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DATE: September 19, 2019

TO: Interested Parties

FROM: Michelle Probert, Director, MaineCare Services

SUBJECT: Emergency Adoption: Chapter 104, Maine State Services Manual, Section 7, Abortion Services for MaineCare Members

This letter gives notice of an emergency rule: Maine State Services Manual, Section 7, Abortion Services for MaineCare Members.

This emergency rulemaking implements P.L. 2019, c. 274, *An Act to Prevent Discrimination in Public and Private Insurance Coverage for Pregnant Women in Maine* (the "Act"), which requires state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid Federal law limits Medicaid reimbursement to those abortions necessary to protect the life of the mother, or when the pregnancy results from rape or incest (the "Hyde Exceptions."). *See, e.g.*, 42 C.F.R. §§ 441.200-441.208; 10-144 C.M.R. Ch. 101 (the "MaineCare Benefits Manual"), Ch. II, Sec. 90.05-2 (MaineCare rule implementing Hyde Exceptions). The Act requires that, for MaineCare eligible women, abortion services that are outside the Hyde Exceptions (*i.e.*, not covered Medicaid services) must be funded separately by using state funds within existing resources. The Legislature appropriated from the General Fund approximately \$227,546 and \$375,843, respectively, for the next two fiscal years to provide these new state-funded abortion services. *See* the Act, Sec. 10 (Appropriations and allocations). The Department requires providers to identify state-funded abortion services when submitting claims for reimbursement of state funded abortion services. This allows the Department to distinguish the state funded abortion claims from those that are covered under the Hyde Exceptions, in order to maintain compliance with federal Medicaid restrictions and requirements for reimbursement.

Pursuant to the Act, the Legislature provided the Department with authority to implement these services on an emergency basis, per 5 M.R.S. § 8054, without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety, or general welfare. Emergency rules are effective immediately and valid for ninety days. The Department shall hereafter initiate "regular" routine technical proposed rulemaking to implement this rule permanently.

Rules and related rulemaking documents may be reviewed at and printed from MaineCare Services 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. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 711.

If you have any questions regarding the policy, please contact Provider Services at 1-866-690-5585 or TTY users call Maine relay 711.

**Notice of Agency Rule-making Adoption
EMERGENCY RULE**

AGENCY: Department of Health and Human Services, Office of MaineCare Services

CHAPTER NUMBER AND TITLE: 10-144 C.M.R., Chapter 104, Maine State Services Manual
Section 7, Abortion Services for MaineCare Members

ADOPTED RULE NUMBER:

CONCISE SUMMARY:

This emergency rulemaking implements P.L. 2019, c. 274, *An Act to Prevent Discrimination in Public and Private Insurance Coverage for Pregnant Women in Maine* (the “Act”), which requires state-funded coverage for abortion services to MaineCare members when those services are not covered by Medicaid.

Federal law limits Medicaid reimbursement to those abortions necessary to protect the life of the mother, or when the pregnancy results from rape or incest (the “Hyde Exceptions.”). *See, e.g.*, 42 C.F.R. §§ 441.200-441.208; 10-144 C.M.R. Ch. 101 (the “MaineCare Benefits Manual”), Ch. II, Sec. 90.05-2 (MaineCare rule implementing Hyde Exceptions). The Act requires that, for MaineCare eligible women, abortion services that are outside the Hyde Exceptions (*i.e.*, not covered Medicaid services) must be funded separately by using state funds within existing resources. The Legislature appropriated from the General Fund approximately \$227,546 and \$375,843, respectively, for the next two fiscal years to provide these new state only funded abortion services. *See* the Act, Sec. 10 (Appropriations and allocations). The Department requires providers to identify state-funded abortion services when submitting claims for reimbursement of state funded abortion services. This allows the Department to distinguish the state funded abortion claims from those that are covered under the Hyde Exceptions, in order to maintain compliance with federal Medicaid restrictions and requirements for reimbursement.

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<http://www.maine.gov/dhhs/oms/rules/index.shtml> for rules and related rulemaking documents.

EFFECTIVE DATE: September 19, 2019

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
10-144 Chapter 104
MAINE STATE SERVICES MANUAL

SECTION 7 ABORTION SERVICES FOR MAINECARE MEMBERS ESTABLISHED 9/19/19
EMERGENCY RULE EFFECTIVE 9/19/19

TABLE OF CONTENTS

	Page
7.01 INTRODUCTION	1
7.02 DEFINITIONS	1
7.03 MEMBER ELIGIBILITY	1
7.04 PROVIDER REQUIREMENTS	1
7.05 COVERED SERVICES	2
7.06 PROVIDER REIMBURSEMENT	2
7.07 BILLING INSTRUCTIONS	3
7.08 TIME LIMITS FOR SUBMISSION OF CLAIMS	3
7.09 APPEALS	3

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SECTION 7 ABORTION SERVICES FOR MAINECARE MEMBERS ESTABLISHED 9/19/19
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7.01 **INTRODUCTION**

This rule implements state-funded Abortion services for MaineCare members. The Department of Health and Human Services (the “Department”) establishes this policy pursuant to P.L. 2019, ch. 274, as codified in 22 M.R.S.A. § 3196 (Coverage for non-Medicaid services to MaineCare members). The Abortion services covered under this rule are not federally approved Medicaid services and must be funded solely by state funds. The Commissioner of the Department has delegated the responsibility for administration of these services to the Office of MaineCare Services. All applicable federal and state laws governing Abortions, including, but not limited to, Maine Revised Statutes Title 22 Chapter 263-B (Abortions), as well as 10-144 C.M.R. Ch. 104 (the Maine State Services Manual), Section I (Administrative Policies and Procedures), are incorporated herein.

7.02 **DEFINITIONS**

7.02-1 **Abortion:** The intentional interruption of a pregnancy by the allocation of external agents, whether chemical or physical, or the ingestion of chemical agents with an intention other than to produce a live birth or to remove a dead fetus, regardless of the length of gestation.

7.02-2 **Health Care Professional:** A physician or physician assistant licensed under Title 32, ch. 36 or 48 or a person licensed under Title 32, ch. 31 to practice as an advanced practice registered nurse.

7.03 **MEMBER ELIGIBILITY**

The individual must be eligible for MaineCare services as determined by the Office for Family Independence (OFI) using the established policies and procedures in the MaineCare Eligibility Manual.

Some members may have restrictions on the type and amount of services they are eligible to receive.

7.04 **PROVIDER REQUIREMENTS**

- A. Health Care Professionals must be enrolled as MaineCare providers to be reimbursed for Abortion services under this policy.
- B. Professionals providing Abortion services must be Health Care Professionals as defined in 22 M.R.S.A. §1596.

7.05 **COVERED SERVICES**

The Department shall provide coverage to MaineCare members for Abortion services that are not covered or reimbursed by Medicaid, including medical services and supplies incidental or preliminary to an Abortion, when performed by a Health Care Professional in a licensed general hospital or outpatient setting.

- A. Physician/surgical charges for performing the Abortion. These charges include the usual, uncomplicated pre- and post-operative care and visits related to performing the Abortion.
- B. Hospital or clinic charges associated with the Abortion. This includes the facility fee for use of the operating room; supplies and drugs necessary to perform the Abortion; and charges associated with routine, uncomplicated pre- and post-operative visits by the patient.
- C. Medication Abortions.
- D. Physician charges for administering the anesthesia necessary to induce or perform an Abortion.
- E. Drug charges for medication usually provided to or prescribed for the patient who undergoes an uncomplicated Abortion. This includes routinely provided oral analgesics and antibiotics to prevent septic complication of Abortion, and Rho-GAM.
- F. Charges for histo-pathological laboratory tests performed routinely.
- G. Charges for other laboratory tests performed prior to performing the Abortion to determine the anesthetic/surgical risk of the patient (e.g., CBC, electrolytes, blood typing).
- H. Ultrasounds related to the Abortion.
- I. One follow-up visit/exam occurring within 30 days from the date of the Abortion.

7.06 **PROVIDER REIMBURSEMENT**

Reimbursement using solely state funding will be available for Abortion services as described in this benefit based on the provider's current applicable MaineCare rate for abortion services that are covered by MaineCare. Providers agree to accept this rate as payment in full and will not hold members responsible for any payment over the rate.

The Department shall be the payor of last resort. The Department will not reimburse for any services which otherwise would be reimbursed by Medicaid, Medicare, private insurance, or other payor(s).

7.07 BILLING INSTRUCTIONS

Health Care Professionals must bill in accordance with the Department's billing instructions.
<https://mainecare.maine.gov/Default.aspx>

These are not MaineCare claims and shall not be reimbursed through MaineCare funding. Providers must retain documentation in support of the separate reimbursements received for state-funded abortions and state-funded abortion-related services.

The Department will review claims and may perform audits or post payments review of claims to determine whether providers have properly submitted claims and properly received state-funded reimbursement for services.

Sanctions may be imposed by the Department against a provider as set forth in the Maine State Services Manual, Section 1.

7.08 TIME LIMITS FOR SUBMISSION OF CLAIMS

The following time limits apply unless waived under special circumstances by the Department. Providers have one (1) year from the date services are provided to file a claim correctly with the Department, regardless of when eligibility is verified.

Since it is the responsibility of providers to verify eligibility, members may not be billed for covered services that have been denied by the Department for exceeding this time limit for claims submission because the provider did not verify eligibility.

7.09 APPEALS

Providers' and participants' appeal rights are set forth in the Maine State Services Manual, Section 1.