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DATE: September 28, 2016

TO: Interested Parties

FROM: Stefanie Nadeau, Director, MaineCare Services

SUBJECT: EMERGENCY MAJOR SUBSTANTIVE RULE: Chapter 101, MaineCare Benefits Manual, Chapter III, Section 29 Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder

This letter gives notice of an emergency rule: Chapter 101, MaineCare Benefits Manual, Chapter III, Section 29 Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder.

The Department is adopting via this emergency rulemaking an increase in the provider reimbursement rates set forth in Chapter III, Section 29, in accordance with P.L. 2016, ch. 477 (An Act to Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax). Effective April 15, 2016, the Legislature enacted P.L. 2016, ch. 477 to provide funding for an increase in reimbursement rates to eligible MaineCare providers for the last three months of SFY 2015-16 and for SFY 2016-17. The purpose of the additional funding is to offset an increase in the service provider tax, which took effect January 1, 2016. Chapter III, Section 29 lists the procedure codes, descriptions and reimbursement rates for covered services provided to members under its companion rule, Chapter II, Section 29 Support Services for Adults with Intellectual Disabilities or Autistic Disorder. Chapter III, Section 29 is a major substantive rule.

The Legislature enacted P.L. 2016, ch. 477 on an emergency basis, and therefore the legislation took effect on the date that it was approved, April 15, 2016. Pursuant to 22 M.R.S. § 42(8), the Department may authorize the adoption of rules that retroactively increase provider reimbursement on an emergency basis "if needed to ensure that MaineCare members have access to covered medically necessary services." The Department makes the following findings in support of this emergency rulemaking, pursuant to 5 M.R.S. § 8054. As recognized by the Legislature in P.L. 2016, ch. 477, MaineCare providers have insufficient reserves to withstand cost increases. Effective January 1, 2016, however, certain MaineCare providers were subject to an increase in the service provider tax, thus increasing their cost of providing services. The providers need the additional funding appropriated by the Legislature as soon as possible in order to continue providing MaineCare services. Given that the law provides benefits to the community, and the time sensitive nature of the law, the Department finds that these changes to Section 29 should be made on an emergency basis.

Under 22 M.R.S. § 42(9), because the Department has determined that an emergency rule is necessary pursuant to 5 M.R.S. § 8054, and because the rule affects reimbursement rates for licensed health care providers, the increased rates will be effective retroactive to April 15, 2016, the date that the legislation took effect. Further, pursuant to 5 M.R.S. § 8073, this emergency major substantive rule will be effective for up to 12 months, or until the Legislature has completed its review. The Department intends to proceed with major substantive rulemaking, which will be provisionally adopted, and then submitted to the Legislature for its review.

The following services will have a 1% increase as a result of this rulemaking:

- T2017, Home Support-Quarter Hour;
- T2017 QC, Home Support-Remote Support-Monitor Only;

- T2017 GT, Home Support-Remote Support-Interactive Support;
- T2021, Community Support (day habilitation);
- T2021 SC, Community Support (day habilitation) with Medical Add-On;
- Replaced H023 HQ Work Support (supported employment) with the following modifiers below;
 - H2023 UN Work Support (supported employment)-Group 2 members served;
 - H2023 UP Work Support (supported employment)-Group 3 members served;
 - H2023 UQ Work Support (supported employment)-Group 4 members served;
 - H2023 UR Work Support (supported employment)-Group 2 members served;
 - H2023 US Work Support (supported employment)-Group 2 members served;

The Department anticipates that this rulemaking will cost approximately \$38,338 in SFY 2016, which includes \$14,311 state dollars and \$24,026 in federal dollars and \$230,027 in SFY 2017, including \$82,925 in state dollars and \$147,102 in federal dollars.

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.

Notice of Emergency Agency Rule-making Adoption

AGENCY: Department of Health and Human Services, MaineCare Services

CHAPTER NUMBER AND TITLE: 10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder

EMERGENCY MAJOR SUBSTANTIVE RULE

ADOPTED RULE NUMBER:

CONCISE SUMMARY: The Department is adopting via emergency major substantive rulemaking a 1% increase to certain rates in Chapter III, Section 29, in accordance with P.L. 2016, ch. 477 (*An Act to Increase Payments to MaineCare Providers That Are Subject to Maine's Service Provider Tax*), which provides additional appropriations to certain MaineCare providers that are subject to the service provider tax and that have experienced a recent increase in the tax from 5% to 6%. The Legislature enacted this law as an emergency measure, effective April 15, 2016, recognizing that providers affected by the tax increase had insufficient reserves to withstand this cost increase and that immediate funding was necessary to enable providers to continue providing MaineCare services. As set forth in the Basis Statement, the Department adopts changes to this rule on an emergency basis with the increased rates effective retroactive to April 15, 2016.

