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GOVERNOR

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

BETHANY L. HAMM
ACTING COMMISSIONER

DATE: 11/16/2018
TO: Interested Parties
FROM: Stefanie Nadeau, Director, MaineCare Services
SUBJECT: Emergency Adoption: 10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Section 17, Chapter III, Allowances for Community Support Services

This letter gives notice of an emergency rule: MaineCare Benefits Manual, Section 17, Chapter III, Allowances for Community Support Services

The Department of Health and Human Services (“the Department”) adopts this emergency rule to increase the rates of reimbursement for 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”), Part D.

The Act requires the Department to amend its rules for reimbursement rates for Community Support Services provided under the provisions of 10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Chapter III, Section 17, Allowances for Community Support Services.

Specific changes are as follows:

- Part D of P.L. 2017, ch. 460 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 who provide direct services and not to administrators or managers.

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 17 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 date comports with the federal law requirement. Pending approval of the proposed changes to the Section 17 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.

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.

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.

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 17, Chapter III, Allowances for Community Support 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 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”), Part D.

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Specific changes are as follows:

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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 17 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 date comports with the federal law requirement. Pending approval of the proposed changes to the Section 17 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.

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.

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

EFFECTIVE DATE: 11/16/2018

AGENCY CONTACT PERSON: Dean Bugaj, Comprehensive Health Planner

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10-144 Chapter 101
 MAINECARE BENEFITS MANUAL
 CHAPTER III

SECTION 17

ALLOWANCES FOR COMMUNITY SUPPORT SERVICES
EMERGENCY RULE

ESTABLISHED: 5/1/93
 LAST UPDATED: 11/16/18

| PROC CODE | DESCRIPTION | | UNIT | MAXIMUM ALLOWANCE | MAXIMUM ALLOWANCE | MAXIMUM ALLOWANCE |
|-----------|--|--|------------|-------------------------|-------------------------------|--------------------|
| | HIPAA CODES | SECTION 17 SERVICES | | RATE through 7/31/2018* | RATE from 8/1/18 to 6/30/19** | RATE from 7/1/19** |
| H2015 | Comprehensive Community Support Services | (Community Integration Services) | 15 minutes | \$20.86 | \$21.35 | \$21.31 |
| H0040 | Assertive Community Treatment | (Assertive Community Treatment) | Per Diem | By Report | By Report | By Report |
| H0038 | CIPSS-Self Help/peer services | | 15 minutes | \$11.10 | \$11.35 | \$11.33 |
| H2017 | Psychosocial Rehabilitation | (Daily Living Support Services) | 15 minutes | \$7.77 | \$7.95 | \$7.94 |
| H2018 | Psychosocial Rehabilitation Service | (Community Rehabilitation Services) | Per Diem | \$74.39 | \$76.11 | \$75.97 |
| H2014 | Skills Training and Development | (Skills Development Services) | 15 minutes | \$12.20 | \$12.48 | \$12.45 |
| H2014 HQ | Skills Training and Development | (Skills Development Services) | 15 minutes | \$3.05 | \$3.34 | \$3.12 |
| H2025 | Ongoing Support to Maintain Employment | (Skills Development Services/training) | 15 minutes | \$12.20 | \$12.48 | \$12.45 |
| H2012 | Behavioral Health Day Treatment | (Day Support Services) | Per hour | By Report | By Report | By Report |

*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 7/1/2016 through 7/31/2018 pursuant to P.L. 2015, ch. 477 (eff. Apr. 15, 2016).

**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, Part D. 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.