

**Summary of Public Comments and Department Responses and  
List of Changes to the Final Rule**

**10-144 C.M.R. Ch. 101, MaineCare Benefits Manual, Ch. II, Section 29,  
Support Services for Adults with Intellectual Disabilities or Autism Spectrum Disorder**

As part of the rulemaking process, the Maine Department of Health and Human Services (the “Department”) must solicit public comment. On August 23, 2023, the Department posted the proposed rule on the Office of MaineCare Services website, sent a provider notice, and published notice in the five (5) newspapers with the highest circulation. The Department hosted a hybrid in-person and virtual Public Hearing on September 11, 2023. Comments on the proposed changes were accepted until 11:59 pm on September 21, 2022. This document summarizes the comments that were received during this time, and the Department’s responses.

**Commenters:**

1. **Angela Burgess**, Medical Records Specialist, Gallant Therapy Services Augusta, ME.
2. **Ashley Clement**, Patient Services Representative, Gallant Therapy Services, Augusta, ME.
3. **Alexandra Desrochers**, Speech-Language Pathologist, Canaan, ME.
4. **Alexa Doucette**, Patient Service Representative, Gallant Therapy Services Augusta, ME.
5. **Audrey Finlay**
6. **Ashley Jenkins**, Occupational Therapist, Gallant Therapy Services, Augusta, ME.
7. **Acadia Jerome**, Certified Occupational Therapy Assistant, Gallant Therapy Services Augusta, ME.
8. **Ariana Lindquist**, Lead Case Manager, Group Main Stream, Westbrook, ME.
9. **Alyssa MacDonald**, Occupational Therapist, Gallant Therapy Services, Augusta, ME.
10. **Abigail Kristina Roberts**, Gallant Therapy Services, Augusta, ME.
11. **Abby**, Certified Occupational Therapy Assistant, Gallant Therapy Services, Augusta, ME.
12. **Allison** (Anonymous submission)
13. **Angela**, Certified Occupational Therapy Assistant, Gallant Therapy Services, Augusta, ME.
14. **Brianna Grumstrup**, Assistant Professor of Special Education, University of ME., Farmington
15. **Bridget McCabe**, Director of Community Services and Training, Group Main Stream, Westbrook, ME.
16. **Breanna L. Torres**, Case Manager, Group Main Stream, Westbrook, ME.
17. **Cynthia J. Asherman**, Occupational Therapist Registered/Licensed, Maine Occupational Therapy Association
18. **Courtney Harnum**, Director of Case Management, Alliance Case Management, Portland, ME.
19. **CarolAnn Jenkins**, Occupational Therapist Registered/Licensed, Gallant Therapy Services, Augusta,

ME.

20. **Christa J Silva**, Community Case Manager, Group Main Stream, Westbrook, ME.
21. **Chelsea Withee**, Occupational Therapy Assistant, Gallant Therapy Services, Augusta, ME.
22. **Debra Bare-Rogers**, Disability Rights Maine, Augusta, ME.
23. **Diane Norris**, Speech and Language Pathologist, Gallant Therapies, Augusta, ME.
24. **Darren Smart**, Program Manager, Spurwink ALLTECH, Portland, ME.
25. **Dennison**, Hermon, ME.
26. **Elizabeth**, Occupational Therapist, Gallant Therapy Services, Augusta, ME.
27. **Glenda Wilson**, Community Case Manager, Group Main Stream, Westbrook, ME.
28. **Hannah DeBlois**, Occupational Therapy Student
29. **Heidi Lamson**, Case Manager, Granite Bay Care, Portland, ME.
30. **Hayley Norberto**, Certified Occupational Therapy Licensed, Gallant Therapy Services, Augusta, ME.
31. **Isabelle Smith**, Occupational Therapist Registered/Licensed, Gallant Therapy Services, Augusta, ME.
32. **John Krasnavage**, Occupational Therapy Assistant Faculty, Kennebec Valley Community College, Fairfield, ME.
33. **Julia MacKenzie** (Anonymous submission)
34. **Jessica Richard**, Occupational Therapy Student, University of Southern Maine
35. **Josiah Garcia**, Patient Service Representative, Gallant Therapy Services, Augusta, ME.
36. **Kelsey Cuskelly** (Anonymous submission)
37. **Kelly DeRoche**, Case Manager, LEAP, Farmington, ME.
38. **Katelyn Fulton**, Speech Language Pathologist, Team Leader, Gallant Therapy Services, Augusta, ME.
39. **Kristy Moody**, Occupational Therapist, Gallant Therapy Services, Augusta, ME.
40. **Karen Noe**, Certified Occupational Therapist Assistant, Gallant Therapy Services, Augusta, ME.
41. **Kayla Paradis**, Gallant Therapy Services, Augusta, ME.
42. **Krisann Pino**, Occupational Therapy Assistant, Gallant Therapy Services, Augusta, ME.
43. **MaryBeth Briggs**, Quality Assurance, Gallant Therapy Services, Augusta, ME.
44. **Maddie Kelley**, Therapy Director, Gallant Therapy Services, Augusta, ME.

