNMI facilities with capacity to serve 1282 members. Total state and federal expenditures for these services in 2010 was \$8,882,383. The services are licensed by DHHS and overseen by the DHHS Office of Substance Abuse Services. Varying levels of residential treatment are provided by teams using treatment models and assessment tools of the American Society of Addiction Medicine (ASAM). Services include rehabilitative treatment (substance abuse and behavioral health services), personal care, and medication management. PNMI Substance Abuse services are broken out into adolescent residential treatment, consumer run residential services, detoxification, extended care, halfway house, residential rehabilitation, and shelter services. These PNMI services are reimbursed using a standard per diem rate.
- **Appendix C- Case Mix Facilities-** In 2010, there were 138 facilities serving 3123 MaineCare members, with total state and federal expenditures of \$98,101,098. These PNMI services are also licensed by DHHS, and are overseen by the DHHS Office of Elder Services. The services reimbursed in these facilities primarily serving frail elders include personal care services, medication

administration, some nursing services. Rehabilitation (including physical therapy, occupational therapy and behavioral health) is billed separately and not generally included in the per diem rate. These PNMI services are reimbursed with a per diem rate adjusted for case mix index (or acuity) of each resident, and recognizes both acuity of residents and associated staff resources necessary. Residents must be determined eligible by the Medical Eligibility Determination (MED) assessment tool. Historically, these facilities were developed to serve individuals in a lower level than nursing facility care, allowing them to age in place. Recent data suggest that approximately 23% of these residents are nursing facility eligible. More than half of these PNMI services are in multi-level facilities operated by agencies that have nursing facility services in the same building.

- **Appendix D- Child Care Facilities-** In 2010, there were 92 facilities serving approximately 696 children, with reimbursement at \$85,537,429 state/federal. These facilities are licensed by DHHS and overseen by DHHS Office of Child and Family Services. Medicaid services include behavioral health, medication administration, rehabilitation, crisis intervention, and personal care. Services are prior authorized, and children must meet eligibility with an assessment such as the LOCUS, that determines a severe and persistent mental illness and a need for residential care. Services are reimbursed through a standardized per diem rate.
- **Appendix E- Community Residences for Members with Mental Illness-** In 2010, there were 562 beds serving members in 104 facilities. These facilities are licensed by DHHS and are overseen by DHHS Office of Mental Health Services. Total state and federal expenditures were \$55,701,000 in 2010. The services include rehabilitative services including behavioral health treatment; medication monitoring and administration; and personal care services. Most members who receive these services would require frequent or long term psychiatric hospitalization if not for provision of these services. Residents are assessed with the LOCUS tool demonstrating severe and persistent mental illness and a need for residential care. All services are also prior authorized to assure that services are medically necessary and provided in the least restrictive setting. Services are reimbursed through a standardized per diem rate.
- **Appendix F- Non-Case Mixed Medical and Remedial Services-** These facilities provide essentially the same services as are provided under Appendix C, but tend to be smaller facilities that serve specialized populations such as members with brain injury, intellectual disabilities, or adults with mental health disorders. In 2010, there were 421 beds in 57 facilities, serving 125 members with brain injury, 93 in APS custody, and 203 members with intellectual disabilities. Total state and federal expenditures in 2010 was \$26,893,651. Medicaid services include rehabilitation, habilitation, personal care, medication administration and monitoring. The facilities are licensed by DHHS, and are overseen by the DHHS Office of Elder Services or Office of Adults with Cognitive and Physical Disabilities. Services are prior authorized, require various assessments using tools appropriate for the population served, and are reimbursed through a per diem rate.

Regulatory Compliance

The DHHS has been working with the Centers for Medicare and Medicaid Services (CMS) around various concerns regarding provision and reimbursement of PNMI services, including but not limited to “bundled” rates. While the Corrective Action Plan requested in response to a December 23, 2011 Companion letter issued by CMS is specific to bundled rates only, the PNMI initiative must consider additional factors. Maine continues to work on a PNMI restructuring initiative that will dramatically change these services. Within the last six months DHHS has sponsored a Statewide Forum, 6 regional

provider forums, and has provided detailed presentations to the Maine State Legislature, both to the Appropriations Committee and to the Health and Human Services Committee, to gather stakeholder feedback on these services and potential solutions.

