



Paul R. LePage, Governor Ricker Hamilton, Acting Commissioner

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DATE: July 11, 2017
TO: Interested Parties
FROM: Stefanie Nadeau, Director, MaineCare Services
SUBJECT: Proposed Rule: MaineCare Benefits Manual, Chapter 101, Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder.

Date of Hearing: August 8, 2017, 9:00 AM

Location: Augusta Armory, First Floor
179 Western Ave.
Augusta, ME 04330

This letter gives notice of a proposed rule: MaineCare Benefits Manual, Chapter II, Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder.

The proposed rule change will expand the number of members who are eligible as Priority 1 on the waitlist for Chapter II, Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder. The proposed language addresses waitlist eligibility for members whose primary caregiver has reached the age of 65 or has a terminal illness and is having difficulty providing the necessary supports to the member, where the member has no other responsible or willing caregiver. The proposed rule specifies criteria whereby those members may qualify as Priority 1 based on the member's medical condition or behavioral need; high risk for institutionalization; history of hospitalizations; and imminent danger to the member or others. A provision is also included specifying that Priority 1 is granted only when the member's needs cannot be met absent provision of services under this comprehensive waiver program. Therefore, Priority 1 on the Section 21 waitlist would be available only for members who specifically need these services; members whose needs could be met with the less intense services provided under the State Plan or Section 29 would be referred to those services. This provision does not preclude the member waiting at another Priority level on the Section 21 waitlist. This rulemaking is required in order to establish clear criteria for prioritization of members, beyond what currently exists. While the Department may offer funded openings to Priority 2 members in the event Priority 1 is exhausted, the Department wishes to establish clear, codified criteria to guide access, now and in the future.

The proposed rule also expands the number of members who are eligible as Priority 2. The proposed language expands eligibility to members whose primary caregiver has reached the age of sixty and is having difficulty providing the necessary supports to the member in the family home. A definition of primary caregiver is also included. This will supersede language in the current rule that applies this criterion only to the member's parents. The proposed provision expands the Priority 2 provision to members being cared for by extended family members, and whose parents are deceased, missing, or unable to care for the member.

The proposed rule requires an annual review of the priority assignments of members, in order to remain on the Section 21 waitlist.

Rules and related rulemaking documents may be reviewed at, or printed from, the 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.

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

Notice of Agency Rule-making Proposal

AGENCY: Department of Health and Human Services, MaineCare Services

RULE TITLE OR SUBJECT: Chapter 101, MaineCare Benefits Manual, Chapter II, Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder

PROPOSED RULE NUMBER:

CONCISE SUMMARY: The proposed rule change will expand the number of members who are eligible as Priority 1 on the waitlist for Chapter II, Section 21, Home and Community Benefits for Members with Intellectual Disabilities or Autism Spectrum Disorder. The proposed language addresses waitlist eligibility for members whose primary caregiver has reached the age of 65 or has a terminal illness and is having difficulty providing the necessary supports to the member, where the member has no other responsible or willing caregiver. The proposed rule specifies criteria whereby those members may qualify as Priority 1 based on the member's medical condition or behavioral need; high risk for institutionalization; history of hospitalizations; and imminent danger to the member or others. A provision is also included specifying that Priority 1 is granted only when the member's needs cannot be met absent provision of services under this comprehensive waiver program. Therefore, Priority 1 on the Section 21 waitlist would be available only for members who specifically need these services; members whose needs could be met with the less intense services provided under the State Plan or Section 29 would be referred to those services. This provision does not preclude the member waiting at another Priority level on the Section 21 waitlist. This rulemaking is required in order to establish clear criteria for prioritization of members, beyond what currently exists. While the Department may offer funded openings to Priority 2 members in the event Priority 1 is exhausted, the Department wishes to establish clear, codified criteria to guide access, now and in the future.

The proposed rule also expands the number of members who are eligible as Priority 2. The proposed language expands eligibility to members whose primary caregiver has reached the age of sixty and is having difficulty providing the necessary supports to the member in the family home. A definition of primary caregiver is also included. This will supersede language in the current rule that applies this criterion only to the member's parents. The proposed provision expands the Priority 2 provision to members being cared for by extended family members, and whose parents are deceased, missing, or unable to care for the member.

