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*Department of the Secretary of State*  
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**Joint Standing Committee on State and Local Government**

**LD 315 “Resolve, To Require State Departments To Report on Rule Changes within State Government since the Beginning of the COVID-19 Pandemic”**

*Written Testimony Provided by Melissa K. Packard,  
Director of Elections and Administrative Procedure Act  
February 22, 2021*

**Senator Baldacci, Representative Matlack and Members of the Committee:**

The Secretary of State is neither for nor against this legislation but would like to provide the Committee with information regarding a report on rule-making by state agencies that the Secretary of State is already statutorily required to produce each year.

Pursuant to the Maine Revised Statutes, Title 5, section 8053-A, sub-§5, by February 1<sup>st</sup> of each year, the Secretary of State shall provide the Executive Director of the Legislative Council with lists, by agency, of all rules adopted by each agency in the previous calendar year.

The list must include, for each rule adopted, the following information:

- A) The statutory authority for the rule and the rule chapter number and title;
- B) The principal reason or purpose for the rule;
- C) A written statement explaining the factual and policy basis for each rule;
- D) Whether the rule was routine technical or major substantive;
- E) If the rule was adopted as an emergency; and
- F) The fiscal impact of the rule.

The report is presented in multiple files:

- 1) An Excel spreadsheet, sorted by agency, that includes for each rule -- the agency name and umbrella unit and the rule chapter number, title, statutory authority, effective date, the rule type (i.e., routine technical or major substantive) and whether the rule is an emergency rule. The internal log number used by the APA office is also included so that this Bureau can easily find the complete filing if requested; and
- 2) A Word document for each agency that includes the above information for each rule, as well as the principal reason or purpose for adopting the rule, the basis statement and the fiscal impact of the rule. This information was extracted from the documentation that is required to be filed with our office for each adoption.

The spreadsheet for the Department of Health and Human Services as well as an excerpt of the Word document for that agency is attached to this testimony. The complete report for calendar year 2020 is posted on the Legislature's web site here:

<http://legislature.maine.gov/execdir/2020-rulemaking-report/9854>

Please contact me if I can provide additional information regarding this report or general rulemaking procedures. I also would be happy to answer any questions of the Committee at the work session.

Annual List of Rule-making Activity  
Rules Adopted 1/1/2020 to 12/31/2020  
Prepared by the Secretary of State

Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Eff. Date
2020-055	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. I Section 4</b> , Telehealth Services	22 MRS §§ 42, 3173; 5 MRS §8054	Routine Technical	Yes	3/16/2020
2020-136	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. I Section 4</b> , Telehealth Services	22 MRS §§ 42, 3173; 5 MRS §8054; 24-A MRS §4136	Routine Technical	No	6/15/2020
2020-057	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. I Section 5</b> , COVID-19 Public Health Emergency Services	22 MRS §§ 42, 3173; 5 MRS §§ 8054, 8073	Routine Technical	No	3/20/2020
2020-116	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. I Section 5</b> , COVID-19 Public Health Emergency Services	22 MRS §§ 42, 3173; 5 MRS §§ 8054, 8073	Routine Technical	Yes	5/13/2020
2020-121	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. II &amp; III Section 65</b> , Behavioral Health Services	22 MRS §§ 42(8), 3173; 5 MRS §8054; PL 2019 ch. 343; Resolves 2019 ch. 110; PL 2019 ch. 616	Routine Technical	Yes	5/21/2020

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Eff. Date
2020-178	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. II &amp; III Section 65</b> , Behavioral Health Services	22 MRS §§ 42, 3173; 5 MRS §80543; PL 2019 ch. 4 <i>and</i> 343; Resolves 2019 ch. 99 <i>and</i> 110; PL 2019 ch. 616	Routine Technical	No	8/19/2020
2020-215	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. III Section 5</b> , Ambulance Services	22 MRS §§ 42, 3173; PL 2019 ch. 530 part B	Routine Technical	No	10/12/2020
2020-242	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. II Section 103</b> , Rural Health Clinic Services	22 MRS §§ 42, 3173; PL 2019 ch. 530	Routine Technical	No	12/8/2020
2020-233	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. III Section 45</b> , Principal of Reimbursement: Hospital Services	22 MRS §§ 42(1)&(8), 3173	Routine Technical	No	11/23/2020
2020-234	10-144	Department of Health and Human Services, Office of MaineCare Services, Division of Policy	Ch. 101	MaineCare Benefits Manual: <b>Ch. VII Section 5</b> , Estate Recovery	22 MRS §§ 42, 3173	Routine Technical	No	11/30/2020

