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BETHANY L. HAMM
ACTING COMMISSIONER

DATE: November 13, 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 12, Allowances for Consumer-Directed Attendant Services

This letter gives notice of an emergency rulemaking: 10-144 C.M.R. ch. 101, MaineCare Benefits Manual, Chapter III, Section 12, Allowances for Consumer-Directed Attendant Services.

The Department of Health and Human Services (“the Department”) adopts this emergency rule to increase the rates of reimbursement for personal care services pursuant to Public Law 2017, ch. 459, Part B, *An Act Making Certain Supplemental 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 community-based personal care services provided under the provisions of 10-144 C.M.R. ch. 101, MaineCare Benefits Manual, Chapter III, Section 12, Allowances for Consumer-Directed Attendant Services (“Section 12”) to reflect the final rates modeled in the February 1, 2016 report “Rate Review for Personal Care and Related Services: Final Rate Models” prepared for the Department by Burns & Associates, Inc. In addition to this Section 12 rule, the Department is adopting increased rate changes on an emergency basis for Section 19, Home and Community-Based Services for the Elderly and Adults with Disabilities & Section 96, Private Duty Nursing and Personal Care Services rules.

This emergency rule increases the following rates:

- S5125 U2, Attendant Care Services
- S5125 U2 UN, Attendant Care Services - 2 person
- S5125 U2 UP, Attendant Care Services - 3 person

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 12 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 12 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.

There are four separate proposed rate changes pending before CMS, one submitted in September 2015 (effective 10/1/15 to 7/28/16), one submitted in July 2016 (effective 7/29/16 to 2/21/17), one submitted in August 2017 (effective 7/1/17 to 6/30/18 and 7/1/18 to 7/31/18), and one submitted in July 2018 (effective 8/1/18-6/30/19); thus, there are four retroactive effective dates applicable for these rates included in Chapter III.

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 a 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 intends to proceed with routine technical rulemaking to permanently adopt this 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.

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 12, Allowances for Consumer-Directed Attendant 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 personal care services provided through Chapter III, Section 12, Allowances for Consumer-Directed Attendant Services pursuant to Public Law 2017, ch. 459, Part B, *An Act Making Certain Supplemental Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government*. The Department is seeking, and anticipates receiving, approval from the federal Centers for Medicare and Medicaid Services (CMS) for this change. Pending approval, the increased rates of reimbursement will be effective retroactive to August 1, 2018.

The adopted rule ensures vulnerable members have access to medically necessary covered services and providers of Attendant Care Services will receive increased rates of reimbursement. Otherwise, the Department anticipates 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> for rules and related rulemaking documents.

EFFECTIVE DATE: November 13, 2018

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10-144-CHAPTER 101
MAINECARE BENEFITS MANUAL

CHAPTER III

SECTION 12

**ALLOWANCES FOR CONSUMER-DIRECTED ATTENDANT SERVICES
EMERGENCY RULE**

Established: 5/16/95

Effective: 11/13/18

**The Department is seeking and anticipates receiving CMS approval for this Section.
There are four separate proposed rate changes pending before CMS: one submitted in September 2015, one submitted in July 2016, one submitted in August 2017, and one submitted in July 2018; thus there are four retroactive effective dates applicable for these rates.
Pending CMS approval, the following rates will be effective:**

PROCEDURE CODE	DESCRIPTION	UNITS	AMOUNT Effective 10/1/15	AMOUNT Effective 7/29/16 to 2/21/17	AMOUNT Effective 2/22/17 to 6/30/17 and 7/1/18 to 7/31/18	AMOUNT Effective 7/1/17- 6/30/18	AMOUNT Effective 8/1/18 to 6/30/19	AMOUNT Effective 7/1/19
S5125 U2	Attendant Care Services	15 minutes	\$2.93	\$3.33	\$3.33	\$3.66	\$4.07	\$3.73
S5125 U2 UN	Attendant Care Services 2 person	15 minutes	N/A	N/A	\$1.83	\$2.01	\$2.24	\$2.05
S5125 U2 UP	Attendant Care Services 3 person	15 minutes	N/A	N/A	\$1.33	\$1.47	\$1.63	\$1.49
H2014	Skills Training Service	15 minutes	\$14.03	\$14.03	\$14.03	\$14.03	\$14.03	\$14.03
G9001	Care Coordination Service – Initial Visit	15 minutes	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00
G9002	Care Coordination Service – Ongoing	15 minutes	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00	\$17.00