



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
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DATE: October 4, 2016
TO: Interested Parties
FROM: Stefanie Nadeau, Director, MaineCare Services
SUBJECT: Emergency Adoption: 10-144 C.M.R. ch. 101, MaineCare Benefits Manual, Chapter III, Section 2, Adult Family Care Services

This letter gives notice of an emergency rule: 10-144 C.M.R. ch. 101, MaineCare Benefits Manual, Chapter III, Section 2, Adult Family Care Services.

The Department of Health and Human Services (“the Department”) adopts this emergency rule to increase the rates of reimbursement for Adult Family Care Services pursuant to: (1) Public Law 2016, ch. 481, Part C, *An Act To Provide Funding to the Maine Budget Stabilization Fund and To Make Additional Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017*; and (2) Resolves 2015, ch. 45, *Resolve, To Require the Department of Health and Human Services to Provide Supplemental Reimbursement to Adult Family Care Homes and Residential Care Facilities in Remote Island Locations*.

First, following the Governor’s approval, the Legislature enacted P.L. 2016, ch. 481, as emergency legislation effective April 16, 2016. In part, the law directed the Department to amend the MaineCare Benefits Manual, Chapter III, Section 2, Adult Family Care Services, to provide a four (4) percent cost-of-living rate increase for adult family care homes for the fiscal year ending June 30, 2017. The Legislature determined that the legislation should take effect immediately on the grounds certain obligations and expenses incident to the operation of state departments and institutions would be becoming due and immediately payable, thus emergency legislation was required for the immediate preservation of the public peace, health, and safety. The Department now adopts this four (4) percent inflation rate increase to the Chapter III, Section 2 rule by increasing the unadjusted price from \$44.99 to \$46.79 and the resource-adjusted prices accordingly. The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for this change. Pending approval, the four (4) percent cost-of-living increase will be effective retroactive to July 1, 2016. A Change in Reimbursement Methodology Notice was published on June 28, 2016. To comply with future cost-of-living increases set forth in P.L. 2016, ch. 481, the Department will engage in subsequent rulemaking at a later date.

Second, the Department is making changes to this rule pursuant to Resolves 2015, ch. 45, which effectuates a supplemental rate payment of fifteen (15) percent to adult family care homes that satisfy the definition of remote island facilities. This legislation was enacted as an emergency measure, effective July 12, 2015, without the Governor’s signature, and on the grounds that current reimbursement rates to remote island facilities did not account for higher prices compared to the mainland. The Legislature directed the Department to amend its rule by October 1, 2015, to implement the fifteen (15) percent supplemental payment and authorized the Department to do so via emergency rulemaking without the necessity of demonstrating emergency findings. The Department previously engaged in emergency rulemaking followed by routine technical rulemaking that added a provision to the rule about the supplemental payment. The Department also indicated in these prior rulemakings that it was seeking CMS approval of this change retroactive to October 1, 2015. However, the Department did not include a case mix chart specific to remote island facilities that identifies the increased rates. The Department now seeks to do so with the emergency adoption of this rule. The Department has added a new case mix chart reflecting an unadjusted price of \$51.74 (a fifteen percent

increase from \$44.99) for the period of October 1, 2015 through June 30, 2016, and an unadjusted price of \$53.81 (reflecting the fifteen percent supplemental payment and the four percent cost-of-living increase) for the period beginning July 1, 2016.

As noted, the increased rates will be retroactive to October 1, 2015 (rate increase for remote island facilities) and to July 1, 2016 (rate increase for inflation). These increases for Adult Family Care Services are in accordance with 22 M.R.S. § 42(8). They ensure vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members.

Further, in support of emergency rulemaking pursuant to 5 M.R.S. § 8054, the Department makes the following findings. Both P.L. 2016, ch. 481, and Resolves 2015, ch. 45 were enacted as emergency measures to provide additional funding to Adult Family Care Services providers. For the cost-of-living increase, the immediate adoption of this rule is necessary given the time sensitive nature of the law and the fact that the law provides benefits to the regulated community. Regarding the supplemental remote island facility payment, the Legislature authorized the Department to implement the change on an emergency basis without the need to demonstrate emergency findings. Although the Department has already engaged in this process, it seeks to do so again so as to provide clarity to providers as to the exact rate increase, especially in light of the additional cost-of-living rate increase. These emergency changes to Chapter III, Section 2 shall be effective for ninety (90) days. The Department shall proceed with “regular” routine technical rulemaking in order to permanently adopt these rules.

