DATE: 11/13/2018

TO: Interested Parties

FROM: Stefanie Nadeau, Director, MaineCare Services


PUBLIC HEARING:

Date and Time: Monday December 10, 2018; 9a.m.
Location: 32 Blossom Lane, Marquardt Building Door D7 Augusta, ME 04333

COMMENT DEADLINE: Comments must be received by 11:59 PM on December 20th, 2018.

The Department of Health and Human Services (“the Department”) proposes this major substantive rule addressing the emergency rulemaking adopted to increase the rates of reimbursement for rehabilitative and community support services pursuant to Public Law 2017, ch. 460, An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government (the “Act”).

The Act requires the Department to amend its rules for reimbursement rates for rehabilitative and community support services provided under the provisions of 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III of Section 28, Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations. Specific changes are as follows:

• Part C of the Act directs the Department to amend the rates of reimbursement to providers of Section 28 services to reflect the final rates modeled in the April 24, 2017 report: “Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking” prepared for the Department by Burns & Associates, Inc. Those rate changes were made.

• Part D of the Act directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement to be applied to the wages and benefits of employees providing direct services. The two percent rate increase was made to the rates as changed by the Burns study.

Through the Act, the Legislature determined that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” As such, the Act requires the Department to implement “immediate rate increases,” effective
July 1, 2018. However, the Act did not become law until July 9, 2018, following a Legislative override of the Governor’s veto.

Because the Act involves MaineCare reimbursement, these rule changes are also governed by federal Medicaid law. 42 C.F.R. § 447.205(d) requires that public notice of changes in reimbursement for State Plan services must “be published before the proposed effective date of the change.” The Department published its notice of reimbursement methodology change for the Section 28 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 28 State Plan Amendment that were submitted to the Centers for Medicare and Medicaid Services, the increased rates will be implemented with an August 1, 2018 effective date.

Pursuant to the Legislative determination regarding the urgent need for these reimbursement increases, the requirements of 5 M.R.S. §8054(1) are satisfied and emergency rulemaking is appropriate. Similarly, an August 1, 2018 retroactive effective date is necessary to implement these changes as soon as possible. The retroactive application comports with 22 M.R.S. § 42(8), which authorizes the Department to adopt rules with a retroactive application (where there is no adverse impact on providers or members) for a period not to exceed eight calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, and the August 1, 2018 date that is permissible pursuant to federal Medicaid law, the Department has recalculated the annual appropriation of funds for this service into a temporary eleven month rate. As such, providers will, over the course of eleven months, receive equivalent aggregate payments as would have been received under a twelve month rate. Beginning on July 1, 2019, rates will be annualized (based upon a twelve month appropriation). This is not an effective rate decrease, but rather a redistribution of the annual appropriation over twelve months, rather than eleven months.

P.L. 2017, ch. 460, Part C, Sec. C-1 directed that rulemaking authorized by the Sec. C-1 law would be a “major substantive” rule. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services. Therefore, for purposes of this rulemaking only, the rule is major substantive. Thereafter, unless otherwise directed by the Legislature, the rule will revert back to routine technical rulemaking status.

Rules and related rulemaking documents may be reviewed at, or printed from, the MaineCare website at http://www.maine.gov/dhhs/oms/rules/index.shtml or for a fee, interested parties may request a paper copy of rules by calling (207) 624-4050 or Maine Relay number 711.

A concise summary of the proposed rule is provided in the Notice of Agency Rulemaking Proposal, which can be found at http://www.main.gov/sos/cec/rules/notices.html. This notice also provides information regarding the rulemaking process. Please address all comments to the agency contact person identified in the Notice of Agency Rulemaking Proposal.
Notice of Agency Rule-making Proposal

AGENCY:  Department of Health and Human Services, MaineCare Services, Division of Policy

CHAPTER NUMBER AND TITLE:  10-144 C.M.R., Chapter 101, Section 28, Chapter III, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations

PROPOSED RULE NUMBER:

CONCISE SUMMARY:

The Department of Health and Human Services (“the Department”) proposes this major substantive rule addressing the emergency rulemaking adopted to increase the rates of reimbursement for rehabilitative and community support services pursuant to Public Law 2017, ch. 460, An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government (the “Act”).

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P.L. 2017, ch. 460, Part C, Sec. C-1 directed that rulemaking authorized by the Sec. C-1 law would be a “major substantive” rule. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services. Therefore, for purposes of this rulemaking only, the rule is major substantive. Thereafter, unless otherwise directed by the Legislature, the rule will revert back to routine technical rulemaking status.


**STATUTORY AUTHORITY:** 22 M.R.S., §§ 42(8), 3173, 5 M.R.S. §§8054 and 8073; P.L. 2017, ch. 460 Parts C and D

**PUBLIC HEARING:**

Date and Time: Monday December 10, 2018; 9a.m.
Location: 32 Blossom Lane, Marquardt building Door D7
Augusta, ME 04333

The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed above before December 3, 2018.

**COMMENT DEADLINE:** Comments must be received by 11:59 PM on December 20th, 2018.

**AGENCY CONTACT PERSON:** Dean Bugaj, Comprehensive Health Planner
**AGENCY NAME:** Division of Policy
**ADDRESS:** 242 State Street
11 State House Station
Augusta, Maine 04333-0011
**EMAIL:** Dean.Bugaj@maine.gov
**TELEPHONE:** (207)-624-4045 FAX: (207) 287-1864
TTY users call Maine relay 711

**IMPACT ON MUNICIPALITIES OR COUNTIES (if any):** The Department anticipates that this rulemaking will not have any impact on municipalities or counties.

**CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different):** N/A
### SECTION 28 - ALLOWANCES FOR REHABILITATIVE AND COMMUNITY SUPPORT SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS

**MAJOR SUBSTANTIVE RULE**

Established: 04/01/10

Last Updated: 6/11/11 1/13/2018

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<th>PROC CODE</th>
<th>MODIFIER</th>
<th>DESCRIPTION</th>
<th>UNIT OF SERVICE</th>
<th>MAXIMUM ALLOWANCE Through 7/31/18</th>
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<td>$4.36</td>
<td>$5.10</td>
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# MAINECARE BENEFITS MANUAL

## CHAPTER III

### SECTION 28 - ALLOWANCES FOR REHABILITATIVE AND COMMUNITY SUPPORT SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS

#### MAJOR SUBSTANTIVE RULE

Established: 04/01/10  
Last Updated: 6/11/11 13/2018

P.L. 2017, ch. 460, Part C, Sec. C-1 directed that rulemaking authorized by the Sec. C-1 law would be “major substantive” rules. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services. Therefore, for purposes of this TBD rulemaking only, the rule is major substantive. Thereafter, unless otherwise directed by the Legislature, the rule will revert back to routine technical rule.

The Department is seeking and anticipates receiving CMS approval for this Section. Pending approval, the Department will reimburse providers under the new increased rate retroactively to 8/1/2018 pursuant to P.L. 2017, ch. 460.

Providers must ensure that the increase in reimbursement rates effective August 1, 2018 is applied in full to wages and benefits for employees who provide direct services. Providers must document compliance with this requirement in their financial records and provide such documentation to the Department upon request.

**Definition of Modifiers**
- HQ: group
- HI: base service
- HK: Specialized Services
- UN: two patients served
- UP: three patients served
- UQ: four patients served

### PROCEDURE CODE MODIFIER DESCRIPTION

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<tr>
<th>PROCEDURE CODE</th>
<th>MODIFIER</th>
<th>DESCRIPTION</th>
<th>UNIT OF SERVICE</th>
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<th>MAXIMUM ALLOWANCE Effective 7/1/19</th>
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