

DHHS - Office of MaineCare Services
Rule, State Plan Amendment, and Waiver Status Report
December 2013

In APA Process*

Chapter II, Section 85, Physical Therapy Service

The Department is proposing changes to this rule to require Prior Authorization for all Physical Therapy Services for persons age 21 and older. The Department also proposes the following changes:

- a. Adding a definition for Terminal Illness,
- b. Adding new covered services and clarifying covered services and their limits,
- c. Limiting supplies to splinting and adding the link to the Department's Rate Setting website,
- d. Adding some language and clerical changes to clarify the policy.

Proposed: October 1, 2013
Staff: Cari Bernier

Public Hearing: October 28, 2013
Comment Deadline: November 7, 2013

Chapter II, Section 68, Occupational; Therapy Service

The Department is proposing changes to this rule to require Prior Authorization for all Occupational Therapy Services for persons age 21 and older. The Department also proposes the following changes:

- a. Adding a definition for Long-Term Chronic Pain and Terminal Illness,
- b. Adding new covered services and clarifies covered services and their limits,
- c. Limiting supplies to splinting only and adds the link to the Department's Rate Setting website,
- d. Adding some language and clerical changes to clarify the policy.

Proposed: October 1, 2013
Staff: Cari Bernier

Public Hearing: October 28, 2013
Comment Deadline: November 7, 2013

Chapter 101, MaineCare Benefits Manual, Chapter X, entitled Non-categorical Adults

The Department of Health and Human Services (DHHS) is proposing to repeal Chapter 101, MaineCare Benefits Manual, Chapter X, Section 2, Non-categorical Adults.

Proposed: October 1, 2013
Staff: Cari Bernier

Public Hearing: October 28, 2013
Comment Deadline: November 7, 2013

MaineCare Benefits Manual (MBM), Chapter 1, Section 1

The Department is proposing the following changes to this rule, for the following reasons:

- (1) removed references to Dirigo Choice, since the Maine Legislature has dissolved the Dirigo Health Agency (P.L. 2013, ch. 368, Sec. A-19);
- (2) as required by 45 CFR 162.410, requires that any MaineCare provider that is a "covered health care provider" must obtain a National Provider Identifier (NPI);
- (3) requires that MaineCare Providers must include their NPI on their MaineCare Provider Agreements and MaineCare enrollment applications, and requires updates for new or changed NPIs;
- (4) requires that all MaineCare Providers must include their NPI on all MaineCare claims, pursuant to the Affordable Care Act, Section 6402(a) as codified in 42 CFR 431.107, or those claims will be denied;

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- (5) pursuant to 42 CFR 455.410, specifies that in order for MaineCare to reimburse for services or medical supplies or prescriptions resulting from a provider's order, prescription or referral, the ordering prescribing or referring (OPR) provider must be enrolled in MaineCare, and the OPR provider's NPI must be on the claim;
- (6) Pursuant to P.L. 2013, c. 368, Part A-34, effective January 1, 2014, if approved by CMS, the Department will limit cost sharing payments, for the Qualified Medicare Beneficiary Without Other Medicaid (QMB Only) population, to hospital and nursing facility providers to the amount necessary to provide a total payment equal to the amount MaineCare would pay for these services under the State plan. The Department will seek CMS approval to amend its State plan for this change.
- (7) Finally, the Department made some additional changes to the 1.07-5 (Medicare provision), all to comport with the current State plan, and these changes also reflect the Department's current practice:
 - (a) Clarified that the cost sharing is limited in that it cannot exceed the lowest rate that Medicare determines to be the allowed amount;
 - (b) deleted references to "Medicare Part B" in provisions where the provisions related both to Medicare A and B, pursuant to the State plan;
 - (c) deleted a provision regarding claims received from January 1, 1997 to February 29, 2000, since that time period has long passed.

Proposed: October 15, 2013
Staff: Michael Dostie

Public Hearing: November 25, 2013
Comment Deadline: December 5, 2013

MaineCare Benefits Manual (MBM), Chapter VI, Section 2, MaineCare DirigoChoice Initiatives

This proposed rule repeals in its entirety MaineCare Benefits Manual, Chapter V, Section 2, MaineCare DirigoChoice Initiatives. The repeal of MaineCare Benefits Manual, Chapter V, Section 2, MaineCare DirigoChoice Initiatives is necessary to help supplement appropriations and allocations for the expenditures of State Government and to amend certain provisions of law necessary to the proper operations of State Government. Public Law, Chapter 368, under the Dirigo Health Fund eliminates positions and reduces funding to reflect the dissolution of the DirigoHealth Agency in fiscal year 2013-14. It also reduces funding to reflect that the Dirigo Health program is no longer required and transfers funding related to a new, separate and distinct fund for the Fund for a Healthy Maine from other special revenue funds.