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2020-118	10-144	Department of Health and Human Services	Ch. 104	Maine State Services Manual: Section 8 ( <i>New</i> ), Wholesale Prescription Drug Importation Program	PL 2019 ch. 472 (5 MRS ch. 167 and 22-A MRS §205)	Major Substantive	No	6/14/2020
2020-111	10-144	Department of Health and Human Services, Division of Licensing and Certification	Ch. 110	Regulation Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities	22 MRS §§ 1817, 1820	Routine Technical	Yes	4/28/2020
2020-169	10-144	Department of Health and Human Services, Division of Licensing and Certification	Ch. 110	Regulation Governing the Licensing and Functioning of Skilled Nursing Facilities and Nursing Facilities	22 MRS §§ 1817, 1820	Routine Technical	No	8/1/2020
2020-099	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 124	Emergency Medical Services Personnel Reporting Rule ( <i>New</i> )	22 MRS §§ 42, 1951, 3173	Major Substantive	Yes	4/22/2020
2020-165	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 201	Administration and Enforcement of Establishments Regulated by the Health Inspection Program	22 MRS §§ 2496, 2664, 1551-A; 32 MRS §§ 4251, 4252, 4325, 4326	Routine Technical	No	7/29/2020
2020-187	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 233	Rules Relating to Testing Private Water Systems for Hazardous Contaminants ( <i>Repeal</i> )	22 MRS §§ 565(3), 2602-A 2609, 2660-U, 2660-X	Routine Technical	No	8/26/2020

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2020-188	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 257	Schedule of Charges for Testing and Services Provided by the Maine Health and Environmental Testing Laboratory	22 MRS §§ 565(3), 2602-A 2609, 2660-U, 2660-X	Routine Technical	No	8/26/2020
2020-117	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 258	Rules for the Control of Notifiable Diseases and Conditions	5 MRS §§ 8054, 8073; 22 MRS §§ 802, 822	Routine Technical	Yes	5/12/2020
2020-051	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 287	Rules for Family Planning Funding ( <i>Repeal</i> )	22 MRS §1904	Routine Technical	No	3/16/2020
2020-088	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 292	Rules Relating to The Lead Poisoning Control Act	22 MRS §§ 1320,1320-A, 1323; 5 MRS §8054	Routine Technical	Yes	4/1/2020
2020-168	10-144	Department of Health and Human Services, Maine Center for Disease Control and Prevention	Ch. 292	Rules Relating to The Lead Poisoning Control Act	22 MRS §§ 1320,1320-A, 1323	Routine Technical	No	7/29/2020
2020-137	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #211A (2019 Updates to the Lottery Rule): Sections 444-12, 666-6	22 MRS §42(1); 7 USC §2015(s)(1)-(3); 7 CFR §§ 273.11(r), 273.12, 273.17	Routine Technical	No	7/1/2020

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2020-198	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #213A: Section 777-3, Administrative Procedures Claims and Collections	22 MRS §42(1), 7 CFR §273.18	Routine Technical	No	9/1/2020
2020-213	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #215E: Section 999-3 (Charts), FFY 2021 Budgeting Figures	22 MRS §§ 42(1), 3104; 5 MRS §8054; 7 CFR §273.9(d)	Routine Technical	Yes	10/1/2020
2020-244	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #214A: Section 999-2, FFY 2021 ABAWD	22 MRS §42(1) and (8); PL 116-127 §2301; 7 CFR §273.24	Routine Technical	No	12/17/2020
2020-250	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 301	Food Supplement Program, FS Rule #215A: Section 999-3, FFY 2021 Budgeting Figures	22 MRS §42(1) and (8); 3107; 7 CFR §273.9(d)	Routine Technical	No	12/30/2020
2020-145	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 323	Maine General Assistance Manual, General Assistance Rule #23A (Changes Pursuant to LD 459): Sections II, IV, VI	22 MRS §42(1); 22 MRS §4301 sub-§5A; 22 MRS §4308 sub-§2	Routine Technical	No	7/1/2020

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2020-017	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual (TANF), Rule #115E (TANF Relationship Changes)	22 MRS §§ 42(1), 3762(3)(A), 3763(6), 3769-A; 5 MRS §8054	Routine Technical	Yes	1/30/2020
2020-022	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual (TANF), Rule #114E (Changes to Budgeting)	PL 2019 ch. 485; PL 2019 ch. 484; 22 MRS §§ 42(1) and (8), 3762(3)(A), 3763(6), 3769-A; 5 MRS §8054; 45 CFR §§ 400.301	Routine Technical	Yes	2/4/2020
2020-053	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual (TANF), Rule #C19E (Changes to In-person Requirements)	22 MRS §§ 42(1), 3762(3)(A), 3763(6), 3769-A; 5 MRS §8054	Routine Technical	Yes	3/13/2020



