DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Gender-Affirming Care, Section 8.735, Section 8.735
Rule Number: MSB 22-12-13-A
Division / Contact / Phone: Health Policy Office / Chris Lane / 6259

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 22-12-13-A, Revision to the Medical Assistance Act Rule Concerning Gender-Affirming Care, Section 8.735, Section 8.735

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.735, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.735 with the proposed text beginning at 8.735 through the end of 8.735.6.A.2. This rule is effective August 30, 2023.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Gender-Affirming Care, Section 8.735, Section 8.735
Rule Number: MSB 22-12-13-A
Division / Contact / Phone: Health Policy Office / Chris Lane / 6259

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The proposed changes to the rule are necessary to align policy with the most recent standards of care. The changes will allow members to more easily access gender-affirming care by removing outdated requirements. The changes remove the requirement for members to engage in behavioral health counseling prior to or concurrent with gender-affirming care, reduce hormone requirements prior to surgery, and simplify the documentation required for prior authorization. The changes also remove the lists of covered procedures to allow for flexibility as best practices change. More inclusive language has been added throughout the rule.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:
   42 C.F.R. §§ 440.50, 440.120, 440.210 (2023)

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2023)
   Section 25.5-5-102(1)(d), C.R.S. (2023)

Initial Review **06/09/23** Final Adoption **07/14/23**
Proposed Effective Date **08/30/23** Emergency Adoption

DOCUMENT #

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Gender-Affirming Care, Section 8.735, Section 8.735
Rule Number: MSB 22-12-13-A
Division / Contact / Phone: Health Policy Office / Chris Lane / 6259

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Members with diagnoses of gender dysphoria will benefit from the proposed rule through improved access to care. Providers of gender-affirming care will benefit through reduced administrative burden.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Removing unnecessary barriers to gender-affirming care will reduce wait times and increase access to lifesaving care. Members will no longer be required to receive multiple evaluations prior to surgery or to ensure those evaluations are within 60 days of scheduled surgery. Members will also no longer be required to engage in behavioral health counseling, which is time consuming and can be stigmatizing when required based solely on a diagnosis of gender-dysphoria.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The Department does not anticipate additional costs related to this rule change. No new services are being covered.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   Not updating this rule would require providers and members to continue to rely on outdated criteria for accessing gender-affirming care. Transgender and gender diverse people are at far greater risk of suicide and being victims of violence than the general public, and delays in access to care can exacerbate these risks.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no other methods to implement this policy change.

DO NOT PUBLISH THIS PAGE

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There is no alternative method for achieving the purpose for the proposed rule.

8.735 GENDER-AFFIRMING CARE~~TRANSGENDER SERVICES~~

8.735.1 Definitions

Gender-Affirming~~Cross Sex-~~ Hormone Therapy means a course of hormone replacement therapy intended to induce or change secondary sex characteristics.

Gender-Affirming ~~Confirmation~~ Surgery means a surgery to change primary or secondary sex characteristics to affirm a person's gender identity. Also known as gender confirmation~~affirmation~~ surgery or sex reassignment surgery.

Gender Dysphoria means either: gender dysphoria, as defined in the Diagnostic Statistical Manual of Mental Disorders, 5th Edition (DSM-5), codes 302.85 or 302.6; or gender identity disorder, as defined in the International Classification of Disease, 10th Edition (ICD-10), codes F64. 1-9, or Z87.890.

Gonadotropin-Releasing Hormone Therapy means a course of reversible pubertal or gonadal suppression therapy used to block the development of secondary sex characteristics in adolescents.

8.735.2 Client Eligibility

8.735.2.A. Clients with a clinical diagnosis of Gg~~e~~nder D~~d~~ysphoria are eligible for the gender-affirming care~~transgender services~~ benefit, subject to the service-specific criteria and restrictions detailed in Section 8.735.4.

8.735.3 Provider Eligibility

8.735.3.A. Enrolled providers are eligible to provide gender-affirming care~~transgender services~~ if:

1. Licensed by the Colorado Department of Regulatory Agencies or the licensing agency of the state in which the provider practices;

2. Services are within the scope of the provider's practice; and

3. Knowledgeable about gender diverse~~nonconforming~~ identities and expressions, and the assessment and treatment of Gg~~e~~nder D~~d~~ysphoria.

