

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
MaineCare Services
Policy Division
11 State House Station
Augusta, Maine 04333-0011
Tel: (207) 624-4050; Fax: (207) 287-1606
TTY: Dial 711 (Maine Relay)

DATE: March 20, 2020
TO: Interested Parties
FROM: Michelle Probert, Director, MaineCare Services
SUBJECT: Emergency Adoption: 10-144 C.M.R. Chapter 101, MaineCare Benefits Manual, Ch. I, Section 5, COVID-19 Public Health Emergency Services

This letter gives notice of an emergency rule: MaineCare Benefits Manual, Ch. I, Section 5, COVID-19 Public Health Emergency Services.

This emergency rulemaking institutes measures, effective immediately, to expedite and improve access to medical care for MaineCare members due to the 2019 Novel Coronavirus (COVID-19). Pursuant to 5 M.R.S. Sections 8054 and 8073, 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 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.

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); Chs. II and III, Section 31 (Federally Qualified Health Center Services); Chs. II and III Section 40 (Home Health Services); Chs. II and III, Section 45 (Hospital Services); Ch. II, Section 55 (Laboratory Services); Ch. II, Section 60 (Medical Supplies and Durable Medical Equipment); Chs. II and III, Section 65 (Behavioral Health Services); Ch. II, Section 80 (Pharmacy Services); Ch. II, Section 90 (Physician Services); Chs. II and III, Section 96 (Private Duty Nursing and Personal Care Services); Ch. II, Section 101 (Medical Imaging); and Chs. II and III, Section 103 (Rural Health Clinic Services).

This emergency rulemaking implements the following changes:

The Department is waiving co-payments for some MaineCare services for all MaineCare members. Co-payment waivers cover 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.

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.

Prior Authorization requirements for certain durable medical equipment are being extended and early refills allowed for individuals with COVID-19, awaiting test results for COVID-19, or in the high-risk category for developing complications from COVID-19.

Home Health Services document submission requirements are being extended for Plans of Care submissions.

The Department is waiving the advance written notice/consent for telehealth services, waiving the comparability requirement for services specifically approved by the Department, and allowing the provision of telephone-only evaluation and management services for members.

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

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.

Rules and related rulemaking documents may be reviewed at and printed from MaineCare Services 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. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 711.

If you have any questions regarding the policy, please contact Provider Services at 1-866-690-5585 or TTY users call Maine relay 711.

Notice of Agency Emergency Rule-making Adoption

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

CHAPTER NUMBER AND TITLE: 10-144 C.M.R. Chapter 101, MaineCare Benefits Manual, Ch. I, Section 5, COVID-19 Public Health Emergency Services

ADOPTED RULE NUMBER:

CONCISE SUMMARY:

This emergency rulemaking institutes measures, effective immediately, to expedite and improve access to medical care for MaineCare members due to the 2019 Novel Coronavirus (COVID-19). Pursuant to 5 M.R.S. Sections 8054 and 8073, 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 included in detail in the Emergency Basis Statement. Maine is facing a substantial public health threat posed by the global spread of 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.

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); Chs. II and III, Section 31 (Federally Qualified Health Center Services); Chs. II and III Section 40 (Home Health Services); Chs. II and III, Section 45 (Hospital Services); Ch. II, Section 55 (Laboratory Services); Ch. II, Section 60 (Medical Supplies and Durable Medical Equipment); Chs. II and III, Section 65 (Behavioral Health Services); Ch. II, Section 80 (Pharmacy Services); Ch. II, Section 90 (Physician Services); Chs. II and III, Section 96 (Private Duty Nursing and Personal Care Services); Ch. II, Section 101 (Medical Imaging); and Chs. II and III, Section 103 (Rural Health Clinic Services).

The Department is waiving certain co-payment requirements for all MaineCare members, including 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 or vaccines become available during the duration of this rule, co-payments will be waived for those services as well.

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 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.

Prior Authorization requirements for certain durable medical equipment are being extended and early refills allowed for individuals with COVID-19, awaiting test results for COVID-19, or in the high-risk category for developing complications from COVID-19.

Home Health Services document submission requirements are being extended for Plans of Care submissions.

The Department is waiving the advance written notice/consent for telehealth services, waiving the comparability requirement for services specifically approved by the Department, and allowing telephone-only evaluation and management services.