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2020-098	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 331	Maine Public Assistance Manual (TANF), Rule #114A (Changes to Household and Budgeting)	5 MRS §8054; 22 MRS §§ 42(1), 3762(3)(A), 3763(6), 3769-A; 45 CFR §400.301	Routine Technical	No	4/29/2020
2020-119	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	Ch. 332, MaineCare Eligibility Manual, <b>MC Rule #298E</b> : Part 9, Limited Benefit Groups	22 MRS §42(1),(8); PL 116-127; 5 MRS §854	Routine Technical	Yes	3/18/2020
2020-122	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual, <b>MC Rule #292A</b> : Part 10, Medically Needy Coverage	22 MRS §42(1)	Routine Technical	No	7/1/2020
2020-138	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual, <b>MC Rule #296A</b> (Transitional MaineCare 2019 Changes): Parts 2, 3	22 MRS §42(1)	Routine Technical	No	1/1/2020
2020-174	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 332	MaineCare Eligibility Manual, <b>MC Rule #293A</b> (MSP and DEL Income Limit Changes): Part 8, Medicare Savings Program (Buy-In)	22 MRS §§ 42(1), 42(8), 254-D(4)(D), 254-D(7), 258(7); PL 2019 ch. 343	Routine Technical	No	2/1/2020 <i>(Retroactive)</i>

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Log #	Umbrella / unit	Agency name	Chapter number	Rule title	Statutory authority	Type of rule	Emergency	Eff. Date
2020-175	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 333	Low Cost Drugs for the Elderly and Disabled (DEL), <b>MC Rule #293A</b> (MSP and DEL Income Limit Changes)	22 MRS §§ 42(1), 42(8), 254-D(4)(D), 254-D(7), 258(7); PL 2019 ch. 343	Routine Technical	No	7/1/2019 <i>(Retroactive)</i>
2020-179	10-144	Department of Health and Human Services, Office for Family Independence, Division of Support Enforcement and Recovery	Ch. 351	Maine Child Support Enforcement Manual: ch. 4, Fees (Annual Service Fee for Obligees)	22 MRS §42(1); 19-A MRS §2103(3-A); <i>Social Security Act</i> , Section 454(6)(B)(ii)	Routine Technical	No	8/18/2020
2020-146	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 607	ASPIRE-TANF Program Rules: ASPIRE Rule #27A (Good Cause), Section 4	22 MRS §§ 42(1), 3785-A; 45 CFR 261.62, 400.301; Resolves 2019 ch. 67	Routine Technical	No	7/20/2020
2020-199	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 607	ASPIRE-TANF Program Rules: ASPIRE Rule #26A (Support Services Changes), Sections 1, 11, 14	22 MRS §§ 42(1), 3762(3)(A), 3769-A	Routine Technical	No	9/1/2020
2020-200	10-144	Department of Health and Human Services, Office for Family Independence	Ch. 609	Food Supplement – Employment and Training (FSET) Program Rules (FSET Rule #FSET4A) <i>(Repeal and replace)</i>	22 MRS §42(1); 7 CFR §273.7	Routine Technical	No	10/1/2020

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2020-173	10-146	Department of Health and Human Services, Maine Center for Disease Control and Prevention, Office of Data, Research, and Vital Statistics	Ch. 15	Death with Dignity Act Reporting Rule <i>(New)</i>	22 MRS §2140	Major Substantive	No	8/30/2020
2020-154	10-146	Department of Health and Human Services, Maine Center for Disease Control and Prevention, Office of Data, Research, and Vital Statistics	Ch. 16	Gender Marker on Birth Record Rule <i>(New)</i>	22 MRS §2705	Routine Technical	No	7/13/2020
2020-092	10-148	Department of Health and Human Services, Office of Child and Family Services	Ch. 21	Rules for the Provision of Payments for Residential Programs Serving Children	22 MRS §§ 42(8), 3174-Z, 4062; 5 MRS §8073	Major Substantive	Yes	4/10/2020
2020-210	10-148	Department of Health and Human Services, Office of Child and Family Services	Ch. 34	Child Care Provider Background Check Licensing Rule <i>(New)</i>	22 MRS §§ 42(1), 8302-A(1)(J),(2)(K); 5 MRS §8073; 42 USC §9858f(b)	Major Substantive	Yes	9/25/2020
2020-251	10-148	Department of Health and Human Services, Office of Child and Family Services	Ch. 202	Child Protective Central Case Record Research Fee	22 MRS §4008(6)(D)	Routine Technical	No	12/23/2020

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*Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5*

**Agency name:** Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42, 3173; 5 MRS §8054  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 4**, Telehealth Services  
**Filing number:** **2020-055**  
**Effective date:** 3/16/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

This emergency rulemaking will remove the *MaineCare Benefits Manual* (MBM), ch. I §4, “Telehealth Services”, blanket prohibition against providers utilizing telehealth to deliver services under the MBM, ch. II §80, “Pharmacy Services”. Pursuant to 5 MRS §8054, the Department has determined that immediate adoption of this rule is necessary to avoid a potentially severe and immediate threat to public health, safety or general welfare. The Department’s findings of emergency are set forth in detail in the Emergency Basis Statement. Maine is facing a substantial public health threat posed by the global spread of the 2019 Novel Coronavirus (COVID-19). On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic. As a preemptive action by the Department, Pharmacy Services will be available via telehealth when medically necessary and appropriate.

