

5. A facility is not required to provide a rebate to the payer if the calculated rebate owed to the payer is *de minimis*, meaning less than \$1,000.

(i) As an example of the calculations in this section, assume a facility reports 100 total bed days, 50 Medicaid/NJ FamilyCare bed days, \$1,000 of total expenses, and \$570.00 of Medicaid/NJ FamilyCare revenue.

1. The payer's Cost Share Percentage is 50 percent (50/100).
2. The payer's Share of Expenditures is \$500.00 (50% * \$1,000).
3. The payer's PCR is 87.7 percent (\$500/\$570).
4. The payer's Rebate Percentage is 2.3 percent (90.0% - 87.7%).
5. The payer's Rebate is \$13.00 (2.3% * \$570). This example does not apply the *de minimis* rule due to illustrative small dollar amounts.

6. The payer's Share of Expenditures plus Rebate is \$513.00, which is 90 percent of the payer's Revenue (\$513/\$570).

(j) If a State entity with financial audit and/or investigatory authority determines that the payment of rebates by a facility will cause the facility's cash balance to fall below the amount needed to operate as a going concern, the facility may request that the Department defer all, or a portion of, the rebate payments owed by the facility. The Department may permit a deferral of all, or a portion of, the rebates owed, but only for a period determined by the Department in consultation with the auditing entity. ***Upon receipt of notice that a rebate is due, a facility may request a deferral by filing a written request, including a copy of the State entity's finding, with the Division of Medical Assistance and Health Services, Office of Legal and Regulatory Affairs, PO Box 712, Mail Code #26, Trenton, NJ 08625-0712. The written request must be filed within 60 days of receipt of notification of the rebate.***

(k) The Department requires, at a minimum, that all reports shall be submitted timely, as described above, and that all data used in reports shall comply with the definitions, criteria, and other requirements as set forth in this chapter. If a facility fails to submit a timely report, fee-for-service and Managed Care claims will be held in pending status and no payments will be made until the facility is in compliance with the requirements in this chapter.

10:49A-3.2 Audits of a facility

(a) The Department will provide 30 days' advance notice of its intent to conduct an audit of a facility, either by Department staff or by authorized representatives of the Department.

1. All audits will include an entrance conference at which the scope of the audit will be presented and an exit conference at which the audit findings will be discussed.

2. The Department will share its preliminary audit findings with the facility, which will then have 30 days to respond to such findings. The Department may extend, for good cause, the time for a facility to submit such a response.

3. If the facility does not dispute the preliminary findings, the audit findings will become final. Alternatively, if the facility responds to the preliminary findings, the Department will review and consider such response and finalize the audit findings.

4. The Department will send the facility a copy of the final audit findings, including any recommendations the facility must implement as a result of the audit findings. A plan of corrective actions must be submitted to the Department within 90 days of the issuance of the final report.

5. If the Department determines, as the result of an audit, that a facility has failed to pay rebates it is obligated to pay pursuant to this chapter, the Department may order the facility to pay those rebates in accordance with this chapter.

6. If another entity conducts an audit of a facility's PCR reporting and rebate obligations, the Department may, in the exercise of its discretion, accept the findings of that audit if the Department determines the following:

i. The entity's audit reports on the validity of the data regarding expenses and revenue that the facility reported to the Department, including the appropriateness of the allocations of expenses used in such reporting; and

ii. The entity submits final audit reports to the Department within 30 days of finalization.

7. If the Department accepts an audit conducted by another entity, and if the facility makes additional rebate payments as a result of the audit, then the Department shall accept those payments as satisfying the facility's obligation to pay rebates pursuant to this chapter.

10:49A-3.3 Access to facilities

(a) Each facility subject to the reporting requirements of this chapter must allow access and entry to its premises, facilities, and records, including computer and other electronic systems, to the Department, the New Jersey Department of Law and Public Safety, the New Jersey Office of the State Comptroller, or any authorized agents of those entities to evaluate, through inspection, audit, or other means, compliance with the requirements for reporting and calculation of data submitted to the Department, and the timeliness and accuracy of rebate payments made pursuant to this chapter.

(b) Each facility must allow the same access and entry to the facilities and records, including computer and other electronic systems, of its parent organization, subsidiaries, related parties, contractors, subcontractors, agents, or a transferee, that pertain to any aspect of the data reported to the Department or to rebate payments calculated and made pursuant to this chapter. To the extent that the facility does not control access to the facilities and records of its parent organization, related parties, or third parties, it is the responsibility of the facility to contractually obligate any such parent organization, related parties, or third parties to grant said access.