The proposed rule requires an annual review of the priority assignments of members, in order to remain on the Section 21 waitlist.

SEE http://www.maine.gov/dhhs/oms/rules/provider_rules_policies.html for rules and related rulemaking documents.

THIS RULE WILL WILL NOT HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 22 MRSA §§ 42, 3173,

PUBLIC HEARING:

Date: August 8, 2017, 9:00 AM
Location: First Floor
Augusta Armory
179 Western Ave.
Augusta, ME 04330

The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed below before July 27, 2017.

DEADLINE FOR COMMENTS: Comments must be received by midnight August 21, 2017.

AGENCY CONTACT PERSON: Rachel Posner, Comprehensive Health Planner

AGENCY NAME: MaineCare Services

ADDRESS: 242 State Street

11 State House Station

Augusta, Maine 04333-0011

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*The Department is seeking and anticipates receiving CMS approval for this Section.
Pending approval, Covered Services will be provided as follows:*

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21.01 INTRODUCTION

The Home and Community Based Benefit (HCB or Benefit) for members with Intellectual Disabilities (ID) or Autism Spectrum Disorder (ASD) gives members eligible for this Benefit the option to live in their own home or in another home in the community thus avoiding or delaying institutional services. The Benefit is offered in a community-based setting as an alternative for members who qualify to live in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The Benefit supplements, rather than replaces supportive, natural personal, family, work, and community relationships. It does not duplicate other MaineCare services.

The HCB Benefit is provided under a Federal 1915(c) waiver that meets Federal standards. MaineCare members may receive covered services as detailed in other sections of the *MaineCare Benefits Manual*, but can receive services under only one Home and Community Based waiver at any one time.

In addition, the planning process includes identifying and documenting the member's needs in a Personal Plan. The Personal Plan describes certain facilitative, therapeutic and intervention services and supplies with an overall goal of community inclusion.

The Benefit is a limited one. Each year the Department of Health and Human Services (DHHS) must identify the total number of unduplicated members it will provide the benefit to during that year. If there is no funded opening, or if a member is not eligible for a funded opening based on priority, the member is placed on a waiting list as described in this rule.

This rule does not alter or supplant other sections of Maine statute, regulation, or DHHS policy.

21.02 DEFINITIONS

21.02-1 Abuse means the infliction of injury, unreasonable confinement, intimidation or cruel punishment that causes or is likely to cause physical harm or pain or mental anguish; sexual abuse or sexual exploitation; or the intentional, knowing or reckless deprivation of essential needs as defined in 22 MRSA §3472.

21.02-2 Activities of Daily Living (ADL) are:

- A. **Bed Mobility:** How a person moves to and from lying position, turns side to side, and positions body while in bed;
- B. **Transfer:** How a person moves between surfaces to/from: bed, wheelchair, standing position (excluding to/from bath/toilet);

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21.02 DEFINITIONS (cont.)

- C. **Locomotion:** How a person moves between locations, in room and other areas. If in wheelchair, self-sufficiency once in chair;
- D. **Eating:** How a person eats and drinks (regardless of skill);
- E. **Toilet Use:** How a person uses the toilet room (or commode, bedpan, urinal), transfers on/off toilet, cleanses, changes pad, manages ostomy or catheter, adjusts clothes;
- F. **Bathing:** How a person takes full-body bath/shower, sponge bath and transfers in/out of tub/shower (exclude washing of back and hair); and
- G. **Dressing:** How a person puts on, fastens, and takes off all items of street clothing, including donning/removing prosthesis.

21.02-3 Administrative Oversight Agency-

- a. Is approved by DHHS-Office of Aging and Disability Services (OADS).
- b. Enters into a contractual agreement with the Shared Living Provider for oversight and monitoring services.
- c. Bills and receives MaineCare reimbursement; and
- d. See additional qualifications 21.10.

21.02-4 Agency Home Support means a provider Managed Service Location that routinely employs direct care staff to provide direct support services.