Proposed: October 3, 2013
Staff: Michael Dostie

Public Hearing: November 4, 2013
Comment Deadline: November 14, 2013

Chapter III, Section 97 Private Non-Medical Institution Services

This proposed major substantive rule eliminates the reimbursement rate for Private Non-Medical Institution Services (PNMI), Appendix D (Child Care Facilities), Model 3 (Intensive Mental Health Services for Infants and/or Toddlers). The Department seeks to provisionally adopt the changes made by an emergency major substantive rule, effective on June 26, 2013. The Department seeks to eliminate intensive Mental Health Services for infants and/or toddlers through a separate rulemaking for Chapter II, Section 97. Although eligible infants and toddlers will no longer have access to PNMI Appendix D, Model 3 Intensive Mental Health services, they remain eligible for medically necessary Behavioral Health Services through Section 65, Behavioral Health Services, which services shall be reimbursed at the rates set forth in Chapter III, Section 65.

Proposed: July 30, 2013
Staff: Ann O'Brien

Public Hearing: August 26, 2013
Comment Deadline: September 5, 2013

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Chapter III, Section 45, Hospital Services

This emergency rule increases the MaineCare hospital supplemental pool to \$65.321 million, because the Legislature appropriated an additional \$10.472 million. P.L. 2013, ch. 368, PART A, Sec. A-34. The Department is seeking approval from the Centers for Medicare and Medicaid Services, to amend its State plan related to hospital reimbursement, for this change.

Proposed: November 26

Public Hearing: December 23

Staff: Rachel Thomas

Comment Deadline: January 2, 2014

Rules Adopted or Provisionally-Adopted Since Last Status Update

Chapter II, Section 45, Hospital Services

This rulemaking permanently adopted on 11/25/13 an emergency rule that implemented provisions in the 2014-15 budget law (P.L. 2013, ch. 368 LD 1509). Specifically, this rulemaking increases reimbursement for therapeutic leave during days awaiting nursing facility placement from one per year to twenty per year.

Estimated Fiscal Impact: The combined General Fund impact of this policy change and the policy change to Chapter II, Section 67, and Nursing Facility Services (which was part of the same budget initiative) is an increase of \$21,702 in SFY 2013, and savings of \$112,760 and \$113,513 in SFYs 2014 and 2015, respectively.

Chapter II, Section 67, Nursing Facility Services

This rulemaking permanently adopted on 11/25/13 an emergency rule that implemented provisions in the 2014-15 budget law (P.L. 2013, ch. 368 LD 1509). Specifically, this rulemaking increases reimbursement for: (1) therapeutic leave from one per year to twenty per year, and (2) bed holds from four days per year to seven days per inpatient hospitalization.

Estimated Fiscal Impact: The combined General Fund impact of this policy change and the policy change to Chapter II, Section 45, and Hospital Services (which was part of the same budget initiative) is an increase of \$21,702 in SFY 2013, and savings of \$112,760 and \$113,513 in SFYs 2014 and 2015, respectively.

Chapter II, Section 32, Waiver Services for Children with Intellectual Disabilities or Pervasive Developmental Disorders

The Department made changes to the rule to comply with the concurrent operation of a 1915(b) Non-Emergency Transportation Waiver. The changes to Section 32 included referencing the regional, risk-based, Pre-Paid Ambulatory Health Plan (PAHP) Brokerages operating under a 1915(b) waiver (see 42 U.S.C. §1396n) approved by the Centers for Medicare and Medicaid Services (CMS). Under risk-based contractual agreements, the Department contracted with Broker(s) to establish, manage, authorize, coordinate and reimburse the provision of Non-Emergency Transportation (NET) services for eligible MaineCare members. The Broker(s) are responsible for establishing a network of NET drivers to deliver NET transportation services to eligible members within assigned region.

The Department has also made a number of other changes:

1. The Department made changes to the definitions of “seclusion” and “restraint” to conform to the definitions employed in the Department of Education’s regulations (5-71 C.M.R. ch. 33). The Department of Health and Human Services was directed by the Legislature’s Committee on Health and Human Services to amend Chapter II to mirror the definitions of seclusion and restraint in the Department of Education’s regulations.

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2. The Department replaced the term “aggression” throughout the rule with “self-injurious behavior and/or aggression.”
3. The Department added language that clarified, for purposes of initial and continuing eligibility, that the annual cost of a member’s services under Section 32 may not exceed the statewide average annual cost of care for an individual in either (a) an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or (b) an Inpatient Psychiatric Facility for individuals age 21 and under, depending upon the level of care at which the individual qualified for the waiver. This is not a new limit; the Department made the changes to clarify that these limits are not fixed numbers, but instead change each year based upon the prior year’s statewide average annual cost of care for the respective facility type.
4. The Department added a number of definitions (including Authorized Agent, Intellectual Disability, and Pervasive Developmental Disorders), and changed the term “Mentally Retarded” to “Intellectual Disabilities,” as required by P.L. 2012, ch. 542, § B(5), An Act To Implement the Recommendations of the Department of Health and Human Services and the Maine Developmental Disabilities Council Regarding Respectful Language.
5. The Department clarified the requirements for providers of Section 32 services. These changes included clarification of the circumstances under which Behavioral Health Professionals may assist with administration of medication, requirements for Respite Service providers, and a requirement that providers put in place a Department-approved informed consent policy.
6. Performance Measures were adopted in Section 32.11. The primary goal of Performance Measurement is to use data to determine the level of success a service is achieving in improving the health and wellbeing of members. Performance Goals and Performance Measures have been established to monitor quality, inform and guide reimbursement decisions and conditions of provider participation across MaineCare services. This focus on Performance Measurement is anticipated to enhance the overall quality of services provided and raise the level of public accountability for both the Department and MaineCare providers.

