



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
www.mass.gov/masshealth



MassHealth
Transmittal Letter ALL-192
March 2012

TO: All Providers Participating in MassHealth
FROM: Julian J. Harris, M.D., Medicaid Director
RE: *All Provider Manuals* (Revised Administrative Regulations)

This letter transmits changes to the administrative regulations contained in Subchapter 2 of all MassHealth provider manuals. 130 CMR 450.249 has been revised to specifically address new federal requirements concerning withholding of payments where there is a credible allegation of fraud. (See 42 CFR 455.23, enacted to conform with 42 U.S.C. 1396b(i)(2), as amended by Section 6402(h) of the Accountable Care Act.)

The federal regulations have been effective since March 25, 2011. The amendments to the administrative regulations are being promulgated as emergency regulations with an effective date retroactive to March 25, 2011.

MassHealth Web Site

This transmittal letter and attached pages are available on the MassHealth Web site at www.mass.gov/masshealth.

Questions

If you have any questions about the information in this transmittal letter, please contact MassHealth Customer Service at 1-800-841-2900, e-mail your inquiry to providersupport@mahealth.net, or fax your inquiry to 617-988-8974.

NEW MATERIAL

(The pages listed here contain new or revised language.)

All Provider Manuals

Pages 2-27 through 2-30

OBSOLETE MATERIAL

(The pages listed here are no longer in effect.)

All Provider Manuals

Pages 2-27 through 2-30 — transmitted by Transmittal Letter ALL-154

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(D) Failure to comply with the conditions set forth in 130 CMR 450.243(C) will result in dismissal of the claim. Dismissal of a claim is a final agency action reviewable pursuant to M.G.L. c. 30A.

(E) Notwithstanding 130 CMR 450.243(C) and (D), if there is no issue of adjudicative fact, but the provider has challenged the MassHealth agency's interpretation or application of regulations or laws, argument concerning such challenges will be presented in memoranda and briefs.

450.244: Hearings: Authority of the Hearing Officer

The hearing officer does not render a decision about the legality of federal or state laws, including, but not limited to MassHealth regulations. If the legality of such law or regulation is raised by the provider, the hearing officer renders a decision based on the applicable law as interpreted by the MassHealth agency. Such decision includes a statement that the hearing officer cannot rule on the legality of such law or regulation and is subject to judicial review in accordance with M.G.L. c. 30A.

450.245: Hearings: Burden of Proof

The provider has the burden of establishing by a preponderance of the evidence that the provider has complied with the MassHealth requirements cited in the MassHealth agency's final determination or otherwise has correctly received, or is entitled to receive, any amounts in dispute.

450.246: Hearings: Procedure

The hearing is conducted in accordance with M.G.L. c. 30A, §§ 9, 10, and 11, and the formal rules of the Standard Rules of Practice and Procedure found at 801 CMR 1.00, 1.01, and 1.03, as modified or supplemented by 130 CMR 450.000.

450.247: Hearings: Hearing Officer's Decision

The hearing officer's decision is in the form of a proposed decision to the commissioner. The proposed decision may affirm, modify, or overturn the actions proposed in the MassHealth agency's final determination. The proposed decision includes a determination of the amount of overpayments, if overpayments have been alleged, and a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision. If the provider makes a written request for the proposed decision prior to its issuance, the Board of Hearings notifies the provider by mail of the proposed decision. The decision of the hearing officer is effective when and to the extent it is adopted by the commissioner.

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450.248: Commissioner's Decision

If the provider has made a written request for a copy of the proposed decision prior to its issuance, the provider has seven calendar days from its receipt of the proposed decision to file written objections with the commissioner. The commissioner may adopt or modify the proposed decision, or return the matter to the hearing officer for further consideration, based on evidence already in the record or, if necessary, additional evidence to be included in the reopened record. The hearing officer will resubmit the proposed decision to the commissioner, as modified pursuant to 130 CMR 450.247 and 450.248. The provider is notified of the commissioner's action. When the commissioner has adopted or modified the proposed decision, the commissioner's decision is a final agency action reviewable pursuant to M.G.L. c. 30A.

450.249: Withholding of Payments

(A) Introduction. The term "withholding of payments" or "withholding payments" as used in 130 CMR 450.249 means the withholding of all or a portion of payments payable to a provider. While withholding payments, the MassHealth agency continues to process the provider's claims. To avoid rejection of otherwise proper claims because of late submission, a provider whose payments are being withheld must continue to submit timely claims.

(B) Withholding Payments from Providers for Overpayments or Other Violations. Upon written notice to the provider, the MassHealth agency may withhold payments to a provider, or any provider under common ownership (defined the same as "provider under common ownership" in 130 CMR 450.101), if the MassHealth agency believes that the provider has received any overpayments or committed any violations. The notice states the effective date of the withholding, the amount being withheld, and the reason for the withholding. A provider subject to a withhold may submit written evidence for consideration by the MassHealth agency as to why payments in whole or in part should not be withheld. The withholding of payments expires 90 calendar days after the date withholding begins unless the MassHealth agency has sent the provider an overpayment or sanction notice pursuant to 130 CMR 450.237 or 450.240. The withholding of payments continues until the entitlement to the withheld funds and the amount of overpayment or administrative fines has been finally adjudicated and all due amounts have been recovered.

