

Hearing Aids

Effective date: 6/18/14

Pursuant to the authority vested in the Department of Health and 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, 18 NYCRR Section 505.31 is amended, to be effective upon publication of the Notice of Adoption in the New York State Register.

Subparagraph (iv) of paragraph (1) of subdivision (h) of section 505.31 is repealed and a new subparagraph (iv) is added to read as follows:

(iv)(a) Payment for hearing aids must not exceed the lower of:

(1) the maximum reimbursable amount for the item, as shown in the fee schedule for hearing aid/audiology services and as determined by the Department based on the average cost of products representative of that item; or

(2) the usual and customary price charged to the general public for the same or similar items.

(b) When there is no maximum reimbursable amount listed in the fee schedule for hearing aid/audiology services, payment for hearing aids must not exceed the lower of:

(1) the acquisition cost, net of any discounts or rebates, supported by a copy of the invoice, which must include the brand, model, and serial number of the dispensed hearing aid; or

(2) the usual and customary price charged to the general public for the same or similar items.

Subparagraph (v) of paragraph (1) of subdivision (h) of section 505.31 is amended to read as follows:

(v) Reimbursement for dispensing and administrative fees, [as defined by regulations of the New York State Department of Health,] batteries, earmolds, and replacement parts is based on the fee schedule for hearing aid/audiology [supplies and] services. The fee schedule for hearing aid/audiology [supplies and] services is available [from the department] at the Medicaid fiscal agent's website. [and is also contained in the Medicaid Management Information System (MMIS) Provider Manual (Hearing Aid/Audiology Services). Copies of the manual may be obtained by writing Computer Sciences Corporation, Health and Administrative Services Division, 800 North Pearl St., Albany, NY 12204. Copies may also be obtained from the Department of Social Services, 40 North Pearl St., Albany, NY 12243. The manual is provided free of charge to every provider of hearing aid services and products at the time of enrollment in the MA program.]

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 Objective:

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. Section 505.31 of the Department’s regulations authorizes payment for hearing aids.

Needs and Benefits:

The Medicaid program provides payment for medically necessary audiology services, audiometric screening and hearing aid services, products and repairs to alleviate disability caused by the loss or impairment of hearing. The 24 hearing aid types covered, as represented by nationally developed procedure codes, include analog, digital, behind the ear, in the ear, programmable, monaural, and binaural. Hearing aids are either electronically prior authorized or manually prior approved by clinicians.

Current regulations state that reimbursement for hearing aids is made for the acquisition cost of a hearing aid and an administrative and dispensing fee. Providers submit claims on paper with the invoice supporting the acquisition cost of a hearing aid

along with the brand name, the model number, the serial number, and any applicable discounts from the manufacturer. Claims are then manually priced by the Department. This can be time-consuming and delay payment to providers.

The proposed amendment provides for establishing a fee schedule setting forth maximum reimbursable amounts (MRAs) for hearing aids based on the average cost of products representative of each type of hearing aid. Since the national coding is specific to each type of hearing aid, and MRAs will be developed for each procedure code, appropriate levels of reimbursement will be established for different types of hearing aids. However, the proposed amendments will not limit the ability of providers to prescribe the appropriate type of hearing aid to address the medical needs of individual beneficiaries with hearing loss or impairment.

Those providers that choose to submit electronic claims for payment would be paid up to the MRA that the Department has established for the hearing aid. There would be no need for the provider to submit an invoice to the Department for manual pricing. Providers would still be able to submit paper claims for payment, should they so choose, and would be paid up to the MRA for the item. Again, there would be no need for providers that choose to submit paper claims also to submit invoices to the Department for items for which MRAs have been established.

COSTS:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

This amendment will not increase costs to the regulated parties. It will minimally reduce revenues to the extent providers are furnishing hearing aids beyond the maximum reimbursable amount to be set. The amendment will also reduce providers' need to submit paper claims and invoices and potentially increase the speed at which providers are paid for hearing aid claims. Various national studies have concluded that the change from paper to electronic claims can significantly decrease providers' administrative burden.