Additionally, changes to the final rule were made based on the recommendation of the Attorney General’s office.

1. 32.02-1, “means” was inserted into the definition.
2. 32.03-2(B), there was an incorrect citation; 34-B MRSA § 6001 has been changed to 5001.
3. In 32.05-1, a comma was added after the reference to the MaineCare Benefits Manual and a reference to (14 472 CMR 1) was inserted.
4. In 32.05-1(C), a typographical error “has an change” was changed to “has any change.”
5. In 32.-05-1(F), a hyphen was inserted in DHHS-sponsored.
6. In 32.05-1(N), the reference to SAMHSA’s system of care principles was modified to refer to an appendix added containing a copy of the principles and called APPENDIX I- Federal Substance Abuse and Mental Health Services Administration’s (SAMHSA) System of Care Principles.

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Final rule: Effective November 17, 2013

Chapter III, Section 45, Hospital Services

This emergency rule increases the MaineCare hospital supplemental pool to \$65.321 million, because the Legislature appropriated an additional \$10.472 million. P.L. 2013, ch. 368, PART A, Sec. A-34. The Department is seeking approval from the Centers for Medicare and Medicaid Services, to amend its State plan related to hospital reimbursement, for this change.

Emergency Rule Adopted: November 15

Staff: Rachel Thomas

In Draft (And Governor's Office Approval Received)

None at this time

In Draft (And Governor's Office Approval not yet requested)

Section 21, Chapter II- Home and Community-Based Benefits for Adults with Intellectual Disabilities or Autistic Disorder – to update the policy to coincide with the waiver amendment.

Staff: Ginger Roberts-Scott

Section 21, Chapter III- Allowances for Home and Community-Based Benefits for Adults with Intellectual Disabilities or Autistic Disorder – to update the policy to coincide with the waiver amendment.

Staff: Ginger Roberts-Scott

Section 29, Chapter II- Support Services for Adults with Intellectual Disabilities or Autistic Disorder to update the policy to coincide with the waiver amendment.

Staff: Ginger Roberts-Scott

Section 29, Chapter III- Allowances for Support Services for Adults with Intellectual Disabilities or Autistic Disorder to update the policy to coincide with the waiver amendment.

Staff: Ginger Roberts-Scott

Chapter II, Section 90, Physician Services

The Department is proposing numerous changes to this rule. The proposed rule will implement a CMS requirement that anesthesiology services be billed in one (1) minute rather than fifteen (15) units of value and that anesthesia administered by a Certified Registered Nurse Anesthetist (CRNA) be supervised by the operating doctor of medicine or osteopathy in accordance with 42 C.F.R. § 482.52 (a)(4).

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Also, the proposed rule will delete Section 90A-04 regarding prior authorization for transplants, establish new criteria for reimbursement and require the nationally accredited United Network for Organ Sharing (UNOS) to recommend that a transplant be performed. The rule will allow In-State kidney and corneal transplants to be performed without prior authorization. When medically necessary, bone marrow or stem cell transplants are covered.

Moreover, the following changes have been proposed:

- Definitions for the terms “Face-to-Face Encounter” for Durable Medical Equipment (DME) and Home Health Services were added,
- Provider qualifications for obstetrical services have been amended
- Orthognathic surgery will only be approved where there is a medical necessity.
- Certified Nurse Midwives, Dentists (General, Orthodonture, Pedodontist) and Dental Hygienists practicing within the scope of their certification and licensures can be employed in a physician’s practice,
- Surgical services for post-operative treatment will be amended to comply with the CMS standard fee schedule for durational global surgical periods (0-10-90 days).
- Bariatric procedures must be performed at a nationally certified center recognized by the American College of Surgeons or the Surgical Review Corporation.
- In general, BRCA1 and BRCA2 testing are covered.
- Restricted services for circumcision will be covered if medically necessary and not cosmetic, except when deformities are the result of cancer, disease, trauma or birth defects.
- Disclosure requirements in Section 90.08-1 will be amended to ensure confidentiality and comply with the Health Insurance Portability and Accountability Act (HIPAA) and Privacy Rule.
- Protection of privacy when using Qualified Electronic Health Records (EHR).

Also within Sec 90 is the ACA’s Primary Care Physicians Payment Rate Increase. This mandatory ACA initiative will increase the current Medicaid Rate for certain primary care physicians to 100% of the Medicare fee schedule in calendar years 2013 and 2014. This will apply to specified primary care services furnished by a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine. This initiative will also apply to all subspecialties related to those three specialty categories to the extent that they provide E&M services.

Eligible services provided by advance practice clinicians providing services within their scope of practice and under the supervision of an eligible physician will be eligible for higher payment; this includes those not specifically mentioned in the proposed rule such as nurse midwives; independently practicing advance practice clinicians (i.e., those *not* under the supervision of an eligible physician) are *not* eligible for increased payment.