45. **Madison Longfellow**, Occupational Therapist Registered/Licensed, Gallant Therapy Services, Augusta, ME.
46. **Mary Miller**, Certified Occupational Therapist Assistant, Gallant Therapy Services, Augusta, ME.
47. **Maureen Perry**, University of Southern Maine, Lewiston-Auburn College
48. **Melissa Plourde**, Jay, ME.
49. **Nicole** (Anonymous Submission)
50. **Olivia Rancourt**, Speech Language Pathologist, Gallant Therapy Services, Augusta, ME.
51. **Ryan Gallant**, Gallant Therapy Services, Augusta, ME.
52. **Rick Heffernan** (Anonymous Submission)
53. **Rachael Wilson**, Direct Support Professional, Gallant Therapy Services, Augusta, ME.
54. **Sarah Ingraham**, Certified Occupational Therapist Assistant, Gallant Therapy Services, Augusta, ME.
55. **Scott Murray**, Dresden, ME.
56. **Tammy Doyle**, Parent, East Baldwin, ME.
57. **Wanda Roy**, PSR, Gallant Therapy Services, Augusta, ME.
58. **Derek Fales**, Licensed Social Worker, Office of Aging and Disability Services, Augusta, ME.
59. **Staci Converse**, Managing Attorney, Disability Rights Maine, Augusta, ME.
60. **L. Kenniston**, Work First, Inc., Farmington, ME.
61. **Melinda Ward**, President and CEO, OHI, Bangor, ME.
62. **Laura Cordes**, Executive Director, Maine Association for Community Service Providers, Hallowell, ME.
63. **Catherine Thibedeau**, Executive Director of Independence Advocates of Maine, Orono, ME.

1. Commenters #1 through #57 request that the Department allow providers to conduct Assistive Technology Assessments via telehealth to ensure continued access to services, assessments, equipment and technology.

Response: The Department thanks the Commenter for this comment. The Department agrees that AT Assessment may be provided via telehealth in certain circumstances. As a result of these comments the Department is adding the following provision to the rule:

**29.05-2, Assistive Technology Assessments (A)(1):**

Evaluation of the assistive technology needs of a Member may be delivered via telehealth when the provider ensures that the assessment via telehealth meets the requirements of the scope of the

service.

2. Commenter #51 requests the Department include Occupational Therapy Maintenance in Section 29, as well as Occupational Therapy Consultation services with rates that are corresponding to the rate system that was recently updated in Section 68.

Response: The Department thanks the Commenter for this comment. Expanding the array of services offered under Section 29 represents a substantial change and outside the scope of this rulemaking. The Department will take this into consideration for future rulemakings. No changes were made to the rule as a result of this comment.

3. Commenter # 58 asks who the responsible party is for the reimbursement of criminal background checks under the Self-Directed Services model.

Response: The Department thanks the Commenter for this comment. Reimbursement for criminal background checks is an administrative component of the service, performed by the Fiscal Intermediary providing Financial Management Services under § 29.05-6(C), and outside the Member's budget. No changes were made to the rule as a result of this comment.

4. Commenter #58 asks whether the guardian of a Section 29 Member can be an employee of that Section 29 Member under Self-Direction.

Response: The Department thanks the Commenter for this comment. The Member can employ their Guardian as a Direct Support Worker so long as the guardian is not also acting as the Representative for the Member. No changes were made to the rule as a result of this comment.

5. Commenter #58 asks whether a Member has the right appeal a precluded item on the list under Goods and Services and request that item.

Response: The Department thanks the Commenter for this comment. Members have a broad right of appeal, set forth in § 29.11 and in Chapter I, Section 1 of the MaineCare Benefits Manual, 10-144 C.M.R. ch. 101. Members may appeal (A) when their claim for services is denied or not acted upon with reasonable promptness, and (B) when they believe the agency has erroneously terminated, reduced, or suspended MaineCare medical eligibility or covered services. MBM Ch. I, Sec. 1, § 1.24-1. Prohibited Individual Goods and Services are not "covered services," and their denial does not give rise to a right to appeal. No changes were made to the rule as a result of this comment.

