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**DATE:** January 9, 2024

**TO:** Interested Parties

**FROM:** Michelle Probert, Director, MaineCare Services

Handwritten signature of Michelle Probert in black ink.

**SUBJECT:** Provisionally Adopted Major Substantive Rule: 10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

This letter gives notice of provisional adoption of rule: 10-144 C.M.R., Chapter 101, MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

The Department is provisionally adopting the following changes to this major substantive rule:

The Department has added new services, effective March 1, 2024, which will be reimbursed pursuant to this rule:

- Home Support - Quarter Hour (Self-Directed)
- Shared Living – Two Members served
- Shared Living - One Member, Increased level of support
- Shared Living - Two Members, Increased level of support
- Home Accessibility Adaptations (Self-Directed)
- Home Accessibility Adaptations Repairs (Self-Directed)
- Assistive Technology – Devices (Self-Directed)
- Assistive Technology – Transmission (Self-Directed)
- Community Support - Community Only – Individual (Self-Directed)
- Community Support - Community Only - Individual (Provider-Managed)
- Community Support - Community Only – Group
- Financial Management Services (Self-Directed)
- Supports Brokerage (Self-Directed)
- Individual Goods and Services (Self-Directed)

Provision of these services was originally implemented through the Appendix K: Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by the Centers for Medicare and Medicaid Services (CMS) but was not added to MBM Chapter II, Section 29 at that time. The Department is concurrently going through APA rulemaking for Chapter II, Section 29 to permanently add these services to that rule. The Department also is seeking and anticipates approval from CMS for the added services and for the increased reimbursement rates, in proposed amendments to the Section 29 § 1915(c) home and community-based services waiver. The Chapter II, Section 29 rule is a routine technical rule and is being adopted separately. MBM Chapter II, Section 29 has a prospective legal application date of March 1, 2024, for the new services.

This provisionally adopted Chapter III, Section 29 rule contains what will be a retroactive effective date of March 1, 2024, for reimbursement provisions for the new services listed above, and of January 1, 2024, for the annual cost of living increase provision in the rule; the effective date of other changes in Chapter III, Section 29 will be the effective date of the finally adopted rule following Legislative review and approval.

As a result, both the new services and provisions for their reimbursement will share the same legal effective date. Retroactive application, authorized by 22 M.R.S. § 42(8), benefits, and does not harm, MaineCare Members or providers.

Until the Department receives CMS approval of provisions for reimbursing the newly-added services, the Department will continue to implement these flexibilities under the Appendix K: Emergency Preparedness and Response authority in accordance with State Medicaid Director (SMD) Letter # 23-004.

In accordance with 22 M.R.S. §§ 7402 and 3173-J, the Department implements annual rate adjustments every January 1<sup>st</sup>. Specifically, Section 29 services that have standard unit rates and that did not receive a rate adjustment within the prior twelve months will receive an annual adjustment equal to the annual increase in the Maine minimum wage, in accordance with 26 M.R.S. § 664(1). This increase also ensures that rates are sufficient to allow reimbursement for services provided by essential support workers to equal to at least 125% of the minimum wage established in 26 M.R.S. § 664. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 M.R.S. § 7401. This annual rate adjustment is effective retroactive to January 1, 2024. This retroactive application is authorized by 22 M.R.S. § 42(8), as this benefits, and does not harm, any MaineCare member or provider.

The Department removed reimbursement rates from the rule in accordance with 22 M.R.S. § 3173-J. All Section 29 reimbursement rates are now solely listed on the MaineCare Provider Fee Schedule, which is posted on the Department's website.

Pursuant to 5 M.R.S. §§ 8071 and 8072, the Commissioner provisionally adopts this rule and will submit the rule to the Legislature for approval. This rule will have legal effect only after review by the Legislature followed by final adoption by the Commissioner.

As a result of public comments and further review by the Department and the Office of the Attorney General, there were additional minor changes to the adopted rule language for purposes of clarity. Importantly, the Department corrected the rate table by changing the "Unit of Service" for Shared Living Services from "1/4 hour" to "Per Diem", added the modifiers for "Community Only-Individual", "Community Only-Group" (UA and UB, respectively) service delivery methods, as well as for "Increased Level of Support" to the list of Modifiers and Modifier Descriptions on page (8) of the rule, and updated the rule to include statutory requirements for 22 M.R.S. §§ 3173-J and 7402.

