

Commonwealth of Massachusetts
Executive Office of Health and Human Services

NOTICE OF PUBLIC HEARING

Pursuant to the authority of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, a remote public hearing will be held on Monday, January 23, 2023, at the times listed below, relative to the emergency adoption of proposed amendments to the regulations listed below.

The following actions are being taken pursuant to the requirements of M.G.L. c. 118E § 13C and 13D. The proposed amendments increase rates for certain heavily utilized family planning codes, abortion codes, and surgery codes related to abortion and family planning services for all eligible providers. Based on available provider data, rates are increased between 3% and 223%, with an average increase of 74%, in order to maintain access to abortion and family planning services for MassHealth members. The proposed regulations contain rates effective for dates of service on and after January 1, 2023.

1. 1:00 p.m.: 101 CMR 312.00: Rates for Family Planning Services. 101 CMR 312.00 governs payment rates used by MassHealth and other governmental units for family planning services rendered to publicly aided individuals. The proposed amendments to 101 CMR 312.00 update rates for certain family planning codes. The proposed amendments also update rates for certain Evaluation and Management (E&M) codes only when the service is provided by a family planning clinic and/or a freestanding abortion clinic. Procedure code 11981 (Insertion, non-biodegradable drug delivery implant) is added to the regulation at a rate of \$255.74. Rates for certain evaluation and management (E&M) office visit codes 99202-99215 are increased between 3% and 72%. The rate for E&M code 99211 remains unchanged. The overall average increase for these E&M codes is 42%. All other rates are proposed to remain at their current levels.

2. 1:30 p.m.: 101 CMR 313.00: Rates for Freestanding Clinics Providing Abortion and Sterilization Services. 101 CMR 313.00 governs the rates of payment used by MassHealth and other governmental units for freestanding abortion clinics to provide abortion services to publicly aided individuals. The proposed amendments to 101 CMR 313.00 update rates for certain abortion procedure codes. Rates for procedure codes 59841 (Induced abortion, by dilation and evacuation), 59841-TF (Induced abortion, by dilation and evacuation, intermediate level of care), 59841-TG (Induced abortion, by dilation and evacuation, complex/high tech level of care) and S0199 (medically induced abortion by oral ingestion of medication) are increased between 6% and 77% over the current rates. The overall average increase in rates for these codes is 36%. All other rates are proposed to remain at their current levels.

3. 2:00 p.m.: 101 CMR 316.00: Rates for Surgery and Anesthesia Services. 101 CMR 316.00 governs the rates of payment used by MassHealth and governmental units

for surgery and anesthesia services rendered to publicly aided individuals by eligible providers, including physicians and mid-level practitioners. The proposed amendments to 101 CMR 316.00 update rates for certain surgery codes related to family planning and abortion services. Rates for procedure codes 58300 (insertion of intrauterine device) and 59200 (insertion of cervical dilator) are increased between 201% and 223% over current rates. The overall average increase in rates for these codes is 212%. All other rates are proposed to remain at their current levels.

The estimated aggregate annual fiscal impact of the proposed amendments is \$1.7 million. There is no fiscal impact on cities and towns. The amendments are not anticipated to impose new costs on small businesses, and any impact on small business providers will vary based on the volume of services provided.

EOHHS is making these changes, subject to federal approval, to ensure that payments are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities, and to ensure that payment rates are consistent with efficiency, economy and quality of care.

To register to testify at the hearing and to get instructions on how to join the hearing online, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings. To join the hearing by phone, call (646) 558-8656 and enter meeting ID 935 397 8200# when prompted.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to ehs-regulations@mass.gov as an attached Word or PDF document or as text within the body of the email with the name of the regulation in the subject line. All written testimony 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, 6th Floor, Quincy, MA 02171. Written testimony will be accepted through 5:00 p.m. on Monday, January 23, 2023. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the emergency regulations, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6th Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at ADAAccommodations@mass.gov 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 final, revised version of the emergency regulation 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.

December 30, 2022

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

CMR No: 101 CMR 312.00: Rates for Family Planning Services

Estimate of the Number of Small Businesses Impacted by the Regulation: There are currently six family planning agencies (most have multiple sites) that participate in the MassHealth program. There are eight family planning providers (including the six MassHealth providers) that contract with DPH.

