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State/Territory Name: Maine

State Plan Amendment (SPA) #: 10-016

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

January 30, 2020

VIA E-Mail

Jeanne Lambrew, Commissioner
Department of Health and Human Services
221 State Street
Augusta, Maine 04333-0011

Dear Commissioner Lambrew:

We are pleased to enclose an approved copy of the Maine State Plan Amendment (SPA) 10-016. The SPA was submitted on September 23, 2010. CMS received the State's formal response to a request for additional information on November 27, 2019. The SPA updates the personal care service language in Attachment 3.1-A of the State plan. The State added detail regarding personal care and personal care attendant services and providers of service. The State indicated that there was no fiscal impact from this SPA.

The SPA was approved January 28, 2020, with an effective date of September 1, 2010, as requested by your agency.

If you have questions concerning this letter, please Nancy Grano at 617-565-1695 or at Nancy.Grano@cms.hhs.gov.

Sincerely,

/s/

James G. Scott, Division Director
Division of Program Operations

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION		1. TRANSMITTAL NUMBER: 10-016	2. STATE: MAINE
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE AND MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE(S) 9/1/10	
5. TYPE OF PLAN MATERIAL (CHECK ONE): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION:		7. FEDERAL BUDGET IMPACT: Cost Neutral	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: ATTACHMENT TO 3.1-A, (PAGE TBA) Attachment to Attachment 3.1-A, Page 10 through Page 10(a)(y)		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment to Attachment to 3.1-A, 9,10,10A Attachment 3.1-A, Page 10	
SUBJECT OF AMENDMENT: PERSONAL CARE SERVICES			
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED COMMISSIONER, DEPT. OF HUMAN SERVICES <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: ANTHONY MARPLE Director, MaineCare Services #11 State House Station 442 CIVIC CENTER DRIVE Augusta, ME 04333-0011	
13. TYPED NAME: BRENDA HARVEY			
14. TITLE: Commissioner, Maine Department of Health and Human Services			
15. DATE SUBMITTED: 10/24/10			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: 9/23/10		18. DATE APPROVED: 1/28/20	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: 9/1/10		20. SIGNATURE OF REGIONAL OFFICIAL: /s/	
21. TYPED NAME: James G. Scott		22. TITLE: Division Director, Division of Program Operations	
23. REMARKS: Maine and CMS agreed by email January 27, 2020 and by initials to the pen and ink changes to correct page numbers in Boxes 8 and 9.			

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Page 10

AMOUNT, DURATION, AND SCOPE OF MEDICAL
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26. Personal Care Services

Personal care services provided through the State Plan are provided either by consumer-directed Personal Care Attendants (PCAs), personal care agencies, Adult Family Care Homes (AFCHs), or Private Non-Medical Institutions (PNMIs).

A. Personal Care Attendant (PCA) services

All personal care services provided by a PCA through the State Plan are consumer directed, and the consumer (the MaineCare member) is the employer of his/her PCAs.

PCA services furnished under the State Plan are limited to “employer authority” only. That is, all PCA funds under the PCA State Plan must be used solely to pay for employer required tasks, and cannot be used for any other purpose, such as the purchase of products and services other than those provided by a PCA to meet the consumer’s personal care needs.

All consumers are responsible for hiring, firing, training, and scheduling PCAs, as well as submitting activity forms to the Fiscal Intermediary (FI).

The State contracts with FIs in accordance with the requirements of 42 CFR 434.10 to perform employer required tasks and administrative tasks on behalf of consumers. The FI receives and processes the PCA timesheet, and submits claims for PCA services through the State’s MMIS system. The State processes the claim and pays the FI to perform all employer required tasks on behalf of the consumer.

- 1) For the State to pay for consumer-directed personal care services provided by a PCA, the consumer must be able to be appropriately cared for in the home and the following conditions must be met:
 - a) The personal care services must meet the State’s medical necessity criteria and must be authorized by the State or the Assessing Services Agency prior to being provided in accordance with the authorized service plan.
 - b) The personal care services must, in accordance with 42 CFR 440.167, be authorized for an individual in accordance with a service plan approved by the State.
- 2) If the conditions in 1 are met, the State will pay for a consumer to receive physical assistance with activities of daily living (ADLs) and Instrumental Activities of Daily Living (IADLs) and/or health maintenance activities, which are directly related to the member’s plan of care. These tasks must be performed in conjunction with direct care to the member. IADLs and health maintenance activities are those activities that would otherwise be normally performed by the member if he or she were physically able to do so.
- 3) The qualifications of personal care attendants are described in Section D.

