MaineCare revised the MaineCare Benefits Manual rules related to Section 109 Speech and Hearing Services, Section 68 Occupational Therapy Services and Section 85 Physical Therapy Services. These revised rules become effective on December 1, 2011. Along with changes to the procedure codes, rates and the addition of "TM" modifiers, the most significant items that impact public schools in Maine are summarized in the preambles to the rules from MaineCare Services, (November 28, 2011 for OT and Speech and Hearing; and November 23, 2011 for PT) from Patricia Dushuttle, Director, Division of Policy, MaineCare Services. Click each link below to open and read the notification letters as well as the revised policies:

Speech and Hearing - Regulations  
Speech and Hearing - DHHS Response to Comments

Physical Therapy - Regulations  
Physical Therapy - DHHS Response to Comments

Occupational Therapy - Regulations  
Occupational Therapy - DHHS Response to Comments

Specifically, MSB points out the following from the Speech and Hearing Services letter and policy:

1. Paragraph 1: The Department of Health and Human Services is adopting this rule to remove any differing requirements for school-based providers of MaineCare speech and hearing services, and require them to meet all other requirements of comparable community-based providers of such services. In addition, the Department will clarify that medical necessity for these services requires appropriate documentation, and that provision of services must be documented. Each member’s written progress note must now contain the start and stop time of the service provided to the MaineCare member.

MSB response: Those districts that are utilizing the services of MSB and utilizing Lumea™, formerly known as X Logs™, are already in compliance with this new rule. From the beginning, Lumea™ requires the service provider to indicate his/her start and stop times for each session and related progress note. This same information is now required for both Section 85 Physical Therapy Services (Paragraph 85.09-2 D.2.) as well as Section 68 Occupational Therapy Services (Paragraph 68.09-2 D.2.) and are both handled via Lumea™.

District Action: None required but to continue current practice if using Lumea™ for progress note purposes

2. Paragraph 2: Additionally, in this adopted rule the Department corrects multiple units of service in the Chapter III to move to HIPAA compliant coding in preparation for MIHMS federal certification, adds billing modifiers, and removes one redundant billing code S9152 Speech therapy, re-evaluation. The Department’s Rate Setting unit carefully analyzed utilization to establish cost neutral reimbursement rates. These rates will be reevaluated in six months to assure members have access to these important services.

MSB response: MSB is responding on behalf of our districts to modify our billing system to comply with these new requirements. Further, MSB is responding to both test and meet all requirements of the upcoming 5010 HIPAA changes.

District Action: None required for those districts utilizing MSB’s services
3. Paragraph 4: The following procedure codes 92526, 92550, 92565, 92568, 92610, V5364, V5364 TF, which were reimbursable historically, are added to MIHMS in this adopted rule and will be covered retroactively to 09/01/2010. Procedure codes 92585 and 96110 will be reimbursed by the Department going forward, as of the effective date of this rulemaking. In response to public comment, Ear Mold/Inserts (V5264) will have an increased reimbursement rate to 70% of the Medicare rate as of the effective date of this rulemaking.

MSB response: MSB is responding on behalf of our districts to modify our billing system to comply with these new requirements.

District Action: None required for those districts utilizing MSB’s services

4. Paragraph 5: This adopted Chapter III also clarifies how some of the HIPAA compliant billing codes of this Section are state-level defined. (For example: Speech group therapy is defined as two to four MaineCare members with one clinician with appropriate documentation made for each individual in his/her medical record). Three (3) billing modifiers have been added to this Section for Departmental tracking purposes, as follows: TL will be required for services performed under an Individualized Family Service Plan (IFSP), TM will be required for all services delivered under an Individualized Education Plan (IEP) with the MaineCare addendum, and 52 (Reduced Services) will be required when a service is reduced or applied to one ear and not both. The Department made several technical corrections in the final rule, including changes in definition clarifications, grammar, punctuation and consistency of the format.

MSB response: In 2010, on behalf of its districts, MSB provided comment during the rule making process that there should be TM modifiers on all school-based claims in order to isolate those services being billed by public schools and avoid any potential for confusion between school-based claiming and community-based claiming. We view the addition of TM modifiers as a positive improvement to MIHMS. After repeated attempts to understand the process via correspondence to MaineCare, MSB is still unclear as to how MaineCare delineated the difference between school-based claims and community-based claims for the period of September 1, 2010 and November 30, 2011.

District Action: None required for those districts utilizing MSB’s services

5. From the adopted new rules changes, there are changes in that “School” is no longer a defined term in the policy with no other changes (other than the removal of “school”) to the definition of a “speech and hearing agency”:

New, Definition Effective December 1, 2011:

109.02-8 Speech and Hearing Agency is a facility that offers, at a minimum, both speech-language pathology services and audiology services by qualified professional staff who are employees of the speech and hearing agency. Contracted staff are not considered employees.

