

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES

The Wisconsin Department of Health and Family Services proposes to repeal s. HFS 107.07 (2) (c); to renumber s. HFS 105.06; to amend s. HFS 105.01 (5) (a) 1., 105.06 (title), 107.07 (2) (a) (intro.), 1. to 4., and (b); to repeal and recreate s. HFS 107.07 (1), (3), and (4); and to create ss. HFS 105.01 (5m), 105.06 (1) (title) and (2), 106.02 (12), 107.07 (1m) and Note, (2) (a) 5. to 8., and (4m), relating to coverage of dental services under the Medical Assistance program, and affecting small businesses.

Analysis Prepared by the Department of Health and Family Services

Statute (s) interpreted: Sections 49.45 (2) (a) 11. a., and (10) and 49.46 (2) (a) 2., and (b)1., Stats.

Statutory authority: Sections 49.45 (2) (a) 11. b., and (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 the Medical Assistance program, including provider certification requirements and covered services. Section 49.45 (2) (a) 11. b., authorizes the Department to promulgate rules establishing criteria for certification of providers of medical assistance and certify providers who meet the criteria.

Related statute(s) or rule(s): Chs. HFS 101 to 104, 106 and 108.

Plain language analysis:

The proposed order revises the Department's rules for coverage of dental services by the MA program to update dental terminology, accommodate the current national dental procedure codeset, improve the organization of s. HFS 107.07, substantially reduce the number of services requiring prior authorization, and change the coverage status of several services, including for sealants, and alveoplasty and osteoplasty (2 types of oral surgery).

The removal of alveoplasty and osteoplasty from the non-covered services category to the category of services covered with prior authorization will permit reimbursement of dentists for these services. Currently, only physicians are allowed reimbursement for these surgeries.

In addition, the proposed order revises ss. HFS 105.01 (5) and (6), to allow for the individual certification of dental hygienists and describes services that may be reimbursed by Medicaid when provided by Medicaid certified dental hygienists.

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

42 CFR Part 440 addresses Medical Assistance, including required and optional services provided under State Plans.

Comparison with rules in adjacent states:

Dental benefit/prior authorization

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 proposed here.

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 State Children's Health Insurance Program enrollees in rural counties. Michigan, however, recently reduced its adult benefit to emergency care only.

Dental Hygienist certification

Minnesota allows dental hygienists to become independently certified Medicaid providers. To qualify for dental services, dental hygienists must be licensed by the Board of Dentistry, and must have entered into a collaborative agreement with a licensed dentist.

Iowa, Illinois, and Michigan do not certify independent dental hygienists.

Summary of factual data and analytical methodologies:

The Department is continually striving to improve access to dental care for Wisconsin Medicaid and BadgerCare enrollees. According to Wisconsin Medicaid Factsheets, 40% of Wisconsin's licensed dentists participate in the program. Dentists cite paperwork, particularly in connection with prior authorization, as a reason they choose not to participate in the program.

Data on approval and denial rates for prior authorization requests from fiscal years 2003-2004 were collected and analyzed by DHCF staff. Most procedures which had high rates of approval (greater than 75%) are proposed to have prior authorization removed. Procedures with low rates of approval (e.g., periodontal services and adult molar root canals) are proposed to retain prior authorization. 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.

Medicaid certification of dental hygienists was a proposal included in the recommendations of the Joint Legislative Council Study on Access to Oral Health Care, which met in 2001 and 2002. These recommendations can be accessed at <http://www.legis.state.wi.us/lc/studies/DCA/>. The proposal to independently certify dental hygienists was reaffirmed in the Governor's 2004 KidsFirst Oral Health Agenda, available at <http://www.wisgov.state.wi.us/docs/kidsfirst.pdf>.

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

Under the proposed rules, a number of common dental procedures which currently require prior authorization, like anterior and bicuspid root canals, and full-mouth periodontal debridement, will

have that requirement removed. Consequently, the staff time required for dental offices to process prior authorization requests will decline.

In regard to the certification of dental hygienists, each of Wisconsin's county and local health departments, as well as its schools boards, will be able to employ independent dental hygienists, and use MA reimbursement to fund these hygienists' oral health activities. This creates numerous business opportunities for hygienists.