Physicians will be required to self-attest that they are either board certified in family medicine, general internal medicine or pediatric medicine or a subspecialty within those specialties or that 60% of all Medicaid services they bill for are specified E&M or vaccine administration codes. Physicians recognized by the American board of physician specialties, the American osteopathic association and the American board of medical specialties are included. In order to receive the higher payment, qualifying physicians and advance practice clinicians must be providing services under the following pay-to/service location provider types: 35-Hospital/062-Hospital Based Professionals; 51-Physicians; and 54-Physician Group.

Estimated Fiscal Impact:

The Department expects that this rulemaking will cost the Department approximately \$150,000 in SFY 2013. This Fiscal impact is the high end of the expected cost of BRCA testing. BRCA1 and BRCA2 are human gene mutations that have been linked to hereditary breast and ovarian cancer. Based on cost estimates, BRCA

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testing ranges from \$300 to \$3,000, depending on whether a patient has a limited test or a full test. The cost will not go higher than \$150,000, but will be much lower. Not all data required for a full analysis is available, as family history is a big factor in the determination of the need of the BRCA test. With no history in the system of this new testing, the Department is limited in the amount of data it can analyze. This proposed rulemaking will have no other impact on the regulated community.

Staff: Michael J. Dostie and Peter Kraut

Chapter 1, Section 3, Ordering and Referring Providers

The proposed draft rule will implement the Patient Protection Affordable Care Act (PPACA) which specifies that Medicaid cannot pay eligible rendering providers for any health care service requiring a referral, order, or prescription from a physician or other health care professional unless the ordering, referring or prescribing provider is enrolled in MaineCare. Furthermore, the proposed rule requires all providers of medical or other items or services that qualify for a National Provider Identifier (NPI) to include their NPI on all Medicare and Medicaid enrollment applications and on all claims for payment submitted under the Medicare and Medicaid programs. If a claim fails to include the NPI, or the legal name of the physician or health care professional that ordered or prescribed the service, or referred the client for service, Medicaid reimbursement will be denied.

Staff: Michael J. Dostie

Effective Date: December 23, 2013

Chapter X, Section 1, Benefit for People Living with HIV/AIDS Renewal

Maine is requesting to renew the Maine HIV/AIDS Section 1115 Demonstration Waiver under the Social Security Act effective January 1, 2014. The objective of this waiver is to provide more effective and earlier treatment, improve access to continuous health care, provide a comprehensive package of services to people living with HIV/AIDS, to assist in enhancing compliance with treatment and medication regimens, and to meet cost-effectiveness as required by federal regulations. The key feature of this waiver which allows for the objectives to be successfully accomplished is the care management services. Maine is not anticipating any impact on enrollment or spending unless a Medicaid expansion occurs. If so, some enrollees would move from the waiver to full MaineCare benefits. Maine does not anticipate asking for any substantial modifications to the existing Section 1115 Demonstration waiver. Maine does not anticipate asking for any substantial modifications to the existing Section 1115 Demonstration waiver. Maine has continued to make improvements with care management and cost saving initiatives. Member satisfaction rates with the program have continued to increase. Two public hearings have been held and favorable comments have been received. A third public hearing was held on April 3, 2013 for public comment and input to coincide with the submission of the application. No comments were received. The HIV Sec. 1115 Demonstration renewal narrative is in final draft and will be vetted internally before it will be submitted to CMS.

Staff: Michael Dostie

Effective: January 1, 2014

Chapters II and III, Section 25, Dental Services

This rule is being proposed in order to update the principles of reimbursement (Chapter III) to include 2012 /2013 CDT codes. This rule change will also add Independent Practice Dental Hygienists, Dental Externs, and Dental Residents as qualified providers.

Staff: Peter Kraut

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Chapter II Section 31, Federally Qualified Health Center Services

This rule is being proposed in order to add Independent Practice Dental Hygienists, Dental Externs, and Dental Residents as qualified providers.

Staff: Peter Kraut

Maine State Services Manual, Chapter 104, Section 6, Independent Practice Dental Hygienist Service for MaineCare Members

This new rule will provide that the Department will reimburse Independent Practice Dental Hygienist (IPDHs) for providing certain services to MaineCare members from 10/1//12 through the effective date of a forthcoming State Plan Amendment to add IPDHs under Maine's State Plan. The services are: prophylaxis performed on a person who is 21 years of age or younger; topical application of fluoride performed on a person who is 21 years of age or younger; provision of oral hygiene instructions; the application of sealants; temporary fillings; and x-rays (under a temporary geographically limited pilot program overseen by the Maine Board of Dental Examiners).

Staff: Peter Kraut

Behavioral Health Homes (no section number assigned yet)

This proposed rulemaking seeks to create Behavioral Health Homes (BHH), effective April 1, 2014, which will provide comprehensive system of care coordination for members with Serious Emotional Disorders (SED), and Serious and Persistent Mental Illness (SPMI). Members eligible for BHH services may also be eligible for services under Section 13 (Targeted Case Management), Section 17 (Community Integration Services) and/or Section 91 (Health Home Services); such members may not receive those services at the same time that they receive BHH services, and must choose among the different types of services for which they are eligible.

BHH services shall be provided to eligible members by a Behavioral Health Home Organization (BHHO) that partners with one or more Health Home Practices (HHPs). BHHOs and HHPs shall integrate and coordinate all primary, acute, behavioral health and long term services and supports for eligible members. BHHOs shall develop and implement a comprehensive Plan of Care for each member. BHH services are expected to result in improved physical and behavioral health outcomes for members, reduced hospital admissions and emergency room use, better transitional care, improved communication between health care providers, and the increased use of preventive services, community supports, and self-management tools.

