



Paul R. LePage, Governor Ricker Hamilton, Acting Commissioner

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**DATE:** September 29, 2017  
**TO:** Interested Parties  
**FROM:** Stefanie Nadeau, Director, MaineCare Services

**SUBJECT: Emergency Major Substantive Rule Adoption:** Chapter 101, MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

The Department is adopting this emergency major substantive rule in accordance with P.L. 2017, ch. 284, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019 (“Act”). This Act provides funding to increase reimbursement rates for 16 procedure codes in Chapter III, Section 29. See Part ZZZZZZ, ZZZZZZ-9. The legislation directs the Department to increase the rates for the specific procedure codes in equal proportion to the funding provided for that purpose, and to do so via major substantive rulemaking. See Part MMMMMMM, Sec. MMMMMMM-2(2) through -2(4). The Act further authorizes the Department’s adoption of rules on an emergency basis without the necessity of demonstrating that immediate adoption is necessary to avoid a threat to public health, safety or general welfare. See Part TTTT, Sec. TTTT-1.

In addition to the rate increases required by the Act, the Department has also increased the rate for a 17<sup>th</sup> procedure code: T2017QC (Home Support-Remote Support-Monitor Only). Pursuant to 5 M.R.S. § 8054, the Department has determined that this rate increase is necessary to avoid an immediate threat to public health, safety, or general welfare. The Department’s findings of an emergency are as follows: the Act increased the other procedure codes related to Home Support services. Increasing the rate for the procedure code that was “left out” creates consistency with the other codes, in line with the Section 29 service and reimbursement scheme. If the rate for this code is not increased, it is likely to create pressure to move members to services with higher rates for financial reimbursement reasons, rather than member need.

These increased rates will be effective retroactive to July 1, 2017. The Department has determined that a retroactive increase to the beginning of the state fiscal year is appropriate, since the appropriation is intended for the entire fiscal year. The retroactive application comports with 22 M.R.S. § 42(8).

The Legislature did not appropriate additional funding for these rate increases beyond June 30, 2018, therefore rates will revert to their current levels (pre July 1, 2017) on July 1, 2018.

In addition, the Department is adding two procedure codes for Shared Living services (S5140 and S5140 UN). The Department is concurrently adopting an emergency rule for Chapter II, Section 29 to add this benefit to available covered services for members. This change in Chapter II will ensure the Department’s expeditious provision of this service to vulnerable members who are in need of residential stability. The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services for this change. The Department has determined that the corresponding rates must be added on an emergency basis in Chapter III so as to allow the immediate implementation of this service. The Shared Living rates added to Section 29 are consistent with rates for these same services under Section 21 to ensure parity. Because the Legislature has appropriated funds to increase the rates for

Shared Living services under Section 21 for SFY ending July 1, 2018, the Department is implementing these higher rates of reimbursement for Shared Living services under Section 29 for the same period. See P.L. 2017, ch. 284, Part MMMMMMMM, Sec. MMMMMMMM-2(1).

The Department moved to emergency rulemaking once the rates were calculated and finalized. In creating the rates for the codes shown below, the Department examined utilization of these services, and then calculated rates to ensure parity between Section 29 and Section 21, to lessen administrative complications for providers.

The emergency adopted rule makes the following changes:

- In Section 1400:
  - Shared Living is added to the list of services being reimbursed at a standard rate.
- In Section 1810, the group rates for Work Support have been increased:
  - 2 Members in Group: rate increased to \$3.83 per quarter hour
  - 3 Members in Group: rate increased to \$2.54 per quarter hour
  - 4 Members in Group: rate increased to \$1.91 per quarter hour
  - 5 Members in Group: rate increased to \$1.53 per quarter hour
  - 6 Members in Group: rate increased to \$1.27 per quarter hour
- In Appendix I:
  - S5140 Shared Living (Foster Care, adult) has been added at \$127.39 per diem
  - S5140 UN Shared Living (Foster Care, adult)-Shared Living Model-Two members has been added at \$70.46 per diem
  - T2017 Home Support-Quarter Hour has been increased to \$7.00 per quarter hour
  - T2017 GT Home Support-Remote Support-Interactive Support has been increased to \$7.00 per quarter hour
  - T2017 QC Home Support-Remote Support-Monitor only has been increased to \$1.80 per quarter hour, to ensure that all the T2017 Home Support rates were increased.
  - T2021 Community Support (Day Habilitation) has been increased to 5.89 per quarter hour
  - T2021 SC Community Support (Day Habilitation) with Medical Add-On has been increased to \$7.27 per quarter hour
  - T2019 Employment Specialist Services (Habilitation, Supported Employment waiver) has been increased to \$8.21 per quarter hour
  - T2019 SC Employment Specialist Services (Habilitation, Supported Employment waiver) with Medical Add-On has been increased to \$9.49 per quarter hour
  - H2023 Work Support (Supported Employment)-Individual has been increased to \$7.64 per quarter hour
  - H2023 SC Work Support (Supported Employment)-Individual with Medical Add-On has been increased to \$8.94 per quarter hour
  - H2023 UN Work Support (Supported Employment)-Group 2 members served has been increased to \$3.83 per quarter hour
  - H2023 UP Work Support (Supported Employment)-Group 3 members served has been increased to \$2.54 per quarter hour
  - H2023 UQ Work Support (Supported Employment)-Group 4 members served has been increased to \$1.91 per quarter hour
  - H2023 UR Work Support (Supported Employment)-Group 5 members served has been increased to \$1.53 per quarter hour
  - H2023 US Work Support (Supported Employment)-Group 6 members served has been increased to \$1.27 per quarter hour
  - T2015 Career Planning (Habilitation, prevocational) has been increased to \$30.97 per hour
  - S5150 Respite Services-1/4 hour has been increased to \$2.99 per quarter hour
  - S5151 Respite Services-Per Diem has been increased to \$99.54 per diem

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.

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 Emergency Major Substantive Agency Rule Adoption

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

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

### EMERGENCY MAJOR SUBSTANTIVE RULE

#### ADOPTED RULE NUMBER:

**CONCISE SUMMARY:** The Department adopts this emergency rule in accordance with P.L. 2017, ch. 284 (*An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019*), §§§ ZZZZZZZ-9, MMMMMMM-2 and TTTT-1, which provided funding to increase reimbursement rates for 16 procedure codes in Chapter III, Section 29, and directed the Department – via major substantive rulemaking – to increase the rates for the specific procedure codes in equal proportion to the funding provided. The Department has also increased the rate for a 17<sup>th</sup> procedure code in order to create consistency among similar services within the waiver. These rates will be effective retroactive to July 1, 2017. Funding for these rate increases was only appropriated for SFY18. The Legislature did not appropriate additional funding for these rates beyond June 30, 2018; therefore, rates increased for SFY18 will revert to their current levels (pre July 1, 2017) on July 1, 2018.

The Legislature granted emergency major substantive rulemaking authority for these rate increases, which the Department commenced once the rates were calculated and finalized. In creating the rates for the codes shown below, the Department examined utilization of these services, and then calculated rates to ensure parity between Section 29 and Section 21, to lessen administrative complications for providers.

In addition, the Department is adding two procedure codes for Shared Living services as the Department is contemporaneously adopting an emergency rule for Chapter II, Section 29 to add this benefit as a covered service for members. These rates are consistent with the rates for the same services under Section 21, and include increased rates for SFY18 that will revert to their current levels (pre July 1, 2017) pursuant to P.L. 2017, ch. 284.

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> for rules and related rulemaking documents.

**EFFECTIVE DATE:** October 1, 2017

**AGENCY CONTACT PERSON:** Rachel Posner, Comprehensive Health Planner  
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CHAPTER III

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SECTION 29	ALLOWANCES FOR SUPPORT SERVICES FOR ADULTS WITH INTELLECTUAL DISABILITIES OR AUTISM SPECTRUM DISORDER	Established: 1/1/08 EFFECTIVE: 10/1/17
EMERGENCY MAJOR SUBSTANTIVE RULE		

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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, Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder 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;

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**1400 REIMBURSEMENT METHODS (cont.)**

- B. Assistive Technology-Transmission (Utility Services);
  - 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. Shared Living;
  - K. Work Support-Individual;
  - L. Work Support-Group.
2. **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.
3. **Respite-** Reimbursement for Respite is a quarter 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 Respite amount billed any single day cannot exceed the Respite per diem rate of ninety (\$90.00) 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.

**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

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**1700 RECORD KEEPING AND RETENTION OF FINANCIAL RECORDS (cont.)**

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	
	Prior to 7/1/17 and After 6/30/18*	7/1/17 – 6/30/18
2	\$3.46	3.83
3	\$2.30	2.54
4	\$1.73	1.91
5	\$1.38	1.53
6	\$1.15	1.27

\*In advance of the rate changes effective July 1, 2018, the Department will seek approval from the federal Center for Medicare and Medicaid Services (“CMS”) for these changes.