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 Emergency Rule-making Adoption

AGENCY: Department of Health and Human Services, MaineCare Services

CHAPTER NUMBER AND TITLE: 10-144 C.M.R. ch. 101, MaineCare Benefits Manual (MBM), Chapter III, Section 2, Adult Family Care Services

ADOPTED RULE NUMBER:

CONCISE SUMMARY: The Department of Health and Human Services (“the Department”) adopts this emergency rule to increase the rates of reimbursement for Adult Family Care Services pursuant to:

1) Public Law 2016, Chapter 481, Part C, *An Act To Provide Funding to the Maine Budget Stabilization Fund and To Make Additional Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2016 and June 30, 2017*. This emergency adopted rule implements a four (4) percent cost-of-living rate increase for adult family care homes for the fiscal year ending June 30, 2017. The Department is seeking and anticipates receiving approval from the federal Centers for Medicare and Medicaid Services (CMS) for this change. Pending approval, the four (4) percent rate increase will be effective retroactive to July 1, 2016.

2) Resolves 2015, ch. 45, *Resolve, To Require the Department of Health and Human Services To Provide Supplemental Reimbursement to Adult Family Care Homes and Residential Care Facilities in Remote Island Locations*. The Department previously engaged in emergency rulemaking followed by routine technical rulemaking that added language to the rule providing for a supplemental rate payment of fifteen (15) percent to adult family care homes that satisfy the definition of remote island facilities. The Department did not include a case mix chart specific to remote island facilities that identified the increased rates and now seeks to do so with an emergency adoption of this rule. As noted previously, the Department is seeking and anticipates receiving CMS approval for the change so that the supplemental rate payment will be retroactive to October 1, 2015.

Both of these rate increases for Adult Family Care Services ensure vulnerable members have access to medically necessary covered services, and otherwise have no adverse impact on either MaineCare providers or members. Further, this change is not expected to have an adverse effect on the administrative burdens of small businesses.

[HTTP://WWW.MAINE.GOV/DHHS/OMS/RULES/INDEX.SHTML](http://www.maine.gov/dhhs/oms/rules/index.shtml) for rules and related rulemaking documents.

EFFECTIVE DATE: October 4, 2016

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10-144 Chapter 101
 MAINECARE BENEFITS MANUAL
 CHAPTER III

SECTION 2

**ADULT FAMILY CARE SERVICES
 EMERGENCY RULE**

May 6, 1996
 Last Updated 10/4/16

Providers will be reimbursed the resource-adjusted price for each member according to the resource group the member is assigned as a result of the MDS-ALS assessment. The Department will reimburse updated resource adjusted prices twice each year upon reassessments as detailed in Chapter II, Section II. Providers must bill using the UB-92 and according to “*Billing Instructions for Adult Family Care Services.*”

Description	Maximum Allowance
Adult Family Care Services	Resource-Adjusted Price, determined by Resource group assignment as a result of MDS-ALS Assessment

The Department is seeking and anticipates receiving Centers for Medicare and Medicaid Services (CMS) approval for this Section. Pending approval, increased rates will be as follows, retroactive to July 1, 2016:

Effective retroactive to 7/1/16	Resource Group	MaineCare Weight	Resource Adjusted Price (Based on \$46.79 UnAdjusted Price Multiplied by MaineCare weight)
	1	1.657	\$77.53
	2	1.210	\$56.62
	3	1.360	\$63.63
	4	1.027	\$48.05
	5	.924	\$43.23
	6	.804	\$37.62
	7	.551	\$25.78
	8	.551	\$25.78

Remote Island Facility Supplemental Payment: If CMS approves, effective October 1, 2015, Remote Island Facilities are entitled to a supplemental payment of fifteen (15) percent in addition to the standard MaineCare reimbursement rate, as set forth in Chapter III. Eligible facilities are allowed to retain this supplemental payment in addition to the total allowable rate under these rules.

Effective retroactive to 10/1/15 and 7/1/16	Resource Group	MaineCare Weight	Resource Adjusted Price (Based on \$51.74 Unadjusted Price Multiplied by MaineCare Weight) Effective 10/1/15 to 6/30/16	Resource Adjusted Price (Based on \$53.81 Unadjusted Price Multiplied by MaineCare Weight) Effective 7/1/16
	1	1.657	\$85.73	\$89.16
	2	1.210	\$62.60	\$65.11
	3	1.360	\$70.36	\$73.18
	4	1.027	\$53.14	\$55.26
	5	0.924	\$47.81	\$49.72
	6	0.804	\$41.60	\$43.26
	7	0.551	\$28.51	\$29.65
	8	0.551	\$28.51	\$29.65