6. Commenter #59 recommends the Department clarify the last sentence in 29.02-12(E) of the proposed rule, suggesting that the provision requires the DSP comply with DHHS's Regulations Governing Behavioral Support, Modification, and Management for People with Intellectual Disabilities or Autism in Maine "regardless of whether the person has a plan or not". stating that it is confusing .

Response: The Department thanks the Commenter for this comment. Because the provision reiterates provisions in *DHHS's Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine* and is redundant with provisions in 29.10 of the rule, the Department has removed the following sentence from 29.02-12 (E), **Services that Support Personal Well-being** as a result of this comment.

*"In the absence of a plan, intervention must be consistent with DHHS's Regulations Governing Behavioral Support, Modification and Management*

*for People with Intellectual Disabilities or Autism in Maine (14-197 C.M.R. ch. 5)."*

7. Commenter #59 recommends the Department reintroduce the reference to "[n]othing in this rule is intended to prohibit community inclusion..." to the service description of **29.05-8 Home Support-Quarter Hour**.

Response: The Department thanks the Commenter for this comment. The Department elects not to reintroduce the reference to "nothing in this rule is intended to prohibit community inclusion," to the service description of 29.05-8 Home Support-Quarter Hour. The language is redundant with the Global HCBS Waiver Person-Centered Planning and Settings Rule, Ch. I. Sec. § 6.04(A). No changes were made to the rule as a result of this comment.

8. Commenter #59 recommends the Department expand the range of services the Member can self-direct and, specifically, add Work Support Services to the available options offered under Self-Direction stating, "Expanding self-directed services to include employment support would significantly enhance the lives of Section 29 recipients and promote their full inclusion and participation in the workforce."

Response: The Department thanks the Commenter for this comment. Expanding the array of Self-Direction Services represents a substantial change and is outside the scope of this rulemaking. The Department will take this into consideration for future rulemakings. No changes were made to the rule as a result of this comment.

9. Commenter #59 recommends increasing the annual cap of 200 units for Supports Brokerage Services stating that Members may require more extensive support from a broker, particularly during the initial transition to Self-Direction and the service "plays a pivotal role in the success of self-directed services." The Commenter also goes on to note that the service has not been thoroughly tested, and so there is a lack of clear understanding of the optimal amount required so to better accommodate an individuals need they strongly recommend a substantial increase in the cap.

Response: The Department thanks the Commenter for this comment. The Department agrees that Supports Brokerage is an essential service in support of Self-Direction. The Department believes the annual limit of 200 units of service for Supports Brokerage is adequate to meet the initial transition needs of Members. Additionally, the Department has established a *Request for Exceptions* process through this rulemaking so that Members may request services in excess of otherwise-applicable Section 29 monetary and/or unit caps, where necessary, to ensure that Section 29 Members receive adequate and appropriate services and supports in the most integrated setting appropriate to their needs. No changes were made to the rule as a result of this comment.

10. Commenter #59 recommends the Department exclude the cost of Financial Management (FMS) and Support Brokerage Services from the individual budget and from the annual Section 29 budget limit. The Commenter feels the rollout of these services through the self-direction pilot have been inconsistent and, in some cases, not helpful to service recipients. Further, the Commenter believes that by removing these services from the budget cap "we can undertake thorough evaluations and make necessary adjustments, ultimately delivering better outcomes for those who rely on these services."

Response: The Department thanks the Commenter for this comment. Excluding the cost for FMS and Support Broker Services from the individual cost budget represents a substantial change in the financial accountability of the waiver program for self-direction and is outside the scope of this rulemaking. The Department will take this into consideration for future rulemakings. No

changes were made to the rule as a result of this comment.

11. Commenter #59 recommends the Department incorporate performance measures for providers of FMS and support brokerage to ensure their accountability in delivering the mandated services indicating some recipients have experienced challenges with the sole provider of these services.

Response. The Department thanks the Commenter for this comment. All providers must comply with the standards of performance enumerated in the federal 1915(c) waiver, and well as the provisions set forth in this rule and Ch. I, Section 1, *General Administrative Policies and Procedures* of the MaineCare Benefits Manual. No changes were made to the rule as a result of this comment.

