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Title of Rule: Revision to the Medical Assistance Rule concerning Abortion Services,  
Section 8.770  
Rule Number: MSB 22-01-19-A  
Division / Contact / Phone: Health Programs Office / Russ Zigler / 303-866-5927

**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 22-01-19-A, Revision to the Medical Assistance Rule concerning Abortion Services, Section 8.770
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) 8.770, 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)? Yes  
If yes, state effective date: 2/11/2022  
Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

**PUBLICATION INSTRUCTIONS\***

Replace the current text at 8.770.4.C with the proposed text beginning at 8.770.4.C through the end of 8.770.4.C. This rule is effective February 11, 2022.

\*to be completed by MSB Board Coordinator

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**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 aligns Department rule with current policy and the requirements of Senate Bill 21-142, enacted at Colorado Revised Statute, Section 25.5-4-415, which authorized providers licensed by the state and acting within their scope of practice and federal regulations to perform abortions reimbursed by Medicaid, and removed the requirement that abortions reimbursed by Medicaid be performed in a licensed health care facility..

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:

Emergency rulemaking is imperatively necessary to align Department rule with current policy and Colorado Revised Statute, Section 25.5-4-415 (2021).

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);  
C.R.S. § 25.5-4-415 (2021)

Initial Review  
Proposed Effective Date

**02/11/22**

Final Adoption  
Emergency Adoption

**02/11/22**  
**DOCUMENT #10**

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Section 8.770

Rule Number: MSB 22-01-19-A

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### **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 receiving an abortion are affected by the proposed rule and non-physician providers, licensed by the state and acting within their scope of practice and federal regulations, performing Medicaid-reimbursed abortions are affected by the proposed rule.

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

Members are not restricted to receiving abortions at licensed health care facilities and non-physician providers, licensed by the state and acting within their scope of practice and federal regulations, are reimbursed by Medicaid for performing abortions.

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 fiscal note for Senate Bill 21-142 assumed some abortions may be performed at different facilities and by providers other than physicians, but that the amount of abortions performed will be unchanged. As such, no increase in medical services expenditures was anticipated.

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

There are no probable costs for the proposed rule. The benefit of the proposed rule is aligning Department rule with current policy and state statute. The cost of inaction is misalignment between Department rule, current policy, and state statute. There are no benefits to inaction.

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

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There are no less costly methods or less intrusive methods for aligning Department rule with current policy and state statute.

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 are no alternative methods for aligning Department rule with current policy and state statute.

## 8.770 ABORTION SERVICES

### 8.770.1. Definitions

Life-Endangering Circumstance means:

1. The presence of a medical condition, other than a psychiatric condition, as determined by the attending physician, which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term; or
2. The presence of a psychiatric condition, which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term. In such cases, unless the pregnant woman has been receiving prolonged psychiatric care, the attending physician shall obtain consultation from a licensed physician specializing in psychiatry confirming the presence of such a psychiatric condition.

### 8.770.2. Client Eligibility

8.770.2.A. All Colorado Medicaid-enrolled clients are eligible.

### 8.770.3. Provider Eligibility

8.770.3.A. All Colorado Medicaid enrolled providers in compliance with CRS § 25.5-3-106 are eligible to perform abortion services.

### 8.770.4. Covered Services

8.770.4.A. Abortion services are only covered when the life of the mother would be endangered if the fetus were carried to term; or when the pregnancy is the result of an act of rape or incest.

8.770.4.B. In cases of a life-endangering circumstance, the physician must make every reasonable effort to preserve the lives of the pregnant woman and the unborn child.

8.770.4.C. A provider who is licensed physician by the state and acting within the scope of the provider's license and in accordance with applicable federal regulations shall perform the procedure ~~in a licensed health care facility. When the pregnancy substantially threatens the life of the client, and the transfer to a licensed health care facility would, in the medical judgment of the attending physician, further threaten the life of the client, the abortion may be provided outside of a licensed health care facility.~~

8.770.4.D. Any claim for payment must be accompanied by a case summary that includes the following information:

1. Name, address, and age of the pregnant woman;
2. Gestational age of the unborn child;
3. Description of the medical condition which necessitated the abortion;
4. Services performed;
5. Facility in which the abortion was performed; and
6. Date of service.

8.770.4.E. A claim for payment for an abortion that is the result of life-endangering circumstances must also be accompanied by at least one of the following forms with additional supporting documentation that confirms the life-endangering circumstances:

1. Hospital admission summary
2. The findings and reports from consultants that provide opinions regarding the health of the client
3. Laboratory results and findings
4. Office visit notes
5. Hospital progress notes

8.770.4.F. A claim for payment for an abortion that is the result of rape or incest must be accompanied by a Department-approved certification statement confirming the circumstances of the abortion.

8.770.4.G. An evaluation by a licensed physician specializing in psychiatry must accompany the claim for reimbursement for the abortion if a psychiatric condition represents a serious and substantial threat to the pregnant woman's life if the pregnancy continues to term.

**8.770.5. Prior Authorization Requirements (PAR)**

8.770.5.A. Prior authorization is not required for this service.

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Title of Rule: Revision to the Medical Assistance Act Rule concerning Pediatric Long-Term Home Health Prior Authorization Exceptions, Section 8.520.8.C  
Rule Number: MSB 22-01-19-B  
Division / Contact / Phone: Health Programs Office / Russ Zigler / 303-866-5927

**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 22-01-19-B, Revision to the Medical Assistance Act Rule concerning Pediatric Long-Term Home Health Prior Authorization Exceptions, Section 8.520.8.C
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) 8.520.8.C, 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)? Yes  
If yes, state effective date: 2/11/2022  
Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

**PUBLICATION INSTRUCTIONS\***

Replace the current text at 8.520.8.C with the proposed text beginning at 8.520.8.C through the end of 8.520.8.C. This rule is effective February 11, 2022.

