**State of Maine: Notice of Agency Rulemaking – August 19, 2020**

**PROPOSALS**

AGENCY: **17-229 - Maine Department of Transportation (MDOT) - Office of the Commissioner**

CHAPTER NUMBER AND TITLE: **Ch. 205**, Rules for Administering the Maine Traveler Information Services Act

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P154**

**BRIEF SUMMARY**: This amendment is to clarify several definitions and to make adjustments to the rule based on a recent U.S. Supreme Court case Reed v. Gilbert.

**DETAILED SUMMARY**: A recent U.S. Supreme Court case, Reed v. Gilbert, provides that any restrictions on free speech in the public right of way are unconstitutional. Therefore, the Department can regulate signs in the right of way in terms of time, place, and manner but not content. In light of this case, these sign rules required modification to eliminate any content-based regulations. In this revision definitions have been modified and references to content-based signs such as political signs have been removed and replaced with the term “temporary signs”.

**PUBLIC HEARING**: N/A

COMMENT DEADLINE: September 18, 2020

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FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES: N/A

STATUTORY AUTHORITY FOR THIS RULE: 23 MRS §1925, as amended by PL 2013 ch. 529; 23 MRS §52

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

MDOT RULEMAKING WEBSITE: <https://www.maine.gov/mdot/rulemaking/> .

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AGENCY: **10-148** - Department of Health and Human Services (DHHS), **Office of Child and Family Services (OCFS)**

CHAPTER NUMBER AND TITLE: **Ch. 202**, Child Protective Central Case Record Research Fee

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2020-P155**

BRIEF SUMMARY: These rules set forth the fee charged by the Department to conduct child protective background checks. These checks report whether the person is known as a substantiated abuser of children. The Office of Child and Family Services is adopting an electronic portal (InforME) to handle requests for child protective background checks. There is a $2.00 per check fee associated with use of this portal and the Department is seeking to reduce the fee charged to providers for these checks to ensure implementation of the electronic portal is cost-neutral for providers.

PUBLIC HEARING: No hearing will be held.

COMMENT DEADLINE: September 18, 2020

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STATUTORY AUTHORITY FOR THIS RULE: 22 MRS §4008(6)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*:

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**ADOPTIONS**

AGENCY: **10-144** - Department of Health and Human Services (DHHS), **Office of MaineCare Services )OMS) – Division of Policy**

CHAPTER NUMBER AND TITLE: **Ch. 101**, MaineCare Benefits Manual (MBM): **Ch. II & III Section 65**, Behavioral Health Services

ADOPTED RULE NUMBER: **2020-178**

CONCISE SUMMARY: The Department of Health and Human Services (“the Department”) adopted this rule to finalize the following changes to 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II and III section 65, “Behavioral Health Services”.

In ch. II, the Department proposes to remove the twenty-four (24) month lifetime limit for reimbursement for Medication Assisted Treatment (“MAT”) with Methadone for opioid addiction to align with changes in state law which took effect on March 14, 2019 under PL 2019 ch. 4, *An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2019*, and which were previously announced via the Department’s list serv to interested parties on March 22, 2019. The Act repealed 22 MRS §§ 3174-SS and 3174-VV which had set limitations on these services. By removing the lifetime limit, members may access MAT with Methadone for as long as medically necessary, with no lifetime cap on services. The Department’s removal of the 24-month cap has already been approved by the Centers for Medicare and Medicaid Services (CMS).

Additionally, in ch. III the Department adopts this rule to finalize the increased rate of reimbursement for MAT with Methadone retroactive to July 1, 2019. Pursuant to PL 2019 ch. 343,*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, 2019, June 30, 2020 and June 30, 2021* (effective June 17, 2019), the Legislature increased funding for the weekly reimbursement rate for MAT services for the FY2020 and FY2021 state budgets. The Department emergency adopted the rate increase on May 21, 2020 after finding the adoption of the MAT rate increase was necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054.