This emergency rule change will take effect upon adoption and will be in effect for 90 days (5 MRS §8054). The Department is concurrently engaging in the routine technical rulemaking process for Section 4 to prevent a lapse in the rule and added services.

**Basis statement:**

Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people. Late in 2019, a new such virus appeared, initially on the Chinese mainland, but rapidly spreading elsewhere. This virus, typically referred to as “Novel Coronavirus,” but officially named “SARS-CoV-2,” has led to the development in humans of a new disease, “coronavirus disease 2019,” typically referred to as “COVID-19.” The precise magnitude of the risk presented by this virus in terms of its communicability and range of severity is not yet determined, but the risk is clearly substantial.

The United States Centers for Disease Control and Prevention (CDC) is still investigating how the virus spreads. The CDC reports that the COVID-19 virus is spread mainly by person-to-person contact between people who are within six feet of one another, through respiratory droplets produced when an infected person coughs or sneezes. The CDC has advised that all symptomatic community members remain home to prevent further spread of the virus. More generally, public health authorities are advising against unnecessary interactions between members of the public, especially those who might be members of vulnerable populations, such as older persons or those with certain preexisting medical conditions. On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic.

The Telehealth Services rule provides that a face to face encounter is not required prior to the provision of covered services via telehealth. This emergency rulemaking will remove the *MaineCare Benefits Manual* (MBM), ch. I §4, “Telehealth Services”, prohibition against providers utilizing telehealth to deliver services under the MBM, ch. II §80, “Pharmacy Services”. Pursuant to 5 MRS §8054, the Department finds that emergency rulemaking is

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necessary to implement these changes as soon as possible to aid in the reduction of the spread of the Novel Coronavirus, while continuing to provide MaineCare services to some of Maine's most vulnerable residents. This emergency rule permits the provision of all Pharmacy Services via Telehealth, as medically necessary and appropriate.

Modification of the usual rulemaking procedures under the *Maine Administrative Procedure Act* is necessary to ensure the public health, safety and welfare of Maine residents. Emergency rules are effective for ninety (90) days. The Department shall promptly follow this emergency rulemaking with proposed rulemaking.

This rule will not have an impact on municipalities or small businesses.

**Fiscal impact of rule:**

This rule is estimated to be cost neutral.

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**Agency name:** Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42, 3173; 5 MRS §8054; 24-A MRS §4136  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 4**, Telehealth Services  
**Filing number:** **2020-136**  
**Effective date:** 6/15/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
*(See Basis Statement)*

**Basis statement:**

This adopted rule implements increased access to all pharmacy services, and particularly substance use disorder (SUD) services, through the removal of the blanket prohibition against the provision of Pharmacy Services (Section 80) via telehealth. On March 16, 2020, the Department implemented these changes on an emergency basis due to the COVID-19 health threat, in an effort to limit face-to-face contact, expedite these services to members, and mitigate disease transmission. The Department now seeks to make these changes permanent, in part because they will ensure delivery of SUD services more quickly and broadly to members, in hopes of helping to stem the opioid crisis. Additionally, the changes will be generally preemptive against any future spread of communicable disease threat or outbreak by decreasing in-person contact for pharmacy services, as medically and situationally necessitated.

Additionally, this rule removed two prohibitions within the Telehealth rule, and adds five new definitions to the rule, including Consultative Physician, Established Patient, Requesting Physician, Specialist, and Treating Provider.

The adopted provisions expand Covered Services by adding Store-and-Forward, Virtual Check-Ins, Remote Consultations, and Telephone Evaluation & Management. Store and Forward and Remote Consultation services permit Health Care Providers to, for example, get reimbursed for communications regarding a member's treatment and diagnoses. This action aligns the MaineCare rule with recent changes to 24-A M.R.S. § 4316, requiring private insurers to more broadly cover services through telehealth. As part of Store-and-Forward modalities, the Department has also added two additional procedure codes associated with Remote Consultation Between a Treating Provider and Specialist. Both new added services permit the transmission of member health information between two or more providers and/or allow collaboration between a primary provider and specialist using a virtual platform. Additionally, the two new remote consultation codes allow for the reimbursement of the requesting and consulting physicians, a departure from reimbursement for the other interprofessional consultation codes extant in policy.