21.02-5 Autism Spectrum Disorder (ASD) means a diagnosis that falls within the category of Pervasive Developmental Disorders, as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*, (American Psychiatric Association), that manifested during the developmental period, in accordance with the definition of Autism codified in 34-B MRSA §6002 and accompanying rules.

21.02-6 Authorized Entity is the organization authorized by the Department of Health and Human Services (DHHS) to perform specified functions pursuant to a signed contract or other approved signed agreement.

21.02-7 Case Manager is a person responsible for assuring the timely convening of the service planning team, developing the Personal Plan, monitoring the planned services received by the member, and assuring that those services meet the requirements set forth in the member's Personal Plan.

21.02-8 Clinical Review Team (CRT) is a multi-disciplinary team of qualified professionals that have work experience with adults with Intellectual Disabilities or Autism Spectrum Disorder. The CRT will partner with the resource coordinators to review and approve the following: Increased level of support for Shared Living and Family-Centered Support; Medical Add-On; all initial classifications to the waiver; and home

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21.02 DEFINITIONS (cont.)

support service requests. The CRT will also be responsible for systematic reviews to determine that members are authorized at an appropriate level of service in accordance with the member's personal plan.

- 21.02-9 Correspondent** is a person designated by the Maine Developmental Services Oversight and Advisory Board (MDSOAB), to act as a next friend of a person with Intellectual Disabilities or Autism Spectrum Disorder.
- 21.02-10 Designated Representative** means the DHHS staff or Authorized Entity authorized by DHHS to perform specified functions.
- 21.02-11 Direct Supports** are a range of activities that contribute to the health and well-being of the member and his or her ability to live in or be part of the community. Direct support activities may include personal assistance or activities that support personal development, or activities that support personal well-being. The emphasis and purpose of the direct support provided may vary depending on the type of service.

Direct support activities include the following:

Personal Assistance is assistance provided to a member in performing tasks the member would normally perform if the member did not have his or her disability. Personal assistance may include guiding, directing, or overseeing the performance of self-care and self-management of activities.

Self-Care includes assistance with eating, bathing, dressing, mobility, personal hygiene, and other activities of daily living; assistance with light housework, laundry, meal preparation, transportation, grocery shopping, and assistance with health and nutrition maintenance, including assessing well-being and identifying need for medical assistance; complying with nutritional requirements as specified in the Personal Plan; administration of non-prescription medication that are ordinarily self-administered; and administration of prescription medication, when provided by a person legally authorized to assist with the administration of medication.

Self-Management includes assistance with managing safe and responsible behavior; exercising judgment with respect to the member's health and well-being; communication, including conveying information, interpreting information, and advocating in the member's interests; managing money including paying bills, making choices on how to spend money, keeping receipts, and expending funds with the permission of a member's representative payee. Self-management also includes teaching coping skills, giving emotional support, and guidance to other resources the member may need to access.

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21.02 DEFINITIONS (cont.)

Activities that support personal development include teaching or modeling for a member self-care and self-management skills, physical fitness, behavior management; sensory, motor and psychological needs; interpersonal skills to cultivate supportive personal, family, work and community relationships; resources and opportunities for participation in activities to promote social and community engagement; participation in spiritual activities of the member’s choice; motivating the pursuit of personal development and opportunities; teaching or modeling informed choice by gathering information and practicing decision making; and learning to exercise.

Activities that support personal well-being include directly or indirectly intervening to promote the health and well-being of the member. This may include identifying risks such as risk of abuse, neglect or exploitation; participating in a member’s risk assessment; identifying and reporting to an immediate supervisor changes in health status and behavior; anticipating or preventing unsafe or destructive behavior; and safely intervening against undesirable behavior according to an intervention plan. In the absence of a plan, intervention must be consistent with DHHS’s rule governing emergency intervention and behavioral treatment for persons with intellectual disabilities (14-197 CMR Chapter 5). It may also be necessary to seek emergency medical or safety assistance when needed and comply with incident reporting requirements.

