

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

NOTICE OF PUBLIC HEARING

Under the authority 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 remote public hearing on Monday, October 21, 2024, at 10:30 a.m. relative to the emergency adoption of amendments to the following regulation.

101 CMR 322.00: Rates for Durable Medical Equipment, Oxygen and Respiratory Therapy Equipment

The regulation will take effect as an emergency on October 1, 2024. There is no fiscal impact on cities and towns.

Effective for dates of service provided on or after October 1, 2024, the Executive Office of Health and Human Services (EOHHS) has implemented, via emergency adoption, add-on payments to MassHealth-enrolled DME mobility providers for certain mobility system repairs, and supplemental payments to ceiling lift providers who serve fee-for-service (FFS) dual eligible members (members with Medicare and MassHealth coverage). The methodologies and applicable payments are described in 101 CMR 322.00. There are also supporting amendments with a concurrent public hearing and comment process proposed for the DME program services regulation, 130 CMR 409.000: Durable Medical Equipment Services.

To alleviate member challenges and promote shorter turnaround for mobility system repairs, EOHHS has implemented an add-on payment for certain mobility system repairs. The \$1,000 add-on payment with reinvestment and reporting requirements is available to providers who perform mobility system repairs within a defined time period.

There is a difference in total payment for ceiling lifts provided to FFS dual eligible members and total payment for ceiling lifts provided to non-dual eligible members. EOHHS has established a supplemental payment methodology for ceiling lifts to address this difference and promote access to this service for dual eligible members. The supplemental payment is calculated by subtracting the total Medicare allowed amount for ceiling lift services provided to a dual eligible member from the MassHealth total payment for the services provided to a non-dual eligible member.

EOHHS has also made necessary revisions and updates to correct or clarify provisions within 101 CMR 322.00, including a correction for an inadvertent incorrect duplicative provision regarding standard markups for patient lift systems.

All other rates remain at their current levels.

The estimated annual aggregate fiscal impact of the proposed amendments to 101 CMR 322.00 is between \$3.4 and \$3.6 million, \$3.3 million for the repair rate add-on and between \$100,000 and \$300,000 for the supplemental payment for ceiling lift services. The estimated annual fiscal impact for aligning MassHealth maintenance repair coverage with Medicare in 130 CMR 409.000 is \$725,000.

To register to testify at the hearing and to get instructions on how to join the hearing online, go to www.mass.gov/info-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 October 28, 2024. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care for MassHealth-covered services.

To review the emergency regulation, go to www.mass.gov/info-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/info-details/executive-office-of-health-and-human-services-public-hearings.

September 26, 2024

Small Business Impact Statement

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

CMR No: 101 CMR 322.00: Rates for Durable Medical Equipment, Oxygen and Respiratory Therapy Equipment

Estimate of the Number of Small Businesses Impacted by the Regulation: There are 102 Durable Medical Equipment (DME) providers, 22 Oxygen and Respiratory (O2) therapy equipment providers, and 738 pharmacy providers that offer DME or O2 equipment and supplies as a subspecialty service.

Select Yes or No and Briefly Explain

Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? Yes. Small businesses will have to create, file, and issue additional reports.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No. Small businesses will not have to implement additional recordkeeping procedures.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to provide additional administrative oversight? Yes. Small businesses will have to provide additional administrative oversight to ensure compliance.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? Providers are required to reinvest 80% of the add-on payments received back into the mobility system repair components of their business. In order to comply, this could include hiring additional employees to support program development and implementation.
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 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. Small businesses are not required to purchase a product or make any other capital investments in order to comply with the regulation.
Yes <input checked="" type="checkbox"/>	No <input 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.) Yes. Performance standards for repair turnaround times are more appropriate than design/operational standards to accomplish the regulatory objective.
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 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 continues to 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. This 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 unlikely to deter or encourage the formation of small businesses in Massachusetts, as this regulation governs payments for DME and O2 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 regulation is unlikely to deter or encourage the formation of small businesses in Massachusetts, as this regulation governs payments for DME and O2 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 contains requirements to report cost data to EOHHS upon request to enable EOHHS to develop rates for health care services and is applied uniformly regardless of whether the provider is a small business.
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 contains requirements to report cost data to EOHHS upon request to enable EOHHS to develop rates for health care services and 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. 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. The regulation is applied uniformly regardless of whether the provider is a small business.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? Yes. Performance standards for repair turnaround times are more appropriate than design/operational standards to accomplish the regulatory objective
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. It governs payments for DME and O2 services to publicly aided individuals and is applied uniformly regardless of whether the provider is a small business.