12. Commenter #59 states that Members have experienced confusion and frustration regarding the approval process for Individual Goods and Services and a lack of clear categorization for Goods, particularly when distinguishing between assistive technology (AT) and other Goods. The Commenter recommends the Department establish a process including a single application that would determine whether a requested item qualifies for reimbursement as durable medical equipment (DME), assistive technology (AT), or can be funded as a Good.

Response: The Department thanks the Commenter for this comment. The Department, in coordination with Applied Self-Direction (nationally recognized subject matter experts in self-direction), has designed an approval form detailing the qualifications and requirements that must be met prior to requesting any Goods and Services using cost savings from the person's budget. No changes were made to the rule as a result of this comment.

13. Commenter #59 supports the inclusion of the Plan of Corrective Action (POCA) process to address compliance with the Global Rule. The Commenter recommends enhancing protections for Members receiving HCBS services by providing any Notices of Deficiency because of non-compliance with the Global Rule, as well as any subsequent communication about the deficiency between the Department and provider, directly to the Member receiving services where the deficiency has been identified. Additionally, the Commenter feels provisions should clearly outline the penalties for providers who continue to remain non-compliant after being notified of deficiencies.

Response: The Department thanks the Commenter for this comment. The Department will take this comment into consideration for future rulemakings. No changes were made to the rule as a result of this rulemaking.

14. Commenter #59 appreciates the inclusion of the Exceptions Process indicating they appreciate the flexibility it will provide to individuals and the potential to prevent unnecessary institutionalization and tailor services to an individual's specific circumstances.

Response: The Department thanks the Commenter for this comment. No changes were made to the rule as a result of this rulemaking.

15. Commenter #59 indicated disappointed that the proposed rules do not introduce any new transportation options and stated that "a persistent lack of consistent, reliable transportation" significantly limits individuals' access to the community and their ability to secure employment. The Commenter recommends the Department amend the rules to incorporate more flexible transportation options that better cater to the diverse needs of Section 29 recipients.

Response: The Department thanks the Commenter for this comment. The Department will take this comment into consideration for future rulemakings. No changes were made to the rule as a result of this rulemaking.

16. Commenter #59 recommends the Department include consultative services, non-traditional communication services, and maintenance occupational, physical, and speech therapy services under Section 29 to provide greater access, promote better health outcomes, and lead to more equitable and cost-effective care for Members. The Commenter asserted that these services also are not available as State Plan services.

Response: The Department thanks the Commenter for this comment. The Department will take this comment into consideration for future rulemakings. No changes were made to the rule as a result of this rulemaking.

17. Commenter #59 recommends the Department ensure current settings are physically accessible to each individual, proactively work toward the creation of more universally accessible settings and guarantee that Members have choice among settings. The Commenter indicated that Home Accessibility Adaptations restricts support to settings owned by the individual or their family.

Response: The Department thanks the Commenter for this comment. The Department will take this comment into consideration for future rulemakings. No changes were made to the rule as a result of this rulemaking.

18. Commenter #59 recommends the Department prohibit the use of restraints altogether as it has in other waivers, but at a minimum should include a provision sunseting the use of restraints against Section 29 recipients.

Response: The Department thanks the Commenter for this comment. The Department will take this comment into consideration for future rulemakings. No changes were made to the rule as a result of this rulemaking.

19. Commenter #60 thanks the Department for retaining that “Community Support is intended to be flexible, responsive, and delivered according to the Member’s choice and needs as documented in the Member’s PCSP” within the service description. However, the Commenter states that this rule conflicts with some of the new proposed rules and the Centered-Based rate for Community Support Services does not support 1:1 service delivery within a facility setting because providers cannot operate a 1:1 service at the 1:3 rate.

Response: The Department thanks the Commenter for this comment. Though rates and rate setting are outside the scope of this rule making, the Department clarifies that the Center-Based Service allows for 1:1 support as needed. However, the Center-Based Service is not intended to be a 1:1 service for the full duration of time a Member participates in the Community Support, Center-Based Service. Community-Only Individual (1:1 ratio) and Community-Only Group Services 1:2 or 1:3 ratio) are delivered solely within the community setting. No changes were made to the rule as a result of this comment.

20. Commenter #60 states that the Community Support 1:3 maximum ratio is often unattainable when Member choice (as required by HCBS regulation) between activities may result in group sizes of 1:4 or 1:2 and indicates that this new proposal appears to conflict with the Community Support remaining flexible and within the HCBS requirements.