Virtual Check-Ins have been added to Covered Services to align MaineCare policy with recently expanded Medicare coverage of telehealth. The addition of Virtual Check-In is intended to allow providers to communicate with members about their health status in between office visits, and to determine medical necessity for future in-office visits. Telephone Evaluation & Management permits a provider to more broadly consult with a member via telephone.

Additionally, the Department is permanently adding codes to the reimbursement section that were opened initially through the COVID-19 Public Health Emergency Services

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rule (the “COVID Rule”), 10-144 C.M.R. Ch. 101, Ch. I, Sec. 5. The COVID Rule shall be effective temporarily, to assist members and providers in specific ways during the COVID crisis, and then the Department intends to repeal the COVID Rule. The COVID Rule makes various other changes to the Telehealth rule, including:

- (i) allows waiver of the requirement in 4.04-1(2) that the covered service delivered by Interactive Telehealth be of comparable quality to what it would be if delivered in person, subject to a new comparability review process and prior approval by the Department;
- (ii) for 4.04-3 (Telephonic Services) – waives requirement that Interactive Telehealth Services be unavailable before one may utilize Telephonic Services; and
- (iii) waives requirement in 4.06-2(B) that the provider do member education and obtain written consent from the member prior to provision of services via Telehealth.

The requirement in this adopted rule for the provision of member education and procurement of informed written consent before the provision of Virtual Check In, Store and Forward, Remote Consultation, and Telephone Evaluation & Management services conflicts with the COVID Rule. Where the COVID Rule and a separate MaineCare rule conflict, the COVID rule supersedes and shall apply. See COVID Rule, Sec. 5.01. Thus, per the COVID Rule, **no education/written informed consent is required for these new Covered Services while the COVID Rule is in effect.**

The Department is seeking and anticipates receiving approval from the Centers for Medicare and Medicaid Services for these changes.

As a result of review by the Office of the Attorney General, the Department finds that changes are necessary in the final rule. The Department is adding a covered service description and additional clarifying language associated with Telephonic Evaluation & Management. The Department also made two clerical corrections to billing codes so that they are consistent with the codes used in the COVID-19 Emergency Rule.

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will have minimal to no fiscal impact.

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**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42, 3173; 5 MRS §§ 8054, 8073  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 5**, COVID-19 Public Health Emergency Services (*New*)  
**Filing number:** **2020-057**  
**Effective date:** 3/20/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

To expedite and improve access to medical care for MaineCare members due to the 2019 Novel Coronavirus (COVID-19). On March 11, 2020, the World Health organization declared COVID-19 a worldwide pandemic. On March 15, 2020, Governor Janet T. Mills declared a state of civil emergency in Maine. Please see the Emergency Basis Statement for more detail regarding the bases for this emergency rulemaking.

**Basis statement:**

Coronaviruses are a large family of viruses that are common in people and many different species of animals, including camels, cattle, cats, and bats. Rarely, animal coronaviruses can infect people and then spread between people. Late in 2019, a new such virus appeared, initially on the Chinese mainland, but rapidly spreading elsewhere. This virus, typically referred to as “Novel Coronavirus,” but officially named “SARS-CoV-2,” has led to the development in humans of a new disease, “coronavirus disease 2019,” typically referred to as “COVID-19.” The precise magnitude of the risk presented by this virus in terms of its communicability and range of severity is not yet determined, but the risk is clearly substantial.

The United States Centers for Disease Control and Prevention (CDC) is still investigating how the virus spreads. The CDC reports that the COVID-19 virus is spread mainly by person-to-person contact between people who are within six feet of one another, through respiratory droplets produced when an infected person coughs or sneezes. The CDC has advised that all symptomatic community members remain home to prevent further spread of the virus. More generally, public health authorities are advising against unnecessary interactions between members of the public, especially those who might be members of vulnerable populations, such as older persons or those with certain preexisting medical conditions. On March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic.

This emergency rulemaking institutes measures, effective immediately, to expedite and improve access to medical care for MaineCare members in light of COVID-19. Pursuant to 5 MRS §§ 8054 and 8073, the Department finds that emergency rulemaking is necessary to implement these changes as soon as possible to aid in the reduction of the spread of the Novel Coronavirus, while continuing to provide MaineCare services to some of Maine’s most vulnerable residents.