Former Definitions Effective September 1, 2010:

109.02-7 School: a program that has been approved by the Department of Education as either a Special Purpose Private School under Chapter 101, § (1,2) and 20-A M.R.S.A. §7251-7258, or a Regular Education Public School under 20-A M.R.S.A. § 1 item # 26.
109.02-8  **Speech and Hearing Agency** is a facility or school that offers, at a minimum, both speech-language pathology services and audiology services by qualified professional staff who are employees of the speech and hearing agency. **Contracted staff are not considered employees.**

**MSB response:** See the interpretation provided by MaineCare in response to Jill Adams (MADSEC) question (as quoted in MSB’s community email on 9/14/2011) regarding the removal of “School” as a defined term from the policy:

“Hi all,
A short time ago I sent out the proposed changes to Section 68 (OT), Section 85 (PT) and Section 109 (speech). You can read the proposed changes and submit written comment at the following: http://www.maine.gov/dhhs/oms/rules/proposed.shtml. Click on the corresponding section and it will take you to it. I found the changes to be confusing so asked for further clarification. I am concerned about the answers I have received below and the effect this may have on schools. I cannot answer questions on how this would work as I do not know. The written comment period for these sections ends on August 18. You can submit your comment on line. Take Care and hope that you are getting a chance to enjoy the great weather. Jill

Jill V Adams
Executive Director
MADSEC

From: Cseak, Delta [mailto:Delta.Cseak@maine.gov]
Sent: Tuesday, August 02, 2011 8:20 AM
To: Jill Adams; Holmes, Jaci; Connolly, Nancy; Dushuttle, Patricia
Subject: RE: OT, PT, Speech and Language changes

Good morning,

I apologize for my delay in clarifying the proposed rule for you. I had to prioritize my responsibilities. My responses are below in red. The public comment periods for these 68/85/109 rulemakings close 08/18/11. Should you have any other questions, I will be attending the MAC meeting this morning.

Sincerely,

Delta Cseak
Division of Policy
MaineCare Services
(207) 287-6348

From: Jill Adams [mailto:jadams@madsec.org]
Sent: Thursday, July 28, 2011 3:18 PM
To: Holmes, Jaci; Connolly, Nancy; Dushuttle, Patricia; Cseak, Delta
Subject: OT, PT, Speech and Language changes

I am reviewing the proposed rules and I am looking for clarification as to how the changes will be interpreted. It is difficult to offer comment if you do not know what the changes mean. Thanks for your assistance. Jill

1. In the Notice of Agency Rule-making Proposals regarding Chapter 101, MaineCare Benefits Manual, Chapters II & III, Section 85, Physical Therapy and Chapters II and III, Section 65, Occupational Therapy, the proposed
The rule states that “Agencies or businesses may enroll as a provider of service and bill directly for services provided by qualified staff”. Are public schools considered an agency or a business and, therefore, able to enroll as a provider of service and bill MaineCare?

[Cseak, Delta] Public schools will be considered just as any other qualified community-based MaineCare provider. They will be able to re-enroll in MIHMS and bill MaineCare on behalf of the PT/OT and/or SLPs they employ. If their PT/OT and/or SLPs are contracted staff who provide these services in the public school setting, those qualified MaineCare professionals must themselves enroll as a MaineCare Services provider and bill MaineCare directly for the services they provide in the public school setting.

2. In the Notice of Agency Rule-making Proposal regarding Chapter 101, MaineCare Benefits Manual, Chapters II & III, Section 109, Speech and Hearing Services the Department of Health and Human Services is “proposing this rule to remove any differing requirements for school based providers, and require them to meet all other requirements of comparable community based providers.” Under these rules the only way in which a school can bill MaineCare is to be a “Speech and Hearing Agency”. There are two general criteria to be a “Speech and Hearing Agency”: 1. “offers, at a minimum, both speech-language pathology services and audiology services by qualified professional staff” and 2. The staff must be employees, not contracted staff. Schools do not employ audiologists and are not speech and hearing agencies. Will schools who do not have an audiologist be able to bill for speech services as a provider? Schools employee speech/language pathologists but also contract with speech/language pathologists, will schools be able to bill for services of a speech language pathologist with whom they contract? [Cseak, Delta] I believe I addressed this above

The response from Delta Cseak indicates that MaineCare may require public school districts to re-enroll with MIHMS subsequent to the new policy. Ms. Cseak’s interpretation of the policy indicates that only those who are employed by the district can be directly billed by the district to MaineCare and that contracted service providers would need to enroll directly with MaineCare and bill MaineCare. We also understand that if contracted service providers enroll and bill MaineCare directly, they will need to accept MaineCare payment as “payment in full” for services provided to students in schools and would not be able to charge the difference in their fees back to the district. Further, the policy seems to indicate that to qualify as a “Speech and Hearing Agency”, the agency would have to “offers, at a minimum . . . audiology services by qualified professional staff who are employees . . .”. Our understanding is that as a MaineCare provider, districts can bill for Speech and Hearing Services without an Audiologist on staff and would then use the independent rate vs. the agency rate. MSB’s understanding is based on the following:

Chapter II, Section 109, paragraph 109.06 Setting reads “MaineCare will reimburse speech and hearing services when provided in appropriate settings. Approved setting for these services are . . . schools for members under age 21.”

