

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2507123
Decision Date:	7/28/2025	Hearing Date:	6/10/2025
Hearing Officer:	Cynthia Kopka		

Appearances for Appellant:



Appearances for Respondent Fallon Health:


Kay George, RN, BOH Appeals Nurse
Hollis Coblentz, DO, Associate Medical Director

Michael Freeman, Contract Manager for
MassHealth, observing



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Managed Care Organization – Denial of Internal Appeal
Decision Date:	7/28/2025	Hearing Date:	6/10/2025
Respondent's Reps.:	Kay George RN, Hollis Coblentz DO	Appellant's Reps.:	
Hearing Location:	Taunton (remote)	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By notice dated March 20, 2025, Fallon Health – Atrius Health Care Collaborative, a MassHealth Accountable Care Organization (ACO) (hereinafter, “Fallon” or “Respondent”), denied Appellant's appeal seeking prospective coverage of an INTRACEPT® Intraosseous Nerve Ablation System procedure (“Intracapt”), CPT code 64628. Exhibit 1. Appellant filed a timely appeal to the Board of Hearings (BOH) on May 7, 2025. Exhibit 2. 130 CMR 610.015(B). Denial of assistance is a valid basis for appeal. 130 CMR 508.010(B), 130 CMR 610.032(B).

Action Taken by Respondent

Fallon denied Appellant's request for prospective coverage of Intracapt, CPT code 64628.

Issue

The appeal issue is whether Fallon was correct in denying Appellant's request for prospective coverage of an Intracapt procedure.

Summary of Evidence

Respondent was represented at hearing by phone by an appeals nurse and associate medical director. Respondent submitted records in support, Exhibit 4. Appellant appeared by phone with his authorized representative and pain provider. Appellant submitted records in support, collectively Exhibit 5.¹ A summary of testimony and records follows.

Fallon Health – Atrius Health Care Collaborative, is a MassHealth Accountable Care Organization (ACO) which acts as an agent of MassHealth and must follow all MassHealth regulations. Appellant is in his sixties and has a medical history including chronic vertebrogenic lower back pain due to degenerative disc disease. On January 9, 2025, [REDACTED] Appellant's pain management physician, requested prior authorization (PA) on Appellant's behalf for coverage of intraosseous ablation of the basivertebral nerve (BVN) through the Intracept Procedure, current procedural terminology (CPT) code 64628. Exhibit 4 at 4. [REDACTED] letter in support cited to medical literature offering scientific support for the procedure and the FDA's initial clearance for its use in 2016. *Id.* at 4-7. [REDACTED] letter indicated that Appellant meets the FDA indications for use: 1) pain for greater than 6 months, 2) failed treatment for greater than 6 months, and 3) MRI demonstrating Modic changes in the L3 – S1 vertebral bodies. *Id.* at 4-5. The letter cites numerous studies supporting the safety and efficacy of the Intracept procedure. *Id.* at 5-6.

On January 28, 2025, Respondent denied Appellant's PA request for the Intracept procedure. *Id.* at 10. The denial letter states that under the MassHealth Physician Manual Subchapter 6, code 64628 is a nonpayable CPT code and therefore MassHealth does not pay for services billed under that code. *Id.*

On February 23, 2025, Respondent received Appellant's Level I appeal of the denial. *Id.* at 12. On March 20, 2025, Respondent denied the appeal for the same reason; that CPT code 64628 is nonpayable. *Id.* at 13. The March 20, 2025 denial included information about Appellant's right to request a BOH fair hearing. Respondent's representatives did not offer additional testimony in support of the denial, arguing that the code is nonpayable and therefore not covered. Respondent included relevant portions of MassHealth Physician Manual Subchapter 6 in its submission. *Id.* at 58-59.

Fallon provided its MassHealth Member Handbook, which states that it includes a list of covered and excluded services as a separate document. *Id.* at 71, 94. The Handbook states that the list is viewable at fallonhealth.org/atrushealth. *Id.* at 94. A search of fallonhealth.org/atrushealth yields no excluded services list, only covered services lists for each MassHealth coverage type. See <https://fallonhealth.org/en/atrushealth/whatscovered> (last visited July 23, 2025).

The Handbook sets forth when prior authorization is needed for services:

¹ Several documents from Exhibit 5 are included in Exhibit 4.

In addition to Prior Authorization needed to see certain network specialists, there are other services that must be authorized in advance by Fallon Health-Atrius Health Care Collaborative, MassHealth, or Carelon Behavioral Health in order for these services to be covered. (Carelon Behavioral Health is responsible for authorizing Behavioral Health (mental health and substance use) services for members). The Covered and Excluded Services List shows the services that require Prior Authorization and/or a referral from your PCP. Your provider must submit a request for those services to Fallon Health-Atrius Health Care Collaborative, Carelon Behavioral Health (for Behavioral Health services), or MassHealth.

Id. at 95.

Fallon's representatives testified that they are not aware whether any other similar procedures are covered. The appeals nurse testified that if a service is not covered, there is no path to approval through Fallon.

Appellant testified that he has been experiencing pain for over two years and was supposed to have the procedure done, but his doctor left the practice. The pain is constant and driving Appellant crazy. Appellant testified that he was institutionalized once because he was losing his mind from the pain. Appellant is incapacitated and can only sit or lie down for so long before experiencing pain. Appellant tosses and turns at night and nothing helps.

Appellant's pain provider testified that Appellant seeks approval of the Intracept procedure, an intraosseous ablation of the BVN, to address Appellant's chronic low back pain due to degenerative disc disease that has resulted in the development of vertebrogenic pain identified by degenerative endplates. Exhibit 4 at 4. An MRI done on [REDACTED] 2022 showed Modic type II changes at the L4-L5 level, associated with edema or inflammation within the bone. Appellant's pain has persisted for more than a year and Appellant has been through pain management, physical therapy, and conservative management. Appellant has received epidural steroid injections, medial branch blocks, and trigger point injections all to failure. Exhibit 4 at 16. Appellant has evidence of the Modic changes and the signs and symptoms that go with that, including difficulty changing position, pain with rising from seated to standing, and difficulty with activities such as putting on shoes and socks and bending forward waist pain. *Id.* Appellant has tried acetaminophen, Gabapentin for nerve pain, and Tizanidine muscle relaxants all to failure. The other options would be non-steroidal anti-inflammatory drugs (NSAIDs) such as ibuprofen or opioids to treat the pain. The long-term use of NSAIDs and opioids are not ideal given the current opioid substance abuse problem in the country and the effects they have upon the stomach, liver, and kidneys. *Id.* at 5.

Appellant's representatives testified that the Intracept procedure was founded in 30 years of science linking Modic changes to chronic low back pain, the only objective biomarker. The FDA has

cleared the Intracept procedure since 2016 and the procedure is covered by Medicare, Harvard Pilgrim, and Blue Cross Blue Shield insurances. Appellant's representatives offered to provide supporting scientific data. Appellant's representative asked if standard radio frequency ablation (RFA), code 64625, is a covered service. Respondent's representatives pointed out that this code is also on the list of nonpayable services. Appellant's representatives expressed surprise at this, testifying that Fallon is the only plan that does not cover RFA. Respondent's representatives testified that MassHealth is a public program funded by taxpayer dollars.

Appellant's pain provider testified that the Intracept procedure results in unmyelinated nerves, meaning the nerve will not grow back, reorganize, or have functional ability. Appellant's pain provider emphasized that this type of procedure is a "one and done" procedure. Alternatively, standard RFA results in myelinated nerves that eventually grow back and come back to life, resulting in repeat procedures every few years. Appellant had undergone a medial branch block (which involves injecting a local anesthetic near the facet joints) to determine if the standard RFA in the joints would work, and this failed.

On May 22, 2025, a physician who works for Relievant Systems wrote that it is inappropriate for Intracept not to be covered, citing listing other insurance companies that cover the procedure. Exhibit 5 at 9-12. Appellant's submission includes supporting articles from medical literature. *Id.* at 13-60.