(c) Unless a longer period is required by applicable law, State audit entities may inspect or audit a facility at any time up to ***[six]* *three*** years from the date, determined by the timestamped confirmation that the Department provides, of the facility's filing of a report required by this chapter. The Department may also inspect or audit a facility at any time up to three years after the completion of an audit and for such longer period ***as*** set forth in this subsection, provided that any of the following occur:

1. An entity determines there is a special need to retain a particular record, or group of records, for a longer period and notifies the facility at least 30 days before the record retention disposition date;

2. There has been a dispute or allegation of fraud or similar action by the facility, in which case the retention may be extended to six years from the date of any resulting final resolution of the dispute, fraud, or similar fault; or

3. The entity determines that there is a reasonable possibility of fraud or similar fault, in which case the entity may inspect, evaluate, and audit the facility at any time.

10:49A-3.4 Recordkeeping

Each facility subject to the requirements of this chapter must maintain all documents and other evidence necessary to enable the Department to verify that the data required to be submitted in accordance with this chapter comply with the definitions and criteria set forth in this chapter, and that the PCR is calculated and any rebates owing are calculated and provided in accordance with this chapter. This requirement includes, but is not limited to, all administrative and financial books and records used in compiling data reported, and rebates provided, pursuant to this chapter and in determining what data to report and rebates to provide under this chapter, electronically stored information, and evidence of accounting procedures and practices. This requirement also includes all administrative and financial books and records used by others in assisting a facility with its obligations pursuant to this chapter.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Notice of Readoption
Chiropractic Services**

Readoption with Technical Changes: N.J.A.C. 10:68

Authorized By: Sarah Adelman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-1 et seq., and 30:4J-8 et seq.

Agency Control Number: 21-A-09.

Effective Dates: September 22, 2021, Readoption;
October 18, 2021, Technical Changes.

Expiration Date: September 22, 2028.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 10:68, Chiropractic Services, were scheduled to expire on September 24, 2020. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021) and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) is extended through January 1, 2022. Therefore, this chapter has not yet expired and the 30-day filing date pursuant to N.J.S.A. 52:14B-5.1.c has not yet occurred, therefore, pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 103, this notice of readoption is timely filed.

The chapter governs the provision of, and reimbursement for, fee-for-service chiropractic services provided to New Jersey Medicaid/NJ FamilyCare beneficiaries.

The technical changes being made include the following:

Throughout the chapter, all references to “Medicaid and NJ FamilyCare” or “Medicaid or NJ FamilyCare” have been changed to “Medicaid/NJ FamilyCare” to more accurately reflect the name of the program.

Throughout the chapter, all references to “Department of Health and Senior Services” are being changed to “Department of Health” to reflect the current name of that Department.

Throughout the chapter and N.J.A.C. 10:68 Appendix, the name of the Division of Medical Assistance and Health Services fiscal agent is being changed from “Unisys Corporation” to “Gainwell Technologies” to reflect the name of the current fiscal agent.

At N.J.A.C. 10:68-1.2(a)1, the reference to “intermediate care facilities for the mentally retarded (ICF/MRs)” is being changed to read “intermediate care facilities for individuals with intellectual disabilities (ICF/IID)” to reflect the current terminology used to describe such facilities.

At N.J.A.C. 10:68-1.5(a)3, proposed technical changes clarify that the Fiscal Agent Billing Supplement is not located in the chapter appendix but that instructions on how to obtain a copy of the billing supplement are in the chapter appendix.

The Department of Human Services has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 30:4D-1 et seq., and 30:4J-8 et seq., and in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

Full text of the technical changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:68-1.1 Purpose

The purpose of this chapter is to provide rules governing the provision of chiropractic services to [Medicaid and NJ FamilyCare] **Medicaid/NJ FamilyCare** beneficiaries.

10:68-1.2 Scope of services

(a) Coverage of a chiropractor’s services shall be limited to treatment by means of manipulation of the spine, which the chiropractor is legally authorized by the State to personally perform (see 42 [C.F.R. §440.60] **CFR 440.60**). The chiropractor may prescribe certain services as outlined [in] **at** N.J.A.C. 10:68-2, Services Prescribed by the Chiropractor.

1. (No change.)