BHHs are implemented pursuant to section 2703 of the Affordable Care Act, 42 U.S.C. § 1396w-4. The Department is seeking approval of a State Plan Amendment from the Centers for Medicare and Medicaid Services. Section 2703 provides an enhanced federal matching rate of 90% for the first eight (8) quarters following the effective date of the program.

Staff: Peter Kraut

Chapter III, Section 45, Hospital Services

This emergency rule increases the MaineCare hospital supplemental pool to \$65.321 million, because the Legislature appropriated an additional \$10.472 million. P.L. 2013, ch. 368, PART A, Sec. A-34. The Department is seeking approval from the Centers for Medicare and Medicaid Services, to amend its State plan related to hospital reimbursement, for this change.

Staff: Rachel Thomas

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Chapter II, Section 80, Pharmacy Services

This emergency rule will adopt technical corrections to statutory language originally adopted pursuant to P.L. 2011, Chap. 657, Part O, § 2, the DHHS 3rd Supplemental Budget. These technical corrections are made pursuant to P.L. 2013, Chap. 368, Part AAAAA (L.D. 1509, “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, 2013, June 30, 2014 and June 30, 2015”).

This emergency rule makes several changes to the rule that was originally adopted, including:

- Changing the term “alternative intervention treatments” to “therapeutic treatment options.”
- Adding language explaining that the Department will reimburse for an initial fifteen (15) day prescription for the treatment of a new onset of acute pain.
- Reducing the number of days that the Department will reimburse for opioid medications for the treatment of a new onset of acute pain from forty-five (45) days per year to forty-two (42) days per year.

The Department is also adding clarifying language indicating that the limits established for acute pain following a surgical procedure are for the treatment of post-operative care. This rule also revises language regarding second opinions, stating that second opinions are required for the Department to reimburse for opioid drugs for a diagnosis typically known to have a poor response to opioid drug treatment. The previous language that is being changed stated that second opinions are required when opioids are prescribed to a MaineCare member who has been typically known to have a poor response to opioid drugs.

Other changes include adding language allowing exceptions to be established through the MaineCare Preferred Drugs List (PDL), and including members residing in a nursing facility on the list of exceptions.

Estimated Fiscal Impact: The original changes made pursuant to P.L. 2011, Chap. 657, Part O, § 2, the DHHS 3rd Supplemental Budget, were projected to save the Department approximately \$1,000,000 in SFY 12-13. The Department anticipates that the enactment of the technical corrections made through this emergency rule, pursuant to P.L. 2013, Chap. 368, Part AAAAA, (L.D. 1509, “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, 2013, June 30, 2014 and June 30, 2015”), will be cost neutral.

Staff: Amy Dix

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State Plan Amendment Status:

09-016 Transportation, Bus Passes - This SPA adds bus passes as a covered service when transportation providers find this the most cost effective method to provide transportation to medically necessary services.
Status: Submitted 9/30/09 "Off Clock", as CMS is reviewing a related 1915B waiver.

10-013 Coverage of PNMI Services - This SPA adds more detail, at request of CMS, of what is covered and who are qualified providers in PNMI facilities. No changes in coverage or benefit.
Status: Submitted September 24, 2010. RAI Issued December 2010, responses submitted to CMS March 17, 2011. Additional questions received last week of April, and a conference call was held in May, 2011 to start working through CMS questions. Responses withdrawn 5/6, currently Off Clock, IMD analysis required.

10-014 Coverage of Behavioral Health Services - This SPA adds more detail, at the request of CMS, of what is covered and who are qualified providers for behavioral health services. No changes in coverage or benefit are made.
Status: Submitted September 24, 2010. RAI issued December 2010, responses submitted to CMS March 17, 2011. Additional questions received last week of April. Withdrew responses 5/6. Currently off clock, IMD analysis required.

10-015 Coverage of Rehabilitative Services - This SPA adds more detail, at the request of CMS, of what is covered and who are qualified providers for rehabilitative services. No changes in coverage or benefit are made.

Status: Submitted September 24, 2010. RAI Issued December 2010, responses submitted to CMS March 17, 2011. Additional questions received last week of April. Responses Withdrawn 5/6, currently Off Clock, IMD analysis required.

10-016 Coverage of Personal Care Services - This SPA adds more detail, at the request of CMS, of what is covered and who are qualified providers for personal care services. No changes in coverage or benefit are made.

Status: Submitted September 24, 2010. RAI Issued December 2010, Responses submitted to CMS March 17, 2011. Additional questions received last week of April. Responses withdrawn 5/6. Currently off clock, IMD analysis required.

12-006 Increase of limits for Chiropractic and Vision Services - The state is requesting approval to increase the limits for Chiropractic and Vision services, pursuant to the 1st Supplemental Budget, P.L. 2011, CH. 477.

