As per the dispatch dated September 26, 2018, the implementation of the new IEP form that incorporates Behavioral Health Day Treatment was delayed until January 1, 2019 to allow time to provide answers to questions received from the field. Here are the questions and answers regarding this form change:

The Department has compiled the following Frequently Asked Questions, in response to inquiries from the field for clarification regarding the new requirements for Individualized Education Programs (IEP) outlined in Administrative Letter # 17. The new requirements for IEPs outlined in Administrative Letter # 17 are based on a collaboration between the DOE Special Services Team and the Office of MaineCare Services Policy Division to ensure regulatory compliance for both agencies. For further information and guidance, refer to the Maine State Required Forms Procedural Manual.

BHDT- Behavioral Health Day Treatment

BHP- Behavioral Health Professional

DHHS- Department of Health & Human Services

DOE- Department of Education

ITP – Individual Treatment Plan

IEP- Individualized Education Plan

LRE – Least Restrictive Environment

MUSER- Maine Unified Special Education Regulations

OT – Occupational Therapy

PT- Physical Therapy

SAU- School Administrative Unit

SDI- Specially Designed Instruction

1. **What is MDOE’s definition of Day Treatment and Behavioral Health?** ‘Day treatment’ and ‘behavioral health’ are not terms that are defined by MDOE or DHHS. ‘Behavioral Health Day Treatment’ services are medically necessary services implemented in an integrated manner to allow the child to access his/her special education program. •Refer to page 30 of the MaineCare Benefits Manual for Chapter II Section 65:

 <https://www.maine.gov/sos/cec/rules/10/ch101.htm>

 65.06-13 **Children’s Behavioral Health Day Treatment**

A covered service is a specificservice determined to be medically necessary by qualified staff licensed to make such a determination and subsequently specified in the Individual Treatment Plan (ITP) and for which payment to a provider is permitted under the rules of this section. This qualified staff must assume clinical responsibility for medical necessity and the ITP development. The behavioral health day services described below are covered when (1) provided in an appropriate setting as specified in the ITP, (2) supervised by an appropriate professional as specified in the ITP, (3) performed by a qualified provider, and (4) billed by that provider. Behavioral health day treatment Services must be delivered in conjunction with an educational program in a School as defined in 65.03-4.

Behavioral health day treatment services are structured therapeutic services designed to improve a member’s functioning in daily living and community living. Programs may include a mixture of individual, group, and activities therapy, and also include therapeutic treatment oriented toward developing a child’s emotional and physical capability in area of interpersonal functioning. This may include behavioral strategies and interventions. Services will be provided as prescribed in the ITP. Involvement of the member’s family will occur in treatment planning and provision. Behavioral health day treatment services may be provided in conjunction with a residential treatment program. Services are provided based on time designated in the ITP but may not exceed six (6) hours per day, Monday through Friday, up to five days per week. Medically necessary services must be identified in the ITP.

1. **Does Behavioral Health include Sections 28 and 65?** •Behavioral health services are addressed in Sections 28 and 65 and are reflected in the term **“Behavioral Health Day Treatment”** in related services on section 8 of the IEP. •Do not list section 65 or 28 on the Behavioral health day treatment line. •Only use the term **“Behavioral Health Day Treatment”** in section 8 related services to document a child that requires services in a day treatment setting. •Refer to the MaineCare Benefits Manual for more information regarding Sections 28 and 65.