Response: The Department thanks the Commenter for this comment. The Department disagrees that the Community Support service description conflicts with HCBS requirements. The Community Support Center-Based Service is designed at a maximum of one (1) staff person for no more than three (3) Members for the duration of support within the center-based program and does not conflict with the HCBS Global Rule. The limits for community support do not pose obstacles to the service achieving its stated purpose. No changes were made to the rule as a result of this comment.

21. Commenter #61 requests the Department consider adding “and unmet needs” to section 29.04 - Person-Centered Service Plan indicating that unmet needs have long been documented in a person’s PCP.

Response: The Department thanks the Commenter for this comment. The Department agrees and has added “*and unmet needs*” to section 29.04 Person-Centered Service Plan as a result of this comment. The relevant section of rule now reads as follows:

*As part of the planning process, the Member’s needs and unmet needs are identified and documented in the PCSP.*

22. Commenter #61 suggests the provision at 29.04-2, *Person-Centered Planning Process* is incomplete because it excludes Direct Support Professionals (DSPs) from the planning meeting and the DSP has more contact with the member than most any other person in the Member’s life. Further, the Commenter requests the Department not exclude the DSP from the PCSP process and that the choice could be which DSP is invited by the Member.

Response: The Department thanks the Commenter for this comment. The Department disagrees that the language excludes any provider or staff member from attending the Planning meeting when invited by the Member. Rather, the language ensures that the Member has full choice regarding who will attend their planning meeting. No changes were made to the rule as a result of this rulemaking.

23. Commenter #61 states that 29.05-4, *Planning Team Composition* is confusing because it states that the Case Manager can come (to the planning meeting) if invited by the Member. The Commenter requests clarification as to who will write the Person-Centered Service Plan (PCSP) if the Case Manager does not attend and whether the Member should invite the Case Manager.

Response: The Department thanks the Commenter for this comment. In accordance with the HCBS Global Rule, the Member shall lead the PCSP planning process where possible including choosing the individuals who may attend the PCSP Planning Meeting. In the event a person requires support in the development of the PCSP to access services, the Department is obligated to support the Member with the development and drafting of the PCSP. No changes were made to the rule as a result of this rulemaking.

24. Commenter #61 states that 29.10-8, *Background Check Criteria* contains a lot of criteria listed over several paragraphs and suggests the Department require the use of the Maine Background Check Center for clarity.

Response: The Department thanks the Commenter for this comment. The Department will take this comment into consideration for future rulemakings. No changes were made to the rule as a result of this rulemaking.

25. Commenter #62 suggests the inclusion of descriptions of community support tiers in section 29.05-4 *Community Support*.

Response: The Department thanks and agrees with the Commenter. The Department has added the following description of the Community Support tiers to the rule as a result of this comment.

#### **29.05-4 Community Support**

*“The community support tiers are as follows:*

- 1. Community Only-Individual – services provided by one staff to one Member at a time (1:1) within community settings.*
- 2. Community Only-Group – services provided by one staff to two Members at a time (1:2) within community settings*



3. *Community Center-Based – services provided by no fewer than one staff for three Members within or from a facility/center.*”

26. Commenter #62 recommends the Department include language within the proposed rule allowing providers who deliver Community Center-Based services the ability to flex to a 4:1 ratio for no more than 25% of an agency’s monthly Community Center-Based service provision.

Response: The Department thanks the Commenter for this comment. The suggested changes to the mandated staffing ratios represent a substantial change and are outside the scope of this rulemaking. The Department will take this into consideration for future rulemakings. No changes were made to the rule as a result of this comment.

27. Commenter #62 recommends the Department allow four Members to one DSP ratio (4:1) in any setting, rather than the 3:1 ratio specified within the rule. Further, the Commenter suggested amending the rule as follows: “*Community Center-Based 3:1 – services provided by no less than one staff for three participants within or from a facility/center. Agencies providing this service may expand to a 4:1 ratio for no more than 25% of the provided agency monthly service time to accommodate participant driven changes and choices afforded under HCBS.*”

Response: The Department thanks the Commenter for this comment. Please see the Department’s response to comment #26. No changes were made to the rule as a result of this rulemaking.

28. Commenter #62 states “discussion with OADS leadership led us to believe that we have been interpreting the 3:1 “at all times” service description ... too literally.” Further, the Commenter stated that OADS may be willing to consider possible exceptions for allowing a 4:1 ratio in certain circumstances such as delays, no-shows due to NET, or choosing a different activity than originally planned. The Commenter believes “this is a reasonable and clear approach that will allow for the flexible service delivery that many participants need and desire.”