HTTP://WWW.MAINE.GOV/DHHS/OMS/RULES/INDEX.SHTML for rules and related rulemaking documents.

EFFECTIVE DATE: September 28, 2016

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10-44 Chapter 101
MAINECARE BENEFITS MANUAL
CHAPTER III

ALLOWANCES FOR SUPPORT SERVICES FOR
ADULTS WITH INTELLECTUAL DISABILITIES OR AUTISTIC DISORDER

SECTION 29	ESTABLISHED: 1/1/08
EMERGENCY MAJOR SUBSTANTIVE RULE	EFFECTIVE: 9/28/16

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SECTION 29

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GENERAL PROVISIONS

1000 PURPOSE

The purpose of these regulations is to describe the reimbursement methodology for Home and Community Based Services waiver providers whose services are reimbursed in accordance with Chapters II and III, Section 29, “Community Support Benefits for members with Intellectual Disabilities and Autistic Disorders” of the *MaineCare Benefits Manual*. All services reimbursed in this section are considered fee for service.

1100 DEFINITIONS

Fee for service- is a method of paying providers for covered services rendered to members. Under this fee-for-service system, the provider is paid for each discrete service described in Appendix I to a member.

Per Diem- A day is defined as beginning at midnight and ending twenty-four (24) hours later.

Week – A week is equal to seven consecutive days starting with the same day of the week as the provider’s payroll records, usually Sunday through Saturday.

Year- Services are authorized based on the state fiscal year, July 1 through June 30.

1200 AUTHORITY

The authority of the Department to accept and administer any funds that may be available from private, local, State or Federal sources for services under this Chapter is established in 22 M.R.S.A. §3173. The authority of the Department to adopt rules to implement this Chapter is established under 22 M.R.S.A. §§ 42(1), and 3173.

1300 COVERED SERVICES –Covered Services are defined in Chapter II, Section 29 of the *MaineCare Benefits Manual*.

1400 REIMBURSEMENT METHODS

Services covered under this section will be reimbursed on a fee for service basis using one of these methods as follows:

1. **Standard Unit rate** – A Standard unit rate is the rate paid per unit of time (an hour, a specified portion of an hour, or a day) for a specific service. Services in the standard rate include:
 - A. Assistive Technology-Assessment;
 - B. Assistive Technology-Transmission (Utility Services);

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1400 REIMBURSEMENT METHODS (cont.)

- C. Career Planning;
 - D. Community Support Services;
 - E. Employment Specialist Services;
 - F. Home Support-Quarter Hour;
 - G. Home Support-Remote Support-Interactive Support;
 - H. Home Support-Remote Support-Monitor Only;
 - I. Respite, ¼ hour and per diem;
 - J. Work Support-Individual;
 - K. Work Support-Group.
- B. Prior Approved Price** – DHHS will determine the amount of reimbursement for Home Accessibility Adaptations or Assistive Technology- Devices after reviewing a minimum of two written itemized bids from different vendors submitted by the provider, prior to providing services. The written itemized bids must contain cost of labor and materials, including subcontractor amounts. DHHS will issue an authorization for the approved amount based on the written bids to the provider.
- C. Respite-** Reimbursement for Respite is a quarter (1/4) hour billing code. After 33-quarter hour units of consecutive Respite Services, the provider must bill using the per diem billing code. The quarter hour (1/4) Respite amount billed any single day cannot exceed the Respite per diem rate of one hundred (\$100.00) dollars.

1500 REQUIREMENTS FOR PARTICIPATION IN MAINECARE PROGRAM

Providers must comply with all requirements as outlined in Chapter 1, General Administrative Policies and Procedures and Chapter II, Section 29 of the *MaineCare Benefits Manual*.

1600 RESPONSIBILITIES OF THE PROVIDER

Providers are responsible for maintaining adequate financial and statistical records and making them available when requested for inspection by an authorized representative of the DHHS,

Maine Attorney General's Office or the Federal government. Providers shall maintain accurate financial records for these services separate from other financial records.

