

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 258]

[Correction]

Medical Assistance Estate Recovery

This document was printed at 31 Pa.B. 6034 (November 3, 2001) with an incorrect title name. The name should have been "Medical Assistance Estate Recovery."

[Pa.B. Doc. No. 01-1597. Filed for public inspection November 2, 2001, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1223]

Outpatient Drug and Alcohol Clinic Services

The Department of Public Welfare (Department), by this order, adopts amendments to Chapter 1223 (relating to outpatient drug and alcohol clinic services) to read as set forth in Annex A under the authority of section 443.3(1) of the Public Welfare Code (62 P.S. § 443.3(1)) (act). A Notice of Rule Change (NORC) was published at 28 Pa.B. 1281 (March 7, 1998).

Notice of proposed rulemaking is omitted under section 204(1)(iv) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204(1)(iv)) (CDL) and 1 Pa. Code § 7.4(1)(iv) (relating to omission of notice of proposed rulemaking because administrative regulations relate to Commonwealth benefits. Additionally, notice of proposed rulemaking is omitted for good cause as impractical, unnecessary and contrary to the public interest under section 204(3) of the CDL and 1 Pa. Code § 7.4(3) since further delay in implementing these regulations may result in undue hardship for eligible Medical Assistance (MA) recipients who do not have access to adequate drug and alcohol services.

Purpose

The purpose of this rulemaking is to amend the MA enrollment policy for outpatient drug and alcohol clinics to maintain consistency with Department of Health (DOH), drug and alcohol program licensing, by allowing drug and alcohol clinics with a provisional license to bill for covered MA services rendered to eligible MA recipients. This rulemaking also deletes references to obsolete bureaus and offices.

Background

Currently § 1223.41 (relating to participation requirements) does not allow for reimbursement to drug and alcohol clinics with provisional licenses. Under the DOH regulations, 28 Pa. Code Chapter 709 (relating to standards for licensure of freestanding treatment facilities), a drug and alcohol clinic with a provisional license may treat patients. New drug and alcohol clinics are issued provisional licenses for a 6-month period following the site inspection by the DOH. Within the 6-month period, a clinic shall demonstrate that it can provide the services in conformity with the regulations. If a clinic meets all licensing regulations for drug and alcohol clinics, the

Division of Drug and Alcohol Program Licensing within the DOH will issue the clinic a full license. If the clinic does not meet the licensing regulation within the 6-month period, the clinic may receive any number of provisional licenses as determined by the DOH.

In addition, a fully licensed drug and alcohol clinic may receive a provisional license after its yearly inspection. If the clinic receives a provisional license, the clinic has 6 months to meet licensing regulations. If the clinic still does not meet licensing regulations, the clinic may receive any number of provisional licenses as determined by the DOH.

By allowing drug and alcohol clinics with provisional licenses to bill for covered services to eligible MA recipients, recipients will be able to continue with the same provider and so maintain continuity of care. Further, since new drug and alcohol clinics cannot receive a full license for at least 6 months, permitting clinics with a provisional license to participate in the MA Program will increase access by MA clients to these covered services.

Need for the Amendments

These amendments are needed to codify changes issued under the NORC published at 28 Pa.B. 1281.

Summary of the Amendment

Section 1223.2 (relating to definitions) is revised by eliminating all references to the "Governor's Council on Drug and Alcohol Abuse" and replacing them with the "Department of Health." Also, the definition of "drug/alcohol outpatient clinic provider" is revised to include those facilities which are provisionally licensed.

Section 1223.14 (relating to noncovered services) is revised by eliminating the reference to the "Governor's Council on Drug and Alcohol Abuse" and replacing it with the "Department of Health."

Section 1223.41 is revised to include those drug/alcohol outpatient clinics that are provisionally licensed. Also, the references to the "Governor's Council on Drug and Alcohol Abuse" is replaced with the "Department of Health." All references to the "Bureau of Provider Relations" have been replaced with the "Office of Medical Assistance Programs."

Fiscal Impact

Public Sector

To the extent that the Department has been providing these services under the NORC published at 28 Pa.B. 1281, the Department does not anticipate any future impact on the public sector if these amendments are adopted.

Private Sector

The Office of MA Programs does not anticipate any future fiscal impact on the private sector.

General Public

The Office of MA Programs does not anticipate any future fiscal impact on the general public.

Paperwork Requirements

There are no additional reports or new forms needed to comply with these rulemaking changes.

Sunset Date

The Department's Office of MA Programs will evaluate the effectiveness of these regulations on an ongoing basis. Necessary and appropriate changes will be made in response to letters, recommendations and comments from other offices, agencies and individuals and as a result of Departmental findings. No sunset date is required.

Public Comment

Although this rulemaking is being adopted without prior notice, interested persons are invited to submit written comments within 30 days from the date of this publication. Comments should be sent to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515 Health and Welfare Building, Harrisburg, PA 17120.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). If another alternative is required, contact Thomas Vracarich at (717) 783-2209.

Regulatory Review Act

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on September 18, 2001, the Department submitted a copy of this final-omitted rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Act, this final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, on October 18, 2001, IRRC met and approved the final-omitted rulemaking.

Findings

The Department finds that:

(1) Notice of proposed rulemaking is omitted because the amendments relate to Commonwealth benefits under section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv).

(2) Notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest under section 204(3) of the CDL and 1 Pa. Code § 7.4(3).

(3) The adoption of this final-omitted rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the act.

Order

The Department acting under the act orders that:

(a) The regulations of the Department, 55 Pa.Code Chapter 1223, are amended by amending §§ 1223.2, 1223.14 and 1223.41 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Attorney General and General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin* and apply retroactively to March 1, 1998.

FEATHER O. HOUSTOUN,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 6120 (November 3, 2001).)

Fiscal Note: 14-453. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE
PART III. MEDICAL ASSISTANCE MANUAL
CHAPTER 1223. OUTPATIENT DRUG AND
ALCOHOL CLINIC SERVICES

GENERAL PROVISIONS**§ 1223.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Drug/alcohol outpatient clinic provider—A facility approved by the Department to participate in the Medical Assistance Program and which is fully or provisionally licensed by the Department of Health to provide regular psychotherapy, client management, medical and psychological outpatient services for the diagnosis and treatment of drug and alcohol abuse and dependence to eligible Medical Assistance outpatient recipients who are not residents of a treatment institution or receiving similar treatment elsewhere. A drug/alcohol clinic may provide methadone maintenance if approved to do so by the Department of Health.

Drug/alcohol outpatient clinic psychotherapy personnel—Licensed physicians, clinical social workers who have been graduated from a graduate school of social work accredited or approved by the Council on Social Work Education, licensed psychologists with psychotherapy training, and other individuals permitted by the Department of Health.

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Treatment institution—A facility licensed, funded or controlled by the Department of Health or its agents that provides or makes provision for full or part-time treatment or rehabilitative services for drug and alcohol abuse and dependence of resident patients.

COVERED AND NONCOVERED SERVICES**§ 1223.14. Noncovered services.**

Payment will not be made for the following types of services regardless of where or to whom they are provided:

(1) Nonmedical counseling consisting of supportive activities to improve an individual's problem-solving and coping skills and intrapersonal or interpersonal development and functioning; and group recreation or group social activities, as group psychotherapy.

(2) Clinic visits, psychotherapy, diagnostic psychological evaluations, psychiatric evaluations and comprehensive medical evaluations conducted over the telephone, that is, any clinic service conducted over the telephone.

(3) Cancelled appointments.