The December 23 CMS Companion letter expresses concern with Maine's use of reimbursement bundled rates for several services, including PNMI services. Specifically, CMS expresses concern that Maine uses a daily "bundled rate" method for reimbursement of its PNMI services. CMS has identified that bundled payments may violate two provisions of the Social Security Act: 1902(A) (30) and 1902(a) (32). Additionally, CMS has stated that the rate "bundle" must be available to any provider within or outside the facility.

PNMI services are not reimbursed using a capitated rate that meets the guidelines of a non-risk contract, as detailed in a CMS February 21, 2012 email. The corrective action plan for PNMI services will need to also address this additional factor, and remove language regarding non-risk contracts from its state plan reimbursement, which will also require additional changes to remove any reference to Private Non-Medical Institution services.

An Overview of Allowable Medicaid Reimbursement Methodologies:

In developing this Corrective Action Plan, Maine must explore three primary funding mechanisms for reimbursing these residential services, including 1) state plan services, 2) waivers from the state plan, (a 1915(c) Home and Community Based waiver) and; 3) a 1915(i) SPA. Timelines for this Corrective Action Plan remain to be identified as Maine continues to explore the costs of the various identified strategic initiatives. DHHS appreciates the technical assistance that CMS continues to provide for this large PNMI initiative.

Recommended Changes to current system of "PNMI" reimbursement and services:

The following section outlines potential alternative funding for services currently provided in PNMI services, and identifies specific decision points that will impact these funding options. It must be noted that no one of the three funding methodologies (state plan, 1915 (i) SPA, HCBS waiver) detailed will resolve funding for all of the PNMI services Maine currently reimburses. In some of the appendices, all of the three funding methodologies must be considered to best serve the medical needs of these diverse populations.

Some services delivered in a PNMI could be "unbundled" and reimbursed under other sections of the MaineCare manual. The Department continues to work on that analysis, and has recently discussed development of "Personal Care Homes" using a composite rate rather than a bundled rate to deliver personal care services under the state plan. Members will have to meet the eligibility requirements of those sections of policy and MaineCare will comparably reimburse services for residents in the community who have the same functional need for such services. Not all services can be covered with this unbundling methodology, since members receiving services in a residential setting receive the benefit of 24/7 staffing.

The following section outlines options currently being analyzed to eliminate both bundled rates and non-risk contracts:

- **Appendix B Options– Substance Abuse Treatment Facilities-**

Some behavioral health services (including substance abuse) may be reimbursed under the state plan, and other services may be covered by a 1915 (i) SPA. The Department is considering both of the following options to unbundle and reimburse Substance Abuse PNMI services:

- The Department will analyze and reimburse appropriate services comparably under the state plan, such as personal care services (Section 96, MaineCare Benefits Manual), and behavioral health (Section 65, MaineCare Benefits Manual). The Department will determine which services can be cross-walked to these sections and make changes as necessary.
- The Department will analyze what other services are not reimbursable under the state plan (such as supervision and habilitation), and determine which services could be covered under a 1915 (i) SPA. A 1915 (i) SPA application appears necessary, based on the technical assistance the DHHS has received.

- **Appendix C Options– Case Mix Facilities-**

Personal care and rehabilitative services in these facilities are also generally reimbursable under the state plan, provided that comparability and provider qualifications are met. Some additional services may be necessary under a 1915 (i) SPA.

Analysis of resident level assessment data show that approximately 23% of the individuals receiving services in PNMI settings are nursing facility eligible. The Department will have to analyze what services can be reimbursed for this NF eligible population, either in a new HCBS waiver (such as an assisted living waiver) or in a nursing facility, or through the existing HCBS waiver for NF eligible consumers.

In summary, the Department will consider one or more of the following options to reimburse these services:

- The DHHS will continue to serve some current residents in “personal care services homes” while community based options are explored. A per diem “composite” rate for personal care is being considered, and the DHHS will continue to work with CMS to determine how this can be funded and seek approval for this approach. CMS held a conference call with DHHS on March 9, 2012 to suggest this methodology, and DHHS has requested further technical assistance to develop an approvable methodology.
- The DHHS will analyze what other state plan services can be provided. Some services such as personal care, medication administration and monitoring, and some rehabilitative services will be cross walked.
- The DHHS will consider what other services are not reimbursable under the state plan (such as supervision and habilitation). The DHHS will analyze addition of those services in an I-SPA.
- The DHHS must also analyze its current nursing facility eligibility threshold to determine if some these services would be reimbursable in a NF or through a HCBS waiver for those members not able to reside in the community.

- The DHHS will also explore expanded use of Adult Family Care Homes, which deliver personal care services; to create long term community based funding solutions for this population. A composite rate might be utilized for reimbursement for this service as well.
- The DHHS is currently exploring development of PACE programs for longer term funding solutions. Currently the DHHS has an internal workgroup assessing the feasibility of PACE development. Presentations from potential PACE providers are scheduled in March of 2012, and one vendor with PACE programs in others states believes the first PACE programs in Maine could be up and running by January 2013.

- **Appendix D Options– Child Care Facilities –**

Some of the treatment provided in PNMI facilities for children will remain reimbursable if the facility setting is small and the staff are qualified to provide such treatment. The DHHS can unbundle some of these services to Section 65, Behavioral Health Services. Some services may also be required and funded through EPSDT guidelines. Medically necessary treatment will be based on functional need.

- The DHHS will unbundle all state plan billable services within MaineCare, most will be under Behavioral Health (Section 65), EPSDT guidelines must also be explored.
- Other services will require application for an I-SPA, which might cover some habilitative services to teach new skills, or reimburse staffing 24/7 for monitoring health and safety.
- The Department continues to analyze the Psychiatric Residential Treatment (PRTF) model.
- The DHHS will continue to work on any HCBS waivers necessary for children who would otherwise require ICF-MR placement.

- **Appendix E Options– Community Residences for Persons with Mental Illness –**

Many of the services for adults residing in the community who have severe and persistent mental illness can be provided under the state plan so long as comparability (using a functional assessment) is met and qualified providers render the service. These services fall under Community Supports (Section 17) and/or Behavioral Health (Section 65). Medication monitoring and administration are also coverable under other MaineCare sections. Some members might qualify for coverage of personal care services. Such services as 24/7 supervision and habilitative services are not coverable under the state plan, but might be covered under a 1915(i) SPA.

- The DHHS will seek to unbundle all potential services to other sections of the MaineCare Benefits Manual.
- The DHHS will seek approval for a 1915(i) SPA that will allow reimbursement for other services such as habilitation activities and supervision.

- **Appendix F Options– Non Case Mixed Medical and Remedial Facilities-**

Services provided under this Appendix are essentially the same as those provided under Appendix C, and include personal care and some rehabilitative services. Funding options for these services are similar to Appendix C, with some additional HCBS waiver and 1915(i) SPA options possible specific to the populations served. The services are specialized to meet the needs of three distinct populations, including members with brain injury, members with intellectual disabilities, and elders with severe and persistent

mental illness who are in DHHS Adult Protective Services custody. Personal Care Services provided under Section 96 of the MaineCare Benefits Manual would be the most potentially fundable state plan service. A 1915(i) SPA is also a possibility, as well as existing or new HCBS waivers.

Residents in these facilities need for 24/7 supervision, which cannot be claimed as a state plan service in any setting less than institutional (nursing facility or ICF-MR). Such supervision may be reimbursed under a 1915 (i) SPA (for those below or at institutional eligibility) or HCBS waiver (for those at institutional level).

Brain Injury Services

As detailed above, some services such as personal care, or rehabilitation services such as occupational therapy, physical therapy, speech therapy, and behavioral health may be covered for these members, so long as they meet the medical eligibility criteria and have services delivered by a qualified provider. Some services that will not be reimbursable under the state plan include supervision (monitoring for safety and welfare 24/7) or habilitation will not be reimbursable under the state plan. Other options for coverage of these services might include a HCBS waiver, which would only be available for those members who meet the ICF-MR eligibility guidelines.

Services for Individuals with Developmental Disabilities

Some services for these members could be reimbursed under the state plan, so long as members meet the medical eligibility criteria and have services delivered by a qualified provider. Additionally, some of these individuals may be NF or ICF-MR eligible, and should be assessed for other funding options.