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

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

EFFECTIVE DATE: March 20, 2020

AGENCY CONTACT PERSON: Anne E. Labonte, Comprehensive Health Planner II
AGENCY NAME: Division of Policy
ADDRESS: 109 Capitol Street, 11 State House Station
Augusta, Maine 04333-0011
EMAIL: Anne.Labonte@Maine.gov
TELEPHONE: (207)-624-4082 FAX: (207) 287-1606
TTY users call Maine relay 711

DEPARTMENT OF HEALTH AND HUMAN SERVICES
10-144 C.M.R. Chapter 101
MAINECARE BENEFITS MANUAL
CHAPTER I

SECTION 5 **COVID-19 PUBLIC HEALTH EMERGENCY SERVICES** ESTABLISHED: 3/20/2020
EMERGENCY RULE EFFECTIVE: 3/20/2020

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SECTION 5 COVID-19 PUBLIC HEALTH EMERGENCY SERVICES ESTABLISHED: 3/20/2020
EMERGENCY RULE EFFECTIVE: 3/20/2020

5.01 INTRODUCTION

Pursuant to 5 M.R.S. §§ 8054 and 8073, this single emergency rulemaking implements temporary changes to various sections of the MaineCare Benefits Manual (MBM) in order to expedite and improve access to medical care for MaineCare members in light of the substantial public health threat posed by the Novel Coronavirus (COVID-19).

The following sections of MaineCare policy are affected by this rulemaking: Ch. 1, Section 1 (General Administrative Policies and Procedures); Ch. I, Section 4 (Telehealth Services); Chs. II and III, Section 31 (Federally Qualified Health Center Services); Chs. II and III Section 40 (Home Health Services); Chs. II and III, Section 45 (Hospital Services); Ch. II, Section 55 (Laboratory Services); Ch. II, Section 60 (Medical Supplies and Durable Medical Equipment); Chs. II and III, Section 65 (Behavioral Health Services); Ch. II, Section 80 (Pharmacy Services); Ch. II, Section 90 (Physician Services); Chs. II and III, Section 96 (Private Duty Nursing and Personal Care Services); Ch. II, Section 101 (Medical Imaging); and Chs. II and III, Section 103 (Rural Health Clinic Services).

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 these changes from the Centers for Medicare and Medicaid Services (CMS) retroactive to March 18, 2020.

Except as noted herein, these changes shall be effective for ninety (90) days, per 5 M.R.S. § 8054.

5.02 CO-PAYMENTS

The Department waives co-payments for the following MaineCare services for all MaineCare members:

- A. Pharmacy: All co-payments charged by pharmacies under Section 80, Pharmacy Services.
- B. Clinical Visits: MaineCare currently requires some members to pay a co-payment for clinical visits based on the member's eligibility coverage group. All co-payments for clinical visits for MaineCare members, regardless of eligibility coverage group, are waived. This includes, but is not limited to, Hospital Services (Sec. 45), Federally Qualified Health Center Services (Sec. 31), Rural Health Clinic Services (Sec. 103), Physician Services (Sec. 90).
- C. Medical Imaging Services: All co-payments charged under Section 101, Medical Imaging Services.
- D. Laboratory Services: All co-payments charged under Section 55, Laboratory Services.
- E. Behavioral Health Services: All co-payments charged under Section 65, Behavioral Health Services.

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5.02 CO-PAYMENTS (cont.)

- F. Medical Supplies and Durable Medical Equipment: All co-payments charged under Section 60, Medical Supplies and Durable Medical Equipment.
- G. Home Health Services: All co-payments charged under Section 40, Home Health Services.
- H. Should COVID-19 specific treatments and/or vaccines become available during the duration of this public health emergency rule, co-payments will be waived.

5.03 PHARMACY SERVICES

The Department alters certain provisions of the MBM, Section 80, Pharmacy Services, as follows:

- A. Initial Prior Authorization requirements for asthma and immune-related prescriptions: Restrictions on asthma related medications like Albuterol are removed to allow all forms of Albuterol without Prior Authorization. Restrictions on Immune-related medications, like Neupogen, are removed for approval with completion of Prior Authorization form, if necessary, for the treatment of COVID-19.
- B. COVID-19 Treatments or Vaccines: Should COVID-19 specific treatments or vaccines become available during the duration of this emergency rule, Prior Authorization will be waived.
- C. Prescription Refills: Early refills of prescription medications are allowed in the same days' supply and quantity as the original prescription; the requirements set forth in Ch. II, Sec. 80.07-7 are waived.
- D. Buprenorphine and Buprenorphine Combination Products for Substance Use Disorder (SUD): The physical assessment requirements for Buprenorphine and Buprenorphine Combination Products for SUD set forth in Ch. II, Sec. 80.07-13 are waived.