Rules and related rulemaking documents may be reviewed at, or printed from, the MaineCare website at <http://www.maine.gov/dhhs/oms/rules/index.shtml> or for a fee, interested parties may request a paper copy of rules by calling (207) 624-4050 or Maine Relay number 711.

A concise summary of the proposed rule is provided in the Notice of Agency Rulemaking Proposal, which can be found at <http://www.maine.gov/sos/cec/rules/notices.html>. This notice also provides information regarding the rulemaking process. Please address all comments to the agency contact person identified in the Notice of Agency Rulemaking Proposal.

## Notice of Agency Major Substantive Rulemaking Provisional Adoption

**AGENCY:** Department of Health and Human Services, MaineCare Services

**CHAPTER NUMBER AND TITLE:** 10-144 C.M.R. Chapter 101, MaineCare Benefits Manual, Chapter III, Section 29, Allowances for Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder

**PROPOSED RULE NUMBER:** 2023-P173

### CONCISE SUMMARY:

The Department is provisionally adopting the following changes to this major substantive rule: The Department has added new services, effective March 1, 2024, which will be reimbursed pursuant to this rule:

- Home Support - Quarter Hour (Self-Directed)
- Shared Living – Two Members served
- Shared Living - One Member, Increased level of support
- Shared Living - Two Members, Increased level of support
- Home Accessibility Adaptations (Self-Directed)
- Home Accessibility Adaptations Repairs (Self-Directed)
- Assistive Technology – Devices (Self-Directed)
- Assistive Technology – Transmission (Self-Directed)
- Community Support - Community Only – Individual (Self-Directed)
- Community Support - Community Only - Individual (Provider-Managed)
- Community Support - Community Only – Group
- Financial Management Services (Self-Directed)
- Supports Brokerage (Self-Directed)
- Individual Goods and Services (Self-Directed)

Provision of these services was originally implemented through the Appendix K: Emergency Preparedness and Response authority in response to the COVID-19 Public Health Emergency, which was approved by the Centers for Medicare and Medicaid Services (CMS) but was not added to MBM Chapter II, Section 29 at that time. The Department is concurrently going through APA rulemaking for Chapter II, Section 29 to permanently add these services to that rule. The Department also is seeking and anticipates approval from CMS for the added services and for the increased reimbursement rates, in proposed amendments to the Section 29 § 1915(c) home and community-based services waiver. The Chapter II, Section 29 rule is a routine technical rule and is being adopted separately. MBM Chapter II, Section 29 has a prospective legal application date of March 1, 2024, for the new services.

This provisionally adopted Chapter III, Section 29 rule contains what will be a retroactive effective date of March 1, 2024, for reimbursement provisions for the new services listed above, and of January 1, 2024 for the annual cost of living increase provision in the rule; the effective date of other changes in Chapter III, Section 29 will be the effective date of the finally adopted rule following Legislative review and approval. As a result, both the new services and provisions for their reimbursement will share the same legal effective date. Retroactive application, authorized by 22 M.R.S. § 42(8), benefits, and does not harm, MaineCare Members or providers.

Until the Department receives CMS approval of provisions for reimbursing the newly-added services, the Department will continue to implement these flexibilities under the Appendix K: Emergency Preparedness and Response authority in accordance with State Medicaid Director (SMD) Letter # 23-004.

In accordance with 22 M.R.S. §§ 7402 and 3173-J, the Department implements annual rate adjustments every January 1<sup>st</sup>. Specifically, Section 29 services that have standard unit rates and that did not receive a rate adjustment within the prior twelve months will receive an annual adjustment equal to the annual increase in the Maine minimum wage, in accordance with 26 M.R.S. § 664(1). This increase also ensures that rates are sufficient to allow reimbursement for services provided by essential support workers to equal to at least 125% of the minimum wage established in 26 M.R.S. § 664. Essential support workers are individuals who by virtue of employment generally provide to individuals direct contact assistance with activities of daily living or instrumental activities of daily living or have direct access to provide care and services to clients, patients or residents regardless of the setting. 22 M.R.S. § 7401. This annual rate adjustment is effective retroactive to January 1, 2024. This retroactive application is authorized by 22 M.R.S. § 42(8), as this benefits, and does not harm, any MaineCare member or provider.

The Department removed reimbursement rates from the rule in accordance with 22 M.R.S. § 3173-J. All Section 29 reimbursement rates are now solely listed on the MaineCare Provider Fee Schedule, which is posted on the Department's website.