10:68-1.3 Definitions

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

...
“Nursing facility (NF)” means an institution (or distinct part of an institution) certified by the New Jersey State Department of Health [and Senior Services] in accordance with N.J.A.C. 8:39 for participation in

[Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** and primarily engaged in providing:

1.-3. (No change.)

“Residential health care facility” means a facility, licensed by the New Jersey State Department of Health [and Senior Services], which furnishes food and shelter to four or more persons 18 years of age and older who are unrelated to the owner and which provides dietary services, recreational activities, supervision of self-administration of medications, supervision of, and assistance in, activities of daily living (ADL), and assistance in obtaining health services to one or more of such persons. As used in this chapter, the term “residential health care facility” means a “boarding home for sheltered care” as defined by the New Jersey State Department of Health [and Senior Services] (see N.J.A.C. 8:43).

10:68-1.4 Application for provider status; chiropractor

(a) Any chiropractor may apply to the New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** program for approval as a provider, if he or she is a chiropractor licensed by the State Board of Chiropractic Examiners in accordance with N.J.A.C. 13:44E, or licensed by a comparable state agency in the state in which the chiropractor practices.

(b) (No change.)

(c) An applicant shall complete a Provider Application (FD-20; see N.J.A.C. 10:49, Appendix #8) and a Provider Agreement (FD-62; see N.J.A.C. 10:49, Appendix #9). The forms may be obtained from, and shall be submitted to:

[Unisys Corporation] **Gainwell Technologies**

Provider Enrollment

PO Box 4804

Trenton, NJ 08650-4804

(d)-(e) (No change.)

10:68-1.5 Basis of reimbursement

(a) Reimbursement for covered chiropractic services provided to a [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** beneficiary is provided on the basis of the customary charge (fee-for-service) not to exceed an allowance determined reasonable by the Commissioner of the New Jersey State Department of Human Services and contained [in] **at** N.J.A.C. 10:68-3.2.

1. In no event shall the charge to the New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** program exceed the charge by the provider for identical services to other governmental agencies, or other groups or individuals in the community.

2. (No change.)

3. The procedure codes [which] **that** are used when submitting claims are listed [in] **at** N.J.A.C. 10:68-3.2, Centers for Medicare & Medicaid Services (CMS) Healthcare Common Procedure Coding System (HCPCS). The Fiscal Agent Billing Supplement, [Appendix A,] incorporated herein by reference, provides information about the claim form and billing instructions. Claims for services rendered shall be submitted by providers in accordance with the Fiscal Agent Billing Supplement. **Instructions on how to obtain a copy of the Fiscal Agent Billing Supplement can be found at N.J.A.C. 10:68 Appendix A.**

(b) (No change.)

10:68-1.7 Recordkeeping

(a) All chiropractors shall keep such individual records as are necessary to fully disclose the kind and extent of services provided in accordance with the rules [and regulations] of the Board of Chiropractic Examiners [in] **at** N.J.A.C. 13:44E-2.2 and the Division, at N.J.A.C. 10:49-9.7 and 9.8.

1. This information shall be made available upon request of the New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** program or its agents.

(b)-(d) (No change.)

SUBCHAPTER 2. SERVICES PRESCRIBED BY THE
CHIROPRACTOR

10:68-2.1 General provisions

(a) Chiropractors may prescribe services within the scope of their license to practice and within the limitations of the New Jersey [Medicaid and NJ FamilyCare] **Medicaid/NJ FamilyCare** programs. The prescriber shall ensure the patient's free choice of provider when ordering and/or prescribing services, such as clinical laboratory services, medical supplies, and durable medical equipment, physical therapy, pre-fabricated orthoses, and diagnostic radiology services (see also N.J.A.C. 13:44E-1.1(c)).

(b) (No change.)

(c) The chiropractor shall include, on each prescription, the patient's diagnosis and, when possible, state the length of time estimated for use or need for items, such as durable medical equipment. The Division, or its authorized agent, may contact the chiropractor for more information about the patient if a prescribed item requires the medical supplier to request prior authorization from the New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** program.

10:68-2.2 Chiropractic services in a nursing facility or residential
health care facility by providers in a partnership or
corporation

(a) When chiropractic services are provided to a [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** beneficiary in a nursing facility, payment is not made for those services if provided by an owner, administrator, stockholder of the company, or corporation, or by anyone who otherwise has a direct financial interest in the institution.

(b) If a [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** beneficiary receives care from more than one member of a chiropractic partnership or corporation, the maximum payment allowance will be the same as that of a single attending chiropractor.

