

**ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
TO ADOPT RULES**

The Wisconsin Department of Health and Family Services proposes to repeal HFS 107.07 (1) (i) and (k) and (2) (a) 5. and 107.22 (4) (a) and (b), and to amend HFS 107.07 (2) (a) (intro.), (3) (intro.) and (a) 3., (4) (intro.) and (j) and (4m), and 107.22 (4) (intro.), and to create HFS 107.07 (1) (j) (Note), relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

SUMMARY OF PROPOSED RULE

Statutes interpreted: Section 49.46 (2) (b) 1., Stats.

Statutory authority: Sections 49.45 (10) and 227.11 (2), Stats.

Explanation of agency authority:

Section 49.45 (10), Stats., authorizes the Department to promulgate rules consistent with its duties in administering Medical Assistance.

Related statute or rule:

The Department believes that the following statutory and rule provisions are related to the proposed rule changes: s. HFS 107.22, and s. 49.46 (2) (a) 2., Stats., which authorize the Department to audit and pay allowable charges to providers for medical treatment and dentists' services found necessary by screening under the early and periodic screening, diagnosis and treatment (EPSDT) program.

Plain language analysis:

The Department is revising rules to clarify circumstances under which the Wisconsin Medicaid program will reimburse providers for orthodontia and certain other services provided to recipients under age 21. In Clearinghouse Rule 05-033, the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. In Clearinghouse Rule 05-033, the Department specifically stated that "Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization." The adopted language, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department intends to revise rules to clarify the Department's intent to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

The department will implement these changes in a substantially identical emergency rule.

Summary of, and comparison with, existing or proposed federal regulations:

Section 441.56 of Title 42 of the Code of Federal Regulations specifies the procedures and tests required to provide early and periodic screening, diagnosis and treatment (EPSDT) services to recipients.

This revision will assist the state in complying with the requirements of that provision, by specifying more clearly that the state's intent is to only cover certain services required as a result of a screening, as described in that provision. The provision of dental services to Medicaid recipients is described in 42 CFR s. 440.100. The state regulations are currently in conformance with that provision. This revision will not change that conformance.

Comparison with rules in adjacent states:

Minnesota offers comprehensive care for Medicaid-enrolled children, but imposes a \$500 yearly cap on dental benefits for adults. Emergency care, oral surgery, and dentures are exempted from this cap. Minnesota's prior authorization requirements are similar to those being promulgated in this rule-making order.

Iowa offers comprehensive care for children, but a limited benefit set for adults that does not include crowns, root canal therapy, periodontics, or orthodontics. Iowa's prior authorization requirements are similar to Wisconsin's current requirements.

Illinois offers comprehensive care for children, but a limited benefit set for adults. Illinois' prior authorization requirements are similar to Wisconsin's current requirements.

Michigan offers comprehensive care for Medicaid-enrolled children, including the private insurance Healthy Kids Dental program for its S-CHIP enrollees in rural counties. Michigan, however, recently reduced its adult benefit to emergency care only.

Summary of factual data and analytical methodologies:

These rules are to correct an error made in Clearinghouse Rule 05-033 that could require reimbursement of orthodontia that is not medically justified.

Analysis and supporting documents used to determine effect on small business:

The rule changes are being made to correct an error made in Clearinghouse Rule 05-033. The error made in Clearinghouse Rule 05-033 could require reimbursement of orthodontia that is not medically justified. The Department does not expect that the rules will increase costs to dentists.

Effect on small business:

The rules will affect all businesses that are dental offices who serve Medicaid recipients. The rules are not expected to affect costs.

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above until the date given in the upcoming notice of public hearing. The deadline for submitting comments and the notice of public hearing will be posted on the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> when the hearing is scheduled. The notice of public hearing will also be published in the Wisconsin Administrative Register.

TEXT OF PROPOSED RULE

SECTION 1. HFS 107.07 (1) (i) and (k) are repealed.

SECTION 2. HFS 107.07 (1) (j) (Note) is created to read:

HFS 107.07 (1) (j) Note: Orthodontia may be covered under early and periodic screening, diagnosis and treatment (EPSDT) services. Please see s. HFS 107.22 (4).

SECTION 3. HFS 107.07 (2) (a) (intro) is amended to read:

HFS 107.07 (2) SERVICES REQUIRING PRIOR AUTHORIZATION. (a) All of the following dental services require prior authorization in order to be reimbursed under MA, ~~except for any service that is part of a dental assessment and evaluation for a recipient under 21 years of age or is found necessary as a result of such an assessment and evaluation:~~

SECTION 4. HFS 107.07 (2) (a) 5. is repealed.

SECTION 5. HFS 107.07 (3) (intro.) and (a) 3., (4) (intro.) and (j) and (4m) are amended to read:

HFS 107.07 (3) OTHER LIMITATIONS. All of the following limitations apply to the coverage of dental services under this section ~~unless the service is part of a dental assessment and evaluation for a recipient under 21 years of age or is found necessary as a result of such an assessment and evaluation.~~ ;

(a) 3. Required documentation, including pathology report ; or operative report , ~~or~~ proof of an EPSDT referral received under s. HFS 107.22 (6) within the past year.

(4) NON-COVERED SERVICES; DENTISTS AND PHYSICIANS. ~~Unless the service is part of a dental assessment and evaluation for a recipient under 21 years of age or is found necessary as a result of such an assessment and evaluation,~~ The following dental services are not covered under MA whether or not the service is performed by a dentist; physician; or a person under the supervision of a dentist or physician:

(j) Orthodontic services, ~~except as specified under sub. (2) (a) 5.~~

(4m) NON-COVERED SERVICES; DENTAL HYGIENISTS. ~~Unless the service is part of a dental assessment and evaluation for a recipient under 21 years of age or is found necessary as a result of such an assessment and evaluation,~~ The following services are not covered by MA whether or not the service is performed by a person under the supervision of a dentist or physician or by a dental hygienist who is individually certified under ch. HFS 105:

SECTION 6. HFS 107.22 (4) (intro.) is amended to read:

HFS 107.22 (4) OTHER NEEDED SERVICES. In addition to diagnostic and treatment services covered by Wisconsin MA under applicable provisions of this chapter, ~~the following any services described in the definition of "medical assistance" under federal law, 42 USC s. 1396d(a), when provided to EPSDT patients,~~ are covered if the EPSDT health assessment and evaluation indicates that they are needed. Prior authorization under s. HFS 107.02 (3) is required for coverage of services under this subsection.

SECTION 7. HFS 107.22 (4) (a) and (b) are repealed.

SECTION 8. EFFECTIVE DATE: The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and Family
Services

Dated: November 13, 2007

Kevin R. Hayden, Department Secretary

SEAL: