TO: Interested Parties

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

SUBJECT: Proposed Rule: Chapter 101, MaineCare Benefits Manual, Chapter II, Section 9, Indian Health Services and Chapters II & III, Section 3, Ambulatory Care Clinic Services

This letter gives notice of a proposed rule: Chapter 101, MaineCare Benefits Manual, Chapter II, Section 9, Indian Health Services and Chapters II & III, Section 3, Ambulatory Care Clinic Services.

The Department of Health and Human Services is proposing to create this new Section to consolidate and update all rules pertaining to reimbursement of Indian Health Service (IHS) clinic services in order to better serve the public and meet federal requirements by making requirements clearer. Some services provided by IHS providers are subject to different federal guidelines. Separation of these rules will clarify specific rules for IHS providers. The Department will also add guidelines for co-payment exemptions and tribal consultation, to be in compliance with new federal guidelines. Currently IHS services are included in MBM Section 3, Ambulatory Care Clinics. Section 3, Ambulatory Care Clinics will be amended at the same time as this rule-making to delete those portions that will now be part of Section 9, Indian Health Services.

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, Chapter II, Section 9, Indian Health Service and Chapters II & III, Section 3, Ambulatory Care Clinic Services

PROPOSED RULE NUMBER:

CONCISE SUMMARY: The proposed rule would consolidate and update all rules pertaining to reimbursement of Indian Health Service (IHS) clinic services to one new section of MaineCare Benefits Manual (MBM) policy in order to better serve the public and meet federal requirements by making requirements clearer. Some services provided by IHS providers are subject to different federal guidelines. Separation of these rules will clarify specific rules for IHS providers. The Department will also add guidelines for co-payment exemptions and tribal consultation, to be in compliance with new federal guidelines. Currently IHS services are included in MBM Section 3, Ambulatory Care Clinics. Section 3, Ambulatory Care Clinics will be amended at the same time as this rule-making to delete those portions that will now be part of Section 9, Indian Health Services.


THIS RULE WILL _ WILL NOT _X_ HAVE A FISCAL IMPACT ON MUNICIPALITIES.

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

PUBLIC HEARING:
Date: October 31, 2011 10:00 AM
Location: Conference Room # 1A & 1B
Department of Health and Human Services
Office of 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 October 24, 2011.

DEADLINE FOR COMMENTS: Comments must be received by midnight on December 1, 2011.

AGENCY CONTACT PERSON: Jamie L. Paul, Comprehensive Health Planner II
AGENCY NAME: Office of MaineCare Services
ADDRESS: 442 Civic Center Drive
11 State House Station
Augusta, Maine 04333-0011

TELEPHONE: 207-287-4460 FAX: (207) 287-9369
TTY: 1-800-606-0215 or 207-287-1828 (Deaf or Hard of Hearing)
MAINECARE BENEFITS MANUAL
CHAPTER II

SECTION 09 INDIAN HEALTH SERVICES

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DEFINITIONS

09.01-1 Contract Health Service (CHS) means health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service. [Title 42 CFR Section 136.21]

09.01-2 Covered Services are those services described in Section 9.04 for which payment may be made under Title XIX by the Department of Health and Human Services.

09.01-3 Direct Effect is any change or update in policy that affect any service tribes are reimbursed for through MaineCare Services. (Some examples of changes that would constitute direct effect are: changes “that are more restrictive for eligibility determinations, changes that reduce payment rates or changes in payment methodologies to I/T/U providers or for services reimbursed to I/T/U providers, reductions in covered services, changes in consultation policies, and proposals for demonstrations or waivers that may impact Indians or I/T/U providers.) (SMDL 10-001, January 22, 2010)

09.01-4 Indian Health Center is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act as of October 1, 1991.

09.01-5 Indian Health Center Unit of Service is a visit that includes face-to-face contact with one or more of the clinic’s professional staff and, where appropriate, provision of treatment, supplies, or laboratory services.

09.01-6 Indian Tribe, Tribal Organization, or Urban Indian Organization (I/T/U) an “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S. 1601 et. seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. “Tribal Organization” means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities. “Urban Indian Organization” means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 1653(a) of Title 25 of the Indian Health Care Improvement Act.
09.02 **ELIGIBILITY FOR CARE**

Individuals must meet the eligibility criteria as set forth in the MaineCare Eligibility Manual, 10-144 C.M.R. Ch. 332. 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, as described in the MaineCare Benefits Manual, Chapter I, prior to providing services.

09.03 **DURATION OF CARE**

Each Title XIX member may receive as many covered services as are medically necessary. The Department reserves the right to request additional information to evaluate medical necessity.

09.04 **COVERED SERVICES**

A. Services provided by physicians, physician assistants, certified nurse midwives, nurse practitioners, psychologists, licensed alcohol and drug counselors, licensed clinical social workers, licensed clinical professional counselors and licensed professional counselors;

B. Services and supplies furnished as incident to services of physicians, physician assistants, certified nurse midwives, nurse practitioners, psychologists, licensed alcohol and drug counselors, licensed clinical social workers, licensed clinical professional counselors and licensed professional counselors;

C. Any other medically necessary services provided by the Indian Health Center that is included in the State’s Medicaid Plan. (These services must be provided in accordance with all applicable sections of the MaineCare Benefits Manual in order to be reimbursable.)

D. If the Indian Health Center chooses to provide pharmacy or ambulance services it must enroll and receive reimbursement as prescribed under the applicable sections of the MaineCare Benefits Manual.

E. Home Health Services provided under the Maine Medicaid home health benefit as described in Chapter II, Section 40 of the MaineCare Benefits Manual. No other services provided under Section 40 will be reimbursable under this section.

F. Asthma self-management services are reimbursable if they are any of the following asthma management programs developed under the auspices of the National Heart, Lung, and Blood Institute/American Lung Association or the Asthma and Allergy Foundation of America:

- Airpower
- Superstuff
- Airwise
- Living with Asthma
- Open Airways
- A.C.T. (Asthma Care Training for Kids)
09.04 COVERED SERVICES (cont’d)

Each program must have:

a. a physician advisor;

b. a primary instructor (a licensed health professional or a health educator with a baccalaureate degree. Note: licensed practical nurses may only reinforce, not initiate, teaching.);

c. a pre and post assessment for each participant which shall be kept as part of the member’s record in accordance with this Section and Chapter I of the MaineCare Benefits Manual;

d. an advisory committee which may be part of an overall patient education advisory committee; and

e. a physician referral for all members.

G. Reimbursement for Ambulatory Diabetes Education and Follow-Up Services will be allowed when a provider is enrolled with the Maine Diabetes Prevention and Control Program administered by Maine Center for Disease Control and Prevention and based on the individualized plan;

The services include:

1. a pre-assessment interview to determine the member’s knowledge, skills and attitudes about diabetes management and to develop an individualized education plan and behavior change goals;

2. a group class instruction covering the comprehensive curriculum outlined by the Maine Diabetes Prevention and Control Program and based on the individualized education plan;

3. a meal planning interview to determine the member’s knowledge, skills and attitudes about meal planning and to develop an individualized meal plan and behavior change goals;

4. a post assessment interview to assess and document what the member has learned during the program, and to develop a plan for follow-up sessions to address the components areas not learned in the class series, and finalize behavioral goals; and

5. follow-up contacts to reassess and reinforce self-care skills, evaluate learning retention and progress toward achieving the member’s behavior change goals. At a minimum, a follow-up visit one year after the last class is required to complete the member’s participation in the program.
9.04 COVERED SERVICES (cont’d)

When the Medicaid member is under the age of 21, this service will also be reimbursed when provided to the person/people who provide the member’s daily care.

H. Off-site delivery of services furnished by health center staff is reimbursable when they are provided away from the center and when it is documented in the member’s chart it is the most clinically appropriate setting for the provision of services. Examples of off-site services locations include: a nursing facility, an emergency room, an inpatient hospital, or a patient’s home.

9.05 POLICIES AND PROCEDURES

09.05-1. Consultation Process

Section 1902(a)(73) of the Social Security Act (the Act) requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular, ongoing basis. The State Medicaid agency should seek advice from designees of Indian health programs, whether operated by the Indian Health Service (IHS), Tribes or Tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA), or Urban Indian Organizations under the Indian Health Care Improvement Act (IHCIA). The Department will provide 60 days prior notice to the Tribal government regarding any plan amendments, waiver requests, and proposals for demonstration projects that are likely to have a direct effect on Indian Tribes, Tribal Organizations or Urban Indian Organizations.

The Department has collaborated with the Tribes to establish the following two tier consultation process. When there are general changes to policies that do not have a direct effect on Indian Health Services the first tier of consultation will be utilized. The first tier consists of the following:

- Written notification via the Interested Parties List
- Listserv updates
- Any other correspondence that pertains to general changes

When there is a direct effect to Indian Health Services the second tier of consultation will be utilized. The second tier consultation consists of the following:

- Face-to-face meetings
- Direct email communications
- Written notification via the Interested Parties List
- Listserv updates
- Any other correspondence that pertains to general changes
- Telephone communications
09.06 BILLING INSTRUCTIONS

09.06-1. Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT)

An Indian Health Center must bill using designated codes when providing Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services as described in Section 94 of the MaineCare Benefits Manual. EPSDT codes for use by Indian Health Center can be found at http://brightfutures.aap.org/pdfs/Coding%20for%20preventive%20care_1pdf.pdf.

The Indian Health Center must be enrolled as a provider under Section 94 of the MaineCare Benefits Manual and must follow all requirements outlined in that Chapter (including submission of the Bright Futures form) to bill under these codes. If the Indian Health Center provides EPSDT services and other medical services to the same individual as part of the same visit, the Center must bill only the EPSDT code. When immunizations are provided, the appropriate immunization and administration codes shall be noted on the CMS-1500 billing form, but no additional reimbursement shall be available. Diabetes education and asthma self-management shall also be billed using distinct codes found at http://maa.dshs.wa.gov/download/Memos/2002Memos/02-61maa%20Asthma-Diabetes.pdf

09.06-2. Same Day Visits

A second, same day visit may be billed if it is medically necessary and could not have been anticipated by the Center’s professional staff as documented in the members’ record or when the first encounter is a medical visit and a second visit is a mental health visit. Billing codes for additional, same day visits must incorporate the appropriate code and/or modifier.

09.06-3. Billing for Non-Tribal Members

In order to ensure appropriate federal financial participation, non-tribal members must be identified on the CMS 1500 claim form.

09.06-4. Fee-for-service and reimbursement for Pharmacy and Ambulance Services

Indian Health Centers have the option of obtaining a separate National Provider Identification (NPI) number for the limited purpose of fee-for-service billing and reimbursement for pharmacy, ambulance or any other ambulatory services in the State’s Medicaid Plan, not covered under this Section. Such services must be provided in accordance with all applicable sections of the MaineCare Benefits Manual and will be reimbursed in accordance with those sections.
09.06 BILLING INSTRUCTIONS (cont’d)

09.06-5. Enrollment as a Federally Qualified Health Center (FQHC)

Indian Health Centers may choose to enroll as Federally Qualified Health Centers (FQHCs) instead of Ambulatory Care Clinics but, for the purposes of billing Medicaid, each center may choose only one designation. Centers may remain FQHCs for the purpose of billing Medicare, while enrolling as Ambulatory Care Clinics under Medicaid. If permitted by a ruling from federal authorities, Indian Health Centers may bill retroactively as Ambulatory Care Clinics as allowed under that ruling. As a condition for this Section of policy Indian Health Centers must provide a copy of their contract with the Indian Health Service.

09.06-6. Co-payment Exemptions

Section 5006(a) of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111-5 amends sections 1916 and 1916A of the Social Security Act, to preclude States from imposing Medicaid premiums or any other Medicaid cost sharing on Indian applicants and members served by Indian health providers and to assure that Indian health providers and providers of contract health services (CHS) under a referral from an Indian health provider, will receive full payment. A tribal member who is presently or has previously been eligible for services at an I/T/U or CHS will be exempt from co-payments (onetime documentation is necessary to provide proof of present or previous I/T/U or CHS eligibility).

09.07 REIMBURSEMENT

Reimbursement for covered services provided by Indian Health Services can be found on the fee schedule at
http://www.maine.gov/dhhs/audit/rate-setting/documents/S3R01012010ProvSpecRatesIHS.pdf

The MaineCare rates incorporated in Section 9 are those related to Indian Health Services in effect on January 1, 2010. Any changes in these rates will be subject to the consultation process in sub-section 9.06-1 and approved in accordance with procedures in Title 5 M.R.S.A. ch. 375.