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1700 RECORD KEEPING AND RETENTION OF FINANCIAL RECORDS

Upon request, providers have ten (10) business days to produce fiscal records to DHHS. Complete documentation shall mean clear written evidence of all transactions of the provider and affiliated entities, including but not limited to daily census data, invoices, payroll records, copies of governmental filings, staff schedules, time cards, member service charge schedule and amounts reimbursement by service, or any other record which is necessary to provide DHHS with the highest degree of confidence in the reliability of the costs of providing services. For purposes of this definition, affiliated entities shall extend to management and other entities for which any reimbursement is claimed, whether or not they fall within the definition of related parties.

The provider shall maintain all such records for at least five (5) years from the date of reimbursement.

1800 BILLING PROCEDURES

Providers will submit claims to MaineCare and be reimbursed at the applicable rate for the service in accordance with MaineCare billing instructions for the CMS 1500 claim form.

1810 Work Support-Group Rate

When billing for Work Support Services-Group the per person rate is based on the number of members served as follows:

Members in Group	Rate per Unit
2	\$3.46
3	\$2.30
4	\$1.73
5	\$1.38
6	\$1.15

1900 AUDIT OF SERVICES PROVIDED

The Department shall monitor provider's claims for reimbursement by randomly reviewing the claim for services and verifying hours actually provided by collecting documentation from providers. Documentation will be requested from providers that correspond to dates of service on claims submitted for reimbursement as follows:

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1900 AUDIT OF SERVICES PROVIDED (cont.)

- A. **Payroll Records** – Documentation showing the number of hours paid to an employee that covers the period of time for which the Direct Care hours are being requested.
- B. **Staffing Schedules per facility** – Documentation showing the hours and the name of the direct care staff scheduled to work at the facility.
- C. **Member Records** - Documentation that supports the service delivery of services that a member received.

2000 RECOVERY OF PAYMENTS

The Department may recover any amounts due the Department based on Chapter I of the *MaineCare Benefits Manual*.

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APPENDIX I

PROCEDURE CODE	SERVICE	MAXIMUM ALLOWANCE
T2017	Home Support-Quarter Hour	\$ 6.33 ¼ hour*
T2017 QC	Home Support-Remote Support-Monitor Only	\$ 1.63 ¼ hour*
T2017 GT	Home Support-Remote Support-Interactive Support	\$ 6.33 ¼ hour*
T2021	Community Support (Day Habilitation)	\$ 5.33 ¼ hour*
T2021 SC	Community Support (Day Habilitation)- with Medical Add-On	\$ 6.57 ¼ hour*
T2019	Employment Specialist Services (Habilitation, Supported Employment waiver)	\$ 7.42 ¼ hour
T2019 SC	Employment Specialist Services (Habilitation, Supported Employment waiver)-with Medical Add-On	\$ 8.58 ¼ hour
H2023	Work Support (Supported Employment)-Individual	\$ 6.91 ¼ hour
H2023 SC	Work Support (Supported Employment)-Individual with Medical Add-On	\$ 8.08 ¼ hour
		*
H2023 UN	Work Support (Supported Employment)-Group 2 members served	\$ 3.46 ¼ hour
H2023 UP	Work Support (supported employment)-Group 3 members served	up to \$2.30 per ¼ hr*
H2023 UQ	Work Support (supported employment)-Group 4 members served	up to \$1.73 per ¼ hr*
H2023 UR	Work Support (supported employment)-Group 5 members served	up to \$1.38 per ¼ hr*
H2023 US	Work Support (supported employment)-Group 6 members served	up to \$1.15 per ¼ hr*
T2015	Career Planning (Habilitation, prevocational)	\$ 28.00 per hour
S5165	Home Accessibility Adaptations	Per invoice
S5165 CG	Home Accessibility Adaptations repairs	Per invoice
97755	Assistive Technology-Assessment	\$ 14.44 ¼ hour
T2035	Assistive Technology-Transmission (Utility Services)	Up to \$50.00 per month
A9279	Assistive Technology-Devices(Monitoring feature/device, stand alone or integrated,	Per invoice up to

*The effective date of this rate change is 4/15/16

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	any type, includes all accessories, components and electronics, not otherwise classified)	\$6,000.00 per year
S5150	Respite Services- ¼ hour	\$ 2.70 ¼ hour
S5151	Respite Services- Per Diem	\$90.00 per diem

Modifiers	Modifier Description
CG	Policy Criteria Applied
SC	Medical Add-On
QC	Remote Support-Monitor Only
GT	Remote Support-Interactive Support

*The effective date of this rate change is 4/15/16