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. Appellant is a member of Fallon Health – Atrius Health Care Collaborative, a MassHealth ACO.
2. Appellant is in his early sixties and has a medical history and diagnoses including vertebrogenic low back pain. Exhibit 4 at 4.
3. On January 9, 2025, Appellant's pain management physician requested prior authorization on Appellant's behalf for coverage of intraosseous ablation of the BVN through the Intracept procedure, CPT code 64628. *Id.*
4. On January 28, 2025, Respondent denied Appellant's request for the Intracept procedure. The denial letter states that under the MassHealth Physician Manual Subchapter 6, CPT code 64628 is a nonpayable CPT code and therefore MassHealth does not pay for services billed under that code. *Id.* at 10.
5. On February 23, 2025, Respondent received Appellant's Level I appeal of the denial. *Id.* at

12.

6. On March 20, 2025, Respondent denied the appeal for the same reason; that CPT code 64628 is nonpayable. *Id.* at 13.
7. Appellant filed this timely external appeal with BOH on May 7, 2025. Exhibit 2.

Analysis and Conclusions of Law

MassHealth members younger than 65 years old, except those excluded under 130 CMR 508.004, must enroll in the Primary Care Clinician (PCC) Plan or a MassHealth-contracted MCO available for their coverage type. 130 CMR 450.117(A) and 130 CMR 508.002.² MassHealth members enrolled in MassHealth-contracted managed care plans may request a fair hearing pursuant to 130 CMR 610.000 *et seq.* and appeal a determination made by an ACO if the member has exhausted all remedies available through the contractor's internal appeals process. 130 CMR 508.010(B).

MassHealth regulations regarding surgical procedures are found within 130 CMR 433.000: *Physician Services*, specifically 130 CMR 433.451-452. According to 130 CMR 433.451(B)(4), MassHealth does not pay for services billed under the codes listed in Subchapter 6 of the *Physician Manual* as not payable. According to Subchapter 6 of the *Physician Manual*, updated January 1, 2025:

MassHealth pays for all medicine, radiology, surgery, and anesthesia CPT codes in effect at the time of service, subject to all conditions and limitations described in MassHealth regulations at 130 CMR 433.000: *Physician Services* and 130 CMR 450.000: *Administrative and Billing Regulations*, except for those codes listed in Section 602 of this subchapter.

Section 602 (Nonpayable CPT Codes) lists code 64628 as a nonpayable code.

Though Fallon provided its MassHealth Member Handbook, it failed to include a list of covered and excluded services. Exhibit 4 at 71, 94. The Handbook states that the excluded services list is available online but it was not found on fallonhealth.org/atriushealth. *Id.* at 94.

Appellant and his representatives offered credible testimony that Appellant is in debilitating pain

² When a member is eligible for managed care, the member may elect to enroll in a Primary Care ACO by selecting a Primary Care ACO and available PCP that participates in the selected Primary Care ACO. 130 CMR 508.006(B)(1). If a member is enrolled in a Primary Care ACO, the member's selected or assigned PCP will deliver the member's primary care, determine if the member needs medical or other specialty care from other providers, and make referrals for such necessary medical services. 130 CMR 508.006(B)(2)(a). All medical services, except those provided by the PCP or exempted by regulation, require a referral or authorization from the member's primary care provider. 130 CMR 450.119(I)(1) and 130 CMR 508.006(B)(2)(b).

that is causing him mental anguish. There is no dispute that Appellant has tried and failed numerous interventions including medications, physical therapy, and injections. As sympathetic as Appellant's circumstances are, there is nothing in the regulations that allows for an exemption for medical necessity or upon a showing supported by scientific literature. Accordingly, this appeal is denied.

Order for Respondent

None.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Cynthia Kopka
Hearing Officer
Board of Hearings

[REDACTED]

MassHealth Representative: Fallon Health, Member Appeals and Grievances, 10 Chestnut Street, Worcester, MA 01608