Pursuant to 5 M.R.S. §§ 8071 and 8072, the Commissioner provisionally adopts this rule and will submit the rule to the Legislature for approval. This rule will have legal effect only after review by the Legislature followed by final adoption by the Commissioner.

As a result of public comments and further review by the Department and the Office of the Attorney General, there were additional minor changes to the adopted rule language for purposes of clarity. Importantly, the Department corrected the rate table by changing the "Unit of Service" for Shared Living Services from "1/4 hour" to "Per Diem", added the modifiers for "Community Only-Individual", "Community Only-Group" (UA and UB, respectively) service delivery methods, as well as for "Increased Level of Support" to the list of Modifiers and Modifier Descriptions on page (8) of the rule, and updated the rule to include statutory requirements for 22 M.R.S. §§ 3173-J and 7402.

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

**PROVISIONAL ADOPTION DATE:** January 11, 2024

**AGENCY CONTACT PERSON:** Heather Bingelis, Comprehensive Health Planner  
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SECTION 29	ALLOWANCES FOR SUPPORT SERVICES FOR ADULTS WITH INTELLECTUAL DISABILITIES OR AUTISM SPECTRUM DISORDER PROVISIONALLY ADOPTED MAJOR SUBSTANTIVE RULE	Established: 1/1/08 Provisional Adoption: 1/11/2024
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**GENERAL PROVISIONS**

**1000 PURPOSE**

The purpose of these regulations is to describe the reimbursement methodology for Home and Community Based Services waiver providers whose services are reimbursed in accordance with Chapters II and III, Section 29, “Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder” of the *MaineCare Benefits Manual*. All services reimbursed in this section are considered fee for service.

**1100 DEFINITIONS**

**Fee-for-service** - is a method of paying providers for covered services rendered to Members. Under this fee-for-service system, the provider is paid for each discrete service described in Appendix I to a Member.

**Per Diem** - A day is defined as beginning at midnight and ending twenty-four (24) hours later.

**Week** – A week is equal to seven consecutive days starting with the same day of the week as the provider’s payroll records, usually Sunday through Saturday.

**Year** - Services are authorized based on the state fiscal year, July 1 through June 30.

**1200 AUTHORITY**

The authority of the Department to accept and administer any funds that may be available from private, local, State or Federal sources for services under this Chapter is established in 22 M.R.S.A. §3173. The authority of the Department to adopt rules to implement this Chapter is established under 22 M.R.S. §§ 42(1) and 3173.

**1300 COVERED SERVICES** –Covered Services are defined in Chapter II, Section 29 of the *MaineCare Benefits Manual*.

**1400 REIMBURSEMENT METHODS**

Services covered under this section will be reimbursed on a fee-for-service basis using the following methods:

1. **Standard Unit rate** – A Standard unit rate is the rate paid per unit of time (an hour, a specified portion of an hour, or a day) for a specific service. Services in the standard rate include:
  - A. Assistive Technology-Assessment;

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**1400 REIMBURSEMENT METHODS (cont.)**

- B. Assistive Technology-Transmission (Utility Services) (Agency and Self-Directed);\*
- C. Career Planning;
- D. Community Support Services (Agency and Self-Directed)\*;
- E. Employment Specialist Services;
- F. Home Support-Quarter Hour (Agency and Self-Directed)\*;
- G. Home Support-Remote Support-Interactive Support;
- H. Home Support-Remote Support-Monitor Only;
- I. Respite, ¼ hour and per diem;
- J. Shared Living;
- K. Work Support-Individual;
- L. Work Support-Group;
- M. Financial Management Services, per month\*;
- N. Supports Brokerage, ¼ hour\*.

Specific reimbursement rates are listed on the MaineCare Provider Fee Schedule, which is posted on the Department’s website in accordance with 22 MRSA Section 3173-J(7), at <https://mainecare.maine.gov/Provider%20Fee%20Schedules/Forms/Publication.aspx>