(C) Withholding Payments for Credible Allegation of Fraud. Upon written notice to the provider, or without notice as provided for under 42 CFR 455.23(b), the MassHealth agency may withhold payments to a provider, or to any provider under common ownership (defined the same as "provider under common ownership" in 130 CMR 450.101), where there is a credible allegation of fraud under 42 CFR 455.23. The notice complies with 42 CFR 455.23(b) and informs the provider of the right to submit written evidence for consideration by the MassHealth agency as to why payments in whole or in part should not be withheld. The withholding of payments continues until such time as any investigation and associated enforcement proceedings are completed, and all due amounts have been recovered. If the Attorney General's Medicaid Fraud Division or other law enforcement agency declines to accept any fraud referral, any payments withheld under 130 CMR 450.249(C) are released and no further payments are withheld, unless within 10 business days of the MassHealth agency receiving such notice from the Attorney General's Medicaid Fraud Division or other law enforcement agency, the MassHealth agency sends written notice to the provider in accordance with 130 CMR 450.249(B) that the MassHealth agency believes that the provider has received any overpayments or committed any violations.

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(D) Withholding Payments to Providers Withdrawing from MassHealth.

(1) The MassHealth agency may withhold payments to a provider, or to any providers under common ownership, at any time following receipt by the MassHealth agency of notification of the provider's intention to close or to withdraw from MassHealth. The MassHealth agency may withhold such payments whenever the MassHealth agency reasonably believes that there may be an outstanding issue, claim, or adjustment in connection with or incident to any payment to the provider. Such payment may be withheld regardless of whether the outstanding issue, claim, or adjustment is related to that payment. Circumstances in which there may be an outstanding issue, claim, or adjustment include, without limitation:

- (a) an outstanding provider cost report;
- (b) an anticipated or pending audit or utilization review;
- (c) a rate decrease or other payment adjustment; or
- (d) an outstanding or incomplete payment reconciliation.

(2) The MassHealth agency notifies the provider in writing of the date of the withholding, the amount withheld, and the reason for the withholding. The withholding of payments under 130 CMR 450.249(D) continue until the provider's entitlement to the withheld funds, and all outstanding issues, claims, or adjustments in connection with or incident to the payments to the provider, have been finally adjudicated or otherwise finally resolved. During the period the MassHealth agency withholds payments under 130 CMR 450.249(D), the MassHealth agency may recoup or offset all or part of the withheld funds for repayment by the provider of any liability incurred due to a rate decrease, any recoupment account balance owed, or any other debt, liability, or account balance owed by the provider.

(E) Federal Orders to Withhold Payments. If the MassHealth agency receives notice from the U.S. Department of Health and Human Services of an order for suspension of payments to a provider under 42 U.S.C. § 1396m or any other section of the Social Security Act, the MassHealth agency withholds payments otherwise due the provider in accordance with the terms of the notice. The MassHealth agency promptly notifies the provider of such action and the reason for it. The MassHealth agency takes such other action as may be necessary or appropriate to ameliorate the effect of actions taken under 130 CMR 450.249(E) on members and on MassHealth, including action similar to that described in 130 CMR 450.216. The withholding of payments continues until the underlying Department of Health and Human Services order is rescinded, or becomes final and unappealable, at which time apportionment of the withheld amounts between the MassHealth agency and the provider are made.

(F) Continued Provider Participation in the MassHealth Program.

(1) A provider subject to a withhold under 130 CMR 450.249(B),(C), and (E) must continue to provide services to MassHealth members as long as the provider continues to participate in MassHealth. Any provider terminating its participation in MassHealth must do so in accordance with 130 CMR 450.223(D) and such other statutory, regulatory, or contractual requirements as may be applicable to the particular provider or provider type.

(2) Any provider that terminates or otherwise discontinues its business operations will be deemed to be terminating its participation in MassHealth and accordingly must comply with the requirements stated in 130 CMR 450.249(F)(1).

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450.259: Overpayments Attributable to Rate Adjustments

(A) Whenever an overpayment occurs due to a rate adjustment that is certified by DHCFP or otherwise established by the MassHealth agency in accordance with applicable law, the MassHealth agency notifies the provider in writing by issuing a remittance advice identifying the impact of the rate adjustment on all previously paid claims and stating the amount of the overpayment.

(B) A provider must pay to the MassHealth agency the full amount of any overpayment attributable to a rate adjustment within 30 calendar days after the date of issuance of a remittance advice under 130 CMR 450.259(A), unless the provider enters into a payment arrangement with the MassHealth agency under 130 CMR 450.260(H).

(C) If a provider disputes the MassHealth agency's computation of an overpayment attributable to a rate adjustment, the provider must submit proposed corrections, including a detailed explanation, in writing to the MassHealth agency within 30 calendar days after the date of issuance of the remittance advice under 130 CMR 450.259(A). The fact that any rate adjustment certified by DHCFP is under appeal is not considered a factor in determining the amount of liability. The fact that a provider has submitted proposed corrections to the MassHealth agency does not delay or suspend the provider's payment obligations set forth under 130 CMR 450.259(B).

(D) If proposed corrections are timely submitted in accordance with 130 CMR 450.259(C), the MassHealth agency reviews the proposed corrections and notifies the provider of its decision within 30 calendar days of receipt of the provider's corrections. If the MassHealth agency determines that corrections are required, the MassHealth agency makes any appropriate payment adjustments reflecting the corrections.

(E) A provider must pay the MassHealth agency the full amount of the overpayment stated in a remittance advice under 130 CMR 450.259(A), regardless of any pending appeal, action, or other proceeding contesting the overpayment, including but not limited to, any appeal, action, or other proceeding contesting any rate on which the overpayment is computed. If required by a final disposition of any such appeal, action, or proceeding, the MassHealth agency issues a revised remittance advice and makes any appropriate payment adjustments to effect the final disposition.

450.260: Monies Owed by Providers

(A) Provider Liability. A provider is liable for the prompt payment to the MassHealth agency of the full amount of any overpayments, or other monies owed under 130 CMR 450.000 et seq., or under any other applicable law or regulation. A provider that is a group practice is liable for any overpayments owed and subject to sanctions imposed as a result of any violation of any statute or regulation committed by the individual practitioner that provided the service.