 <https://www.maine.gov/sos/cec/rules/10/ch101.htm>

1. **Under what conditions would behavioral health day treatment services be documented on the related services grid?** •A child requiring behavioral health professional services (determined by the IEP team), regardless of the pay source, should be documented in the behavioral health day treatment section of the related services grid on section 8 of the IEP. •Note that behavioral health professional services are an accommodation, which still need to be documented in section 7 of the IEP (Ed Tech/BHP). Note – There have been no changes to Section 7 “Supplementary Aids, Services, Modifications, and/or Supports”.
2. **If a student becomes no longer eligible for MaineCare funding, does the cost for nursing services or behavioral health day treatment become the fiscal responsibility of the school?** •A child requiring behavioral health day treatment or nursing services (determined by the IEP team), regardless of the pay source, should be documented in the related services grid on section 8 of the IEP. •If a child loses a third-party funding source or if the parent refuses/withdraws consent for MaineCare billing for a service necessary for the child to access his/her special education program, yes, the SAU is fiscally responsible for the services.
3. **Should we** **continue to list social work services, psychological services, nursing services, etc. separately in section 8?** •Yes, each required individual related service should continue to be documented separately in section 8. •For further information and guidance, refer to the Maine State Required Forms Procedural Manual.
4. **Can we write a range for BHDT services in section 8, since the actual time for clinical support typically varies day to day for students?** •Do not list a range (such as 1-3 hours) of BHDT in section 8. You can indicate that the services will be provided “up to” a maximum amount of time. This does not apply to other services and related services in section 8.
5. **Who is responsible for Specially Designed Instruction (SDI)?** The Special Educator is always responsible for SDI, which is documented as a special education service. It is not factored as a related service, in the new behavioral health day treatment section on section 8 of the IEP.
6. **Who is responsible for nursing?** If the IEP team determines that nursing services are required in order for the student to receive a FAPE, then the SAU is responsible for providing the services.
7. **Must the nurse providing nursing services for a child as listed on the IEP be a DOE certified school nurse?** The services may be provided by a DOE certified nurse or a licensed nurse with a valid CHRC contracted from an outside agency.
8. **If the school nurse, and appropriately trained special education staff and related services staff (OT, PT, Speech) can provide the school health services (G-Tube feeding, positioning, transferring, monitoring for skin integrity, personal care assistance, etc.) should the school list this as nursing services or school health services?** •If someone other than a credentialed school nurse provides the service, it should be documented as school health services. •If a credentialed school nurse provides the service, it should be documented as nursing.
9. **If a student only requires intermittent nursing services (as needed monitoring for blood sugar levels, pulse and respiration, personal care assistance, etc.) but the family prefers a full-time nurse be available at all times, is the school required to list the family’s preference and secure a full-time nurse?** No, the IEP Team determines the services necessary for the child to access his/her special education program. If there is a lack of consensus, the SAU makes the decision and the parent can challenge that decision through due process procedures.
10. **If the school believes that the school health services could be provided by the school nurse and school staff but the parent has a doctor’s prescription for a full time private nurse, is the school required to secure the full-time nurse?** No, the IEP Team determines the services necessary for the child to access his/her special education program. The school must provide a qualified professional to implement the IEP.
11. **If a school does not access MaineCare funding and the parent has contracted with a private nursing agency to provide private nursing within the school, is the school required to list nursing services on the IEP?**  No, the school only lists on the IEP the nursing services that are medically necessary for the child to receive FAPE. •Note – There have been no changes to Section 7 “Supplementary Aids, Services, Modifications, and/or Supports”. \*
12. **What positions can be listed as providers of behavioral health day treatment?** •Although behavioral health professionals provide a major portion of day treatment services, the position responsible on the IEP should be documented as “appropriately credentialed personnel”. •Note that behavioral health professional services are an accommodation, which still need to be documented in section 7 of the IEP (Ed Tech/BHP). Related services providers, such as social workers should continue to be listed in the related services block in section 8.
13. **Why list behavioral health day treatment instead of the specific clinical person providing the ITP, counseling and supervision of the BHP?** •Behavioral health day treatment integrates a variety of services that create a milieu to provide the services necessary for the child to access his/her special education program. •Continue to list social work services, psychological services, nursing services, and other related services separately in section 8. •In addition, please refer to question 14.
14. **Will the services reflected as behavioral health day treatment impact the calculation of least restrictive environment (LRE)?** •No, behavioral health day treatment services are not calculated in the least restrictive environment percentage. •Behavioral health day treatment, as a related service, occurs concurrent to special education services. •Behavioral health day treatment does not reduce specially designed instruction.
15. **Should the BHP accommodation in section 7 match the BHDT related service in section 8?** •The BHP accommodation in section 7 and the BHDT related service in section 8 will generally match. •The frequency of BHDT documented in section 8 should reflect the amount of time the child requires BHP support to allow the child access to his/her special education programming. •The frequency of BHDT cannot exceed the school day, or 6 hours. •Some examples of exceptions to the BHP accommodation in section 7 and the BHDT related service in section 8 matching include: when a child requires 2:1 or 3:1 support, after school support, and when working on a transition to a less restrictive environment.
16. **When a health plan is created for a child using evaluation data and reports required to determine eligibility for MaineCare, do the evaluation reports have to be included in the child’s educational record?** •If the IEP team orders the evaluation or the parent submits an outside evaluation report and requests the evaluation data to be included in the development of the IEP, yes – include the evaluation report in the child’s educational record. •If the evaluation is not ordered by the IEP Team and the data are not used in the development of the child’s IEP, then the evaluation report does not need to be included in the child’s educational record. (This question applies to special purpose private schools.)
17. **If a child comes into a district with an IEP that says day treatment and the district doesn’t have a day treatment program, what happens?** Districts should follow the procedures outlined in MUSER IX (3)(B)(5) for students who transfer and if needed, the IEP team would meet and determine the student’s needs. Then the team would decide on the placement, whether that be an in-district or an out-of-district placement.
18. **Will SAUs need to reconvene to amend all IEPs to reflect the “Behavioral Health Day Treatment” change or can they address this change beginning January 1, 2019; as IEP teams convene.** SAU’s should reflect the **“behavioral health day treatment”** language change beginning January 1, 2019 as IEP team meetings are held; and are not expected to reconvene IEP meetings for all students and make amendments immediately.
19. **Will DHHS pay for services that exceed BHDT listed on the child’s IEP?** •DOE does not interpret third-party funding policies and procedures. •Contact Trista Collins regarding MaineCare funding questions. Her contact information is Trista E Collins, State Medicaid Educational Liaison, e-mail: trista.collins@maine.gov, phone 207-624-4094.

For further information please contact the Office of Special Services at 624-6713.

\*Updated 12/03/2018