

Proposed changes to MassHealth Durable Medical Equipment Regulations

Initial comment deadline May 23, 2008 BUT a new notice expected
May 30, 2008 scheduling public hearing for late June 2008

The Office of Medicaid is proposing extensive changes to its regulations governing payment for durable medical equipment and medical supplies. Less extensive changes are also proposed to regulations governing payment for pharmacy services and transportation.

The original notice of proposed rule-making dated May 2, 2008, stated that the deadline for written comments about the proposed regulations was May 23, 2008. HOWEVER, the director of publications for the Office of Medicaid tells us that a new notice will be issued on May 30, 2008 setting a new comment deadline and a public hearing for later in June 2008 (probably the week of June 23-27).¹

The May 2, 2008 Notice and the Proposed rules are posted on the MassHealth website:

http://mass.gov/?pageID=eohhs2terminal&L=4&LO=Home&L1=Government&L2=Laws%2c+Regulations+and+Policies&L3=MassHealth+Regulations+and+Other+Publications&sid=Eeohhs2&b=terminalcontent&f=masshealth_government_proposed_mhregs&csid=Eeohhs2

The proposed rules change provider credentialing standards, & provider claiming & recordkeeping requirements in ways that it is hard for us to assess without more input from affected providers. One concern is whether the new credentialing requirements may restrict the number of pharmacies authorized to dispense medical supplies.

Comparing the current rules at 409.406 on "nonreimbursable services" with the proposed rules at 409.414 on "noncovered services", the new rules appear to restrict access to DME and medical supplies that are now covered, for example:

- new rules exclude all "experimental" DME --old rules used to allow for Prior Authorization (PA) to show medical necessity even if "experimental";

¹ A public hearing is required whenever rules propose to restrict MassHealth covered services. G.L. c.118E, § 12.

- new rules exclude repairs for DME not in the Manual --old rules allowed for repair of anything reimbursable including DME not in Manual if PA for item was obtained;
- new rules exclude routine maintenance -old rules specified that extensive maintenance can be covered as a repair;
- new rules exclude any DME not approved by FDA—this was not required in old rule & we need more info about it, it seems unlikely that FDA approves items like absorbent products that are billed under the DME regulations;
- new rules specifically exclude air conditioners & light boxes--old rules generally exclude nonmedical equipment but people have been able to get A/C and light boxes for certain medical conditions despite language in old rule when medically necessary;
- new rules specifically exclude home or vehicle modifications --not addressed in old rules.
- Another change we have not yet analyzed is that new rules remove standards for support surfaces, absorbent products and enteral products in favor of medical necessity guidelines posted on website at [http://www.mass.gov/?pageID=eohhs2subtopic&L=6&L0=Home&L1=Provider&L2=Insurance+\(including+MassHealth\)&L3=MassHealth&L4=Guidelines+for+Clinical+Treatment&L5=Guidelines+for+Medical+Necessity+Determination&sid=Eeohhs2](http://www.mass.gov/?pageID=eohhs2subtopic&L=6&L0=Home&L1=Provider&L2=Insurance+(including+MassHealth)&L3=MassHealth&L4=Guidelines+for+Clinical+Treatment&L5=Guidelines+for+Medical+Necessity+Determination&sid=Eeohhs2)

WE ARE TRYING TO GET MORE INFORMATION ABOUT HOW THESE PROPOSED RULES MAY AFFECT PATIENT ACCESS TO DME and MEDICAL SUPPLIES –

1. Have any of you or your organizations (or any other disability rights organizations you know about) been briefed by the Office of Medicaid on what these changes will mean for consumers?
2. What concerns do you or your organization have about changes in these proposed regulations?
3. Are you or your organization planning to submit written comments or testify?

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