10:68-2.3 Consultation

Consultation between chiropractors shall not be reimbursed by the New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** program, since there are no chiropractic specialists within the chiropractic discipline (see N.J.A.C. 10:68-1.3 for definition of consultation).

10:68-2.4 Services prescribed by a chiropractor: clinical laboratory
services

(a) A chiropractor shall not include any charges for laboratory services in a claim for reimbursement; however, he or she may order those professional and technical laboratory services for [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** beneficiaries that are consistent with chiropractic practice. The New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** program shall reimburse a clinical laboratory for covered services rendered to [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** beneficiaries that has met the following requirements:

1. Licensure and/or approval by the New Jersey Department of Health [and Senior Services] or comparable agency in the state in which the facility is located, including meeting certificate of need and licensure requirements, when required, and all applicable laboratory provisions of the New Jersey State Sanitary Code, [of] N.J.A.C. 8:45;

2.-3. (No change.)

10:68-2.5 Services prescribed by a chiropractor; medical supplies,
durable medical equipment, and pre-fabricated orthoses

(a) Medical supplies and durable medical equipment that are essential for the beneficiary's condition are reimbursable to an approved durable medical equipment or medical supplies provider under the following conditions:

1. The medical supplies and durable medical equipment shall be prescribed by a chiropractor, within his or her scope of practice, and provided by a medical supplier approved for participation in the New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** programs, in accordance with N.J.A.C. 10:59.

2. (No change.)

(b) (No change.)

(c) Medical supplies, durable medical equipment, and pre-fabricated orthotics are not reimbursable by the New Jersey [Medicaid or NJ

FamilyCare] **Medicaid/NJ FamilyCare** program when available at no charge from community resources (such as the Lions Club, Senior Citizen Centers, Office of the Aged, or other service organizations).

10:68-2.7 Services prescribed by a chiropractor; diagnostic
radiological services

The New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** program shall reimburse for diagnostic radiological services prescribed by a chiropractor within their scope of practice as determined by the New Jersey State Board of Chiropractic Examiners, or the applicable agency in the state in which the chiropractor practices. Diagnostic radiological services of any type are reimbursable only when provided by a specialist in radiology as recognized by the New Jersey [Medicaid or NJ FamilyCare] **Medicaid/NJ FamilyCare** program or by the State Medicaid agency in the state in which the radiologist practices.

SUBCHAPTER 3. CENTERS FOR MEDICARE & MEDICAID
SERVICES (CMS) HEALTHCARE COMMON
PROCEDURE CODING SYSTEMS (HCPCS)

10:68-3.1 Introduction

The New Jersey [Medicaid and NJ FamilyCare] **Medicaid/NJ FamilyCare** programs adopted the Centers for Medicare & Medicaid Services (CMS) Healthcare Common Procedure Coding System (HCPCS) codes for 2006, established and maintained by CMS in accordance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. [§1320] §§ 1320 et seq., and incorporated herein by reference, as amended and supplemented, and published by PMIC, 4727 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. Revisions to the Healthcare Common Procedure Coding System made by CMS (code additions, code deletions, and replacement codes) will be reflected in this chapter through publication of a notice of administrative change in the New Jersey Register. Revisions to existing reimbursement amounts specified by the Department and specification of new reimbursement amounts for new codes will be made by rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The HCPCS Level I codes consist of the American Medical Association (AMA) Current Procedural Terminology (CPT) codes, which are assigned to specific procedures by the AMA. HCPCS Level II codes are assigned to specific procedures by CMS. An updated copy of the CPT codes may be obtained from the American Medical Association, [P.O.] PO Box 10950, Chicago, IL 60610, or by accessing www.ama-assn.org. An updated copy of the Level II codes may be obtained by accessing the HCPCS website at www.cms.hhs.gov/medicare/hcpcs or by contacting PMIC, 4727 Wilshire Blvd., Suite 300, Los Angeles, CA 90010.

APPENDIX A

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, copies will be distributed to providers, placed on the website at www.njmmis.com and will be filed with the Office of Administrative Law. The Fiscal Agent Billing Supplement may be reviewed and downloaded by accessing: www.njmmis.com. For a paper copy of the Fiscal Agent Billing Supplement, write to:

[Unisys Corporation] **Gainwell Technologies**

PO Box 4801

Trenton, New Jersey 08619-4801

or contact:

Office of Administrative Law

Quakerbridge Plaza, Building 9

PO Box 049

Trenton, New Jersey 08625-0049