5.04 MEDICAL SUPPLIES AND DURABLE MEDICAL EQUIPMENT

- A. COVID-19-Related Supplies and Durable Medical Equipment: Prior Authorization approvals currently in effect for Section 60, Durable Medical Equipment (DME), will be extended for individuals with COVID-19 (who should be in quarantine), individuals with pending COVID-19 tests in self-isolation, and individuals in the high-risk category for developing severe complications from COVID-19, and early refills will be temporarily allowed as follows on the following DME items:
 - 1. Glucose supplies;
 - 2. Hearing aid batteries; and

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5.04 MEDICAL SUPPLIES AND DURABLE MEDICAL EQUIPMENT (cont.)

3. The following Continuous positive airway pressure (CPAP) and bi-level positive airway pressure (Bi-PAP) supplies:
 - a. Oral/nasal mask– one (1) per three (3) months;
 - b. Oral cushion– two (2) per one (1) month;
 - c. Nasal pillow – two (2) per one (1) month;
 - d. Full face mask – one (1) per three (3) months;
 - e. Facemask interface – one (1) per one (1) month;
 - f. Nasal interface – two (2) per one (1) month;
 - g. Tubing – one (1) per one (1) month;
 - h. Tubing (with heating element) – one (1) per three (3) months;
 - i. Filter (disposable) – two (2) per one (1) month;
 - j. Oral interface – one (1) per three (3) months; and
 - k. Water chamber – one (1) per one (1) month.

B. Extension of Prior Authorizations set to end will be temporarily allowed, when applicable, for the following:

1. CPAP and Bi-PAP devices and supplies;
2. Home blood glucose monitors and test strips;
3. Enteral and Parenteral nutritional therapy;
4. Apnea Monitors;
5. External Insulin Infusion Pumps;
6. Infusion Pumps Other than Insulin Pumps;
7. Continuous Glucose Monitors; and
8. Home Use of Oxygen.

5.05 HOME HEALTH SERVICES*

The Department extends the period of time for Home Health Providers to submit Plans of Care to the Department under MBM, Ch. II, Section 40, Home Health Services, § 40.02-1, Authorization Process. The current requirement of submission within five (5) business days is extended to within thirty (30) business days, including for certifications and recertifications.

***MBM, Chs. II and III, Section 40, Home Health Services, are major substantive rules, thus, if CMS approves, these emergency rules changes shall be effective for up to one year pursuant to 5 M.R.S. § 8073.**

5.06 TELEHEALTH

A. Waiver of Advance Written Notice.

The Department is waiving the requirement under Ch. 1, Section 4, Telehealth, Sec. 4.06-2.B, requiring advance written notice/consent prior to services.

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5.06 TELEHEALTH (cont.)

B. Waiver of Comparability

The Department, at its discretion, may waive the requirement under Ch. 1, Section 4, Telehealth, Sec. 4.04-1(2), requiring Interactive Telehealth Services be of comparable quality to what they would be were they delivered in person. Requests will be handed on a case-by-case basis through a clinical review by the Department to determine whether members may face imminent harm in the absence of a telehealth mode of delivery for a particular service, given the inability due to the public health emergency for that member to receive the service in-person

C. Telephone-Only Evaluation and Management.

The Department will reimburse providers for telephone evaluation and management services provided to members. The restrictions set forth in the MaineCare Benefits Manual, Ch. I, Sec. 4.04-2 are waived for this purpose.

Telephonic evaluation and management services must be rendered by a qualified professional actively enrolled in MaineCare or contracted through an enrolled MaineCare provider.

Relevant CPT codes are:

- 99441: Telephone evaluation and management service; 5-10 minutes of medical discussion
- 99442: 11-20 minutes of medical discussion
- 99443: 21-30 minutes of medical discussion

Telephone evaluation management services are not to be billed if clinical decision-making dictates a need to see the member for an office visit within 24 hours or at the next available appointment. In those circumstances, the telephone service shall be considered a part of the subsequent office visit. If the telephone call follows an office visit performed and reported within the past seven (7) days for the same diagnosis, then the telephone services are considered part of the previous office visit and are not separately billable.