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B. Personal care agency services

1. For the State to pay for personal care services provided by a personal care agency, the consumer must be able to be appropriately cared for in the home and the following conditions must be met:
 - a) The personal care services must meet the State's medical necessity criteria and must be authorized by the State or the Assessing Services Agency prior to being provided in accordance with the authorized service plan.
 - b) The personal care services must, in accordance with 42 CFR 440.167, be authorized for an individual in accordance with a service plan approved by the State.
2. If the conditions in 1 are met, the State will pay for a consumer to receive physical assistance with ADLs and IADLs and/or health maintenance activities, which are directly related to the member's plan of care. These tasks must be performed in conjunction with direct care to the member. IADLs and health maintenance activities are those activities that would otherwise be normally performed by the member if he or she were physically able to do so.

Family Provider Service Option (FPSO) is an option available to certain eligible members that allows the member to manage his or her own personal care services or to have a family provider agency manage the services. The management includes: hiring, firing, training, maintaining records, and scheduling the personal support specialist(s).

3. Personal care services delivered by personal care agencies may be delivered by personal care attendants, registered nurses, licensed practical nurses, home health aides, certified nursing assistants, Certified Residential Medication Aide (CRMA), or a Personal Support Specialist (PSS). The provider qualifications for these provides is included in Section D.

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C. Adult Family Care Homes (AFCH)

Personal care services provided by a licensed AFCH are provided in a community-based setting operated by the AFCH and delivered by direct care staff of the AFCH. AFCHs are residential style homes for eight or fewer residents, which are licensed by the Department pursuant to the Regulations Governing the Licensing and Functioning of Assisted Housing Programs. AFCH services are not provided in an Institute for Mental Disease servicing individuals aged 22-64.

A member who is eligible to receive personal care services provided by an AFCH may obtain those services from any qualified AFCH participating in MaineCare. Personal care services are provided by AFCH's direct care staff in accordance with a written individual service plan that is developed within thirty calendar days of admission based upon the findings of the resident assessment instrument, with the participation of the members (and the member's surrogate, if applicable), describing in detail the responsibilities of the member and the residential care provider (and the member's surrogate, if applicable). The plan describes strategies and approaches to meet the resident's needs, how the AFCH will arrange and deliver services, the frequency of each service that will be provided and how those services will address the goals to improve or maintain the beneficiary's level of functioning. The service plan shall be modified, as necessary, based upon identified changes.

The Minimum Data Set- Assisted Living Services (MDS-ALS) is the assessment tool approved by the Department to provide a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. The Department utilizes this tool to divide members into resource groupings that determine the resource-adjusted price for each member.

1. For the State to pay for personal care services provided by an AHCH to a member, the member must be able to be appropriately cared for in the AFCH setting and the following conditions must be met:
 - a) The personal care services provided to the member by the AFCH's direct care staff must meet the State's medical necessity criteria and must be authorized by the State or the Assessing Services Agency prior to being provided in accordance with the authorized service plan.
 - b) The personal care services must, in accordance with 42 CFR 440.167, be authorized for an individual in accordance with a service plan approved by the State.
2. If the conditions in 1 are met, the State will pay for a consumer to receive physical assistance with ADLs and IADLs and/or health maintenance activities, which are directly related to the member's plan of care. These tasks must be performed in conjunction with direct care to the member. IADLs and health maintenance activities are those activities that would otherwise be normally performed by the member if he or she were physically able to do so.
3. Personal care services delivered in AFCHs must be delivered by the AFCH's direct staff.

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D. Private Non-Medical Institution Services (PNMI)

Personal care services provided by a PNMI are provided in a community-based setting operated by the PNMI provider and delivered by direct care staff of the PNMI. PNMI services are not provided in an Institute for Mental Disease servicing individuals aged 22-64.

A member who meets medical necessity criteria to receive personal care services provided by a PNMI may obtain those services from a qualified PNMI participating in MaineCare. Personal care services are provided by PNMI's direct care staff in accordance with a written individual service plan based upon the findings of the appropriate State-approved assessment tool, with the participation of the members (and the member's surrogate, if applicable), describing in detail the responsibilities of the member and the PNMI (and the member's surrogate, if applicable). The Plan also describes strategies and approaches to meet the resident's needs, names of who will arrange and/or deliver services, when and how often services will be provided and goals to improve or maintain the resident's level of functioning. The service plan shall be modified, as necessary, based upon identified changes.

1. For the State to pay for personal care services provided by a PNMI to a member, the member must be able to be appropriately cared for in the PNMI setting and the following conditions must be met:
 - a) The personal care services provided to the member by the PNMI's direct care staff must meet the State's medical necessity criteria and must be authorized by the State or the Assessing Services Agency prior to being provided in accordance with the authorized service plan.
 - b) The personal care services must, in accordance with 42 CFR 440.167, be authorized for an individual in accordance with a service plan approved by the State.
2. If the conditions in 1 are met, the State will pay for a consumer to receive physical assistance with ADLs and IADLs and/or health maintenance activities, which are directly related to the member's plan of care. These tasks must be performed in conjunction with direct care to the member. IADLs and health maintenance activities are those activities that would otherwise be normally performed by the member if he or she were physically able to do so.
3. Personal care services delivered in PNMIs must be delivered by the facility's direct staff.