2. **Prior Approved Price** – DHHS will determine the amount of reimbursement for Home Accessibility Adaptations or Assistive Technology- Devices (Agency or Self-Directed) after reviewing a minimum of two written itemized bids from different vendors submitted by the provider, prior to providing services. The written itemized bids must contain cost of labor and materials, including subcontractor amounts. DHHS will issue an authorization for the approved amount based on the written bids to the provider.
3. **Respite** - Reimbursement for Respite is a quarter hour billing code. After 33-quarter hour units of consecutive Respite Services, the provider must bill using the per diem billing code. The quarter hour Respite amount billed any single day cannot exceed the Respite per diem rate.
4. **Annual Adjustments to Services that have a Standard Unit rate.**
  - a. Effective January 1, 2024, and every January 1<sup>st</sup> thereafter, pursuant to 22 M.R.S. § 3173-J, Section 29 services that have standard unit rates, as identified in 1400(1), and that did not receive a rate adjustment within the prior twelve months, will receive an annual adjustment equal to the annual increase in the Maine minimum wage, in accordance with 26 M.R.S. § 664(1).
  - b. Effective January 1, 2024, pursuant to 22 M.R.S. § 7402, the Department must ensure that the annual COLA increases to Section 29 rates, cited in (a) above, are sufficient to allow reimbursement for services provided by essential support workers to be equal to at least 125% of the minimum wage established in 26 M.R.S. § 664(1).

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**1400 REIMBURSEMENT METHODS (cont.)**

5. **Individual Goods and Services\*** – Member must receive approval from the Fiscal Intermediary delivering Financial Management Services (FMS) prior to getting reimbursement for invoices.

\*Rates for these services will be effective on March 1, 2024.

**1500 REQUIREMENTS FOR PARTICIPATION IN MAINECARE PROGRAM**

Providers must comply with all requirements as outlined in Chapter 1, “General Administrative Policies and Procedures” and Chapter II, Section 29 of the *MaineCare Benefits Manual*.

**1600 RESPONSIBILITIES OF THE PROVIDER**

Providers are responsible for maintaining adequate financial and statistical records and making them available when requested for inspection by an authorized representative of the DHHS, Maine Attorney General’s Office or the Federal government. Providers shall maintain accurate financial records for these services separate from other financial records.

**1700 RECORD KEEPING AND RETENTION OF FINANCIAL RECORDS**

Upon request, providers have ten (10) business days to produce fiscal records to DHHS. Complete documentation shall mean clear written evidence of all transactions of the provider and affiliated entities, including but not limited to daily census data, invoices, payroll records, copies of governmental filings, staff schedules, timecards, Member service charge schedule and amounts reimbursement by service, or any other record which is necessary to provide DHHS with the highest degree of confidence in the reliability of the costs of providing services. For purposes of this definition, affiliated entities shall extend to management and other entities for which any reimbursement is claimed, whether or not they fall within the definition of related parties.

The provider shall maintain all such records for at least five (5) years from the date of reimbursement.

**1800 BILLING PROCEDURES**

Providers will submit claims to MaineCare and be reimbursed at the applicable rate for the service in accordance with MaineCare billing instructions for the CMS 1500 claim form.



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**1800 BILLING PROCEDURES (cont.)**

**1810 Work Support-Group Rate**

\*When billing for Work Support Services-Group the per person rate is based on the number of Members receiving services with different per person rates for group sizes of 2, 3, 4, 5, or 6 Members.

\*The Department is seeking approval from the federal Centers for Medicare and Medicaid Services (“CMS”) for these changes.

**1900 AUDIT OF SERVICES PROVIDED**

The Department shall monitor provider’s claims for reimbursement by randomly reviewing the claim for services and verifying hours actually provided by collecting documentation from providers. Documentation will be requested from providers that corresponds to dates of service on claims submitted for reimbursement as follows:

- A. Payroll Records – Documentation showing the number of hours paid to an employee that covers the period of time for which the Direct Care hours are being requested.
- B. Staffing Schedules per facility – Documentation showing the hours and the name of the direct care staff scheduled to work at the facility.
- C. Member Records - Documentation that supports the delivery of services that a Member received.

**2000 RECOVERY OF PAYMENTS**

The Department may recover any amounts due the Department based on Chapter I of the *MaineCare Benefits Manual*.

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 AUTISM SPECTRUM DISORDER  
 PROVISIONALLY ADOPTED MAJOR  
 SUBSTANTIVE RULE