21.02-12 Employment Setting for either Work Support-Individual or Work Support-Group must be one with the highest level of integration possible. The job must be one that is available to a non-disabled employee with the same expectations for the member’s job performance and attendance. The member works under similar work conditions as others without disabilities in similar positions; including access to lunchrooms, restrooms, and breaks. The member performs work duties with ongoing interaction with other workers without disabilities, and has contact with customers, suppliers and the public to the same degree as workers without disabilities in the same or comparable occupations. The member cannot be excluded from participation in company-wide events such as holiday parties, outings and social activities. Provider owned/operated businesses are subject to the same integration standards as other businesses. Staff providing employment services at the worksite are not considered non-disabled employees in determining the level of integration. For those agencies that currently operate under an award from AbilityOne (<http://AbilityOne.org>), the federal workforce guidelines associated with this funding source will apply to the services funded by the contract. The member can be on the employer’s payroll or the provider agency payroll.

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21.02 DEFINITIONS (cont.)

Members may receive additional employment supports from a provider agency. A member must be supervised in a manner identical to other employees. It is permissible, on a case by case basis to have the support provider offer and provide this supervision as long as the above conditions are met.

21.02-13 **Exploitation** means the illegal or improper use of an incapacitated or dependent member or that member's resources for another's profit or advantage as defined in 22 MRSA §3472.

21.02-14 **Family-Centered Support** is a model designed to provide home support to a member in a family environment, with the family and the member sharing a home that is not owned by the member or member's family. No more Family-Centered Support will be approved after December 30, 2007. The Family-Centered Provider must be a Certified Direct Support Professional (DSP) who meets all the requirements to provide this service.

21.02-15 **Habilitation** is a service that is provided in order to assist a member to acquire a variety of skills, including self-help, socialization and adaptive skills. Habilitation is aimed at raising the level of physical, mental, and social functioning of a member. Habilitation is contrasted to rehabilitation which involves the restoration of function that a person has lost.

21.02-16 **Instrumental Activities of Daily Living (IADL)** include only the following: main meal preparation; routine housework; grocery shopping and storage of purchased groceries; and laundry either within the residence or at an outside laundry facility.

21.02-17 **Intellectual Disability** means a diagnosis as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*, (American Psychiatric Association), that manifested during the developmental period, in accordance with the definition of Intellectual Disability codified in 34-B MRSA §5001.

21.02-18 **Medical Add-On** is an increase in the rate paid to address short-or-long term medical needs and is reviewed and approved by the CRT. Medical Add-On is a component of Home Support, Community Support, Employment Specialist Services and Work Support-Individual and is included in the established authorization (as described in Section 21.04-1). It is not a separately billable activity.

Billing may not exceed the Home Support, Community Support, Employment Specialist Services or Work Support authorized units of service. It is not a separately billable activity. Documentation must clearly identify and support periods of such activity. Refer to Appendix II for more information.

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21.02 DEFINITIONS (cont.)

- 21.02-19** **Member** is a person determined to be eligible for MaineCare benefits by the Office for Family Independence (OFI) in accordance with the eligibility standards published by the OFI in the *MaineCare Eligibility Manual*. Some members may have restrictions on the type and amount of services they are eligible to receive.
- 21.02-20** **Neglect** means a threat to a member's health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these as defined in 22 MRSA §3472.
- 21.02-21** **On Behalf Of** is a billable activity that is provided for individual members and is not necessarily a direct face-to-face service. On Behalf Of is a component of Home Support, Community Support, Employment Specialist Services and Work Support. It is included in the established authorization and is not a separately billable activity. Documentation detail must clearly identify and support periods of such activity. Refer to Appendix III for more information.
- 21.02-22** **Personal Plan** is a member's plan developed at least annually based on the effective plan date, that identifies the services required under the waiver benefit. The Personal Plan must also include services and supports not covered by the waiver but identified by the member. Only covered services included on the Personal Plan are reimbursable. The Personal Plan may also be known as a person centered plan, a service plan, an individual support plan, or an individual education plan, as long as the requirements of Section 21.04-2 are met.
- 21.02-23** **Primary Caregiver:** The Primary Caregiver is the adult who takes primary responsibility for the health and well-being of a member who cannot fully care for himself/herself. This is unpaid assistance and support, typically provided by a family member.
- 21.02-243** **Prior Authorization** is the process of obtaining written prior approval by the Department's Designated Representative as to the medical necessity and eligibility for a service.
- 21.02-254** **Qualified Intellectual Disability Professional (QIDP)** is a person who has at least one year of experience working directly with persons with intellectual disabilities or other developmental disabilities and is one of the following: 1) a doctor of medicine or osteopathy; 2) a registered nurse; or 3) an individual who holds at least a bachelor's degree as specified in title 42 Code of Federal Regulations (CFR) 483.430, paragraph B5.

