Orthodontic Screening

Effective date: 2/13/13

Pursuant to the authority vested in the Commissioner of Health by Sections 201 and 206 of the Public Health Law and Sections 363-a and 365-a(2) of the Social Services Law, Section 85.45 of Title 10 (Health) and Section 506.4 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended as follows, to be effective upon publication of a Notice of Adoption in the New York State Register:

Section 85.45 of Title 10 is repealed.

Section 506.4 of Title 18 is amended to read as follow:

(a) [Authorization of the social services official for orthodontic] Orthodontic care shall be provided, in accordance with criteria and procedures set forth in the Medicaid Dental Provider Manual, at https://www.emedny.org/ProviderManuals/Dental/index.aspx, only:

(1) for a [child] person under twenty-one years of age with a severe physically handicapping malocclusion, up to a maximum of three years of active orthodontic care, plus one year of retention care, provided that treatment was approved and active therapy begun prior to the person's twenty-first birthday [, if such care is approved by the county medical director of the physically handicapped children's program upon the recommendation of an orthodontic screening center approved by the New York State Department of Health]; or

(2) [for a young adult if the malocclusion presents a serious psychological problem, determined from a written report by a qualified psychiatrist and if such care is approved by the dental director upon the recommendation of an orthodontic screening center approved by the

New York State Department of Health] for a person twenty-one years of age or older, in connection with necessary surgical treatment (e.g. approved orthognathic surgery, reconstructive surgery or cleft palate treatment).

(b) [All cases accepted for orthodontic care shall be reviewed annually for progress to determine the need for continuing care.

(c) Social services districts shall provide and pay for orthodontic care for an eligible recipient of medical assistance, in any one case, for a maximum period of three years of active orthodontic care and one year of retention care. However, for a patient with cleft palate, active care beyond such three-year period may be approved and authorized when supported by adequate justification.

d)] (b) Orthodontic care shall be provided only by [orthodontists] qualified practitioners as determined by the Department.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objectives:

Section 365-a of the SSL provides that in addition to care, services, and supplies specifically listed in such section, Medicaid payment will be available for care, services, and supplies authorized in the regulations of the Department.

Needs and Benefits:

The proposed amendments clarify current policy regarding coverage of orthodontic services under the Medicaid program, and eliminate outdated references to the Physically Handicapped Children's Program (PHCP), a county-based public health program that was once, but is no longer, the primary point of access for Medicaid-covered orthodontic services for children.

The proposed amendments also remove from regulation specific procedures and criteria for Medicaid providers to bill and be reimbursed for orthodontic services, in favor of having such information provided in the Department's Medicaid Dental Provider Manual, which is available online at https://www.emedny.org/ProviderManuals/Dental/index.aspx. Including detailed information on these topics in the regulation necessitates amending the regulation whenever a

minor change is made to policy, procedures or criteria. This is unwieldy, and prevents the Medicaid program from reacting promptly to evolving clinical standards for orthodontic care.

Specifically, the proposed amendments would repeal 10 NYCRR Section 85.45, an outdated section dealing primarily with the PHCP, and amend 18 NYCRR Section 506.4 to set forth current Medicaid coverage policy regarding orthodontic services. As amended, section 506.4 would provide for Medicaid coverage, with respect to a person under 21 years of age, of up to three years of active orthodontic care, plus one year of retention care, to treat a severe physically handicapping malocclusion. Part of such care could be provided after the person reached the age of 21, provided that the treatment was approved and active therapy begun prior to the person's 21st birthday. In addition, coverage would be provided for persons age 21 and over in connection with necessary surgical treatment (e.g. approved orthognathic surgery, reconstructive surgery or cleft palate treatment).

Costs:

Costs to the State Government:

There will be no additional costs to State Government as a result of the amendments.

Costs to Local Government:

There will be no additional costs to local governments as a result of the amendments.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties as a result of the amendments.

Costs to the Regulatory Agency:

There is no anticipated cost to the regulatory agency.

Local Government Mandate:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulation does not require any additional paperwork to be completed by regulated parties.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state, or local regulation.

Alternatives:

The existing rules contain outdated and vague criteria for the appropriate provision of orthodontic services under the Medicaid program. One alternative would be to update and clarify these criteria and procedures within the regulation. This approach was rejected since, as indicated above, it would maintain in the regulation a level of detail more appropriate to a provider manual. In addition, it would hamper the Department's ability to keep Medicaid criteria in step with advances in orthodontic clinical standards, and potentially allow providers to perform excessive or unnecessary procedures while the Department undertakes the process of promulgating revised regulations.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

It is anticipated that regulated persons would be able to comply with the rule upon the publication of a Notice of Adoption in the State Register.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers and practitioner offices. Based on recent data extracted from providers' submitted cost reports, seven hospitals, 245 DTCs and most practitioner offices were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Economic and Technical Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendment is intended to strengthen the orthodontic care program in New York State so that it is more adaptive to the Medicaid population's evolving clinical needs while ensuring that eligible recipients receive the appropriate level of orthodontic care. It is projected to have little or no impact on health care providers, particularly those with fewer than 100 employees.

Minimizing Adverse Impact:

The proposed amendment applies to orthodontic services and programs provided by hospitals, diagnostic and treatment centers and practitioner offices. The Department meets regularly with these providers in order to proactively address concerns and issues relating to orthodontic services.

Small Business and Local Government Participation:

The proposed amendment clarifies current policy regarding coverage of orthodontic services under the Medicaid program. It will not have an adverse economic impact on small businesses or local governments, and no new reporting, record keeping, or other compliance requirements are being imposed as a result of these rules. Small businesses and local governments will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rulemaking.

RURAL AREA FLEXIBILITY ANALYSIS

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, record keeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendment applies to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The proposed amendment is intended to strengthen the orthodontic care program in New York State and increase its flexibility so that it is more adaptive to the Medicaid population's evolving clinical needs while ensuring that eligible recipients receive the appropriate level of orthodontic care. The existing rule would continue to provide Medicaid reimbursement to providers for delivering clinically unnecessary and excessive orthodontic care.

Opportunity for Rural Area Participation:

The proposed amendment clarifies current policy regarding coverage of orthodontic services under the Medicaid program. It will not have an adverse impact on rural areas, and no new reporting, record keeping, or other compliance requirements are being imposed as a result of these rules. Public and private interests in rural areas will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rulemaking.

JOB IMPACT STATEMENT

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to orthodontists that perform orthodontic screenings as well as some downstate hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to orthodontists that perform orthodontic screenings as well as some downstate hospitals as defined under Article 28 of the Public Health Law, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.