The Department is seeking and anticipates approval from CMS for the MAT rate increase. The Department published a Notice of MaineCare Reimbursement Methodology Change on June 28, 2019 notifying providers of this increase and is awaiting approval of a state plan amendment. Pending that approval, the Department will reimburse MAT services at the increased rate retroactive to July 1, 2019.

Additionally, the Department finalized adoption of increases of the rates of reimbursement in ch. III for Functional Family Therapy (FFT), Multisystemic Therapy (MST), Multisystemic Therapy for Problem Sexualized Behaviors (MST-PSB) by 20% effective January 1, 2020 in accordance with Resolves 2019 ch. 110, *Resolve, To Increase Funding for Evidence-based Therapies for Treating Emotional and Behavioral Problems in Children* (effective January 12, 2020)*.* In approving this legislation (which became law without the Governor’s signature), the Legislature determined that an immediate effective date was necessary given the rates had “not been adjusted in more than 8 years” and the rates were “insufficient to enable some providers to continue to provide services.”

The Department is seeking and anticipates CMS approval for the 20% rate increases for FFT, MST, and MST-PSB services. The Department published a Notice of MaineCare Reimbursement Methodology Change on June 28, 2019 of the intended 20% rate increases with the expectation that the Legislature would approve the increases effective July 1, 2019. The Department believes this notice is sufficient despite the legislation not taking effect until January 12, 2020. The Department will reimburse FFT, MST, and MST-PSB services at increased rates retroactive to January 1, 2020.

Additionally, following the completion of the rate study directed by Resolves 2019 ch. 110 and completed by Burns and Associates, the Department adopted new increased rates for MST, MST-PSB, and FFT. The additional funding has been approved for the FY2021 state budget pursuant to PL 2019 ch. 616, *An Act Making Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2020 and June 30, 2021* (effective March 18, 2020). Through the rate study process and in line with the Legislature’s directive in the Resolve, the Department has made the determination to switch reimbursement from quarter hour billing to a weekly case rate to reflect the requirements for the evidence-based models. In ch. II, the Department has ended Collateral Contacts for MST, MST-PSB, and FFT as these services have been incorporated into the new weekly case rate, and the Department has also adopted minimum contact standards for providers accessing this new weekly case rate. Following public comment, the Department reviewed and updated the minimum contact requirements to add flexibility and consistency to the evidence based model for the final rule.

In ch. III, the Department has finalized adoption of deleting the prior quarter hour codes and adding in the new weekly codes and rates. In response to financial challenges and civil emergency created by the COVID-19 pandemic, the Department has advanced the increased rates from the anticipated July 1, 2020 start date approved in the FY2021 budget retroactively to May 1, 2020, in order to provide financial relief, to support stability in the workforce, and to increase access to members in need. The Department further found that the immediate adoption of the MST, MST-PSB, and FFT rate increases was necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054, and adopted an emergency rule May 21, 2020.

The Department published a Notice of MaineCare Reimbursement Methodology Change on April 30, 2020 of the intended rate increases and filed a State Plan Amendment with CMS on June 30, 2020. The Department will reimburse MST, MST-PSB, and FFT at increased weekly rates retroactive to May 1, 2020.

The rate study described above also developed a rate for an evidence-based modality of outpatient therapy, Trauma Focused Cognitive Behavioral Therapy (TF-CBT). The Department has adopted a service description and provider requirements in ch. II and rate in ch. III for this evidence-based practice. Following public comment, the Department added psychiatrists to the list of qualified professionals delivering TF-CBT. The Department will be seeking and anticipates CMS approval for these new services that are intended to benefit providers and members alike.