This is a single new section of the *MaineCare Benefits Manual* that implements emergency changes for multiple types of MaineCare Services. The following sections of MaineCare policy are affected by this rulemaking: Ch. I Section 1 (“General Administrative Policies and Procedures”); Ch. I Section 4 (“Telehealth Services”); Ch. II and III Section 31 (“Federally Qualified Health Center Services”); Ch. II and III Section 40 (“Home Health Services”); Ch. II and III Section 45 (“Hospital Services”); Ch. II Section 55 (“Laboratory Services”); Ch. II Section 60 (“Medical Supplies and Durable Medical Equipment”); Ch. II and



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III Section 65 (“Behavioral Health Services”); Ch. II Section 80 (“Pharmacy Services”); Ch. II Section 90 (“Physician Services”); Ch. II and III Section 96 (“Private Duty Nursing and Personal Care Services”); Ch. II Section 101 (“Medical Imaging”); and Ch. II and III Section 103 (“Rural Health Clinic Services”).

This emergency rulemaking implements the following changes:

1. **Co Payments:** The Department is waiving some co-payments for MaineCare services for all MaineCare members. The co-payment waivers include pharmacy, clinical visits, medical imaging, laboratory services, behavioral health services, medical supplies and durable medical equipment, private duty nursing and home health services. Should COVID-19 specific treatments and/or vaccines become available during the duration of this rule, co-payments will be waived for those services as well.
2. **Pharmacy:** The Department is altering some of the MBM, Section 80, Pharmacy Services, requirements in order to expedite and improve access to prescriptions. Restrictions are lifted for asthma and immune-related prescriptions. Prior Authorizations for COVID-19 treatments and/or vaccines, should they come available, are waived. Early refills of prescriptions are allowed, and the physical assessment requirements for Buprenorphine and Buprenorphine Combination products for SUD are waived.
3. **Durable Medical Equipment:** Prior Authorization requirements for certain durable medical equipment are being extended and early refills allowed for individuals with COVID-19, in self quarantine who may have COVID-19, or in a high-risk category for developing complications from COVID-19.
4. **Home Health Services.** Home Health Services document submission requirements are being extended for Plans of Care submissions.
5. **Telehealth:** The Department is waiving the advance written notice/consent for telehealth services, waiving the comparability requirement for services with specific approval by the Department, and allowing the provision of telephone-only evaluation and management services for MaineCare members.

In the event of conflict between the COVID-19 Public Health Emergency Services rule and any other MaineCare rule, the terms of this rule supersede other rules and shall apply.

**The Department shall seek and anticipates receiving approval of those changes from the Centers for Medicare and Medicaid Services (CMS) retroactive to March 18, 2020.**

Except for the changes affecting MBM, Ch. II and III Section 40, “Home Health Services”, these emergency rule changes shall be effective for ninety (90) days, per 5 MRS §8054. MBM Ch. II and III Section 40, “Home Health Services”, are major substantive rules, thus, if CMS approves, the emergency rule changes affecting Section 40 shall be effective for up to one year pursuant to 5 MRS §8073.

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will cost approximately \$1,976,845.00 in SFY 2020, which includes \$607,035.00 in state dollars and \$1,369,810.00 in federal dollars, and \$7,907,380.00 in SFY 2021, which includes \$2,430,813.00 in state dollars and \$5,476,567.00 in federal dollars.

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**Agency name:** Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42, 3173; 5 MRS §§ 8054, 8073  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: **Ch. I Section 5**, COVID-19 Public Health Emergency Services  
**Filing number:** **2020-116**  
**Effective date:** 5/13/2020  
**Type of rule:** Routine Technical (except section 506, major substantive)  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

To expedite and improve access to medical care for MaineCare members due to the 2019 Novel Coronavirus (COVID-19). On March 11, 2020, the World Health organization declared COVID-19 a worldwide pandemic. On March 15, 2020, Governor Janet T. Mills declared a state of civil emergency in Maine.

**Basis statement:**

Pursuant to 5 MRS §§ 8054 and 8073, the Department finds that further emergency rulemaking is necessary to implement these additional changes to the COVID-19 rule as soon as possible to further aid in the reduction of the spread of the Novel Coronavirus, while continuing to provide MaineCare services to some of Maine's most vulnerable residents. The COVID-19 rule impacts the following sections of MaineCare policy: Chapter 1, Section 1 (General Administrative Policies and Procedures); Chapter I, Section 4 (Telehealth Services); Chapter II, Section 12 (Consumer-Directed Attendant Services); Chapter II, Section 17 (Community Support Services); Chapters II and III, Section 31 (Federally Qualified Health Center Services); Chapters II and III, Section 40 (Home Health Services); Chapters II and III, Section 45 (Hospital Services); Chapter II, Section 55 (Laboratory Services); Chapter II, Section 60 (Medical Supplies and Durable Medical Equipment); Chapter II, Section 67 (Nursing Facility Services); Chapters II and III, Section 94 (Early and Periodic Screening, Diagnosis and Treatment Services); Chapters II and III, Section 96 (Private Duty Nursing and Personal Care Services); Chapter III, Section 97 (Private Non-Medical Institution Services); Chapter X, Section 3 (Katie Beckett Benefit); and Chapter X, Section 1 (Benefit for People Living with HIV/AIDS).