DHHS must consider a 1915(i) SPA or a HCBS waiver. The DHHS currently has two existing HCBS waivers that serve this population, reimbursed under Sections 21 and 29 of the MaineCare Benefits Manual. There is currently a wait list for one of the two waivers serving this population.

Services for Adults in Adult Protective Services Custody

As above, many of these services for these members could be reimbursed under the state plan, so long as members meet the medical eligibility criteria and have services delivered by a qualified provider. In addition, the DHHS also has the option of providing services under a 1915(i) SPA or a HCBS waiver. Some of these individuals may be NF or ICF-MR eligible.

All of these options must be considered for this population:

- The DHHS will cover all appropriate personal care and rehabilitative services possible under the state plan, and will crosswalk those services to appropriate sections of MaineCare policy.
- The DHHS will seek to cover some services for members under an I-SPA.
- The DHHS will cover some services not reimbursable under the state plan for members under a new or existing HCBS waiver.

PNMI Service Component	Immediate Analysis	Consider Long Term Development
Behavioral Health Services/Substance Abuse PNMI- Appendix B	Unbundle services as appropriate through other sections of MaineCare. Consider development of a composite rate, with further technical assistance from CMS.	Submit a 1915(i) SPA for habilitation services SPA.
Case Mixed PNMI- Appendix C	<p>Unbundle all appropriate services through other sections of MaineCare and consider development of a composite rate, with further technical assistance from CMS.</p> <p>Assess NF eligibility threshold</p> <p>Assess NF bed conversion for multi-level facilities/Dementia NF</p> <p>Convert some PNMI to Personal Care Homes</p> <p>Open the HCBS Elder Waiver</p>	<p>Incorporate some services in to a 1915(i) SPA</p> <p>HCBS Assisted Living Waiver</p> <p>PACE program</p> <p>Reduce NF beds as community options are developed.</p> <p>Develop community options (bricks and mortar)</p>
Children's PNMI- Children's Residential- Appendix D	Unbundle all appropriate services through other state plan sections of MaineCare and explore development of a composite rate, with further technical assistance from CMS.	<p>Explore PRTF</p> <p>Explore HCBS Waiver</p> <p>Analyze 1915(i) SPA services</p>
Children's PNMI - Treatment Foster Care- Appendix D	Unbundle all appropriate services through other sections of MaineCare and explore development of a composite rate, with further technical assistance from CMS.	Not yet determined
Children's PNMI/- Infant Mental Health- Appendix D	Unbundle all appropriate services through other sections of MaineCare, and explore development of a composite rate, with further	Not yet determined

PNMI Service Component	Immediate Analysis	Consider Long Term Development
Adult Mental Health PNMI- Appendix E	<p>technical assistance from CMS.</p> <p>Unbundle all appropriate services through other sections of MaineCare and explore development of a composite rate, with further technical assistance from CMS.</p>	<p>Incorporate rehabilitative services into a 1915(i) SPA</p> <p>Explore NF eligibility for aging members</p>
Non Case Mixed PNMI/ Brain Injury- Appendix F	<p>Analyze NF eligibility</p> <p>NF bed conversion where needed</p> <p>Convert some PNMI to Personal Care Homes (see Appendix C)</p> <p>Open the HCBS Waiver</p> <p>Bill all appropriate services through other sections of MaineCare and explore development of a composite rate, with further technical assistance from CMS.</p>	<p>Develop a new 1915(c) Home and Community Services Waiver</p> <p>Analyze a 1915(i) SPA</p>
Non Case Mixed PNMI/ Elder Services- Appendix F	<p>Bill all appropriate services through other sections of MaineCare and explore development of a composite rate, with further technical assistance from CMS.</p> <p>Analyze NF eligibility</p> <p>NF bed conversion where needed</p> <p>Convert some PNMI to Personal Care Homes</p> <p>Open the Home and Community Based</p>	<p>Incorporate some services in to a 1915(i) SPA HCBS Assisted Living Waiver</p> <p>PACE program</p> <p>Reduce NF beds as community options are developed.</p>

PNMI Service Component	Immediate Analysis	Consider Long Term Development
Non Case Mixed PNMI/ Intellectual Disability- Appendix F	<p>Services Waiver (HCBS)</p> <p>See Appendix C.</p>	Expand the existing MR Waiver