Costs to State and Local Government:

This amendment will not increase costs to the State or social services districts. Minor savings to Medicaid program costs will be achieved by establishing maximum reimbursable amounts. In addition, the Department will no longer need to manually price hearing aids for which MRAs have been established. Paper claims for such items would not need to be administratively reviewed. Because social services districts' share of Medicaid costs is statutorily capped, it is expected that the proposed regulations will have no effect on districts' Medicaid costs.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional cost, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

This amendment will not impose any additional paperwork for providers of hearing aids. In fact, it will decrease paperwork for hearing aid providers because they will no longer be required to submit invoices to support their claims for payment for hearing aids for which MRAs have been established.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

In order to facilitate electronic billing for hearing aids, which reduces providers' and State costs, the maximum reimbursable amount must be input into the electronic claims processing system for the claim to be priced automatically and paid. The alternative is to continue with the current manual process, which is time-consuming, burdensome to providers and was thus not considered.

Another alternative is to continue with the current reimbursement methodology. This alternative was not considered. The Department has established maximum

reimbursable amounts for durable medical equipment and for orthopedic shoes. It is consistent also to establish maximum reimbursable amounts for hearing aids.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

The proposed regulations do not impose any compliance requirements on social services districts. Providers of hearing aids will be able to comply with the proposed regulations when they become effective.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect on Small Businesses and Local Governments:

This amendment affects the approximately 126 hearing aid providers enrolled in the Medicaid program that actively bill Medicaid for hearing aids. The amendment will establish maximum reimbursable amounts for hearing aids, which may reduce these providers' Medicaid revenue to the extent that they furnish hearing aids that exceed the MRA for that item. The amendment will also input the maximum reimbursable amount into the electronic claims processing system, reducing providers' need to submit paper claims and invoices.

The fifty-eight local social services districts share in the costs of services provided to eligible beneficiaries who receive Medicaid through their districts. The proposed regulations would not affect their costs.

Compliance Requirements:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this amendment.

Compliance Costs:

There are no direct costs of compliance with this amendment.

Economic and Technological Feasibility:

The amendment will simplify the manner in which hearing aid providers bill for services as it will decrease the need to submit paper claims and invoices. It will not affect the way the local districts contribute their local share of Medicaid expenses for hearing aids. Therefore, there should be no technological difficulties associated with compliance with the proposed regulation.

Minimizing Adverse Impact:

The Department will engage provider and beneficiary stakeholders in the establishment and ongoing maintenance of hearing aid maximum reimbursable amounts to ensure that access to medically necessary hearing aids will continue under the Medicaid program.

Small Business and Local Government Participation:

The establishment of MRAs for hearing aids is one of the initiatives proposed in Phase 3 of the Medicaid Redesign Team's efforts to reform the Medicaid program. The Department has posted on its website a work plan for this initiative (#6204) and other MRT initiatives. In addition, the Department will engage both the ordering and dispensing providers to provide information on the proposed changes and to assist as necessary with the transition to the new process.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no penalty or sanction. Hence, a cure period is not necessary.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Number of 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, include towns with population densities of 150 or fewer persons 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 or fewer persons per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

The benefit limit on hearing aids will apply to approximately 126 hearing aid providers in New York State. These businesses are located in rural as well as suburban and metropolitan areas of the State.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements and professional services are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

The rule is not expected to have any adverse impact on public and private sector interests in rural areas.

Opportunity for Rural Area Participation:

The Department will engage both the ordering and dispensing providers to inform all of the proposed changes and assist as necessary with the transition to the new process.

JOB IMPACT STATEMENT

Nature of Impact:

This rule will result in a minimal reduction in the amount paid to providers of hearing aids. This decreased revenue will not likely have an adverse impact on jobs and employment opportunities within these businesses as they offer a variety of services to other insurers and insureds.

Categories and Numbers Affected:

This rule, which minimally decreases Medicaid revenue, will not likely affect employment opportunities within providers of hearing aids.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program to provide hearing aids.

Minimizing Adverse Impact:

This decreased revenue will not likely have an adverse impact on jobs and employment opportunities within these businesses as they offer a variety of services to other insurers and insureds.

Self-Employment Opportunities:

The rule is expected to have minimal impact on self-employment opportunities.