In the event of conflict between the COVID-19 Rule and any other MaineCare rule, the terms of this rule supersede other rules and shall apply.

In particular, this emergency rulemaking implements the following changes:

1. **Co Payments:** The Department is waiving some co-payments for MaineCare services for all MaineCare members. This Second COVID-19 Rule adds co-payment waivers including: Section 96, private duty nursing and personal care services, Section 12, allowances for consumer directed attendant services, and Ch. X, Sec. 1, benefits for people living with HIV/AIDS.
2. **Waiver of Premiums:** The Department is waiving all enrollment fees, premiums, and similar charges for all beneficiaries.
3. **Durable Medical Equipment:** If CMS approves, the Department is authorizing Advanced Practice Providers to prescribe durable medical equipment and allowing audiologist orders to justify medical necessity of hearing aids when all other criteria are met. The Department may implement these changes permanently through separate rulemaking in the MBM, Chs. II and III, Section 60.
4. **Home Health Services.** The Department is authorizing Advanced Practice Providers as qualified providers to order and recertify plans of care. The Department may implement these changes permanently through separate rulemaking in the MBM, Chs. II and III, Section 40.

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5. **Telehealth:** The Department is allowing the provision of telephone-only evaluation and management services for MaineCare members. As noted specifically in the Second COVID-19 Rule, the Department is implementing some of these telehealth services permanently through separate rulemaking in the MBM, Ch. I, Section 4.
6. **Early and Periodic Screening, Diagnosis and Treatment:** If CMS approves, the Department is allowing for one additional health assessment visit per member within a year following an initial assessment via Telehealth under Bright Futures Health Assessment Visits.
7. **Hospital Services:** The Department is allocating a special supplemental pool in the amount of ten million dollars (\$10,000,000) for COVID-19 among the Acute Care Non-Critical Access hospitals and Critical Access hospitals. The special supplemental pool payments shall be allocated proportional to the 2016 MMIS base date distribution of MaineCare payment for inpatient and outpatient services, not to exceed the total supplemental pool amount and not to exceed allowable aggregate upper payment limits.
8. **Private Non-Medical Institution Services:** The Department is increasing reimbursement uniformly for Appendix B substance abuse treatment facilities by 23.9% effective 3/1/2020 to 5/31/2020. This increased reimbursement may not duplicate any other reimbursement received for COVID-19, and the Department may cease paying the rate increase to any provider it determines has received such funding after providing advance notice.
9. **Uninsured Individuals:** As authorized by the Disaster SPA and the Families First Coronavirus Response Act (FFCRA) H.R. 6201, 116 Cong. (2019-2020), P.L. No. 116-127, effective retroactive to March 18, 2020, individuals who meet the eligibility requirements set forth in the MaineCare Eligibility Manual, 10-144 C.M.R. Ch. 332 shall receive coverage for testing and diagnosis of COVID-19.
10. **Community Support Services:** Members who require annual verification for determination of eligibility shall retain eligibility through previously-rendered diagnoses and clinical judgment. Retroactive to April 15, 2020, for community integration services only, providers must verify that a member meets specific eligibility requirements within sixty days of the start date of services.
11. **Private Duty Nursing and Personal Care Services:** The period of time for an individual without the required training to enroll in a certified training program for Personal Support Specialists is extended from sixty days to one-hundred twenty days from date of hire. The period of time in which an individual must complete and pass the training requirements is extended from nine months to twelve months from date of hire.
12. **Nursing Facility Services:** The federal Preadmission Screening and Resident Review (PASRR) requirements for nursing facilities are being waived for thirty days. All new admissions can be treated like exempted hospital discharges. After thirty days, new admissions with mental illness or intellectual disability should receive a PASRR as soon as resources become available.

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will cost approximately \$12,478,433.00 in SFY 2020, which includes \$3,643,997.00 in state dollars and \$8,834,436.00 in federal dollars; and \$7,887,262.00 in SFY 2021, which includes \$2,226,915.00 in state dollars and \$5,660,915.00 in federal dollars. These sums include changes made in the first COVID emergency rule filed on March 20, 2020 combined with all additional changes contained within this rule.

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**Agency name:** Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42(8), 3173; 5 MRS §8054; PL 2019 ch. 343; Resolves 2019 ch. 110; PL 2019 ch. 616  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III §65**, Behavioral Health Services  
**Filing number:** **2020-121**  
**Effective date:** 5/21/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**  
*(See Basis Statement)*

**Basis statement:**

The Department of Health and Human Services (Department) adopts the following emergency rule changes in 10-144 CMR ch. 101, *MaineCare Benefits Manual*, ch. II and III section 65, “Behavioral Health Services”.

