



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

PAUL R. LEPAGE
GOVERNOR

BETHANY L. HAMM
ACTING COMMISSIONER

DATE: November 8, 2018
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 28, Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations.

EMERGENCY MAJOR SUBSTANTIVE RULEMAKING

The Department of Health and Human Services (“the Department”) adopts this major substantive emergency rule to increase the rates of reimbursement for rehabilitative and community support services pursuant to Public Law 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* (the “Act”).

The Act requires the Department to amend its rules for reimbursement rates for rehabilitative and community support services provided under the provisions of 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III of Section 28, Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations. Specific changes are as follows:

- Part C of the Act directs the Department to amend the rates of reimbursement to providers of Section 28 services to reflect the final rates modeled in the April 24, 2017 report: “Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking” prepared for the Department by Burns & Associates, Inc. Those rate changes were made.
- Part D of the Act directs the Department to increase the rate of reimbursement for all services by two percent. Sec. D-1 and D-2 specifically require the increase in reimbursement to be applied to the wages and benefits of employees providing direct services. The two percent rate increase was made to the rates as changed by the Burns study.

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.” The Department published its notice of reimbursement methodology change for the Section 28 rates on July 31, 2018. Upon the advice of the Office of the Attorney General, the increased rates will be effective August 1, 2018; this effective date comports with the federal law requirement. Pending approval of the proposed changes to the Section 28 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 eight calendar quarters.

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

P.L. 2017, ch. 460, Part C, Sec. C-1 directed that rulemaking authorized by the Sec. C-1 law would be a “major substantive” rule. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services. Therefore, for purposes of this November 8, 2018 rulemaking only, the rule is major substantive. Thereafter, unless otherwise directed by the Legislature, the rule will revert back to routine technical rulemaking status.

Pursuant to 5 M.R.S. § 8054, this emergency major substantive rule will remain in effect for up to one year or until the Legislature has completed its review of the provisionally adopted major substantive rule. The Department shall proceed with rulemaking in order to present the Legislature with a provisionally adopted major substantive rule consistent with this emergency major substantive rule.

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.

A concise summary of the adopted rule is provided in the Notice of Agency Rulemaking Proposal, which can be found at <http://www.maine.gov/sos/cec/rules/notices.html>. This notice also provides information regarding the rulemaking process.

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, Section 28, Chapter III, Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations

EMERGENCY MAJOR SUBSTANTIVE RULEMAKING

ADOPTED RULE NUMBER:

CONCISE SUMMARY:

The Department of Health and Human Services (“the Department”) adopts this major substantive emergency rule to increase the rates of reimbursement for rehabilitative and community support services pursuant to Public Law 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* (the “Act”).

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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 eight calendar quarters.

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

P.L. 2017, ch. 460, Part C, Sec. C-1 directed that rulemaking authorized by the Sec. C-1 law would be a “major substantive” rule. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services. Therefore, for purposes of this November 8, 2018 rulemaking only, the rule is major substantive. Thereafter, unless otherwise directed by the Legislature, the rule will revert back to routine technical rulemaking status.

Pursuant to 5 M.R.S. § 8054, this emergency major substantive rule will remain in effect for up to one year or until the Legislature has completed its review of the provisionally adopted major substantive rule. The Department shall proceed with rulemaking in order to present the Legislature with a provisionally adopted major substantive rule consistent with this emergency major substantive rule.

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

EFFECTIVE DATE:	November 8, 2018
AGENCY CONTACT PERSON:	Dean Bugaj, Comprehensive Health Planner
AGENCY NAME:	Division of Policy
ADDRESS:	242 State Street 11 State House Station Augusta, Maine 04333-0011
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10-144 Chapter 101
 MAINECARE BENEFITS MANUAL
 CHAPTER III

SECTION 28 - ALLOWANCES FOR REHABILITATIVE AND COMMUNITY SUPPORT SERVICES FOR CHILDREN
 WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS
EMERGENCY MAJOR SUBSTANTIVE RULE

Established: 04/01/10
 Last Updated: 11/8/2018

PROC CODE	MODIFIER			DESCRIPTION	UNIT OF SERVICE	MAXIMUM ALLOWANCE Through 7/31/18	MAXIMUM ALLOWANCE 8/1/18-6/30/19	MAXIMUM ALLOWANCE Effective 7/1/19
H2021	HI			SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) 1:1	15 MINUTES	\$8.94	\$10.67	\$10.53
H2021	HQ	HI	UN	SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) GROUP- UN two patients served	15 MINUTES	\$4.72	\$5.35	\$5.30
H2021	HQ	HI	UP	SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) GROUP- UP three patients served	15 MINUTES	\$3.23	\$3.68	\$3.64
H2021	HQ	HI	UQ	SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) GROUP- UQ four patients served	15 MINUTES	\$2.49	\$2.85	\$2.82
H2021	HK			SPECIALIZED SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) 1:1	15 MINUTES	\$12.34	\$14.77	\$14.57
H2021	HQ	HK	UN	SPECIALIZED SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) GROUP- UN two patients served	15 MINUTES	\$6.42	\$7.46	\$7.37
H2021	HQ	HK	UP	SPECIALIZED SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) GROUP- UP three patients served	15 MINUTES	\$4.36	\$5.10	\$5.04

10-144 Chapter 101
 MAINECARE BENEFITS MANUAL
 CHAPTER III

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H2021	HQ	HK	UQ	SPECIALIZED SERVICES FOR CHILDREN WITH COGNITIVE IMPAIRMENTS AND FUNCTIONAL LIMITATIONS (COMMUNITY BASED WRAP AROUND SERVICES) GROUP- UQ four patients served	15 MINUTES	\$3.33	\$3.96	\$3.91
G9007	HA			BCBA SERVICES (COMMUNITY BASED WRAP AROUND SERVICES)	15 MINUTES		\$16.60	\$16.60

P.L. 2017, ch. 460, Part C, Sec. C-1 directed that rulemaking authorized by the Sec. C-1 law would be “major substantive” rules. Sec. C-1 provided for certain rate increases, and rulemaking, for Section 28 services. Therefore, for purposes of this November 8, 2018 rulemaking only, the rule is major substantive. Thereafter, unless otherwise directed by the Legislature, the rule will revert back to routine technical rule.

The Department is seeking and anticipates receiving CMS approval for this Section. Pending approval, the Department will reimburse providers under the new increased rate retroactively to 8/1/2018 pursuant to P.L. 2017, ch. 460.

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.

Definition of Modifiers

- HQ: group
- HI: base service
- HK: Specialized Services
- UN: two patients served
- UP: three patients served
- UQ: four patients served