Anticipated costs incurred by private sector:

The proposed rules are MA reimbursement criteria. The proposed changes are to update dental terminology, accommodate the current national dental procedure codeset, improve the organization of s. HFS 107.07, substantially reduce the number of services requiring prior authorization, describe services that may be performed by a dental hygienist, and change the coverage status of several services, including for sealants, and alveoplasty and osteoplasty (2 types of oral surgery). Consequently, the Department believes that no costs will be incurred by the private sector in order to comply with the proposed rules.

Effect on small business:

The Department believes that the proposed rules will have a positive effect on dental hygienists and dentists. Dental hygienists will enjoy increased opportunities to independently contract their services. Dentists will experience a reduction in paperwork and administrative staff time associated with participation in Wisconsin Medicaid and BadgerCare. The proposed rules do not impose reporting requirements or schedules.

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

The public hearing record closed on July 29, 2005.

Order

SECTION 1. HFS 105.01 (5) (a) 1. is amended to read:

HFS 105.01 (5) (a) 1. Dental hygienists; except as provided under sub. (5m).

SECTION 2. HFS 105.01 (5m) is created to read:

HFS 105.01 (5m) OPTIONAL CERTIFICATION. A dental hygienist licensed under s. 447.04 (2), Stats., may opt to be individually certified by the department for MA reimbursement for dental hygiene services.

SECTION 3. HFS 105.06 (title) is amended to read:

HFS 105.06 Dentists and dental hygienists.

SECTION 4. HFS 105.06 is renumbered HFS 105.06 (1).

SECTION 5. HFS 105.06 (1) (title) and (2) are created to read:

HFS 105.06 (1) DENTISTS.

(2) For MA certification, dental hygienists shall be licensed pursuant to s. 447.04 (2), Stats.; have 2 years or 3,200 hours of active practice experience as a licensed dental hygienist; and operate within the scope of dental hygiene as defined under ss. 447.01 (3) and 447.06, Stats. Written documentation showing the required experience shall be provided to the department upon application for MA certification.

SECTION 6. HFS 106.02 (12) is created to read:

HFS 106.02 (12) REQUIREMENTS FOR DENTAL HYGIENIST SERVICES. (a) 1. At least 20 days before a MA certified dental hygienist performs a service for a dental sealant program conducted by an entity specified under s. 447.06 (2) (a) 2., 3., and 5., Stats., the dental hygienist shall notify the contract agency for the Wisconsin Seal-A-Smile Dental Sealant program. Upon notification of the dental sealant program dates, the contract agency shall post the program dates on an Internet site. If the dental sealant program is rescheduled, notice may be provided closer to the date of the rescheduled program. If the dental hygienist provides a list of dates of the programs for which the dental hygienist will perform services during the year, the 20 day notice requirement for each event is waived.

Note: Dental hygienists are encouraged to work with dentists, when available, to assist in these programs.

2. An MA certified dental hygienist and any entity who employs or contracts with a MA certified dental hygienist under s. 447.06 (2) (a) 2., 3., and 5., Stats., or that uses the volunteer services of an MA certified dental hygienist shall maintain written documentation of all of the following:

a. The relationship between the dental hygienist and the entity.

b. Any referral of a patient who has a condition that cannot be treated within the dental hygienist scope of practice as defined under s. 447.03, Stats., to a private dental practice; a federally qualified health center that provide dental services; a rural dental health clinic; a college or university that provides dental diagnostic and clinical services; or any other dental entity that employs, contracts with, or is under the supervision of a licensed dentist.

c. Consultation with a licensed dentist in a private dental practice; a federally qualified health center that provide dental services; a rural dental health clinic; a college or university that provides dental diagnostic and clinical services; or any other entity that employs, contracts with, or is under the supervision of a licensed dentist.

d. The notification required under subd. 1.

(b) Compliance with this subsection is subject to audit by the department and the legislature.