In addition, this rulemaking adopts coverage in ch. II and reimbursement in ch. III for three evidence-based parenting programs for children with disruptive behavior disorders: Positive Parenting Program (Triple P), the Incredible Years (IY), and Parent-Child Interaction Therapy (PCIT). Following public comment, the Department added language for fidelity monitoring, updated the eligibility criteria for consistency with the evidence-based models and to add the “other specified” and “unspecified” disorders to aid in qualifying young children where it may otherwise be inappropriate to render a full diagnosis. The Department has also updated the rate methodology to assure the rate assumptions use current wage data for the appropriate education level determined by the model. This update in methodology resulted in an increase to the final rates for all three services. The Department will be seeking and anticipates CMS approval for these new services that are intended to benefit providers and members alike.

With this rule, the Department adopted coding changes to comport with coding updates per the National Correct Coding Initiative for certain Neuropsychological testing services effective January 1, 2019. The reimbursement table for these codes in ch. III have been adjusted to reflect billing as of January 1, 2019. The changes were made in the system and the public notified via list serve of the coding changes on January 31, 2019, and now the Department wishes to update policy for consistency. Coverage language in ch. II has been updated to reflect the intent of the new codes.

Additionally, the Department adopted changes to the educational requirements for Behavioral Health Professionals in accordance with Resolves 2019 ch. 99, *Resolve, To Change the Educational Requirements of Certain Behavioral Health Professionals* (effective Sept. 19, 2019), creating three educational levels: high school diploma or equivalent with a minimum of 3 years direct experience working with children in a behavioral health with a specific plan for supervision and training; a minimum of 60 higher education credit hours in a related field of social services, human services, health or education; and a minimum of 90 higher education credit hours in an unrelated field with a specific plan for supervision and training. The Department has received CMS approval for these changes.

The Department finalized adoption of increased rates for certain services in accordance with PL 2019 ch. 616. In response to the COVID emergency and hardships created during this period of civil emergency, the Department made the decision to advance these rate increases to be effective retroactively to April 1, 2020. The rate changes include an increase for physicians delivering medication management, and an increase for Behavioral Health Professionals providing Home and Community-based Treatment (HCT) services. In order for physicians to access the increased rate of reimbursement, they will be required to use the AF modifier on their claims. The Department found that the immediate adoption of the medication management and HCT rate increases was necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054, and adopted this change through an emergency rule on May, 21, 2020.

The Department published a Notice of MaineCare Reimbursement Methodology Change on March 31, 2020 of the intended rate increases and filed a State Plan Amendment with CMS on June 30, 2020. The Department will reimburse Behavioral Health Professionals delivering HCT and physicians delivering Medication Management at increased rates retroactive to April 1, 2020.

The Department also adopted new coverage for Adaptive Assessments, namely the Vineland, ABAS, Bayley, and Battelle rating scales, adding coverage language within Chapter II and coding within ch. III of this section. The Department has been allowing coverage for these assessments via the Comprehensive Assessment (code H2000) and wishes to clarify coverage, coding, and rate per assessment.

In addition to the above changes, the Department adopted changes in ch. II to:

* Added protections for Adults with Serious and Persistent Mental Illness regarding providers terminating services and accepting referrals for this population as defined in the rule;
* Modified HCT language regarding team requirements to allow for flexibility when clinically appropriate;
* Added background check requirements for staff having direct interaction with members within the provision of services;
* Updated the Comprehensive Assessment and Individualized Treatment Plan (ITP) sections to clearly note what services do not require these documents, and to include in the ITP section a schedule of development and review of the new services;
* Updated Appendix I and II to reflect the changes proposed in this rulemaking; and
* Updated formatting, citations, and references where necessary, including changing “Office of Substance Abuse and Mental Health Services” to “Office of Behavioral Health” throughout the rule.

For ch. III, the Department adopted a modifier to Medication Management for Treatment with Suboxone to more clearly show coverage of that medication, which will aid in the Department’s licensing efforts for these programs.

Considering public comment, in addition to the changes to the final rule described above, the Department made the following changes to the final rule:

* The Department has added “Providers shall participate with the Department in fidelity monitoring according to the Department determined process” to 65.06-17.
* The Department updated the contact standard for MST and MST-PSB as follows:

**MST**

“Providers must meet a minimum of two (2) contacts per week, met by one (1) face-to-face or interactive telehealth contact, and either a second face-to-face or interactive telehealth contact or clinically substantive telephonic contact.”