In ch. III, the Department is increasing the rate of reimbursement for Medication Assisted Treatment with Methadone (MAT) 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. In light of the state’s ongoing opioid crisis, the Department finds that the immediate adoption of the MAT rate increase is necessary to avoid an immediate threat to public health, safety, or general welfare under 5 MRS §8054. The emergency rate increase benefits both providers and members and will further support the delivery of these critical services to those in need.

The Department is seeking and anticipates approval from the Centers for Medicare and Medicaid Services (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, this rulemaking will increase 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 agrees with and incorporates these findings in support of this emergency rulemaking under 5 MRS §8054.

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. Pending CMS approval, the Department will reimburse FFT, MST, and MST-PSB services at increased rates retroactive to January 1, 2020.

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Additionally, following the completion of the rate study directed by Resolves 2019 ch. 110 and completed by Burns and Associates, the Department has developed 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. Concurrent with these rate changes in ch. III, 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. The Department has also adopted minimum contact standards for providers to provide guidance to providers accessing this new weekly case rate. In ch. III, the Department has deleted the prior quarter hour codes and added 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 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. Because of this, the Department has determined emergency rulemaking is necessary to support these providers and members receiving these services under 5 MRS §8054

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

Finally, PL 2019 ch. 616 also included funding for the Department to increase rates for certain services effective July 1, 2020. In response to the COVID-19 emergency and hardships created during this period of civil emergency, the Department has 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 has determined emergency rulemaking is necessary to support these providers and members receiving these services under 5 MRS §8054.

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

This emergency rulemaking will take effect upon filing with the Secretary of State and will remain in effect for ninety days. 5 MRS §§ 8052(6), 8054(3). To avoid a lapse, the Department is concurrently proposing non-emergency routine technical changes.

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will cost approximately \$4,237,264 in SFY 2020, which includes \$1,491,405 in state dollars and \$2,745,859 in federal dollars, and \$6,595,787 in SFY 2021, which includes \$2,183,171 in state dollars and \$4,412,616 in federal dollars.

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*Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5*

**Agency name:** Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42, 3173; 5 MRS §8054; PL 2019 ch. 4 *and* 343; Resolves 2019 ch. 99 *and* 110; PL 2019 ch. 616  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: **Ch. II & III §65**, Behavioral Health Services  
**Filing number:** **2020-178**  
**Effective date:** 8/19/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
*(See Basis Statement)*

**Basis statement:**

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 sec. 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

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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

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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 increase 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 ch. 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;



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- 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.

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*Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5*

- 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 ch. 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.

**Fiscal impact of rule:**

The Department anticipates that this rulemaking will cost approximately \$4,237,264 in SFY 2020, which includes \$1,491,405 in state dollars and \$2,745,859 in federal dollars, and \$7,685,519 in SFY 2021, which includes \$2,689,369 in state dollars and \$4,999,150 in federal dollars.

**Annual List of Rulemaking Activity**  
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**Agency name:** Department of Health and Human Services, **Office of MaineCare Services - Division of Policy**  
**Umbrella-Unit:** **10-144**  
**Statutory authority:** 22 MRS §§ 42, 3173; PL 2019 ch. 530 part B  
**Chapter number/title:** **Ch. 101**, MaineCare Benefits Manual: **Ch. III Section 5**, Ambulance Services  
**Filing number:** **2020-215**  
**Effective date:** 10/12/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**  
*(See Basis Statement.)*

**Basis statement:**

The Department adopts changes to ch. III section 5, “Ambulance Services”, to comply with PL 2019 ch. 530 part B, *An Act to Prevent and Reduce Tobacco Use with Adequate Funding and by Equalizing the Taxes on Tobacco Products and To Improve Public Health*, by increasing the MaineCare reimbursement rate for ambulance services to a level that is not less than the average allowable reimbursement rate under Medicare for such services and to reimburse for neonatal transport services under MaineCare at the average rate for critical care transport services under Medicare, effective retroactive to January 1, 2020.

The Department used HCPCs code A0433 (ALS 2) to develop the rate for A0225 (neonate) through the proposed rulemaking. Based on comments received and additional analysis, the Department determined that it is more appropriate to utilize HCPCs code A0434 (specialty care transport) to develop the rate for A0225 (neonate). Section 5.07(E) was edited to reflect this change.

The Department shall submit to CMS and anticipates approval for a State Plan Amendment related to these provisions.

**Fiscal impact of rule:**

The Department anticipates this rulemaking will cost the Department approximately \$7,664,916 in SFY 2019, which includes \$2,770,101 in state dollars and \$4,894,815 in federal dollars. The Department anticipates this rulemaking will cost the Department \$9,197,899 in SFY 2020, which includes \$3,329,640 in state dollars and \$5,868,259 in federal dollars.