8.735.4 Covered Services

8.735.4.A. The following requirements apply to all covered gender-affirming care~~transgender services~~:

1. Client has a clinical diagnosis of Gg~~e~~nder D~~d~~ysphoria;

2. Requested service is medically necessary, as defined in Section 8.076.1.8.;

3. Any co-existing physical and behavioral health conditions do not interfere with diagnostic clarity or capacity to consent, and associated risks and benefits have been discussed ~~contraindicated medical and behavioral health conditions have been addressed and are well-controlled~~;

4. Client has given informed consent for the service; and

5. Subject to the exceptions in §13-22-103, C.R.S., if client is under 18 years of age, client's parent(s) or legal guardian has given informed consent for the service.

8.735.4.B. Requests for services for clients under 21 years of age are evaluated in accordance with the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program criteria detailed in Section 8.280.

8.735.4.C. Behavioral health services are covered in accordance with Section 8.212.

8.735.4.D. Hormone Therapy

1. Covered hormone therapy services are limited to the following:

a. Gonadotropin-Releasing Hormone (GnRH) Therapy

i) GnRH therapy is a covered service for a client who:

1) Meets the criteria at Section 8.735.4.A.;

2) Meets the applicable pharmacy criteria at Section 8.800; and

~~3) Has been referred to a licensed behavioral health provider and has a plan in place to receive behavioral health counseling concurrent with GnRH therapy.~~

3) Has reached Tanner Stage 2.

b. Gender-Affirming~~Cross-Sex~~ Hormone Therapy

i) Gender-Affirming~~Cross-sex~~ H~~h~~ormone T~~t~~herapy is a covered service for a client who:

1) Meets the criteria at Section 8.735.4.A.;~~ and~~

2) Meets the applicable pharmacy criteria at Section 8.800;~~.~~

3) Has been informed of the possible reproductive effects of hormone therapy, including the potential loss of fertility, and the available options to preserve fertility;

4) Has reached Tanner Stage 2; and

5) If under 18 years of age, demonstrates the emotional and cognitive maturity required to understand the potential impacts of the treatment.

ii) Other Gender-Affirming~~cross-sex~~ H~~h~~ormone T~~t~~herapy requirements

1) Prior to beginning Gender-Affirming~~cross-sex~~ H~~h~~ormone T~~t~~herapy, a licensed ~~behavioral health provider~~health care professional who has competencies in the assessment of transgender and gender diverse people ~~, with whom the client has an established and ongoing relationship,~~ must determine that any behavioral health conditions that could negatively impact the outcome of treatment have been assessed and the ~~with~~ risks and benefits have been discussed with the client~~or concerns have been addressed and are well-controlled~~; and~~.~~

2) For the first twelve (12) months of Gender-Affirming~~cross-sex H~~hormone T~~t~~herapy~~:~~

~~a) Client must receive ongoing behavioral health counseling at a frequency determined to be clinically appropriate by the behavioral health provider; and~~

~~b)~~ , ~~C~~client must receive medical assessments at a frequency determined to be clinically appropriate by the prescribing provider.

8.735.4.E. Permanent Hair Removal

1. Permanent hair removal is a covered service when:

a. Client meets the criteria at Section 8.735.4.A.; and

b. Used to treat a surgical site.

8.735.4.F. Surgical Procedures

1. Gender-Affirming Surgery~~A surgical procedure listed in Section 8.735.4.F.3.– 5.~~ is a covered service for a client who:

a. Meets the criteria at Section 8.735.4.A.1.–4;

b. Is 18 years of age or older;

~~i) Requests for surgery for clients under 18 years of age will be reviewed by the Department and considered based on medical circumstances and clinical appropriateness of the request;~~

~~c. Has lived in the preferred gender role for twelve (12) continuous months;~~

c~~d~~. Has completed six (6)~~twelve (12)~~ continuous months of hormone therapy, unless hormone therapy is not clinically indicated or is inconsistent with the client's desires, goals, or expressions of individual gender identity~~medically contraindicated~~;

i) ~~i)~~ This requirement does not apply to mastectomy surgeries ~~at Section 8.735.4.F.4.a.~~;

~~i)~~ii) Twelve (12) continuous months of hormone therapy are required for mammoplasty, unless hormone therapy is not clinically indicated or is inconsistent with the client's desires, goals, or expressions of gender identity;

d. Understands the potential effect of the Gender-Affirming Surgery on fertility.

~~e. Has been evaluated by a licensed medical provider within the past sixty (60) days; and~~

~~f. Has been evaluated by a licensed behavioral health provider within the past sixty (60) days.~~

2. Requests for surgery for clients under 18 years of age will be reviewed by the Department and considered based on medical circumstances and clinical appropriateness of the request;

~~2~~3. Rendering surgical providers must retain the following documentation for each client:

a. A signed statement from a licensed health care professional who has competencies in the assessment of transgender and gender diverse people~~behavioral health provider, with whom the client has an established and ongoing relationship~~, demonstrating that:

i) Criteria in Section 8.735.4.F.1.a.–d. ~~and f.~~ have been met; and

ii) A post-operative care plan is in place.

~~b. A signed statement from a licensed medical provider, with whom the client has an established and ongoing relationship, demonstrating that:~~

~~i) Criteria in Section 8.735.4.F.1.a.–e. have been met; and~~

~~ii) A post-operative care plan is in place.~~

~~3~~4. Covered ~~genital~~ Gender-Affirming S~~s~~urgeries include~~are limited to the following~~:

a. Genital surgery;

b. Breast/chest surgery; and

c. Facial and neck surgery.

~~4~~5. Requests for other medically necessary Gender-Affirming Surgeries will be reviewed by the Department and considered based on medical circumstances and clinical appropriateness of the request.

~~a. Ovariectomy/oophorectomy~~

~~b. Salpingo-oophorectomy~~

~~c. Hysterectomy~~

~~d. Vaginectomy~~

~~e. Vulvectomy~~

~~f. Metoidioplasty~~

~~g. Phalloplasty~~

~~h. Erectile prosthesis~~

~~i. Scrotoplasty~~

~~j. Testicular prostheses~~

~~k. Urethroplasty~~

l. Orchiectomy

m. Penectomy

n. Prostatectomy

o. Clitoroplasty

p. Vaginoplasty

q. Vulvoplasty

r. Labiaplasty

4. Covered breast/chest surgeries are limited to the following:

a. Mastectomy

b. Mammoplasty is covered when:

i) Client has completed twenty-four (24) continuous months of hormone therapy that has proven ineffective for breast development, unless medically contraindicated.

56. Pre- and post-operative services are covered when:

a. Related to a covered surgical procedure covered under listed in Section 8.735.4.F.; and

b. Medically necessary, as defined in Section 8.076.1.8.

8.735.5 Prior Authorization

8.735.5.A. Prior authorization is required for hormone therapy services listed in Section 8.735.4.D. in accordance with pharmacy benefit prior authorization criteria at Section 8.800.7.

8.735.5.B. Prior authorization is required for covered surgeries listed in Sections 8.735.4.F.3-4Surgical services may require prior authorization.

8.735.5.C. All prior authorization requests must provide documentation demonstrating that the applicable requirements in Section 8.735.4 have been met.

8.735.6 Non-Covered Services

8.735.6.A. The following services are not covered under the gender-affirming caretransgender services benefit:

1. Any items or services excluded from coverage under Section 8.011.1.

2. Reversal of surgical procedures covered under listed in Section 8.735.4.F.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning updates to the Transitional Medical Assistance for section 8.100.4.I.3.b
Rule Number: MSB 23-03-20-A
Division / Contact / Phone: Eligibility Policy Section / Melissa Torres-Murillo / 303-866-5052

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 23-03-20-A, Revision to the Medical Assistance Act Rule concerning updates to the Transitional Medical Assistance for section 8.100.4.I.3.b

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.1004.I.3.b, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100.4.I with the proposed text beginning at 8.100.4.I.3 through the end of 8.100.4.I.3.b. This rule is effective August 30, 2023.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning updates to the Transitional Medical Assistance for section 8.100.4.I.3.b
Rule Number: MSB 23-03-20-A
Division / Contact / Phone: Eligibility Policy Section / Melissa Torres-Murillo / 303-866-5052

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The proposed rule change will amend 10 CCR 2505-10 Section 8.100.4.I.3.b to remove requirements for the employer to employee health insurance availability requirements for members who are enrolled in Transitional Medical Assistance. The updates to amend the requirements for Transitional Medical Assistance members to enroll in health insurance available to the employee at no cost from the employer will eliminate barriers and keep members enrolled in Transitional Medical Assistance. Although this policy was in Department rules, this policy is a state option per 1925 (a)(4)(B) that the Department has not selected or implemented within our State Plan Amendment or applied any processes or procedures that would allow us to enforce this policy through our Third Party Liability (TPL) and or CBMS. Because the Department does not have systematic functionality for this rule, there will be no need to update the Colorado Benefits Management System (CBMS) to reflect these changes.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   42 C.F.R. § 435.112

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2023);
   C.R.S - 25.5-5-101 (1)(b)

Initial Review	**06/09/23**	Final Adoption	**07/14/23**
Proposed Effective Date	**08/30/23**	Emergency Adoption	

DOCUMENT #

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning updates to the Transitional Medical Assistance for section 8.100.4.I.3.b
Rule Number: MSB 23-03-20-A
Division / Contact / Phone: Eligibility Policy Section / Melissa Torres-Murillo / 303-866-5052

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The rule update will benefit all members who are found eligible and enrolled in Transitional Medical Assistance coverage. By removing this requirement, we can continue to offer Transitional Medical assistance eligible members a guaranteed extension of 12 months of coverage, regardless of their choice to decline enrollment in their employer's insurance at no cost. These proposed rule changes have no projected negative impacts on any class of persons.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule to continue Transitional Medical Assistance for members, regardless of their choice to decline enrollment in their employer's insurance at no cost, will help keep members and families on medical assistance so they can continue to receive necessary health care leading to healthier Medicaid and CHP+ eligible members.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The Department expects that removing the rule that requires members on Transitional Medical Assistance to enroll in health insurance that is available to the member at no cost from their employer will have no costs to the Department because this is something that is not current policy and the Department does not currently do this.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.
   There is no cost to the Department associated with this policy. The probable benefit of this policy is to true up the state rules to be reflective of the State Plan with CMS. The cost of inaction is the current rules will be not reflective of the State Plan. There are no obvious benefits to inaction.

DO NOT PUBLISH THIS PAGE

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly methods of removing the rule to allow member to enroll in health insurance from their employer

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There were no alternative methods considered for the proposed rule

8.100 MEDICAL ASSISTANCE ELIGIBILITY

8.100.4 MAGI Medical Assistance Eligibility [Eff. 01/01/2014]

8.100.4.I. Transitional Medical Assistance and 4 Month Extended Medical Assistance

1. Eligibility for Transitional Medical Assistance shall be granted for twelve months (beginning with the first month of ineligibility) to individuals who are no longer eligible for the Parent/Caretaker Relative category due to a change in income.

   The extension shall be applied to individuals who:

   a. Were eligible for the Parent/Caretaker Relative category in at least three of the six months preceding the month in which the individual would have become ineligible, and

   b. Are no longer eligible for coverage under the Parent/Caretaker Relative category because of new or increased income from employment or hours of employment

      i) At least one Parent/Caretaker Relative must continue to be employed and cannot terminate employment without good cause. This does not need to be the same person for the whole period the family is receiving Transitional Medical Assistance.

2. Any dependent child or Parent/Caretaker Relative who was or becomes part of the Medical Assistance household after the individual has begun receiving Transitional Medical Assistance is eligible for the remaining months of Transitional Medical Assistance.

   a. A dependent child in the household who received Medical Assistance through continuous eligibility, but is no longer eligible for Medical Assistance based on a redetermination, is eligible for the family's remaining months of Transitional Medical Assistance.

   b. An individual in the household who received Medical Assistance, but is no longer eligible for Medical Assistance based on a redetermination, is eligible for the family's remaining months of Transitional Medical Assistance

3. To become or remain eligible for Transitional Medical Assistance ~~:~~

~~a. The~~the household must include a dependent child. If it is determined that the household no longer has a child living in the home, Transitional Medicaid Assistance shall discontinue at the end of the month in which the household does not include a dependent child.

~~b. If health insurance is available from the employer to the employee, at no cost to the Medical Assistance recipient, the client shall enroll in the insurance program.~~

4. When Transitional Medical Assistance ends the case will be reassessed for all other categories of Medical Assistance for which the family members may be eligible. A new application shall not be required for this process.

5. Eligibility for Medical Assistance shall be extended for four months (beginning with the first month of ineligibility) for certain families who become ineligible for Medical Assistance due solely or partially to the receipt of support income, such as alimony. The extension shall be applied for a family which receives assistance under Medical Assistance in at least three of the six months immediately preceding the month in which the family becomes ineligible for assistance. To be eligible for the four month Medical Assistance extension, the family shall meet all other eligibility criteria for Medical Assistance before the alimony income is applied.

    a. Alimony received will be countable income only if the divorce or legal separation is executed on or before December 31, 2018. Alimony will not be countable income if the divorce or legal separation is modified or executed on or after January 1, 2019.