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. The proposed amendments will not require small businesses to create, file, or issue additional reports.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No. The proposed amendments will not require small businesses to implement additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No. The proposed amendments will not require small businesses to provide additional administrative oversight.
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. The proposed amendments will not require small businesses to hire additional employees in order to comply with the proposed regulation.
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. The proposed amendments will not require small businesses to hire other professionals to comply with the regulation.
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. The proposed amendments will not require small businesses to purchase a product or make any other capital investments in order to comply with the regulation.
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 M.G.L. Chapter 118E, Section 13C, and establishes the rates to be paid by governmental units to providers of noninstitutional 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 other regulations duplicate or conflict with the proposed regulation.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No. The proposed amendments do not require providers to periodically comply with audits, inspections, and other regulatory activities.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No. The proposed amendments do not require small businesses to provide educational services to keep up with 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 proposed amendments are unlikely to deter or encourage the formation of small businesses in Massachusetts as this regulation governs payments for family planning services provided 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 proposed amendments are unlikely to deter or encourage the formation of small businesses in Massachusetts, as this regulation governs payments for family planning services provided 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. The regulation does not distinguish between small and other businesses.
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. The 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 regardless of whether the provider is a small business.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. The 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 regardless of whether the provider is a small business.
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 family planning services to publicly aided individuals. These requirements are applied uniformly, regardless of the size of the provider's business, 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 family planning services provided to publicly aided individuals and is applied uniformly regardless of whether the provider is a small business.

Small Business Impact Statement

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

101 CMR 313.00: Rates for Freestanding Clinics Providing Abortion and Sterilization Services

Estimate of the Number of Small Businesses Impacted by the Regulation: There are currently four (4) abortion clinics that participate in the MassHealth program.

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. The proposed amendments will not require small businesses to create, file, or issue additional reports.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No. The proposed amendments will not require small businesses to implement additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No. The proposed amendments will not require small businesses to provide additional administrative oversight.
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. The proposed amendments will not require small businesses to hire additional employees in order to comply with the proposed regulation.
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. The proposed amendments will not require small businesses to hire other professionals to comply with the regulation.
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. The proposed amendments will not require small businesses to purchase a product or make any other capital investments in order to comply with the regulation.
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 M.G.L. Chapter 118E, Section 13C, and establishes the rates to be paid by governmental units to providers of noninstitutional 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 other regulations duplicate or conflict with the proposed regulation.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No. The proposed amendments do not require providers to periodically comply with audits, inspections, and other regulatory activities.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No. The proposed amendments do not require small businesses to provide educational services to keep up with 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 proposed amendments are unlikely to deter or encourage the formation of small businesses in Massachusetts as this regulation governs payments for abortion and sterilization services provided to publicly aided individuals by freestanding clinics 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 proposed amendments are unlikely to deter or encourage the formation of small businesses in Massachusetts, as this regulation governs payments for abortion and sterilization services provided to publicly aided individuals by freestanding clinics 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. The regulation does not distinguish between small and other businesses.
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. The 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 regardless of whether the provider is a small business.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. The 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 regardless of whether the provider is a small business.
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 abortion and sterilization services to publicly aided individuals by freestanding clinics. These requirements are applied uniformly, regardless of the size of the provider's business, 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 abortion and sterilization services provided to publicly aided individuals by freestanding clinics and is applied uniformly regardless of whether the provider is a small business.

Small Business Impact Statement

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

101 CMR 316.00: Rates for Surgery and Anesthesia Services

Estimate of the Number of Small Businesses Impacted by the Regulation: There are 20,000 Physician providers currently participating in the MassHealth program.

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. The proposed amendments will not require small businesses to create, file, or issue additional reports.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No. The proposed amendments will not require small businesses to implement additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No. The proposed amendments will not require small businesses to provide additional administrative oversight.
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. The proposed amendments will not require small businesses to hire additional employees in order to comply with the proposed regulation.
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. The proposed amendments will not require small businesses to hire other professionals to comply with the regulation.
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. The proposed amendments will not require small businesses to purchase a product or make any other capital investments in order to comply with the regulation.
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 M.G.L. Chapter 118E, Section 13C, and establishes the rates to be paid by governmental units to providers of noninstitutional 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 other regulations duplicate or conflict with the proposed regulation.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No. The proposed amendments do not require providers to periodically comply with audits, inspections, and other regulatory activities.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No. The proposed amendments do not require small businesses to provide educational services to keep up with 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 proposed amendments are unlikely to deter or encourage the formation of small businesses in Massachusetts as this regulation governs payments for surgery and anesthesia services provided 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 proposed amendments are unlikely to deter or encourage the formation of small businesses in Massachusetts, as this regulation governs payments for surgery and anesthesia services provided 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. The regulation does not distinguish between small and other businesses.
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. The 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 regardless of whether the provider is a small business.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. The 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 regardless of whether the provider is a small business.
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 surgery and anesthesia services to publicly aided individuals. These requirements are applied uniformly, regardless of the size of the provider's business, 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 surgery and anesthesia services provided to publicly aided individuals and is applied uniformly regardless of whether the provider is a small business.