Status: Submitted June 29, 2012.
Informal RAI questions received on August 8, 2012.
Informal RAI responses submitted to CMS on September 10, 2012. Formal RAI received September 20, 2012.
Formal RAI responses submitted December 22, 2012
Follow Up questions received September 24, 2013
Follow Up Responses sent October 9, 2013

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12-007 Pharmacy Coverage and Reimbursement - The state is requesting approval to revise and add several reimbursement methodologies for Pharmacy services. The reduction of reimbursement for brand-name drugs to AWP minus (-) 16%, the request to impose a mandatory generic substitution and eliminate coverage of smoking cessation products for all members except for pregnant women is made pursuant to the 1st and 3rd Supplemental Budgets.

Status: Submitted June 29, 2012.
Informal RAI questions received on August 13, 2012.
Informal RAI responses submitted to CMS on September 10, 2012.
Formal RAI received September 26, 2012.
Formal RAI extension received December 31, 2012
Formal RAI submitted August 19, 2013
Follow-Up Questions received September 21, 2013
Follow-Up Questions submitted September 30, 2013
Ongoing questions received and responded to through November 4, 2013
Formal RAI withdrawn

12-008 Reimbursement for Services other than Inpatient Hospital - The state is requesting approval to decrease the rates of reimbursement for Podiatry, Occupational Therapy, Physical Therapy and Opioid Treatment pursuant to the 1st Supplemental Budget, P.L. 2011, CH. 477.

Status: Submitted June 29, 2012
Informal RAI questions received on August 8, 2012.
Informal RAI responses submitted to CMS on September 10, 2012. Formal RAI received September 20, 2012.
Formal RAI responses submitted December 22, 2012
Follow Up questions received September 24, 2013
Follow Up Responses sent October 9, 2013
Formal RAI withdrawn

12-015 Mandatory Pharmacy Co-Pays – this State Plan Amendment (SPA) is made to assure that Maine’s State Plan is updated to be consistent with policy changes that will need to be made to implement LD 346-An Act Regarding Pharmacy Reimbursement in MaineCare, which will implement mandatory co-payments for certain MaineCare members. In accordance with 42 CFR 447.76, the Department published notices in five (5) local papers, on the Departments website and held a public hearing regarding the proposed SPA. The Department did not receive any comments regarding the proposed SPA and there were no attendees at the public hearing.

Status: Submitted: 12/7/12
Informal RAI received 1/2/13
Informal responses submitted to CMS 1/15/13
Formal responses submitted to CMS 6/3/13
Budget neutral

13-004 Substance Abuse Service – The State will be requesting approval to impose MaineCare reimbursement for methadone for the treatment of addiction to opioids to a lifetime maximum of twenty four (24) months, except as permitted with prior authorization beyond twenty-four (24) months.

Status Submitted 3/29/13
Informal RAI received 05/14/13

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Informal responses submitted 6/24/13
Formal RAI received 6/26/13
Formal responses submitted 09/27/2013
Additional questions received 11/1/13
Additional questions responded 11/15/13
Formal RAI withdrawn

13-005 Physical Therapy services – The State will be requesting approval to increase the limits for Physical Therapy Services to allow for up to five (5) treatment visits and one (1) evaluation within twelve (12) months, when provided pursuant to a pain management care plan.

Status Submitted 3/29/13
 Informal RAI received 5/22/13
 Informal responses submitted 6/25/13
 Formal RAI received 6/27/13
 Formal responses submitted 09/27/2013
 Additional question received 11/7/13
 Responses to additional question submitted 11/21/13

13-006 Pharmacy Services/ Pain Management – The State will be requesting approval for limits on opioid medication used for the treatment of pain

Status Submitted 3/29/13
 Formal RAI received 6/20/13
 Formal Responses to be submitted 11/5/13

13-008 Behavioral Health -- The Maine State Legislature in P.L. 2013, Ch. 1, § A-23 (“An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2013”) directed the Department to reduce reimbursement rates by 5% for LCPC and LMFT. This change in rates requires a State Plan Amendment to be approved by the Centers for Medicare and Medicaid Services (CMS); the Department will request approval of a State Plan Amendment retroactive to March 5, 2013.

Status: Submitted 3/29/13
 Informal RAI received 5/13/13
 Formal RAI received 6/28/13
 Formal responses submitted 09/27/2013
 Formal RAI withdrawn

13-013 Excluded Drugs, Barbiturates, and Benzodiazepine - The proposed Pharmacy Services amendment is being submitted to comply with Section 175 of the Medicare Improvement for Patient and Providers Act of 2008 which amended section 1860D-2(e)(2)(A) of the act to include Medicare Part D drug coverage of barbiturates “used in the treatment of epilepsy, cancer, or a chronic mental health disorder” and benzodiazepines for all medically accepted indications.

The State of Maine asks that this SPA be retroactive to the effective date of April 1, 2013. The Department of Health and Human (The Department) has made edits to its system to implement this change effective January 1, 2013. However, the submission of this SPA has been delayed in order to meet notice requirements.

Submitted 5/10/13
Formal RAI received 8/7/13
Formal responses to be submitted 11/5/13

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13-014- Inpatient Hospital Services - the Department requested approval to pay a distinct substance abuse unit discharge rate equal to \$4,898. MaineCare will only reimburse at the distinct unit substance abuse rate when the member has spent the majority of his or her stay in the distinct unit. MaineCare will only reimburse for one (1) discharge for a single hospital for one (1) episode of care.