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21.02 DEFINITIONS (cont.)

- 21.02-265** **Qualified Vendor** is a provider approved by DHHS to provide waiver services to eligible members receiving services under this Section. DHHS requires agencies to provide high quality services that, at a minimum, meet the expectations of the members who utilize those services. DHHS may authorize agencies to provide services under this Section after an application, along with supporting documentation, has been submitted to a Designated Representative for review and approval. The Designated Representative will authorize only agencies that meet DHHS expectations in the areas of organization and operation, operation of individual programs or services, personnel administration, environment and safety, and quality management. Only Qualified Vendors will receive authorizations for reimbursement.
- 21.02-276** **Shared Living (Foster Care-adult)** is a model in which services are provided to a member by a person who meets all of the requirements of a Direct Support Professional with whom that member shares a home. The home may belong to the provider or the member, but the provider must enter into a contractual relationship with an Administrative Oversight Agency in order to provide services under this model. Only one member may receive services in any one Shared Living arrangement at the same time, unless a relationship existed prior to the service arrangement and the arrangement is approved by DHHS. In such case, no more than two members may be served in any one Shared Living arrangement concurrently. Please see 21.10 for additional qualifications.
- 21.02-287** **Shared Living Provider** is a provider who subcontracts with an agency to provide direct support to a member, with whom they share a home. The Shared Living Provider must be a Certified Direct Support Professional (DSP) who has met all the requirements to provide this service. The Shared Living Provider must enter into a contractual relationship with the Administrative Oversight Agency in order to provide services to a member. The agency supports the provider in fulfilling the requirements and obligations agreed upon by the DHHS, the Administrative Oversight Agency, and the member's Personal Plan. See 21.10 for additional qualifications.
- 21.02-298** **Utilization Review** is a formal assessment of the medical necessity, efficiency and appropriateness of services on a prospective, concurrent or retrospective basis.
- 21.02-2930** **Year** Services are authorized on the state fiscal year, July 1 through June 30.

21.03 DETERMINATION OF ELIGIBILITY

Eligibility for this benefit is based on meeting all three of the following criteria: 1) the eligibility criteria for a funded opening based on priority, 2) medical eligibility, and 3) eligibility for MaineCare as determined by the DHHS, Office for Family Independence (OFI).

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SECTION 21	HOME AND COMMUNITY BENEFITS FOR MEMBERS WITH INTELLECTUAL DISABILITIES OR AUTISM SPECTRUM DISORDER	Established: 11/1/83 Last Updated: 3/5/17
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*The Department is seeking and anticipates receiving CMS approval for this Section.
Pending approval, Covered Services will be provided as follows:*

21.03 DETERMINATION OF ELIGIBILITY (cont.)

21.03-1 Funded Opening

The number of MaineCare members that can receive services under this Section is limited to the number, or “funded openings,” and point in time approved by the Centers for Medicare and Medicaid Services (CMS). Persons who would otherwise be eligible for services under this Section are not eligible to receive services if all of the funded openings are filled.

21.03-2 Reserved Capacity

The DHHS reserves a portion of member capacity of the waiver for specified purposes subject to CMS review and approval in order to:

- Meet the needs of incapacitated or dependent adults who require adult protective services to alleviate the risk of serious harm resulting from abuse, neglect and/or exploitation; and
- Meet the needs of those individuals who choose to leave an ICF/IID, long term nursing home placement, state psychiatric hospital, or hospital and
- Meet the needs of members under age 21 in out of state residential placements funded by MaineCare or State funds.

The number reserved associated with Section 21.03-2 above is an average based on the DHHS’s data for those in need of adult protective services in recent years. The number reserved for ICF/IID, long term nursing home placement, state psychiatric hospital or hospital residents is based on currently known referrals. The number reserved for members in out of state residential placements is based on the number of current out of state residential placements funded by MaineCare or State funds.