SECTION 7. HFS 107.07 (1) is repealed and recreated to read:

HFS 107.07 Dental services. (1) COVERED SERVICES; DENTISTS AND PHYSICIANS. Except as provided under subs. (2), (3), (4) and (4m), all of the following dental services are covered services when provided by or under the supervision of a dentist or physician within the scope of practice of dentistry as defined in s. 447.01 (8), Stats:

- (a) Diagnostic services.
- (b) Preventive services.
- (c) Restorative services.
- (d) Endodontic services.
- (e) Periodontic services.
- (f) Removable prosthodontic services.
- (g) Fixed prosthodontic services.
- (h) Oral and maxillofacial surgery services.
- (i) Orthodontic services.
- (j) All of the following other services:
 - 1. Unclassified treatment.
 - 2. Palliative emergency treatment.
 - 3. General anesthesia, intravenous conscious sedation, nitrous oxide, and non-intravenous conscious sedation.
 - 4. Hospital calls.
- (k) Any service that is part of a dental assessment and evaluation for a recipient under 21 years of age or that is found necessary as a result of such an assessment and evaluation.

SECTION 8. HFS 107.07 (1m) and Note are created to read:

HFS 107.07 (1m) COVERED SERVICES; DENTAL HYGIENISTS. Except as provided under subs. (2), (3), (4), and (4m), all of the following dental services are covered services when provided by a dental hygienist who is individually certified under ch. HFS 105 within the scope of dental hygiene as defined in s. 447.01 (3), Stats:

- (a) Oral screening and preliminary examination.

- (b) Prophylaxis.
- (c) Topical application of fluoride.
- (d) Pit and fissure sealants.
- (e) Scaling and root planing.
- (f) Full mouth debridement.
- (g) Periodontal maintenance.

Note: The Joint Committee for the Review of Administrative Rules (JCRAR) has objected to the Department's allowing MA reimbursement for the services specified in pars. (a), (e), (f), and (g) when performed by a dental hygienist. This means that the services specified in those paragraphs, when performed by a dental hygienist, are not reimbursable under MA. If bills introduced by JCRAR, to uphold the objection fail to be enacted, then dental hygienists can be reimbursed by MA for performing those services.

SECTION 9. HFS 107.07 (2) (a) (intro.) and 1. to 4. are amended to read:

HFS 107.07 (2) SERVICES REQUIRING PRIOR AUTHORIZATION. (a) ~~The~~ All of the following dental services listed under par. (c) require prior authorization. ~~In addition, the department may require prior authorization for other covered dental services where necessary to meet the program objectives stated in s. HFS 107.02 (3). A request for prior authorization of dental services submitted to the department by a dentist or physician shall identify the items enumerated in s. HFS 107.02 (3) (d), and in addition 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:

1. ~~The age and occupation of the recipient;~~ Molar root canal therapy for recipients ages 21 and over.

2. ~~The service or procedure requested;~~ All of the following periodontal services:

a. Grafts, mucogingival and osseous surgical periodontal services.

b. Provisional splinting.

c. Gingivectomy and gingivoplasty.

d. Scaling and root planing.

e. Periodontal maintenance.

3. ~~An estimate of the fee associated with the provision of the service, if requested by the department and;~~ All of the following removable prosthodontic services:

a. Complete dentures.

b. Partial dentures.

~~4. Diagnostic casts, dentist's statement, physician's statement and radiographs if requested by the department.~~ All of the following oral and maxillofacial surgery services:

a. Surgical extractions of teeth and tooth roots for orthodontia, or for asymptomatic impacted teeth.

b. Temporomandibular joint surgery.

c. Repairs of orthognathic deformities.

d. Other repair procedures including osteoplasty, alveoloplasty, and sialolithotomy.

SECTION 10. HFS 107.07 (2) (a) 5. to 8. are created to read:

HFS 107.07 (2) (a) 5. Orthodontia services for children under age 21.

6. General anesthesia, intravenous conscious sedation, nitrous oxide, and non-intravenous conscious sedation for recipients age 21 and over, where the treatment is not provided in a hospital or in an emergency situation.

7. Surgical or other dental services, including fixed prosthodontics in order to correct conditions that may reasonably be assumed to significantly interfere with a recipient's personal or social adjustment or employability.

