

**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 Friday, December 15, 2023, at 10:00 a.m. relative to the adoption of amendments to the following regulation.

101 CMR 334.00: Prostheses, Prosthetic Devices and Orthotic Devices (to be renamed, “Rates for Prostheses, Prosthetic Devices, and Orthotic Devices”)

Under M.G.L. Chapter 118E, Section 13D, EOHHS is required to establish and periodically review the rates to be paid by governmental units for non-institutional health care services, including rates of payment for prosthetic and orthotic devices. EOHHS is proposing to:

- 1) Rebase the majority of rates from 2017 to 2023 Medicare fees while continuing to use the same percentages of Medicare rates based on product complexity (94.00% for custom fabricated; 82.00% for prefabricated; and 70.76% for off-the-shelf);
- 2) Update markup percentages of certain miscellaneous codes (L0999, L1499, L2999, L3999, L5999, L7499, L8499) from adjusted acquisition cost (AAC) plus a single fixed markup to AAC plus three markups—AAC+40%, AAC+50%, and AAC+70%—for each miscellaneous code to accommodate various product complexities. EOHHS is also proposing to add three new modifiers corresponding to each of the three markup percentages to be billed in conjunction with the miscellaneous codes; and
- 3) Apply a retrospective cost adjustment factor (CAF) of 19.98% to non-AAC rates without corresponding Medicare fees. This CAF was calculated using a base period of quarter three of calendar year 2020, and a two-year rate period of quarter one of calendar year 2024 through quarter four of calendar year 2025. The CAF was calculated using the Massachusetts-specific Consumer Price Index (CPI) Spring 2023 forecast developed by IHS Markit Economics.

Under the proposed amendments, all other rates would remain at their current levels. In addition, the proposed amendments incorporate updates issued via administrative bulletins since the last review, effective December 28, 2018, update language to reflect current policy and terminology, remove duplicative sections, and enhance clarity, consistency, and conformity within and across EOHHS regulations.

The estimated annual aggregate fiscal impact of the proposed amendments is \$2.1 million over base spending. The proposed regulation contains rates effective for dates of service on or after April 1, 2024. There is no fiscal impact on cities and towns.

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 Friday, December 15, 2023. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care for MassHealth-covered services.

To review the current draft of the proposed regulation, 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 revised version of the proposed 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.

November 24, 2023

Small Business Impact Statement

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

CMR No: 101 CMR 334.00: Prosthesis, Prosthetic Devices and Orthotic devices (to be renamed as “Rates for Prostheses, Prosthetic Devices, and Orthotic Devices”)

Estimate of the Number of Small Businesses Impacted by the Regulation: 30 Prosthetic providers and 43 Orthotic providers.

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.
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 type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No. Small businesses will not have 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. Small businesses will not have 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. 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 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 Sections 13C and 13D, and establishes the rates to be paid by governmental units to providers of non-institutional health care services, including prosthetic and orthotic 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 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 prosthetic and orthotic 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 prosthetic and orthotic 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 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 or not 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, and the regulation is applied uniformly regardless of whether or not 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 prosthetic and orthotic 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 prosthetic and orthotic services to publicly aided individuals and is applied uniformly regardless of whether or not the provider is a small business.