21.03-3 General Eligibility Criteria

Consistent with Subsection 21.03-1, a person is eligible for services under this Section if the person:

- A. Is age eighteen (18) or older (members who were younger than age 18 and were already receiving services under this Section as of December 30, 2007 may continue to receive benefits under this Section); and
- B. Has an Intellectual Disability as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association) (DSM) or Autism Spectrum Disorder as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*, (American Psychiatric Association) or Rett Syndrome as defined by the DSM; and

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21.03 DETERMINATION OF ELIGIBILITY (cont.)

- C. Meets the medical eligibility criteria for admission to an ICF/IID as set forth under the *MaineCare Benefits Manual*, Chapter II, Section 50; and
- D. Does not receive services under any other federally approved MaineCare home and community based waiver program; and
- E. Meets all MaineCare eligibility requirements as set forth in the *MaineCare Eligibility Manual*; and
- F. The estimated annual cost of the member's services under the waiver is equal to or less than two hundred percent (200%) of the state-wide average annual cost of care for an individual in an ICF/IID, as determined by the DHHS.

21.03-4 Establishing Medical Eligibility

In order to determine medical eligibility, the member and Case Manager must provide to DHHS the following:

- A. A completed copy of the assessment form (BMS 99) or current functional assessment approved by the DHHS; and
- B. A copy of the member's Personal Plan developed, approved and signed by the member, guardian and the Case Manager within the preceding six months of the effective plan date and any other relevant material indicating the member's service needs.

Based on review of the Assessment Form and the member's Personal Plan, a QIDP designated by DHHS will determine the member's medical eligibility for services under this Section.

DHHS shall notify each member or the member's guardian in writing of any decision regarding the member's medical eligibility, and the availability of benefit openings under this Section. The notice will include information about the member's right to appeal any of these decisions. Rights for notice and appeal are further described in Chapter I of the *MaineCare Benefits Manual*.

If the member is found to be medically eligible, DHHS must send the member or guardian written notice that the member can receive ICF/IID services or services under this Section. The member or guardian must submit to the Case Manager a signed choice letter documenting the member's choice to receive services under this section.

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21.03 DETERMINATION OF ELIGIBILITY (cont.)

21.03-5 Calculating the Estimated Annual Cost

Prior to formal determination of eligibility for services under this section, each applicant and the applicant's planning team must identify the required mix of services to meet the applicant's needs and to assure the applicant's health and welfare. The applicant and the applicant's planning team shall submit a detailed estimate of the total annual cost for waiver services identified in the Personal Plan, including the specific services and the number of units for each service.

21.03-6 Priority

When a member is found to meet MaineCare eligibility criteria and medical eligibility criteria for these services, the priority for a funded opening shall be established in accordance with the following:

A. **Priority 1:** Any member on the waiting list shall be identified as Priority 1 if:

1. The member has been determined by DHHS to be in need of adult protective services in accordance with 22 M.R.S.A. §3473 *et seq.*, and if the member continues to meet the financial and medical eligibility criteria at the time that need for adult protective services is determined.

OR

2. The member meets the following criteria:

a. The member's Primary Caregiver, with whom the member resides, has reached age sixty-five (65) or has a terminal illness, and is having difficulty providing the necessary supports to the member;
AND

b. The member has no other responsible or willing caregiver;-AND-

c. The member meets at least TWO of the following criteria:

i. Within the last 12 months, the member has demonstrated a significant change in medical/behavioral need, as evidenced and documented by:

- o Increased functional needs and required supports as a result of a mental health or medical condition; OR,
- o Criminal behavior resulting in involvement with the Criminal Justice System (not dependent upon conviction) that impacts or results in the harm or threat to others;

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21.03 DETERMINATION OF ELIGIBILITY (cont.)

- ii. Prolonged and unresolved Crisis Involvement resulting -in high-risk for institutionalization; OR
- iii. Three or more hospital admissions over the last 12 months due to a medical or behavioral decline that is expected to continue; OR
- ii-iv. The health, safety or welfare of the Member or others is at imminent danger.