Status: Submitted June 28, 2013
RAI received 9/18/13
Informal RAI question received 11/26/13

13-015 Inpatient Leave Days -- Payment of bed holds for a semi-private room for a short-term hospitalization of the member is proposed to change to seven (7) days (midnights) absence each fiscal year, as long as the member is expected to return to the nursing facility. Payment for these bed holds would be granted up to seven (7) days (midnights) absence during each twelve (12) month period. The Department will also, if CMS approves, increase reimbursement for a leave of absence from one (1) day in a twelve-month period to no more than twenty (20) day in leave of absence each fiscal year, and twenty (20) day of leave of absence during the twelve (12) month period each fiscal year.

Status: Submitted 6/28/13
Formal RAI received 9/24/13

13-002 Personal Care - The Department will be submitting this SPA to CMS. This SPA will request approval to consolidate all personal care services including consumer directed personal care services into one part of the Medicaid State Plan. This SPA will also establish standard levels of medical eligibility and acuity for all personal care services and propose a minimum standard staffing qualification across all personal care services. Finally it will establish a standard rate for home based personal care services provided by independent providers and agency providers and Maintains a per diem case mix adjusted rate for personal care services delivered in residential care settings.

Submitted 6/25/13
Informal RAI received 9/9/13
Responses to informal RAI 10/21/13
Formal RAI received 10/23/13

Hospital Services Outpatient 13-017 – The Department will be requesting approval to reduce the outpatient Ambulatory Payment Classification (APC) rate for Acute Care Non-Critical Hospitals and Rehabilitation Hospitals from 93% to 83.7% of the adjusted Medicare APC rate for outpatient services; if multiple procedures are performed, the Department will pay 83.7% -- rather than 93% -- of Medicare's single bundled APC rate; calculations for outlier payments will follow Medicare rules and also be paid at 83.7% -- rather than 93% -- of the Medicare payment.

Submitted 9/27/13
Informal question received 11/18/16
Responses to informal RAI submitted 11/26/13

Behavioral Health 13-019 --Maine's Legislature directed the Department to reduce restore rates by 5% for LCPC and LMFT. This change in rates requires a State Plan Amendment to be approved by the Centers for Medicare and Medicaid Services (CMS); the Department will request approval of a State Plan Amendment retroactive to July 1, 2013.

Submitted 9/27/13
Informal RAI received on 11/26/13

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Hospital Services Inpatient 13-020- The Department will be requesting approval to increase the reimbursement rate per psychiatric discharge for members under 18 years of age from hospitals in the Lewiston-Auburn area to \$9,128.31.

Submitted 9/27/13

RAI not yet received

Smoking Cessation Counseling for Pregnant Women 13-032 - to comply with Section 4107 of the Patient Protection and Affordable Care Act (Affordable Care Act), P.L. 111-148, which amended Title XIX (Medicaid) of the Social ;ld for pregnant women, including both counseling and pharmacotherapy, without cost sharing,

Submitted 10/21/13

Informal RAI received 11/12/13

Responses to informal RAI submitted 11/26/13

In Draft

Dental Services

The Department will submit a SPA adding two provider-types to the Other Licensed Providers section of our State Plan:

1. Independent Practice Dental Hygienists (to comply with 22 M.R.S. 3174-RR)
2. Denturists

The State Plan Amendment will also detail the provider qualifications and scope of practice. This SPA will be submitted no later than December 31, 2013.

Pharmacy Services - Opioids

The Department will submit a SPA requesting CMS's approval to modify the State Plan originally submitted on March 29, 2013.

These technical corrections are made pursuant to P.L. 2013, Chap. 368, P&rt AAAAA (L.D. 1509, "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, 2013, June 30, 2014 and June 30, 2015").

The correction includes:

- Changing the term "alternative intervention treatments" to "therapeutic treatment options."
- Adding language explaining that the Department will reimburse for an initial fifteen (15) day prescription for the treatment of a new onset of acute pain.

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- Reducing the number of days that the Department will reimburse for opioid medications for the treatment of a new onset of acute pain from forty-five (45) days per year to forty-two (42) days per year.

The Department will also clarify that the limits established for acute pain following a surgical procedure are for the treatment of post-operative care. This SPA also revises language regarding second opinions, stating that second opinions are required for the Department to reimburse for opioid drugs for a diagnosis typically known to have a poor response to opioid drug treatment. The previous language stated that second opinions are required when opioids are prescribed to a MaineCare member who has been typically known to have a poor response to opioid drugs.

Other changes to the Pharmacy Services section of the State Plan include adding language allowing exceptions to be established through the MaineCare Preferred Drugs List (PDL), and including members residing in a nursing facility. This SPA will be submitted no later than December 31, 2013.

Supplemental Pool

The Department will submit a SPA requesting approval to increase the MaineCare hospital supplemental pool to \$65.321 million, because the Legislature appropriated an additional \$10.472 million. This SPA will be submitted no later than December 31, 2013.

Vaccines Administration

The Department will submit a SPA to reflect that the State of Maine became a Universal Purchaser State for the vaccine program under the Pediatric Immunization Program. This SPA will be submitted no later than December 31, 2013.