Response: The Department thanks the Commenter for this comment. Please see the Department’s response to #26. No changes were made to the rule as a result of this comment.

29. Commenter #62 recommends the Department create a new 1:1 Community Center-Based Service with a cap on the service to allow Members with complex needs “the opportunity to secure intensive, 1:1 skill building experiences to support their successful access to the community and connections with their peers...that support their individual goals.”

Response: The Department thanks the Commenter for this comment. Expanding the Community Support Services is outside the scope of this rulemaking. The Department will take this into consideration for future rulemakings. No changes were made to the rule as a result of this comment.

30. Commenter #62 recommends amending, “*Providers must develop methods, procedures, and activities to facilitate meaningful days and independent living choices about activities, services, and staff for the Member,*” in the service description of Home Support-Quarter Hour (29.05-8), because the Member defines these within the PCSP. The commenter suggests replacing, “*about activities, services, and staff for the Member,*” with “*in the Member’s PCSP.*”

Response: The Department thanks and agrees with the Commenter. The Department has edited **29.05-8, Home Support-Quarter Hour** and the provision now reads:

*“Providers must develop methods, procedures, and activities to facilitate meaningful days and independent living choices as outlined in the Member’s PCSP.”*

31. Commenter #62 supports the changes to the provisions in the service description of 29.05-9, *Home Support-Remote Support Services* regarding the inclusion of the delivery of services out of state (29.07-16) and the provision allowing two Members to be supported in a Shared Living setting without the requirement for a prior relationship (29.19).

Response: The Department thanks the Commenter for this comment. No changes were made to the rule as a result of this comment.

32. Commenter #62 requests confirmation of their understanding of the age qualifications for DSPs, “individuals 17 without a high school diploma, adult high school diploma, or high school equivalency credential (GED or HiSET), **cannot be hired**, even when they meet other requirements of the position, as opposed to individuals 18 years or older who may be hired without high school diploma, adult high school diploma, or high school equivalency credential (GED or HiSET) when they meet the other requirements.”

Response: The Department thanks the Commenter for this comment. The Commenter’s understanding is incorrect. Providers may hire individuals who are 18 years of age who do not have a HS Diploma, GED, or HS equivalent so long as they meet all other requirements of the position. Additionally, providers may *retain* a DSP (originally hired at 17 years of age) beyond 18 years of age who do not have a HS Diploma, GED, or HS equivalent so long as they meet all other requirements of the position. For the purposes of the Section 29 rule, this provision applies to the Direct Support Professional position excluding Job Coaches, Career Planners, and Employment Specialists. No changes were made to the rule as a result of this comment.

33. Commenter #62 states that as written, item #10 of the Administrative Oversight Agency (AOA) General Requirements within Appendix IV (page 83 of the proposed rule) “mirrors an employer-employee relationship which puts the AOA in conflict with DOL contractor guidance,” because it requires the AOA to train the Shared Living Provider to become a provider. The Commenter suggests removing the requirement from item #10 and revising item # 11 as follows: “*11. Maintains and retains documentation of contractual arrangements including documentation of required 4 training received, for all Shared Living Providers, including those that have ended in accordance with Ch I, Sec.1 of the MaineCare Benefits Manual.*”

Response: The Department thanks the Commenter for this comment. The Department agrees with the commenter that the Shared Living Provider is not an employee of the AOA. As a result of this comment, the Department has removed the provision requiring that the AOA “provide training to Shared Living Providers,” and replaced it as follows.

**29.19 APPENDIX IV, 3. Operational Policies and Procedures, (b.)(iii.)(10.)**

*Maintains and retains documentation of the Shared Living Provider’s training and certification requirements ensuring each Shared Living Provider meets the requirements to be a provider in accordance with this rule and Ch.I, Sec. 1 of the MaineCare Benefits Manual.*

Additionally, to further delineate the roles and responsibilities related to training and certification requirements for Shared Living Providers, the Department has added the following provision to the rule.

**29.19, APPENDIX IV, 3. Operational Policies and Procedures, (b.)(i)(14.)**

*Attend all required trainings and provide proof of current trainings and certifications to the AOA as needed ensuring compliance with requirements to be a provider in accordance with this rule and Ch.I, Sec. 1 of the MaineCare Benefits Manual.*

34. Commenter #63 thanks the Department and supports the following changes in the proposed rule:
- Removing the "at all times" language from the Community supports center-based ratio language.
  - Removing the proposed weekly limit placed on Community Supports as outlined in the proposed waiver amendment.
  - Raising the combined annual limit on any combination of Home Support (Remote or ¼ hour), Community Support, or Shared Living Services to \$84,689.28 from \$58,168.50.
  - Providing new language that clarifies a client's ability to include provider staff as part of their planning team should they choose.
  - The continued commitment to make Remote Supports more accessible by:
    - \* Not including the proposed daily limit placed on Home Supports-Remote Supports as was outlined in the proposed waiver amendment.
    - \* Changing the language around the back-up plan needs, assessment requirements, and the time frame for beginning services.