SECTION 11. HFS 107.07 (2) (b) is amended to read:

~~HFS 107.07 (2) (b) In determining whether to approve or disapprove a request for prior authorization, A provider who submits a request for prior authorization of dental services to the department shall ensure consideration of criteria enumerated in s. HFS 107.02 (3) (e) identify the recipient's birth date and the items enumerated in s. HFS 107.02 (3) (d).~~

SECTION 12. HFS 107.07 (2) (c) is repealed.

SECTION 13. HFS 107.07 (3) and (4) are repealed and recreated to read:

(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) General limitations. The MA program may impose reasonable limitations on reimbursement of the services listed in subs. (1) and (1m) regarding any of the following:

1. Frequency of service per time period, including coverage of services in emergency situations only.

2. Allowable age of recipient who may receive a service.

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

(b) Specific limitations.

1. Reimbursement for dentures and partial dentures includes 6 months postdelivery care. If a prior authorization request for these services is approved, the recipient shall be eligible on the date the authorized treatment is started, which is the date the final impressions were taken. Once started, the service shall be reimbursed to completion, regardless of the recipient's eligibility.

2. Temporomandibular joint surgery is a covered service only when performed after all professionally accepted non-surgical medical or dental treatment has been provided, and the necessary non-surgical medical or dental treatment has been determined unsuccessful by the department's dental consultant.

3. The diagnostic work-up for orthodontic services shall be performed and submitted with the prior authorization request. If the request is approved, the recipient is required to be eligible on the date the authorized orthodontic treatment is started as demonstrated by the placement of bands for comprehensive orthodontia. Once started, the service shall be reimbursed to completion, regardless of the recipient's eligibility.

4. A non-covered service specified under sub. (4) or (4m) may be reimbursed if the department's dental consultant requests that the service be performed in order to review the request for prior authorization.

(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:

(a) General services for purely aesthetic or cosmetic purposes.

(b) General services performed by means of a telephone call between a provider and a recipient, including those in which the provider provides advice or instructions to or on behalf of the recipient, or between dentists, physicians or a dentist and physician on behalf of the recipient.

(c) Equivalent services or separate components of a service performed on the same day.

(d) Tests and laboratory examinations, other than for diagnostic casts when required by the department.

(e) Oral hygiene instruction or training in preventive dental care as a separate procedure, including tooth brushing technique, flossing or use of special oral hygiene aids, tobacco cessation counseling, or nutritional counseling.

(f) The following restorative services:

1. Labial veneer.

2. Temporary crowns.

3. Cement bases as a separate item.

4. Endodontic filling materials that are not approved for use by the American Dental Association.

(g) Pulp cappings.

(h) The following removable prosthodontic services:

1. Overlay dentures.
2. Overlay partial dentures.
3. Duplicate dentures and adjustments.

(i) The following implant services:

1. Tooth implants.
2. Transplantations.
3. Surgical repositioning except reimplantation under sub. (3).
4. Transseptal fiberotomies.

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

(k) The following adjunctive general services:

1. Professional consultation.
2. Non-surgical treatment of temporomandibular joint disorder.
3. Behavior management.
4. Athletic mouthguards.
5. Local anesthesia as a separate procedure.
6. Occlusal guard, analysis and adjustment.
7. Non-covered services that are listed in s. HFS 107.03.

(L) Professional visits, other than for the oral evaluation of a nursing home resident, or hospital calls as noted in sub. (1) (j) (4).

SECTION 14. HFS 107.07 (4m) is created to read:

HFS 107.07 (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:

(a) Services performed outside the scope of practice of dental hygiene as defined under ss. 447.01 (3) and 447.06, Stats.

(b) Oral hygiene instruction or training in preventive dental care as a separate procedure, including tooth brushing technique, flossing or use of special oral hygiene aids, tobacco cessation counseling, or nutritional counseling

(c) General services for purely aesthetic or cosmetic purposes.

SECTION 15. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and
Family Services

Dated: June 22, 2006

By: _____
Helene Nelson
Secretary

Seal: