

**SUMMARY AND RESPONSE TO 15-DAY
WRITTEN COMMENTS**

FSOR ADDENDUM 3

DHCS-08-003

Commenter Name, Title, Organization and Date of Comment(s)

1. Abbi Coursolle, Staff Attorney, National Health Law Program, And on Behalf of Disability Rights California, Western Center on Law & Poverty, (Dated/Received May 7, 2015)

Comment

1. **22 C.C.R. §§ 51161, 51315.1: Coverage of compression stockings.**

The proposed regulation continues to provide a definition of "gradient compression stockings," but does not include a definition for the other predominant type of compression stocking, thromboembolism-deterrent hose (TED hose). *See id.* § 51161(pp). TED hose may be used to prevent deep vein thrombosis, especially for post-surgical patients, and also to treat varicose and spider veins. The proposed regulation also does not provide any criteria for the authorization of TED hose. *Cf. id.* § 51315.1(c) (criteria for gradient compression stockings). This omission appears to limit coverage of compression stockings to gradient compression stockings, even when TED hose are medically necessary to treat a beneficiary's condition. We recommend that DHCS amend the section 51161 to include TED hose, and add criteria for the authorization of TED hose to section 51315.1.

Response

As stated in our previous response to this comment (Addendum 1, Commenter #6, Comment #1.), "Criteria provided in this regulatory action pertain to those appliances and services currently covered by specific procedure codes under the Medi-Cal program. This regulatory action is not intended to expand the scope of coverage for O&P appliances and services. The addition of new appliances for coverage under Medi-Cal is outside the scope of this regulatory action.

Comment

2. **22 C.C.R. §§ 51161(e) & (ddd)**

We are pleased that both activities of daily living and instrumental activities of daily living are defined and identified as relevant for medical necessity determinations. We are especially heartened that this version of the regulation expressly incorporates the functional requirements of

Welfare & Institutions Code § 14059 by referencing the requirement to address the "capacity for normal activity, including employment" in the definition of IADL.

We continue to recommend that the regulations include a "by report" section to cover newly available orthotics and prostheses to ensure that Medi-Cal beneficiaries may have access to all medically necessary equipment and supplies.

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Response

As stated in our previous response to this comment (Addendum 1, Commenter #6, Comment #2b.), “Section 51315(b) contains criteria and instructions for requesting appliances that have not been assigned specific procedure codes (by report/miscellaneous codes). The Department has determined that including a specific section to accommodate future appliances not yet included in the coverage under Medi-Cal is not necessary.”

Comment

3. 22 C.C.R. §§ 51315(c), (d)(2) Limitations on coverage of services or appliances for cosmetic purposes.

We remain concerned that the proposed definition at section 41315(d)(2) defines the limitation on services and appliances for cosmetic purposes too narrowly. Specifically, the definition fails to take into consideration the impact of having an appearance outside the norm of normal appearance on the ability to participate in normal activities including work, as required by Welfare & Institutions Code § 14059. The proposed definition could prohibit Medi-Cal beneficiaries from receiving facial prostheses that are individually fashioned so that with the prosthesis the facial appearance is normal. For someone with a gaping hole in the middle of the face where the nose should be, the medical necessity for a prosthetic nose is apparent—for instance, in order to wear glasses and to keep things outside of the body. In our experience, the cosmetics questions can arise when a beneficiary requires more than a duct tape cover with some breathing holes plus a screwed in cup holder between the eyes to hold up glasses. Absent a quality prosthetic nose that brings the person within the normal range of appearance, that beneficiary is subjected to a significant disability and severe pain that only can be alleviated by access to a quality prosthesis so the person can engage in normal activities including employment. The regulation should be amended to clarify that prostheses for this purpose are not considered cosmetic.

Response

As stated in our previous response to this comment (Addendum 1, Commenter #6, Comment #3.), “The assumption is that the comment is in reference to Section 51315(d)(2) related to “cosmetic restoration.”

In Section 51161(ddd), the definition of IADLs was expanded through the 15-Day Public Availability published on April 23, 2015, to include “...means those activities that support activities of daily living *and the capacity for normal activity, including employment...*” (See response – Addendum 1, Commenter #6, Comment #2a). Therefore, the evaluation of medical necessity for O&P appliances will be broadened as specified in this revised definition. The example cited by the commenter would not be limited by “...the sole purpose of cosmetic restoration...” because the facial prosthesis in the example would be medically necessary.

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4. 22 C.C.R. §§ 51315.1, 51315.2: Limiting authorization to individuals with a particular diagnosis.

We greatly appreciate the inclusion of general language in the beginning of sections 51315.1 and 51315.2 that explains that any list of medical conditions in those sections should be read as inclusive but not exhaustive, and that affirms that medical necessity must be determined in light of the particular beneficiary's needs. We also appreciate that DHCS amended the particular sections we identified as containing overly restrictive diagnosis-based criteria to specify that the devices described should be provided for any condition for which they are medically necessary: 51315.1(h)(3)(i)(1)(A)(2) for tension based scoliosis , 51315.1(h)(9)(C)(7) for reciprocating gait , and 51315.1(p) for trusses.

Response

No response required.

Comment

5. 22 C.C.R. § 51315.2: Facial Prostheses.

We remain concerned that this section omits any reference to Medi-Cal coverage of facial prostheses. Facial prostheses may be medically necessary for beneficiaries who have experienced congenital impairments, accidents, or certain cancer surgeries. We recommend that DHCS amend this section to expressly allow for coverage of facial prostheses that will bring the beneficiary into the normal range of facial appearances when medically necessary.

Response

As stated in our previous response to this comment (Addendum 1, Commenter #6, Comment #5.), "Facial prostheses are a benefit under the Medi-Cal program, but are not assigned a specific procedure code(s). Prosthetic appliances, including facial prostheses not assigned a specific procedure code(s), may be covered under a miscellaneous code as noted in Section 51315.2(g)(1)."