Chapter III, Section 109, Page 1 indicates that there are two types of rates that can be billed, Agency Rates and Independent Rates. The policy reads “**The Independent Rate applies to organizations with either one or more Speech Language Pathologist or Audiologist.” [emphasis MSB]

Given Ms. Cseak’s interpretations, the same seems to apply for PT and OT with respect to districts inability, moving forward, to bill MaineCare directly for contracted service providers who are not considered employees of the school district.

MSB’s understanding of federal policy related to public schools’ ability to bill for contracted providers, and our understanding as to what many other States across the country are currently practicing with respect to billing for contracted providers, is that there is no prohibition for public schools to bill for contracted service providers as long as
there is an understanding, often referred to as an “assignment of benefits” between the district and the contractor that the district would be receiving the benefit and responsibilities for billing Medicaid, and that the contractor would not become a direct biller to the Medicaid agency.

MSB also understands that if contractors in Maine would begin billing MaineCare directly, the contractor or contractor agency, would have to agree that MaineCare payment would represent “payment in full” on a per student basis and could not bill the district for the difference between the MaineCare reimbursement rate and the rate agreed to previously between the district and the contractor or contractor agency. MSB believes a district’s options include 1) employ service providers in order to bill them to MaineCare; 2) require any contracted service providers to bill MaineCare directly and offset local expenditures from the district budget and/or 3) discontinue billing MaineCare for contracted services providers.

District Action: We urge districts to continue to ask all contracted staff currently utilizing Lumea to continue to do so until this issue is finally settled. The reasons are twofold: 1) should the State interpret its policy differently in the future and retroactively allow districts to once again submit claims for contracted service providers directly to MaineCare, MSB would have a process to submit those, now unallowed, claims to MaineCare for reimbursement directly to districts. Secondly, MSB is considering ways to assist both school districts and contracted service providers to take information that is provided in Lumea™ by contracted service providers and make that information available to contracted services providers who opt to bill MaineCare directly. It may also help districts who contractually require their contracted services providers to bill MaineCare, and offset local costs for those services, to obtain reports as to how much contracted service provides may be eligible to bill compared with how much they are billing directly to MaineCare to offset local district budgets to pay for other otherwise reimbursable services.

In addition, it will be necessary to differentiate these “contracted” service providers in Lumea. We ask that districts change any contracted service provider’s “State Approved Service Provider Type” in Lumea, to a “Custom Provider Type” that specifies they are contracted. Districts can perform this task by going to User Details, finding the service provider’s name and selecting the Edit/View link. Select the Types tab, remove the check under the “State Approved Service Provider Types” and select the contracted equivalent from the “Custom Service Provider Types” list. This will ensure that no billing is submitted for these service providers, while still allowing them to record and post sessions.

MSB points out the following additional changes found in the revised policies for Section 85 Physical Therapy Services:

Page 3 of Section 85 under paragraph 85.06 has an additional paragraph that reads, in part, that “physical therapy services must be prescribed by a physician or other licensed practitioner of the healing arts” [emphasis MSB] within the scope of practice under Maine law and must be provided by or under the direction of a qualified licensed physical therapist”.

MSB Response: The policy continues to allow a licensed practitioner of the healing arts within the scope of practice to prescribe services. See the definitions under paragraph 85.02-6 where Practitioner of the Healing Arts is defined as “physicians and all others registered or licensed in the healing arts, including, but not limited to . . . physical therapists . . .”

District action: Districts should continue to obtain written orders/referrals from their licensed physical therapists on MSB’s ORRF forms each time an IEP is finalized.
MSB points out the following additional changes found in the revised policies for Section 68 Occupational Therapy Services:

Page 3 of Section 68 under paragraph 68.06 has an additional paragraph that reads, in part, that “occupational therapy services must be prescribed by a physician or other licensed practitioner of the healing arts [emphasis MSB’s] within the scope of practice under Maine law and must be provided by or under the direction of a qualified licensed occupational therapist”.

**MSB Response**: The policy continues to allow a licensed practitioner of the healing arts within the scope of practice to prescribe services. See the definitions under paragraph 68.02-6 where Practitioner of the Healing Arts is defined as “physicians and all others registered or licensed in the healing arts, including, but not limited to . . . occupational therapists . . .”

**District action**: Districts should continue to obtain written orders/referrals from their licensed occupational therapists on MSB’s ORRF forms each time an IEP is finalized.