



PAUL R. LEPAGE
GOVERNOR

Maine Department of Health and Human Services
MaineCare Services
11 State House Station
Augusta, Maine 04333-0011

BETHANY L. HAMM
ACTING COMMISSIONER

DATE: November 6, 2018
TO: Interested Parties
FROM: Stefanie Nadeau, Director, MaineCare Services
SUBJECT: Emergency Adoption: Chapter 101, MaineCare Benefits Manual, Chapter III, Section 23, Developmental and Behavioral Clinic Services,

This letter gives notice of an emergency rule: MaineCare Benefits Manual, Section 23, Developmental and Behavioral Clinic Services, Chapter III.

The Department of Health and Human Services (“the Department”) adopts this emergency rule pursuant to P.L. 2017, ch. 460, Part D, *An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*. Part D-1 requires the Department increase the rates of reimbursement for Section 23, Development and Behavioral Clinic Services, to ensure a net increase in funding from fiscal year 2008-2009 to fiscal year 2018-2019 of two (2) % as long as no rates for a service is lower than the rate reimbursed as of January 1, 2018.

This rulemaking requires that the increase in reimbursement rates must be applied to wages and benefits for employees who provide direct services as required by Part D-2 of P.L. 2017, ch. 460. In compliance with the law, providers must ensure that increase in reimbursement rates effective August 1, 2018, is applied in full to wages and benefits to 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.

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.” (emphasis added). The Department published its notice of reimbursement methodology change for the Section 23 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018, which effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 23 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 (8) calendar quarters.

To remedy the difference between the July 1, 2018 effective date set forth in the Act, versus 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.

Pursuant to 5 M.R.S. § 8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

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

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

CHAPTER NUMBER AND TITLE: 10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter III, Section 23, Developmental and Behavioral Clinic Services
EMERGENCY RULEMAKING

ADOPTED RULE NUMBER:

CONCISE SUMMARY: The Department of Health and Human Services (“the Department”) adopts this emergency rule pursuant to P.L. 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*. Part D-1 requires the Department increase the rates of reimbursement for Section 23, Development and Behavioral Clinic Services, to ensure a net increase in funding from fiscal year 2008-2009 to fiscal year 2018-2019 of two (2) % as long as no rates for a service is lower than the rate reimbursed as of January 1, 2018.

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Pursuant to 5 M.R.S. § 8054, this emergency rule may be effective for up to ninety (90) days. The Department shall proceed with routine technical rulemaking to permanently adopt these rule changes.

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

EFFECTIVE DATE: November 6, 2018

AGENCY CONTACT PERSON: Thomas M Leet, Comprehensive Health Planner II

AGENCY NAME: Division of Policy

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10-144 Chapter 101
 MAINECARE MANUAL
 CHAPTER III

SECTION 23 DEVELOPMENTAL AND BEHAVIORAL EVALUATION CLINIC SERVICES

Established 9/1/92

Last Updated by Emergency Rule 11/6/2018

The Department is seeking and anticipates receiving approval from CMS for this rate change. Pending CMS approval, the rate increase will be effective retroactive to August 1, 2018.

ALLOWANCES FOR DEVELOPMENTAL AND BEHAVIORAL EVALUATION CLINIC SERVICES

PROC. CODE	DESCRIPTION	UNIT	RATE EFFECTIVE PRIOR TO 8/1/18	RATE EFFECTIVE 8/1/18 – 6/30/19	RATE EFFECTIVE 7/1/19	MAXIMUM ALLOWANCE
T1026*	Developmental and Behavioral Evaluation	Per hour	\$76.89	\$78.57***	\$78.43***	14 Units**
T1026 HK*	Child Abuse Evaluation	Per hour	\$95.00	\$97.07***	96.90***	11 Units**

* These procedure codes and limits will become effective when the new payment system, MIHMS, is implemented. Providers will be notified within 30 days of implementation.

** Developmental and Behavioral Evaluation is limited to a maximum of fourteen (14) units per evaluation, and Child Abuse Evaluation is limited to a maximum of Eleven (11) units per evaluation, and both are limited to two (2) evaluations in a twelve (12) month period.

*** 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.

The procedure codes below will be in effect until MIHMS goes live. These codes will no longer be in effect when the new payment system MIMHS is implemented.

Z3016- Developmental and Behavioral Evaluation, 7/1/10-7/31/10 \$765.00 per evaluation

Z3015- Child Abuse Evaluation 7/1/10-7/31/10 \$1,327.50 per evaluation