

To: Lisa Sturtevant  
Maine DHHS/OADS

From: Lisa A. Mills, PhD  
Subject Matter Expert  
ODEP Employment First State Leadership Mentoring Project

Date: March 12, 2015

RE: Request for analysis and response regarding transportation assistance for Medicaid HCBS waiver enrollees participating in integrated, competitive employment where face-to-face supported employment services at the job site is not necessary.

You asked me to look at your Section 113 Non-Emergency Transportation Waiver and offer my opinion on what transportation services can be provided to Medicaid HCBS waiver enrollees participating in integrated, competitive employment where face-to-face supported employment services at the job site is not necessary.

According to you, MaineCare created this Section 113 Non-Emergency Transportation Waiver to provide non-emergency transportation waiver to separately meet the non-emergency transportation needs of Medicaid waiver beneficiaries. When this Section 113 Waiver was created, the existing Transportation service included in the Section 21 and Section 29 waivers was eliminated under the understanding that these transportation services would now be covered under the Section 113 waiver. You raised concerns that Medicaid HCBS waiver enrollees participating in integrated, competitive employment, where face-to-face supported employment services at the job site is not necessary, have recently been denied transportation assistance through the Section 113 waiver to get to/from their job sites. The following is my analysis of the issue:

In reviewing the definitions of the Transportation services previously offered under the Section 21 and 29 waivers (see Appendix A), I see that these services clearly permitted coverage of transportation to/from community activities and venues, regardless of whether a Medicaid service was being delivered at these community locations. Note this part of the service definitions:

“Transportation Service may be provided in order to enable waiver participants to gain access to waiver **and other community services, activities and resources**, as specified by the Personal Plan.” [Emphasis added]

In comparing the definitions of Transportation, formerly offered under the Section 21 and Section 29 waivers, to the definition of transportation under the Section 113

waiver, I note that the above bolded phrase was not carried over to the definition in the Section 113 waiver.

“Non-emergency Transportation (NET) Services ***provides transportation to MaineCare covered services*** for eligible MaineCare members when no other means of transportation is available to them.” [Emphasis added]

Source: MaineCare Benefits Manual; Ch2; Section 113.

You reported that when the Section 113 waiver was created, the funding being used to provide Transportation services under the Section 21 and Section 29 waivers was taken out of these waiver programs and put into the Section 113 waiver with the understanding that the same service would continue to be available to the Section 21 and Section 29 waiver participants through the Section 113 non-emergency transportation waiver. In comparing the definitions, you can see that full coverage of transportation, as was available under the Section 21 and Section 29 waivers, was not included in the Section 113 waiver definition. As a result, a gap in coverage has been created, perhaps inadvertently. This is unfortunate for many reasons, but most notably because it inhibits community integration and community involvement, which are otherwise key goals of HCBS waiver programs. The restriction also significantly inhibits waiver participants’ ability to maximize their independence and rely on natural rather than paid supports whenever possible. This restriction inadvertently requires waiver participants to receive paid waiver services in the context of community participation, thus obligating provision of paid services (and the expense to the state associated with this) in order to qualify for assistance with transportation.

With regard to MaineCare funded Supported Employment services which enable a member to obtain and maintain competitive employment in ordinary community businesses, a fundamental expectation of Supported Employment services is the fading of on-the-job supports over time as an outcome of effective service delivery which results in the individual supported employee being able to continue employment with natural supports and minimal or no MaineCare funded supports on the job. Such a positive and cost-effective service outcome should not be accompanied by a loss of eligibility for transportation assistance a supported employee may still need to get to and from their job. In addition, some MaineCare members who are employed through Supported Employment services may still be receiving that service on an on-going basis but effective service provision does not necessitate the Supported Employment specialist delivering that service on a face-to-face basis at the job site.

Given your state’s Employment First law and based on your report of the recent denials of Section 113 transportation assistance for MaineCare members who need assistance to get to/from their community job sites, I recommend an immediate policy clarification be issued which contains the following:

- MaineCare members who receive, or have received, MaineCare services to obtain and/or maintain competitive integrated employment continue to be eligible for Section 113 transportation assistance, if they have a documented need for such assistance to get to and/or from work, so long as they continue to remain employed in competitive integrated employment and have at least one MaineCare funded service to support competitive integrated employment in their Individual Service Plans. These members are eligible for Section 113 transportation assistance to get to/from work regardless of whether MaineCare funded services to support the members' participation in competitive integrated employment are provided at the job site or not.

This policy clarification ensures that unique best practice strategies and expected outcomes of Maine Care funded Supported Employment services are not otherwise undermined, that the spirit of Maine's Employment First law is reflected in the Section 113 waiver policy, and that cost-effective use of Medicaid funding is achieved.

It is recommended that the next time the Section 113 waiver is amended or renewal, the transportation definition is modified to include coverage of transportation services provided to enable waiver participants to gain access to ***other community services, activities and resources including competitive integrated employment opportunities***, as specified by the Personal Plan. The state may wish to cover this type of service under a separate definition added to the Section 113 waiver. If such a modification cannot be approved by CMS, because the scope of coverage is beyond what is allowable under Non-Emergency Medical Transportation Services, the state should amend the Section 21 and 29 waivers to add back in coverage for Non-Medical Transportation that enables waiver participants to gain access to other community services, activities and resources, including competitive integrated employment opportunities. Per CMS guidance, Non-Medical Transportation services are defined as follows:

**Core Service Definition:**

*Service offered in order to enable waiver participants to gain access to waiver and other community services, activities and resources, as specified by the service plan.*

*This service is offered in addition to medical transportation required under 42 CFR §431.53 and transportation services under the State plan, defined at 42 CFR §440.170(a) (if applicable), and does not replace them. Transportation services under the waiver are offered in accordance with the participant's service plan.*

*Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge are utilized.*

[Source: CMS 1915c HCBS Waiver Technical Guide, version 3.5; page 163.]

## Appendix A

Definition of Transportation covered under the Section 21 HCBS Waiver prior to the creation of the Section 113 Non-Emergency Transportation Waiver

**21.05-14 Transportation Service** may be provided in order to enable waiver participants to gain access to waiver and other community services, activities and resources, as specified by the Personal Plan. This is offered in addition to medical transportation required under 42 CFR §431.53 and transportation services in the MaineCare Benefits Manual, defined at 42 CFR §440.170 (a) (if applicable), and does not replace them. Transportation services under this waiver are offered in accordance with the member's Personal Plan. Whenever possible, family, neighbors, friends, or community agencies that can provide this service without charge must be utilized.

A provider may only be reimbursed for providing transportation services when the cost of transportation is not a component of a rate paid for another service. Relatives and legal guardians may only be reimbursed for transportation if they indicate that they are unable to transport at no charge, there is no other viable option, and there is a recommendation by the planning team to reimburse the transportation.

Definition of Transportation covered under the Section 29 HCBS Waiver prior to the creation of the Section 113 Non-Emergency Transportation Waiver

**29.05-5 Transportation** service offered in order to enable members to gain access to waiver and other community services, activities and resources, as specified by the Personal Plan. This is offered in addition to medical transportation required under 42 CFR §431.53 and transportation services under the State plan, defined at 42 CFR §440.170 (a) (if applicable), and does not replace them. Transportation services under the waiver are offered in accordance with the member's Personal Plan. Whenever possible, family, neighbors, friends, or community agencies, which can provide this service without charge, are utilized.

A provider may only be reimbursed for providing transportation services when the cost of transportation is not a component of a rate paid for another service. Relatives and legal guardians may only be reimbursed if:

- They indicate that they are unable to transport at no charge; and
- There is no other viable option; and
- There is a recommendation by the planning team.