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D. Provider Qualifications

1. Licensed Providers

- a. Registered Professional Nurse
- b. Licensed Practical Nurse
- c. Adult Family Care Homes
- d. Private Non-Medical Institutions

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2. Unlicensed Providers

- a. Certified Nursing Assistant (CNA) who meets the following criteria:
 - i. Meets all applicable State laws and regulations as are currently in effect;
 - ii. Is employed by, or acting under a contractual relationship with, a licensed home health agency;
 - iii. Has satisfactorily completed training for certified nurse assistants consistent with, and receive supervision consistent with, the Rules and Regulations of the Maine State Board of Nursing; and,
 - iv. Is listed on the CNA registry.
- b. Certified Nursing Assistant/Medications who meets the following criteria:
 - i. Is a CNA as described above who has also satisfactorily completed a Department-approved medication course for Certified Nursing Assistants, consistent with the Rules and Regulations of the Maine State Board of Nursing.
- c. Certified Residential Medication Aide (CRMA) who meets the following criteria:
 - i. Is employed by a licensed assisted living agency that holds a valid contract with the Maine Office of Aging and Disability (OADS) and provides medication administration as allowable under certification.
- d. Personal Care Attendants must meet the following criteria:
 - i. Must be at least seventeen years old;
 - ii. Cannot be the consumer's family member;
 - iii. Must be legally authorized to work in the United States;
 - iv. Must be able to understand and carry out direction given by the consumer of the consumer's surrogate;
 - v. Must be willing to receive training and supervision in all PCA tasks from the consumer or the consumer's surrogate.
 - vi. Within twenty-one (21) days of initiating services, the PCA must be deemed competent through a Statement of competency from the member.
 - vii. Cannot be an individual who has a notation on the Maine Registry of Certified Nursing Assistants of (a) any criminal convictions, except for Class D and Class E convictions over ten (10) years old that did not involve as a victim of the act, a patient, client, or resident of a health care entity; or (b) any specific documented findings by the State Survey Agency of abuse, neglect or misappropriation of property of a resident, client or patient
- e. Personal Support Specialist (PSS)
 - i. A PSS must be employed by, or acting under a contractual relationship with a licensed home health agency, registered personal care agency, or licensed assisted living agency, under contract with OADS. The following requirements must be met:
 1. Criminal background check and CNA registry check.
 2. A PSS must meet one of the following:
 - a. Hold a valid certificate of training for nursing assistants or have official documentation of equivalent training as verified by the Office of the Maine CNA Registry, and be currently listed on the Maine CNA Registry without any annotation that would prohibit that individual from employment; or

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- b. Hold a valid certificate of training, which meets the standards of the Maine State Board of Nursing- nursing assistant training program; or
- c. Hold a valid certificate of training as a personal care assistant/PSS; or
- d. Be a PSS who successfully completed a Department-approved curriculum prior to September 1, 2003. Such individuals will be grand fathered as a qualified personal care assistant/PSS; or
- e. Obtain a waiver from the Department, the Assessing Services Agency, or the Service Coordination Agency. This is only for PSSs under the FPSO if the PSS has provided services to the Member prior to July 1, 2004. Otherwise, the PSSs must meet the training and competency requirements described above.
- f. A PSS, newly hired by an agency, who meets the Department's PSS training requirements, must receive an agency orientation.
- g. With the exception of FPSO, a newly hired PSS who does not yet meet the Department's training and examination requirements must undergo an orientation that reviews the role, responsibilities and tasks of the PSS. The PSS must demonstrate competency to the employing agency in all required tasks prior to being assigned to a member's home, with the exception of health maintenance activities, where by a PSS can demonstrate competency via on the job training once being assigned to a member's home.
- h. A family provider agency must provide adequate orientation for the PSS to meet the needs of the member(s). Adequacy shall be determined by the Service Coordination Agency.
- i. A family member who meets the requirements of this Section may be a PSS and receive reimbursement for delivering personal care services, with the exception of the MaineCare member's spouse, or the parent (including stepparent) of a minor child who is a MaineCare member in accordance with 42 CFR 440.167.
- j. An individual without the required training may be hired and reimbursed for delivering personal care services as long as the individual enrolls in a certified training program within sixty days of hire and completes training and examination requirements within nine months of employment and meets all other requirements. If the individual fails to pass the examination within nine months, reimbursement for his or her services must stop until such time as the training and examination requirements are met.