Established: 1/1/08  
 Provisional Adoption: 1/11/24

**Appendix I**

<b>PROCEDURE CODE</b>	<b>SERVICE**</b>	<b>Unit of Service</b>
T2017	Home Support - Quarter Hour	Per ¼ hour
T2017 QC	Home Support - Remote Support - Monitor Only	Per ¼ hour
T2017 GT	Home Support - Remote Support - Interactive Support	Per ¼ hour
T2017 U6	Home Support - Quarter Hour (Self-Directed)*	Per ¼ hour
S5140	Shared Living - One Member	Per Diem
S5140 TG	Shared Living - One Member, Increased Level of Support*	Per Diem
S5140 UN	Shared Living - Two Members	Per Diem
S5140 UN TG	Shared Living - Two Members, Increased Level of Support*	Per Diem
T2021	Community Support (Day Habilitation) (Center-Based)	Per ¼ hour
T2021 SC	Community Support (Day Habilitation) (Center-Based) - with Medical Add On	Per ¼ hour
T2021 UA	Community Support - Community Only-Individual *	Per ¼ hour
T2021 UB	Community Support - Community Only-Group*	Per ¼ hour
T2021 U6	Community Support - Community Only-Individual (Self-Directed)*	Per ¼ hour
T2019	Employment Specialist Services (Habilitation, Supported Employment waiver)	Per ¼ hour
T2019 SC	Employment Specialist Services (Habilitation, Supported Employment waiver)-with Medical Add On	Per ¼ hour
H2023	Work Support (Supported Employment) - Individual	Per ¼ hour
H2023 SC	Work Support (Supported Employment) - Individual with Medical Add On	Per ¼ hour
H2023 UN	Work Support (Supported Employment) - Group (2 Members)	Per ¼ hour
H2023 UP	Work Support (supported employment) - Group (3 Members)	Per ¼ hour

\*The Department is seeking CMS approval for these changes. \*Rates for these services will be effective on March 1, 2024.

\*\* Specific reimbursement rates are listed on the [MaineCare Provider Fee Schedule](#), which is posted on the Department's website in accordance with 22 MRSA §3173-J(7).

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 SUBSTANTIVE RULE

Established: 1/1/08  
 Provisional Adoption: 1/11/24

**Appendix I**

<b>PROCEDURE CODE</b>	<b>SERVICE**</b>	<b>Units of Service</b>
H2023 UQ	Work Support (supported employment) - Group (4 Members)	Per ¼ hour
H2023 UR	Work Support (supported employment) - Group (5 Members)	Per ¼ hour
H2023 US	Work Support (supported employment) - Group (6 Members)	Per ¼ hour
T2015	Career Planning (Habilitation, prevocational)	Per Hour
S5165	Home Accessibility Adaptations	Per Invoice
S5165 CG	Home Accessibility Adaptations Repairs*	Per Invoice
S5165 U6	Home Accessibility Adaptations (Self-Directed)*	Per Invoice
S5165 CG U6	Home Accessibility Adaptations Repairs (Self-Directed)*	Per Invoice
97755	Assistive Technology - Assessment	Per ¼ hour
T2035	Assistive Technology - Transmission (Utility Services)	Per Month
T2035 U6	Assistive Technology - Transmission (Utility Services-Self-Directed)*	Per Month
A9279	Assistive Technology - (Monitoring feature/device, stand alone or integrated, any type, includes all accessories, components and electronics, not otherwise classified)*	Per Invoice
A9279 U6	Assistive Technology - (Monitoring feature/device, stand alone or integrated, any type, includes all accessories, components and electronics, not otherwise classified) ) (Self-Directed)*	Per Invoice
S5150	Respite Service - Quarter Hour	Per ¼ hour
S5151	Respite Services - Per Diem	Per Diem
T2040 U6	Financial Management Services*	Per ¼ hour
T2041 U6	Supports Brokerage*	Per ¼ hour
T2028 U6	Individual Goods and Services*	Per Invoice

\*The Department is seeking CMS approval for these changes. \*Rates for these services will be effective on March 1, 2024.

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SUBSTANTIVE RULE

Established: 1/1/08  
Provisional Adoption: 1/11/24

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**Appendix I**

<b><u>Modifiers</u></b>	<b><u>Modifier Description</u></b>
CG	Policy Criteria Applied
SC	Medical Add On
HQ	Group Setting
QC	Remote Support-Monitor Only
GT	Remote Support-Interactive Support
UN	Two (2) Members
UP	Three (3) Members
UQ	Four (4) Members
UR	Five (5) Members
US	Six (6) Members
U6	Self-Directed Services*
UA	Community Only-Individual
UB	Community Only-Group
TG	Increased Level of Support

\*The Department is seeking CMS approval for these changes. \*Rates for these services will be effective on March 1, 2024.

\*\* Specific reimbursement rates are listed on the [MaineCare Provider Fee Schedule](#), which is posted on the Department's website in accordance with 22 MRSA §3173-J(7).