\*to be completed by MSB Board Coordinator

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**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 removes prior authorization requirements for Certified Nurse Assistant services, physical therapy services, occupational therapy services, and speech-language therapy services in relation to the reinstatement of pediatric long-term home health prior authorization, which is currently being implemented in accordance with the tiered schedule established by rule number MSB 21-11-17-B adopted at the December 2021 Medical Services Board meeting.

The Department recently met with Health First Colorado (Colorado’s Medicaid program) members and families, providers, and other stakeholders about concerns related to the pediatric long-term home health (LTHH) benefit prior authorization request (PAR) process. Based on these conversations, the Department has made the decision to temporarily pause the CNA, physical therapy, occupational therapy, and speech-language pathology pediatric LTHH PAR process effective November 1, 2021 until June 1, 2022, at the earliest. It is important to note that only the PARs related to the CNA, physical therapy, occupational therapy, and speech-language pathology pediatric LTHH benefit will be paused. Pediatric LTHH Skilled Nursing Visits, and Private Duty Nursing (PDN) services will continue to require a PAR. Benefits will be reinstated back to November 1, 2021 for Health First Colorado members whose PARs were denied during this time, so there is no gap in services or payment for services.

The Department understands the stakeholders' concerns and wants to hear more perspectives to inform the exploration of long-term solutions to address the issue within state and federal guidelines. Therefore, the Department will use the temporary pause to collaborate with stakeholders to identify and address issues. The Department will reach out to stakeholders about upcoming engagement opportunities in the coming weeks.

- 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:

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The proposed rule is imperatively necessary to address concerns raised by stakeholders concerning the tiered prior authorization reinstatement for pediatric long-term home health services in Section 8.520.8.C.1, specifically related to Certified Nurse Assistant services, physical therapy services, occupational therapy services, and speech-language pathology services. The suspension of prior authorization requirements for said services is imperatively necessary for the preservation of public health, safety, and welfare.

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);

Initial Review  
Proposed Effective Date

**02/11/22**

Final Adoption  
Emergency Adoption

**02/11/22**

**DOCUMENT #11**

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### **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 receiving pediatric long-term home health services rendered by Certified Nurse Assistants, and Certified Nurse Assistant service providers, are impacted by this rule. Members receiving pediatric long-term home health physical therapy, occupational therapy, and speech-language pathology, and the providers of such services, are also affected by the proposed rule.

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 will remove the requirement that Certified Nurse Assistant services, physical therapy services, occupational therapy services, and speech-language pathology services be prior authorized in accordance with the tiered reinstatement of long-term home health prior authorizations established in Section 8.520.8.C.1.

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.

Implementing and enforcing this rule change could result in an increase in Medicaid spending on pediatric long-term home health. The Department anticipates that expenditure for services delivered by Certified Nurse Assistants, and for occupational therapy services, physical therapy services, and speech-language pathology services, would remain in line with spending for the last two years when all prior authorizations for long-term home health were suspended.

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

The benefit of the proposed rule is providing the Department and stakeholders time to discuss long-term solutions concerning prior authorization of pediatric long-term home health services related to Certified Nurse Assistants, physical therapy, occupational therapy, and speech-language therapy. The cost of the proposed rule

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is suspension of prior authorization requirements for such services. The cost of inaction would be continuing the tiered reinstatement of prior authorization of such services while the Department is actively working with stakeholders to discuss the long-term solutions. There are no benefits to inaction.

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 or less intrusive methods for pausing the prior authorization of the services at issue in order to provide the Department and stakeholders time to discuss long-term solutions.

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 are no alternative methods for pausing the prior authorization of the services at issue in order to provide the Department and stakeholders time to discuss long-term solutions

## 8.520 HOME HEALTH SERVICES

### **[ONLY SECTION 8.520.8.C IS AFFECTED BY THIS RULE CHANGE]**

#### **8.520.8.C. Long-Term Home Health**

1. Beginning November 1, 2021, providers must submit a prior authorization request (PAR) for all new long-term pediatric Home Health Services under Section 8.017.E, except for Certified Nurse Assistant services, physical therapy services, occupational therapy services, and speech-language pathology services. For members currently receiving long-term pediatric Home Health Services initiated prior to November 1, 2021, providers must submit a PAR in accordance with the following schedule:
  - ~~4~~a. Ten percent (10%) of PARs must be submitted by November 30, 2021;
  - ~~2~~b. An additional 10% of PARs must be submitted by December 31, 2021;
  - ~~3~~c. An additional 10% of PARs must be submitted by January 31, 2022;
  - ~~4~~d. An additional 10% of PARs must be submitted by February 28, 2022;
  - ~~5~~e. An additional 10% of PARs must be submitted by March 31, 2022;
  - ~~6~~f. An additional 10% of PARs must be submitted by April 30, 2022;
  - ~~7~~g. An additional 10% of PARs must be submitted by May 31, 2022;
  - ~~8~~h. An additional 10% of PARs must be submitted by June 30, 2022;
  - ~~9~~i. An additional 10% of PARs must be submitted by July 31, 2022;
  - ~~10~~j. The final 10% of PARs, with a total of 100% of PARs initiated prior to November 1, 2021, must be submitted by August 31, 2022.

### **[ONLY SECTION 8.520.8.C IS AFFECTED BY THIS RULE CHANGE]**