Response: The Department thanks the Commenter for this comment. No changes were made to the rule as a result of this comment.

35. Commenter #63 recommends removing the definition of Qualified Intellectual Disability Professional (QIDP) because it does not appear elsewhere in the rule.

Response: The Department thanks the Commenter for this comment. The Department disagrees and clarifies that the QIDP is integral to the determination of medical eligibility for Members as outlined in 29.03-4 of the rule as follows: *“Based on review of the Assessment Form, the PCSP, and DHHS Estimated Annual Cost Form, a **QIDP designated by DHHS will determine the Member’s medical eligibility for services under this Section.**”* No changes were made to the rule as a result of this comment.

36. Commenter #63 states that the following sentence of page 23 of the proposed rule is incomplete: *“The Center Based tier is delivered from a facility setting but must ensure community integration and Community.”*

Response: The Department thanks and agrees with the Commenter. The Department omitted a portion of the provision in error. As a result of this comment, the Department has added the following bolded excerpt to the rule.

29.05-4, Community Supports

*“The Center-Based tier is delivered from a facility setting but must ensure community integration and Community **Inclusion to the greatest extent possible as documented in the Member’s PCSP.**”*

37. Commenter #63 states that the following two paragraphs on page #28 of the proposed rule within the description of Home Support-Remote Support is repetitive and recommends the Department use one or other of the paragraphs.

*Direct support that assists Members with acquisition, retention, or improvement in skills related to living in their own home or with others (either owned or leased) within their Community who*

*need less than 24-hour (1:1 in person) staff support per day. Support includes assistance with ADLs, IADLs, building self-reliance and adaptive skills, control of personal resources, transportation, and facilitating opportunities to seek employment and to work in competitive, integrated settings.*

*Home Support-Quarter Hour may include assisting the Member to: A. Develop and maintain independence with self-care, including ADLs, IADLs; B. Develop and use adaptive cognitive and communication skills; C. Develop and demonstrate use of replacement behaviors identified in the Member's Positive Behavior Support Plan. This may include effectively addressing situations and antecedents of frequently occurring maladaptive or challenging behavior. In- Home Supports providers may work under the direction of an assigned professional to assist the Member to develop skills necessary to reduce or eliminate episodes in which the Member becomes a danger to self or others; and D. Explore and engage in prevocational and/or work-related activities.*

Response: The Department thanks the Commenter for this comment and will take the suggested changes into consideration for a future rulemaking. No changes were made to the rule as a result of this comment.

38. Commenter #63 recommends the following change to the last sentence in the first paragraph of the service description of Home Support-Quarter Hour:

*“Providers must provide the direct supports in a manner to facilitate meaningful days and independent living choices for the Member.”*

Response: The Department thanks the Commenter for this comment. Please see the Departments response to comment #30.

39. Commenter #63 states the proposed changes to the age and educational requirements for DSP’s are confusing asking, “If a DSP is hired and is over 18, do they need to have a high school diploma or equivalent or does it read that as long as they can perform the job functions (like with a 17-year-old) a diploma/ equivalent is not needed?”

Response: The Department thanks the Commenter for this comment. Please see the Departments response to comment #32.

40. Commenter #63 requests clarifying or removing the requirement that a Job Coach must have one year of experience in a work setting if they are not currently a Job Coach.

Response: The Department thanks the Commenter for this comment. The Department clarifies that Job Coaches are required to be certified through the Collège of Direct Support and meet minimum requirements for the position before providing services to a Member on a job site. The Department agrees that the requirement to have one year experience “in a work setting” for newly certified Job Coaches is not possible. As a result of the comment, the Department has removed “in a work setting” from 29.10-2 (B) of the rule as follows:

**29.10-2 Job Coach (Work Support-Individual and/or Work Support-Group)**

- B.** Job Coaches must be eighteen years of age or older, must be graduated from high school or hold a GED, and must have worked for a minimum of one (1) year with a person or persons having an Intellectual Disability or Autism Spectrum Disorder.

