

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 February 10, 2023, at 2:00 p.m. relative to the proposed adoption of amendments to:

101 CMR 322.00: Durable medical equipment, oxygen and respiratory therapy equipment.

The proposed amendments will provide the Executive Office of Health and Human Services (EOHHS) the authority to price durable medical equipment and medical supplies (DME) available through pharmacies with claims processed through the Pharmacy Online Processing System (POPS) at the lower of wholesale acquisition cost (WAC) and usual and customary charge (U&C), as those terms are defined in 101 CMR 331.00: Prescribed Drugs. EOHHS would identify any non-drug products available through pharmacies in an administrative bulletin describing the pricing methodology, as well as on the MassHealth Drug List. This pricing is largely consistent with how EOHHS prices prescription drugs dispensed through pharmacies. Pharmacy claims paid in POPS must have a specific rate, and it is not always possible to use the existing DME rate methodology to identify a specific price.

The regulatory changes will go into effect no sooner than July 1, 2023. There is no immediate fiscal impact, because this regulatory change only gives EOHHS the ability to designate products subject to the new pricing methodology via administrative bulletin. For those products for which EOHHS does designate as subject to this pricing methodology, EOHHS does not expect significant fiscal impact because these products are already available through DME providers. There is no fiscal impact on cities and towns.

If you would like to testify at the hearing, please register online at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings. To join the hearing online, go directly to [EHS Public Hearings Meeting Room](#). Alternatively, go to <https://zoom.us/join> and enter meeting ID 935 397 8200 and passcode 800606. 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 must be submitted by 5:00 p.m. on February 10, 2023. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the proposed 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@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 final, 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.

January 5, 2023

Small Business Impact Statement

(As required by M.G.L. c. 304, §§ 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: 250

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 M.G.L. Chapter 118E Section 13C, and establishes the rates to be paid by governmental units to providers of durable medical equipment, oxygen and respiratory therapy equipment
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 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. The proposed amendments do not expand these provisions.
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 regulatory 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"/>	<p>Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?</p> <p>No. The regulation is unlikely to deter or encourage the formation of small businesses in Massachusetts, as this regulation governs payments for durable medical equipment, oxygen and respiratory therapy equipment to publicly aided individuals. It is applied uniformly regardless of whether or not the provider is a small business.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?</p> <p>No. The regulation is unlikely to deter or encourage the formation of small businesses in Massachusetts as this regulation governs payments for durable medical equipment, oxygen and respiratory therapy equipment to publicly aided individuals. It is applied uniformly regardless of whether or not the provider is a small business.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation provide for less stringent compliance or reporting requirements for small businesses?</p> <p>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.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?</p> <p>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.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Did the agency consolidate or simplify compliance or reporting requirements for small businesses?</p> <p>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.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?</p> <p>No. The regulation establishes uniform conditions of payment for durable medical equipment, oxygen and respiratory therapy equipment to publicly aided individuals. These conditions of payment are applied uniformly, regardless of the size of the provider's business, to maintain consistency in the care provided to publicly aided individuals.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are there alternative regulatory methods that would minimize the adverse impact on small businesses?</p> <p>No. The regulation does not have an adverse impact on small businesses and governs payments for durable medical equipment, oxygen and respiratory therapy equipment to publicly aided individuals.. It is applied uniformly regardless of whether or not the provider is a small business.</p>