**MST-PSB**

“Providers must meet a minimum of three (3) contacts per week, met by one (1) face-to-face or interactive telehealth contact per week with MST clinician (master’s or bachelor-level) and additional contacts met by a combination of face-to-face or interactive telehealth, or clinically substantive telephonic contact. Contacts may include individual therapy sessions for identified child, family therapy sessions, scheduled team meetings, or home or community-based skill-building sessions.”

* The Department struck “home or community skill building sessions” from the contact minimums stated in 65.08-9.
* The Department amended 65.08-9 to reflect “clinical intervention” vs “session” and has amended the description of qualifying contacts in this section.
* The Department added “FFT therapists” to the list of “Other qualified Staff” in 65.09-1.
* The Department updated the minimum contact standards in 65.08-9 to reflect minimum contacts delivered on an average of required weekly contacts per month.
* The Department amended the minimum contact language for MST and MST-PSB to update language from “sessions” to “contacts” and “scheduled team meetings” to “clinically necessary team or stakeholder meetings.”
* The Department updated 65.02-22, the definition of Functional Family Therapy, as recommended by the commenter.
* The Department updated 65.03-2 and 65.03-4 to clarify agencies are licensed by the Division of Licensing and Certification and to add that notification of changes in the level of licensure must go to DHHS, including the Office of MaineCare Services, the Office of Child and Family Services, and/or the Office of Behavioral Health.
* The Department updated 65.09-7 to remove inconsistencies and to reflect the current requirements of 22 MRS §§ 9051-9065 (the *Maine Background Check Center Act*), and the “Maine Background Check Center” rule, 10-144 CMR ch. 60.
* The Department updated 65.02-40 to reflect the “current version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).
* The Department updated 65.06-7 to remove the formal training in the ethical administration, scoring, and interpretation of clinical assessments requirements of this section, focusing more on licensed clinicians acting within their scope of practice.
* The Department updated 65.06-9.A to update the list of assessment tools currently approved by the Department for determining eligibility for Home and Community Based Treatment.
* The Department updated Chapter III and the description of H2021 HN, HN U1, and G9007 HN to reflect Behavioral Health Professional, and not a specific education level.
* The Department added “and current” employees to the Background Check requirements in 65.09-7.
* The Department added “with the member’s consent” as suggested for 65.09-A.1.

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

EFFECTIVE DATE: August 19, 2020

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AGENCY: **10-144** - Department of Health and Human Services (DHHS), Office for Family Independence (OFI), **Division of Support Enforcement and Recovery (DSER)**

CHAPTER NUMBER AND TITLE: **Ch. 351**; Maine Child Support Enforcement Manual: **Ch. 4**, Fees (page 23)

ADOPTED RULE NUMBER: **2020-179**

CONCISE SUMMARY: In order to conform with state and federal law, this adoption increases the service fee for child support services from $25 to $35 annually for those individuals receiving at least $550 in support collected for the federal fiscal year. The annual service fee is for cases in which there has never been assistance under a state program. The service fee is. to be retained from child support collected and deemed to be paid by the custodial parent. The amended rule will implement the adjusted service fee enacted by the 129th Maine Legislature (19-A MRS §2103 sub-§3-A (PL 2019 c. 400 §1) and approved by the Governor on June 19, 2019. The. amended rule also implements Section 53117 of Public Law 115-123, *Modernizing child support enforcement fees*, which amended Section 454(6)(b)(ii) of the *Social Security Act* to increase the annual collection fee from $25.00 to $35.00. The federal provision mandated compliance with the new fee requirements and had an effective date of October 1, 2018. The amended rule number, Rule 4(3), will remain unchanged.

See <http://www.Maine.gov/dhhs/ofi/rules/index.shtml> for rules and related rulemaking documents.

EFFECTIVE DATE: August 18, 2020

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