

**Preliminary Injunction Entered in MassHealth Orthodontia Lawsuit:
What does it mean for your clients?
January 14, 2021**

Background

MassHealth covers orthodontic treatment for children and youth under age 21 if it is medically necessary. It uses a tool called the HLD index to determine medical necessity. In March 25, 2020 MassHealth released a Dental Transmittal changing the instructions for how orthodontist should complete the HLD index. It made further changes in a June 2020 transmittal. Last summer, an association of MassHealth participating orthodontists and five children and putative class representatives denied prior authorization under the new instructions filed a state court law suit against MassHealth to enjoin the changes. The plaintiffs argued that the new instructions were different from the standard of practice in the profession for measuring the kinds of irregularities that indicate a need for orthodontia (MassHealth rules call this “handicapping malocclusions”), and that the new instructions would result in many more children being denied treatment in violation of EPSDT and notice and comment rule-making requirements. MLRI filed an amicus brief in support of the plaintiffs.

The Preliminary Injunction (December 14, 2020)

On Dec 14, 2020 the court entered the following order on the plaintiffs' motion for a preliminary injunction:

It is further **ORDERED** that the defendants are preliminary enjoined from implementing the changes to the scoring instructions on the HLD Index set forth in Transmittal Letters DEN-104 and DEN-106 unless and until they comply with the notice and a public hearing requirements of G.L. c.30A, § 2 and G.L. c. 118E, § 12

[Dayanne N. v. Baker, Middlesex Superior Court, No. 2081CV01893 \(J. Camille Sarrouf Jr., Order of Dec. 14, 2020\)](#)

MassHealth implementation of the Preliminary Injunction

On January, 6, 2021 MassHealth published a transmittal letter rescinding the March and June 2020 transmittals and reinstating the HLD Index and instructions previously in effect. The Transmittal provides that the new standards will be applied to all authorization requests submitted or re-submitted on January 15, 2021 or later.

Deadlines for young people who are now age 21:

The Transmittal also provided that notwithstanding the under age 21 limit in the regulations, for young people who were under 21 when their orthodontists applied for prior authorization

between Mar 25 2020 and Jan 15, 2021, were denied under the enjoined standards, or who had a pre-orthodontic treatment examination within those dates and who have now turned 21, their orthodontists have until **March 31, 2021** to submit a new request for prior authorization that will be reviewed under the reinstated standards and, if approved, will be covered by MassHealth so long as treatment begins by **June 30, 2021**.

[Transmittal Letter DEN-108 \(January 2021\)](#)

Advocacy to help your clients obtain services

Three groups of children are affected: 1. Some children and youth may have had their orthodontist's prior authorization requests denied since the March 25 2020; 2. Some children may have been seen by orthodontists who were holding off on submitting requests based on objections to the March 2020 standards or while awaiting the outcome of the lawsuit, and 3. Some children may only now be consulting orthodontists about the need for treatment. After Jan. 15, 2021, all will be able to have their prior authorization requests determined under the reinstated standards. There are special procedures in place only for the young people who have now turned 21 as set out in the Transmittal DEN-108.

The HLD Form (attached to Transmittal Letter DEN-108)

The HLD Form has three sections any of one of which can be the basis for a finding of medical necessity. The March & June 2020 Transmittals that have now been enjoined changed the instructions for taking measurements for some of the conditions in the first two sections. The Tables below show the first two sections of the HLD form and identify which conditions were affected by the changes and what the main changes were.

Clients denied between March 25, 2020 and Jan 14, 2020

If your client was denied between March 25, 2020 and Jan 14, 2021, and you have a copy of the PA request and denial from your client's orthodontist, you will be able to see the HLD form showing if any of the conditions affected by the change in instructions as shown in the Tables below were involved in your client's case. If no factors in your client's case were affected by the changes in a way that is likely to lead to approval, consider working with the treating orthodontist to obtain additional evidence of medical necessity with a narrative from the orthodontist, the child's pediatrician, therapist or other provider.

Section 1: Autoqualifiers. This section lists seven very severe conditions each of which is an “autoqualifying” condition the existence of which authorizes treatment. Only one of the seven was affected by the enjoined 2020 changes.

Autoqualifier –Present/Not Present	2020 Change in instructions
Cleft Palate or Cranio-Facial Anomaly	None
Deep Impinging Overbite with severe soft tissue damage (e.g., ulcerations or tissue tears – more than indentations)	None
Anterior Impactions where extraction is not indicated	None
Severe Traumatic Deviations – refers to facial accidents rather than congenital deformity. Do not include traumatic occlusions or crossbites.	None
Overjet (greater than 9 mm)	None
Reverse Overjet (greater than 3.5 mm)	Changes include not considering single tooth in crossbite
Severe Maxillary Anterior Crowding (greater than 8 mm)	None

Section 2: Conditions contributing to score of 22 or more. The second section lists nine types of measurable malocclusions; treatment will be authorized if the total score of these measurements is 22 or more. Five of the nine conditions were affected by the enjoined 2020 changes.

Conditions –numeric measure	2020 Change in instructions
Overjet (in mm)	None
Overbite (in mm)	None
Mandibular Protrusion (in mm) – See scoring instructions.	Changes include measuring incisor to incisor rather than molar to molar
Anterior Open Bite – Do not count ectopic eruptions. Measure the opening between maxillary and mandibular incisors in mm.	Changes include redefining condition in reference to incisors only
Ectopic Eruption (Number of teeth, excluding third molars) – refers to an unusual pattern of eruption such as high labial cuspids. Do not score teeth in this category if they are scored under maxillary or mandibular crowding.	Changes include that each qualifying tooth must be 100% blocked out of arch
Anterior Crowding – If crowding exceeds 3.5 mm in an arch, score each arch.	Changes include scoring only fully erupted incisors and canines
Labio-Lingual Spread (anterior spacing in mm) – See scoring instructions.	Changes include only scoring the arch with the greatest spacing rather than total of both arches
Posterior Unilateral Crossbite – Must involve 2 or more teeth, one of which must be a molar.	None
Posterior Impactions or Congenitally Missing Posterior Teeth (excluding 3 rd molars).	None

Section 3: Medical Narrative. The third section provides another basis for MassHealth to authorize treatment based on a “medical necessity narrative. The medical narrative instructions were not changed in 2020. Using narratives (supporting letters) to prove medical necessity is the only way to obtain prior authorization (absent an appeal) where scores alone do not capture severity.

The narrative can be supplied by the orthodontist supplying additional evidence of medical necessity not captured the HLD measure, photos or x-rays. And while all narratives must be submitted by the orthodontist along with the prior authorization request, letters can also be obtained from other providers with expertise outside the professional expertise of orthodontists. You and your client can assist by obtaining letters of medical necessity from pediatricians, therapists and other providers regarding the effect of misaligned teeth in causing pain or negatively affecting the child’s speech, nutrition or behavioral health.

If authorization is denied because the treating orthodontist scored a measure higher than the MassHealth reviewer (and the photo did not include the measuring device), a letter from the orthodontist confirming that he or she measured the malocclusion in accordance with the instructions should be compelling evidence at the hearing. The MassHealth reviewer is basing his or her measurements on photographs and x-rays and some method unspecified in the Dental Manual for converting the measurements to scale compared to the treating orthodontist who is taking actual measurements of the child’s mouth. See MLRI’s Resources for Appealing Denials of Orthodontic Treatment on masslegalservices.org for more information on representing clients appealing from the denial of orthodontic treatment,