Priority 1 is granted only when a member's needs cannot be met absent the provision of such services available within this waiver program. This includes, but is not limited to, a review of whether a member's needs can be met through services for which they are eligible under the State Plan or Section 29, Support Services for Adults with Intellectual Disabilities or Autistic Spectrum Disorder.

- B. **Priority 2:** Any member on the waiting list shall be identified as Priority 2 if the member has been determined to be at risk for abuse, neglect, or exploitation in the absence of the provision of benefit services identified in his or her service plan. Examples of members who shall be considered Priority 2 include:
1. a member whose ~~parents~~ Primary Caregiver has have reached age sixty (60) and ~~are-is~~ having difficulty providing the necessary supports to the member in the family home; or
 2. a member living in unsafe or unhealthy circumstances but who is not yet in need of adult protective services, as determined by DHHS Adult Protective Services.
- C. **Priority 3:** Any member on the waiting list shall be identified as Priority 3 if the member is not at risk of abuse, neglect, or exploitation in the absence of the provision of the benefit identified in the service plan. Examples of members who shall be considered Priority 3 include:
1. a member living with family, who has expressed a desire to move out of the family home;
 2. a member whose medical or behavioral needs are changing and who may not be able to receive appropriate services in the current living situation;
 3. a member who resides with family, if the family must be employed to maintain the household but cannot work in the absence of the benefit being provided to the member; or

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21.03 DETERMINATION OF ELIGIBILITY (cont.)

4. A member who has graduated from high school in the State of Maine, has no continuing support services outside of the school system, but is in need of such services.

D. Annual Review of Priority: In order to remain on the waiting list for Section 21 services, the member or his/her guardian or Representative must annually resubmit the following to the Department:

1. Verification of the member's continued interest in remaining on the waiting list; and
2. Information necessary to redetermine the member's priority level.

In the event that this information is not received by the Department within six (6) months of the annual review date, the member will be notified of his or her removal from the waitlist. The member may reapply thereafter.

21.03-7 Choosing Whom to Serve Within the Same Priority

If the number of openings is insufficient to serve all members on the waiting list who have been determined, at the time that any opening is determined to be available, to be within the same priority group, DHHS shall first determine whether each member continues to meet the financial and medical eligibility criteria to be served through this benefit. For those who continue to meet such criteria, the DHHS will utilize the most current assessment that is entered into the Enterprise Information System (EIS), or current database, and submitted by the individual member, guardian or Case Manager. Upon review of information concerning all members within the same priority group who continue to meet financial and medical eligibility criteria and for whom current service plans are in place, DHHS shall determine which members to serve. The determination will be based on a comparison of the members' known needs and the comparative degree of abuse, neglect or exploitation or risk of abuse, neglect or exploitation that each member will likely experience in the absence of the provision of the benefit.

21.03-8 Waiting List and Offers for Funded Opening

DHHS will maintain a waiting list of eligible MaineCare members who cannot access Home and Community Benefits because a funded opening is not available. Members who are on the waiting list for the benefit services shall be served in accordance with the priorities identified above. At the time a member is offered a funded opening the member will be removed from the waiting list.

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21.03 DETERMINATION OF ELIGIBILITY (cont.)

A member has sixty days from the receipt of notification by DHHS of a funded opening to respond with intent to accept waiver services. A member has six (6) months from the receipt of notification to start services. If the member fails to respond to DHHS with intent to accept the funded opening within sixty (60) days of this notice or fails to begin services within six (6) months, the waiver offer will then be withdrawn. A member may reapply at any time for waiver services.

21.03-9 Redetermination of Eligibility

Every twelve (12) months from the date of initial eligibility approval, the member's Case Manager will submit to OADS: a Current Personal Plan based on the effective plan date that is less than six (6) months old and an updated assessment form (BMS 99) or current assessment approved by the Department.

If the updated Assessment Form and Personal Plan are not received by OADS, by the due date, reimbursement for services will be denied until receipt of the assessment form and Personal Plan. Reimbursement for services will resume upon receipt of the Assessment Form and a signed Personal Plan.