41. Although Commenter #63 supports the inclusion of the Exceptions Process to the proposed rule, they recommend reducing the time for the Department’s response to requests.

Response: The Department thanks the Commenter for this comment and will take the suggested changes into consideration for a future rulemaking. No changes were made to the rule as a result of this comment.

## List of Changes to the Final Rule

1. The Department has removed the following sentence from § **29.02-12 (E), Services that Support Personal Well-being**.

*In the absence of a plan, intervention must be consistent with DHHS's Regulations Governing Behavioral Support, Modification and Management for People with Intellectual Disabilities or Autism in Maine (14-197 C.M.R. ch. 5).*

2. The Department has added “*and unmet needs*” to § **29.04, Person-Centered Service Plan** and reads as follows:

*As part of the planning process, the Member's needs and unmet needs are identified and documented in the PCSP.*

3. The Department is adding the following provision to § **29.05-2, Assistive Technology (AT)** the rule:

A. Assistive Technology-Assessment:

1. *Evaluation of the assistive technology needs of a Member may be delivered via telehealth when the provider ensures that the assessment via telehealth meets the requirements of the scope of the service.*

4. The Department has added the following description of the Community Support Services tiers to § **29.05-4 Community Support** of the rule.

*The community support tiers are as follows:*

1. *Community Only-Individual – services provided by one staff to one Member at a time (1:1) within community settings.*
2. *Community Only-Group – services provided by one staff to two Members at a time (1:2) within community settings*
3. *Community Center-Based – services provided by no fewer than one staff to three Members within or from a facility/center.*

5. The Department has added the following bolded excerpt to § **29.05-4, Community Supports** of the rule.

*The Center-Based tier is delivered from a facility setting but must ensure community integration and Community **Inclusion to the greatest extent possible as documented in the Member's PCSP.***

6. The Department has removed “*about activities, services, and staff for the Member,*” from § **29.05-8, Home Support-Quarter Hour** of the rule and the provision now reads:

*Providers must develop methods, procedures, and activities to facilitate meaningful days and independent living choices as outlined in the Member's PCSP.*

7. The Department has removed “in a work setting” from § **29.10-2, Job Coach (Work Support-Individual and/or Work Support-Group) (B)** of the rule as follows:

B. *Job Coaches must be eighteen years of age or older, must have graduated from high school or hold a GED, and must have worked for a minimum of one (1) year with a person or persons having an Intellectual Disability or Autism Spectrum Disorder.*

8. The Department has added the following provision to the rule.

**29.19 APPENDIX IV, 3. Operational Policies and Procedures, (b)(i)(14)**

*Attend all required trainings and provide proof of current trainings and certifications to the AOA as needed ensuring compliance with requirements to be a provider in accordance with this rule and Ch.I, Sec. 1 of the MaineCare Benefits Manual.*

9. The Department has removed the provision requiring that the AOA “provide training to Shared Living Providers,” and replaced it as follows.

**29.19 APPENDIX IV, 3. Operational Policies and Procedures, (b)(iii)(10)**

*Maintains and retains documentation of the Shared Living Provider’s training and certification requirements ensuring each Shared Living Provider meets the requirements to be a provider in accordance with this rule and Ch.I, Sec. 1 of the MaineCare Benefits Manual.*

10. Unlike the other provisions in the rule, the following new services will not be effective until March 1, 2024. To make that plain, the Department added the statement “The Department is seeking and anticipates approval from CMS for this newly-added service with an effective date of March 1, 2024” to each of the following:

- § 29.05-2 Assistive Technology (AT):
  - \* AT Devices (Self-Directed)
  - \* AT Transmission (Self-Directed)
- § 29.05-4 Community Support:
  - \* Community Only - Individual
  - \* Community Only – Group
  - \* Community Only-Individual (Self-Directed)
- § 29.05-6 Financial Management Service
- § 29.05-7 Home Accessibility Adaptations (Self Directed)
- § 29.05-8 Home Support - Quarter Hour (Self-Directed)
- § 29.05-10 Individual Goods and Services
- § 29.05-12 Shared Living:
  - \* Shared Living- Two Members served
  - \* One Member served, Increased level of support
  - \* Two Members served, Increased level of support
- § 29.05-13 Supports Brokerage
- § 29.15 Self-Direction
- § 29.16 APPENDIX I-Shared Living Criteria for Increased Level of Support

(These services will continue to be available under the Department’s Appendix K: Emergency Preparedness and Response authority, through February 29, 2024.)