- (4) Covered services that have not been rendered.
- (5) Inpatient hospital methadone maintenance.
- (6) Vocational rehabilitation; day care; drug/alcohol or mental health partial hospitalization; reentry programs, occupational or recreational therapy; Driving While Intoxicated (DWI) or Driving Under the Influence Programs or Schools; referral, information or education services; experimental services; training; administration; follow-up or aftercare; program evaluation; case management; central intake or records; shelter services; research; drop-in, hot-line or social services; inpatient nonhospital or occupational program services, or any other service or program not specifically identified as a covered service in Chapter 1150 (relating to Medical Assistance Program payment policies) and the Medical Assistance (MA) Program fee schedule.
- (7) An MA covered service, including drug/alcohol clinic services, provided to inmates of State or county correctional institutions or committed residents of public institutions.
- (8) Drug/alcohol outpatient clinic services provided to residents of treatment institutions, that is, persons who are also being provided with room and board and services on a 24-hour basis by the same facility or distinct part of the facility or program. Drug/alcohol outpatient clinic services provided to residents of inpatient nonhospital and shelter facilities.
- (9) Drug/alcohol outpatient clinic services provided to patients receiving psychiatric partial hospitalization services under the MA Program or drug/alcohol partial hospitalization services under the Department of Health.
- (10) Covered drug/alcohol clinic services, with the exception of family psychotherapy, provided to persons without a drug/alcohol abuse or dependence diagnosis who are family members, other relatives, friends, acquaintances or live-in companions of the eligible recipient with a drug/alcohol abuse or dependence problem solely because of a relationship to the recipient. Payment will be made only for covered services directly provided to eligible MA recipients who have been diagnosed by a licensed physician as having a drug/alcohol abuse or dependence problem.
- (11) Services delivered at locations other than approved drug/alcohol outpatient clinics with the exception of home visits under the conditions specified in § 1223.52(d) (relating to payment conditions for various services).
- (12) Methadone maintenance clinic visits on days when the patient has take-home privileges, that is, self-administers methadone at home.
- (13) Home visits not provided in accordance with the conditions specified in § 1223.52(d).
- (14) Services provided before the date of the physician's examination, diagnosis and treatment plan.

PROVIDER PARTICIPATION

§ 1223.41. Participation requirements.

In addition to the participation requirements established in Chapter 1101 (relating to general provisions), drug/alcohol outpatient clinics shall meet the following participation requirements:

- (1) Be fully or provisionally licensed/approved as an outpatient drug/alcohol facility by the Department of Health. To remain eligible for Medical Assistance reimbursement, a facility shall be fully or provisionally licensed/approved at all times as an outpatient drug/alcohol clinic.
- (2) Have medical personnel currently licensed or registered in accordance with the laws of the Commonwealth.
- (3) Have a written patient referral plan that provides for inpatient hospital care and other follow-up treatment.
- (4) Post a current, written fee schedule for billing third party and private payors.
- (5) Appoint an administrator or director responsible for the internal operation of the clinic in accordance with established policies. Appoint a physician responsible for the supervision and direction of services rendered to eligible recipients.
- (6) Notify immediately the Department's Office of Medical Assistance Programs, in writing, of any facility name, address and service changes prior to the effective date of change. Failure to do so may result in payment interruptions or termination of the provider agreement.
- (7) Enter into a written provider agreement with the Department.
- (8) Forward copies of items required by subparagraphs (i)—(v) to the Office of Medical Assistance Programs. It is the clinic director's responsibility to notify the Office of Medical Assistance Programs, in writing, of changes in the clinic's full compliance with licensure standards and changes in the following items required by subparagraphs (i)—(v) within 30 days following a change. If the clinic is relicensed by the Department of Health, the clinic director shall also forward a copy of the current license to the Office of Medical Assistance Programs within 30 days of relicensure:
 - (i) A current Department of Health license showing effective dates of licensure and activities licensed.
 - (ii) A written description of referral services utilized.
 - (iii) A written description of clinic services provided on the clinic premises.
 - (iv) The current fee schedule for billing third party and private payors.
 - (v) The names and business addresses of physicians providing treatment or supervision for MA recipients on a full-time or part-time basis in the clinic.
- (9) Have each branch location or satellite of an approved clinic also licensed by the Department of Health as an outpatient clinic and be approved by the Office of Medical Assistance Programs before reimbursement can be made for services rendered at the branch or satellite. Approval of the parent organization does not constitute approval for any branches or satellites of the same organization.
- (10) Be approved by the Office of Medical Assistance Programs.

[Pa.B. Doc. No. 01-2011. Filed for public inspection November 9, 2001, 9:00 a.m.]