

DIVISION OF HEALTH CARE FINANCE AND POLICY

**Commonwealth of Massachusetts  
Executive Office of Health and Human Services**

**NOTICE OF PUBLIC HEARING**

Pursuant to the provisions of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, the Executive Office of Health and Human Services (EOHHS) will hold a public hearing on Thursday, September 12, 2019, at 10:00 a.m., in the First Floor Conference Room, 100 Hancock Street, Quincy, MA relative to the adoption of:

**101 CMR 329.00: Psychological Testing, Treatment, and Related Services**

and the repeal of:

**114.3 CMR 29.00: Psychological Services**

These actions are being taken in order to comply with c. 224 of the Acts of 2012, which transferred authority for this regulation from the Division of Health Care Finance and Policy in M.G.L. c. 118G to the Executive Office of Health and Human Services (EOHHS) in M.G.L. c. 118E. 101 CMR 329.00 replaces 114.3 CMR 29.00 as the regulation governing the rates of payment used by state governmental units for psychological testing, treatment, and related services provided by eligible psychologists, and contains amendments as well.

The proposed regulation contains changes and updates from the current rates established for psychological services under 114.3 CMR 29.00. The proposed rates comply with the new Medicare coding requirements and establish rates for all psychological services under 101 CMR 329.00 at 75% of the corresponding Massachusetts Medicare rates. The proposed regulation also includes updates to: (i) incorporate technical changes related to the transfer of rate-setting authority; (ii) remove references to a standard hourly rate, as this will no longer apply; (iii) revise the general rate provision related to individual consideration; (iv) remove all obsolete services; (v) assign appropriate Current Procedural Terminology (CPT) codes for previously non-coded therapy and diagnostic services; (vi) remove from the fee schedule the testing timeframes for component tests of the psychological testing service; and (vii) remove the separate fee schedule for psychological testing of the hearing impaired, as the proposed rates will apply to any eligible population of publicly aided individuals, including individuals who are deaf or hard of hearing.

EOHHS is proposing this regulation and amendments to ensure that payment rates are consistent with efficiency, economy, and quality of care, and to satisfy the requirements of M.G.L. 118E, sections 13C and 13D. EOHHS anticipates that annual aggregate MassHealth expenditures will increase by approximately \$4,300 (4.4%) as a result of these amendments. There is no fiscal impact on cities and towns. The proposed regulation and amendments do not impose new costs on small businesses; the impact on small business providers will vary based on the volume of services provided.



The proposed regulation is planned to go into effect no sooner than January 1, 2020.

Individuals who notify EOHHS of their intent to testify at the hearing will be afforded an earlier opportunity to speak. Speakers may notify EOHHS of their intention to testify at the hearing by registering online at [www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings](http://www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings). Individuals may also submit written testimony by emailing [ehs-regulations@state.ma.us](mailto:ehs-regulations@state.ma.us). Please submit electronic testimony as an attached Word document or as text within the body of the email with the name of the regulation in the subject line. All submissions must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6<sup>th</sup> Floor, Quincy, MA 02171. Written testimony must be submitted by 5:00 p.m. on Thursday, September 12, 2019. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

All persons desiring to review the current draft of the proposed actions may go to [www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings](http://www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings) or request a copy in writing or in person from MassHealth Publications, 100 Hancock Street, 6<sup>th</sup> Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at [ADAaccommodations@state.ma.us](mailto:ADAaccommodations@state.ma.us) or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

EOHHS may adopt a revised version of the proposed actions taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at [www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings](http://www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings).

August 9, 2019

## Small Business Impact Statement for Rescission

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

**CMR No: Promulgation of 101 CMR 329.00: Psychological Testing, Treatment and Related Services, and rescission of 114.3 CMR 29.00: Psychological Services**

**Estimate of the Number of Small Businesses Impacted by the Regulation: 1,415**

**Select Yes or No and Briefly Explain**

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? No. Small businesses will not have to create, file, or issue additional reports as a result this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No. Small businesses will not have additional responsibilities to keep records as a result of the proposed amendments to this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No. Small businesses are not required by this regulation to provide additional administrative oversight as a result of the proposed amendments to this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No. This regulation does not require small businesses to hire additional employees to remain in compliance.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No. Small businesses are not required by this regulation to hire other professionals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No. This regulation does not require small businesses to purchase any particular product or make any capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.)  No. The regulation is required by statute under MGL Chapter 118E Section 13C, and establishes the rates to be paid by governmental units to providers of non-institutional health care services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No. No regulations duplicate or conflict with this regulation.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? Yes. The regulation requires providers to periodically comply with audits, inspections and other regulatory activities.
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with

<input type="checkbox"/>	<input checked="" type="checkbox"/>	regulatory requirements? No. The regulation does not require small businesses to provide educational services to keep up to date with the regulatory requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? No. The regulation is not likely to deter or encourage the formation of small businesses in Massachusetts as this regulation governs payments for psychological testing, treatment and related services to publicly-aided individuals, and is applied uniformly among providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? No. The regulation is not likely to deter or encourage the formation of small businesses in Massachusetts as this regulation governs payments for psychological testing, treatment and related services to publicly-aided individuals, and is applied uniformly among providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No. This regulation requires providers to submit documentation requested by the Commonwealth for purposes of utilization and provider review to ensure compliance with requirements and the regulation is applied uniformly among all providers. .
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No. This regulation requires providers to submit documentation requested by the Commonwealth for purposes of utilization and provider review to ensure compliance with requirements, including the timelines for reporting, and the regulation is applied uniformly among all providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. This regulation requires providers to submit documentation requested by the Commonwealth for purposes of utilization and provider review to ensure compliance with requirements, including the timelines for reporting, and the regulation is applied uniformly among all providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? No. The regulation establishes uniform conditions of payment for the provision of services to publicly-aided individuals. These requirements are applied uniformly to maintain consistency in the care provided to publicly-aided individuals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No. The regulation does not have an adverse impact on small businesses and governs payments for psychological testing, treatment and related services to publicly-aided individuals, and is applied uniformly among providers.