Hospital Readmissions and Hospital Acquired Conditions

The Department will submit a SPA requesting approval for the following:

1. Extend the time after discharge that a hospital can bill for the same Diagnosis Related Group (DRG) that a member was admitted under from 72 hours to 14 days.
2. Add 49 Hospital Acquired Conditions to the list of conditions that hospitals will not receive additional payment when the condition was not present on admission.

Please see the attached document for the 49 Hospital Acquired Conditions. The Department hopes to submit this State Plan in December of 2013, but may submit it in January 2014.

New assessment tool for Eligibility Criteria for Children with Behavioral Health Disorders

Targeted Care Management Services – The Department will submit a SPA requesting approval to add Child and Adolescent Needs and Strengths (CANS) as an assessment tool under the Targeted Care Management Services of the State Plan. CANS is an open domain assessment tool that addresses the mental health of children, adolescents, and their families, as well as the needs of Developmental Disabilities/Intellectual Disability. The Child and Adolescent Assessment Tool (CAFAS) is currently the approved assessment tool for

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eligibility for children with Behavioral Health Disorders. The provider will now have a choice of using the CANS or CAFAS to meet this requirement. The Department may also add this language to the Behavioral Health Services pages of the State Plan pending a conversation with CMS. The Department hopes to submit this SPA in December of 2013, but may submit it in January 2014.

Hospitals and Nursing Reimbursement for Qualified Medicare Beneficiary without other Medicaid (QMB only)

The Department will submit a SPA requesting approval to limit cost sharing payments, for the Qualified Medicare Beneficiary without other Medicaid (QMB Only) population, to hospital and nursing facility providers to the amount necessary to provide a total payment equal to the amount MaineCare would pay for these services under the State plan pursuant to P.L. 2013, c. 368, Part A-34. The Department will request an effective date of January 1, 2014.

Waivers

Waiver Amendments

Section 21, Home and Community-Based Benefits for Adults with Intellectual Disabilities or Autistic Disorder (CMS control # 0159) -

The state of Maine would like to amend the waiver to clarify Shared Living and Family Centered Support as separate services from Home Support (Residential Habilitation). The state would like to add a new service called Home Support-Remote Support as part of Residential Habilitation. The state would like to separate Work Support (supported employment) into two services, individual and group. The state would also like to add two new services, Career Planning and Assistive Technology. For Communication Aids, Assistive Technology Professional and Audiologists will be added as qualified providers. For Occupational Therapy Maintenance, Occupational Therapy Assistants will be added as qualified providers.

The state would like to put limits on Consultation Services. The state would like to add a reserved capacity category for children transitioning to adult services. The state would also like to put a point in time limit in the waiver application. Appendix I-7 is also being revised to reflect that the participant has a cost of care. Appendix A.3 use of contracted entities, the state would like to add the use of contracted entities to this section. Lastly, a performance measure in Appendix D that was deleted during the last amendment has been added back in and the national core indicators used. Performance measures and Provider Qualifications have had terminology changes to update the current language.

Staff: Ginger Roberts-Scott

Status: Submitted to CMS 11/1/2013

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Section 32, Waiver Services for Children with Intellectual Disabilities or Pervasive Developmental Disorders (CMS control # 0864) - This amendment will update the start date of the waiver.

Staff: Ginger Roberts-Scott

Status: in draft

Section 29, Support Services for Adults with Intellectual Disabilities or Autistic Disorder (CMS control # 0467) -

The state of Maine would like to amend this waiver to add six services. The state would like to add Residential Habilitation known in Maine as Home Support- 1/4 hour and Remote Support. This service will be limited to \$23,771.00. When combined with Community Support or Work Support, the combined total of the services cannot exceed \$23,771.00. The state would also like to add Assistive Technology (Assessment, Monthly Transmission and Equipment) and Career Planning.

The state would like to separate Work Support (Supported Employment) into two services, Individual and Group Work Support.

The state would also like to put a point in time limit in the waiver application. Appendix I-7 is also being revised to reflect that the participant has a cost of care.

Appendix A.3 use of contracted entities, the state would like to add the use of contracted entities to this section.

Performance measures and Provider Qualifications have had terminology changes to update the current language.

The state would also like to add 30 funded openings as well.

Staff: Ginger Roberts-Scott

Status: Submitted to CMS 11/1/2013

Section 19, Home and Community-Based Benefits for the Elderly and for Adults with Disabilities (CMS control #0276) - This amendment will merge Sections 19 and 22 together.

Staff: Ginger Roberts-Scott

Status: in draft-Spring 2014

Section 18 Home and Community Based Services for Members with Brain Injury.

New Brain Injury Waiver-1915 (c)

Staff: Ginger Roberts-Scott

Status: in draft July 2014

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*PLEASE NOTE THAT ALL RULES ARE PROMULGATED IN COMPLIANCE WITH EXECUTIVE ORDER OF AUGUST 24, 2011 “AN ORDER TO IMPROVE REVIEW OF THE RULEMAKING PROCESS,” detailed at:
http://www.maine.gov/tools/whatsnew/index.php?topic=Gov_Executive_Orders&id=182022&v=article2011.

Please note: Public Hearings are no longer being held at 442 Civic Center Drive, Augusta. Please check the published rulemaking documents to find the location where the public hearing will be held for each individual rule.