

purpose of the APA, courts interpret the definition of regulation broadly.<sup>9</sup> *Id.* “Nevertheless, the definition excludes ‘regulations concerning only the internal management of the agency . . . and not substantially affecting the rights of or the procedures available to the public or that portion of the public affected by the agency’s activities’” [alterations omitted].<sup>10</sup> *Id.* at 371-372; quoting G. L. c. 30A, § 1(5)(b).

Here, the evidence weighs in the plaintiffs’ favor that the Transmittal Letters, which changed the instructions and criteria on the HLD Index, substantially affected the rights available to MassHealth members. According to Dr. Rizkallah’s affidavit, the new scoring instructions and criteria severely restrict coverage. In fact, MOMA estimates that sixty percent of children who previously qualified as having a medical necessity for orthodontic treatment no longer qualify. Although the defendants argue that the instructional changes were merely technical edits and clarifications and were “intended to fill in the details or clear up an ambiguity of an established policy,” the court is not persuaded. Massachusetts Gen. Hosp. v. Rate Setting Comm’n, 371 Mass. 705, 707 (1977).

By the defendants’ own admission in an email on May 21, 2018 from Thommes to Chase, the defendants were aware that the instructional changes would cause approvals to drop.

However, “eligibility requirements can only be accomplished through the promulgation of rules since . . . [they] substantially affect the rights of the regulated parties.” Trust Ins. Co. v. Commissioner of the Div. of Ins., 1997 Mass. Super. LEXIS 344 at \*11 (Mass. Super. 1997). As a result, changes to eligibility requirements must be implemented in accordance with pertinent

**DENTAQUEST DIRECTOR**

**DENTAQUEST  
VICE PRESIDENT**

<sup>9</sup> Although courts accord substantial deference to an agency’s interpretation of its own regulations, courts do not defer to an agency’s interpretation of the APA. Carey, 479 Mass. at 371.

<sup>10</sup> Regulations concerning the internal management of an agency are “those that concern the organizational structure of [the] agency . . . or those that are directed toward agency employees, instructing them on how they should perform their duties.” Carey, 479 Mass. at 372. The regulations at issue in this case do not concern the internal management of MassHealth.