COLORADO
Department of Health Care Policy & Financing
Medical Services Board

NOTICE OF PROPOSED RULES

The Medical Services Board of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, May 10, 2024, beginning at 9:00 a.m., in the eleventh floor conference room at 303 E 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator at 303-866-4416 or chris.sykes@state.co.us or the 504/ADA Coordinator hcpf504ada@state.co.us at least one week prior to the meeting.

A copy of the full text of these proposed rule changes is available for review from the Medical Services Board Office, 303 E. 17th Ave, Ste 1100, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website at www.colorado.gov/hcpf/medical-services-board.

This notice is submitted pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

MSB 23-12-20-A, Revision to the Medical Assistance Act Rule concerning Payment for Inpatient Hospital Services 8.300.1 (Diana Lambe, Rates Division)

Medical Assistance. There are two components to the Health First Colorado's payment methodology for Inpatient Hospital Services payments. Last year, the Department updated the base rate methodology that was 20+ years old. This year, the Department is updating the second component of the payment equation that assigns an estimate of the resource allocation for the services provided during the inpatient hospital stay. The All Patient Refined Diagnostic Related Groups (APR-DRG) version Colorado is currently using (Version 33) is 8+ years old and needs to be updated on a regular basis going forward to keep up with hospital resource allocation and introduction of new medical technologies/methods of service delivery.

This rule change is to support the upcoming APR-DRG Version 40 update, which will impact Payment for Hospital Services in 10 CCR 2505-10 8.300. The Department will be making changes to rule regarding certain definitions impacted by its planned implementation of the All Patients Refined Diagnosis Related Groups (APR-DRG) Version 40 update which will use national statistics instead of statistics based upon a hybrid of Colorado and national data. The changes will be focused in two areas: 8.300.1.W. Relative Weight and 8.300.1.AA. Trim Point Day.

The authority for this rule is contained in 42 CFR 440.10 (2021) and Sections 25.5-1-301-303 (2023).

MSB 24-01-25-A, Revision to the Colorado Indigent Care Program Rule concerning CICP Social Security Number and Other Minor Updates, Section 8.900. (Taryn Graf, Special Financing Division)

Medical Assistance. The proposed changes to this rule are intended to bring the CICP and Hospital Discounted Care into closer alignment, and to clean up the rule as a whole, including removing language referencing lawful presence and adding clarifications to existing language.

The authority for this rule is contained in Sections 25.5-3-101 through 25.5-3-111 C.R.S. (2023) and 25.5-1-301-303 (2023).

MSB 23-10-25-B, Revision to the Medical Assistance Act Rule concerning Electronic Visit Verification (EVV) Provider Types, Section 8.001.A.2 (Erica Schaler, Policy Development & Implementation Section)

Medical Assistance. The proposed rule removes Hospice Services from the provider types required to utilize Electronic Visit Verification (EVV). The current rule includes Hospice Services as a provider type required to utilize EVV. In order to align the rule with current practices, Hospice Services must be removed as a provider type from EVV requirements. Additionally, there are technical changes to the numbering as a result of removing hospice throughout the rule.

The authority for this rule is contained in Section 12006(A) of the 21st Century Cures Act, P.L. No. 114-255 and 25.5-1-301-303 (2023).

MSB 24-01-03-B, Revisions to the Medical Assistance Rule Concerning the Hospital Expenditure Report Data Collection, 8.4000)

Medical Assistance. The Department of Health Care Policy & Financing (HCPF) is proposing a new section to the Medical Assistance Rule Concerning Hospital Expenditure Report Data Collection, Section 8.4000. With recently enacted legislation, House Bill 23-1226: Hospital Transparency and Reporting Requirements, hospitals are required to submit annual financial data and certain historic data previously not required to HCPF; House Bill 23-1226 also sets up a corrective action process for noncompliance. This rule will outline an expansion of existing processes, requirements and parameters for hospitals to submit the new financial reporting information required by legislation to HCPF, in doing so HCPF will reduce administrative burden for both hospitals and HCPF. For example, hospitals are to annually submit changes to services lines. These rules will define what HCPF will be collecting annually through the reporting template. This rule will also outline the process for corrective action plans for noncompliance.

The authority for this rule is contained in Sections Section 25.5-4-402.8, C.R.S. and 25.5-1-301-303 (2023).