**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:

- 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.



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**1900 AUDIT OF SERVICES PROVIDED (cont.)**

- 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 Prior to 7/1/17 and After 6/30/18*	MAXIMUM ALLOWANCE Effective 7/1/17-6/30/18
T2017	Home Support-Quarter Hour	\$ 6.33 ¼ hour	\$7.00 ¼ hour
T2017 QC	Home Support-Remote Support-Monitor Only	\$ 1.63 ¼ hour	\$1.80 ¼ hour
T2017 GT	Home Support-Remote Support-Interactive Support	\$ 6.33 ¼ hour	\$7.00 ¼ hour
S5140**	Shared Living (Foster Care, adult)-Shared Living Model-One member served	\$127.39	\$140.89
S5140 UN**	Shared Living (Foster Care, adult)-Shared Living Model-Two members served	\$63.71	\$70.46
T2021	Community Support (Day Habilitation)	\$ 5.33 ¼ hour	\$5.89 ¼ hour
T2021 SC	Community Support (Day Habilitation)- with Medical Add On	\$ 6.57 ¼ hour	\$7.27 ¼ hour
T2019	Employment Specialist Services (Habilitation, Supported Employment waiver)	\$ 7.42 ¼ hour	\$8.21 ¼ hour
T2019 SC	Employment Specialist Services (Habilitation, Supported Employment waiver)-with Medical Add On	\$ 8.58 ¼ hour	\$9.49 ¼ hour
H2023	Work Support (Supported Employment)-Individual	\$ 6.91 ¼ hour	\$7.64 ¼ hour
H2023 SC	Work Support (Supported Employment)-Individual with Medical Add On	\$ 8.08 ¼ hour	\$8.94 ¼ hour
H2023 UN	Work Support (Supported Employment)-Group 2 members served	\$ 3.46 ¼ hour	\$3.83 ¼ hour
H2023 UP	WORK SUPPORT (supported employment)-Group 3 members served	up to \$2.30 per ¼ hr	\$2.54 per ¼ hr
H2023 UQ	WORK SUPPORT (supported employment)-Group 4 members served	up to \$1.73 per ¼ hr	\$1.91 per ¼ hr
H2023 UR	WORK SUPPORT (supported employment)-Group 5 members served	up to \$1.38 per ¼ hr	\$1.53 per ¼ hr

\*In advance of any rate decreases in this column that are effective July 1, 2018, the Department will be seeking CMS approval.

\*\*The Department is seeking and anticipates CMS approval for the addition of these procedure codes and corresponding rates.

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PROCEDURE CODE	SERVICE	MAXIMUM ALLOWANCE Prior to 7/1/17 and After 6/30/18*	MAXIMUM ALLOWANCE Effective 7/1/17–6/30/18
H2023 US	WORK SUPPORT (supported employment)-Group 6 members served	up to \$1.15 per ¼ hr	\$1.27 per ¼ hr
T2015	Career Planning (Habilitation, prevocational)	\$ 28.00 Per hr	\$30.97 per hr
S5165	Home Accessibility Adaptations	Per invoice	Per invoice
S5165 CG	Home Accessibility Adaptations repairs	Per invoice	Per invoice
97755	Assistive Technology-Assessment	\$ 14.44 ¼ hour	\$14.44 per ¼ hour
T2035	Assistive Technology-Transmission (Utility Services)	Up to \$50.00 per Month	Up to \$50.00 per Month
A9279	Assistive Technology-Devices(Monitoring feature/device, stand alone or integrated, any type, includes all accessories, components and electronics, not otherwise classified)	Per invoice up to \$6,000.00 per year	Per invoice up to \$6,000.00 per year
S5150	Respite Services- ¼ hour	\$ 2.70 ¼ hour	\$2.99 ¼ hr
S5151	Respite Services- Per Diem	\$90.00 per diem	\$99.54 per diem

<u>Modifiers</u>	<u>Modifier Description</u>
CG	Policy Criteria Applied
SC	Medical Add On
HQ	Group Setting
QC	Remote Support-Monitor Only
GT	Remote Support-Interactive Support
UN	Two Members Served
UP	Three Members Served
UQ	Four Members Served
UR	Five Members Served
US	Six Members Served