MSB 24-01-05-A, Revision to the Medical Assistance Act Rule concerning Modifying Language for Inpatient Hospital Opioid Antagonist Drugs, Section 8.300.5.D (Andrew Abalos, Rates Division)

Medical Assistance. House Bill 22-1326 (Fentanyl Accountability And Prevention) appropriates funding for the Department to reimburse providers with for providing the take-home opioid antagonist drug, Naloxone, in the inpatient hospital setting. MSB 22-11-17-A, a previously adopted rule change which added language allowing for the carveout Naloxone from the DRG payment bundles, contained language for the opioid antagonist being dispensed specifically to the Medicaid patient. This rule change seeks to generalize the language so that the rule encompasses instances where the opioid antagonist is dispensed to a family member, friend, or other person in a position to assist a medical assistance member who is at risk of experiencing an opiate-related drug overdose, which aligns with the original intent of the regulatory language set forth by House Bill 22-1326.

The authority for this rule is contained in Section 25.5-5-509 (2)(b), C.R.S., and 25.5-1-301-303 (2023).

MSB 24-03-01-A, Revision to the Medical Assistance Nursing Facility Reimbursement Rule concerning Pay for Performance and Medicare costs Sections 8.440.2.A, 8.441.5.H, 8.441.5.L, and 8.443.12 (Christine Bates, Office of Community Living)

Medical Assistance. These changes are required per HB 23-1228. Medicare costs are being removed from nursing facility cost reports (8.440.2.A, 8.441.5.H. and 8.441.5.L). The Pay for Performance supplemental payment for nursing facilities is being increased.

The authority for this rule is contained in Sections 25.5-6-202, 203, 208, and 210, C.R.S., as revised pursuant to HB23-1228.and 25.5-1-301-303 (2023).

MSB 24-02-29-B, Revision to the Medical Assistance Act concerning Private Duty Nursing Benefit Rule, Section 8.540 (Christine Merriman, Benefits and Services Management Division)

Medical Assistance. The Department is revising the regulations regarding Private Duty Nursing Benefit to update and modernize program rules. The rule governs the state plan benefit for Private Duty Nursing for adults and children requiring continuous nursing services in their home and community. This revision was drafted with extensive stakeholder engagement and input.
The revision of the Private Duty Nursing rule will provide clarity and simplification of the rule language as well as a structured reorganization of requirements under this benefit. These changes are necessary to improve the benefit for members and providers.

The authority for this rule is contained in 42 CFR § 440.80; Section § 25.5-5-303 and Sections 25.5-1-301-303 (2023).

MSB 24-02-13-A, Revision to the Medical Assistance Act Rule concerning Safety Net Providers Language Update, Section 8.750 (Alex Lyons, Policy Development & Implementation Section)

Medical Assistance. This rule change is part of the Department's work to align our regulations with House Bill 22-1278. Specifically, this proposed rule will implement terminology changes mandated by HB 22-1278 by shifting Community Mental Health Clinics (CMHCs) to the new Comprehensive Community Behavioral Health and Essential Behavioral Health Safety Net provider designations, and by describing the requirements and covered services for providers participating in the new provider types.

The authority for this rule is contained in Section 27-50-101(7), (11), (13), C.R.S. and 25.5-1-301-303 (2023).

MSB 23-11-29-A, Revision to the Medical Assistance Act Rule concerning Member Appeals, Section 8.057 (Rachel Entrican, Legal Division)

Medical Assistance. County informal dispute resolution conferences are available to members and applicants who are found to be ineligible for the Colorado medical assistance program - i.e., eligibility appeals under Section 8.100. Counties have no involvement in utilization management and medical necessity reviews for benefit appeals, and informal dispute resolutions conferences are not, and have never been, available to members for such appeals. The purpose of the rule change is to clarify that county or service delivery agency informal dispute resolution conferences are only for eligibility appeals under Section 8.100.

Separately, this proposed rule change removes language from Section 8.057 regarding possible recoupments from members who receive services during an unsuccessful appeal. This change is to comply with a Center for Medicare and Medicaid Services (CMS) waiver under Section 1902(e)(14)(A); and to harmonize with Department practices of not recouping in these circumstances.

Finally, the language in Section 8.057.4 is being updated to align with C.R.S. § 25.5-4-207(1)(a)(II), which states, "The applicant or recipient has sixty days after the date of the notice to file an appeal."

The authority for this rule is contained in 42 CFR Part 456; Social Security Act, Section 1902(e)(14)(A); Section 25.5-1-118(a), C.R.S. (2023); Section 25.5-4-207(1)(a)(II), C.R.S. (2023) and 25.5-1-301-303 (2023).