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Title of Rule: Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D.
Rule Number: MSB 23-02-27-C
Division / Contact / Phone: Fee for Service Rates / Andrew Abalos / 2130

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 23-02-27-C, Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D.
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) OP Pages, 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: 3/10/2023
Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.300.5.D with the proposed text beginning at 8.300.5.D through the end of 8.300.5.D.2. This rule is effective March 10, 2023.

*to be completed by MSB Board Coordinator

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Title of Rule: Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D.
Rule Number: MSB 23-02-27-C
Division / Contact / Phone: Fee for Service Rates / Andrew Abalos / 2130

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).

House Bill 22-1326 appropriates funding allowing the Department of Health Care Policy and Financing to reimburse opioid antagonist drugs outside of its current reimbursement methodology. Currently, there is not distinct reimbursement for the opioid antagonist drug Naloxone in the payment bundles used for outpatient hospital payment calculation. This rule change will allow the Department to make payment outside of the payment bundles, creating greater incentive to inpatient hospitals to provide take-home Naloxone to patients at-risk for opioid overdoses.

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:

House Bill 22-1326 appropriates funding allowing the Department of Health Care Policy and Financing to reimburse opioid antagonist drugs outside of its current reimbursement methodology and assumes implementation within the 2023 state fiscal year.

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. (2022);
HB 22-1326

Initial Review
Proposed Effective Date

Final Adoption
Emergency Adoption

DOCUMENT #

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Title of Rule: Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D.

Rule Number: MSB 23-02-27-C

Division / Contact / Phone: Fee for Service Rates / Andrew Abalos / 2130

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.

Persons benefiting from the proposed rule are Health First Colorado patients at-risk for opioid overdoses, as the rule will increase access to an opioid antagonist drug. Inpatient hospitals may bear the cost of the proposed rule when providing Naloxone if the payment rate is less than the acquisition cost of the drug, but in general this will increase the reimbursement rates associated with this drug compared to inaction.

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

Inpatient hospitals may bear the cost of the proposed rule when providing Naloxone if the payment rate is less than the acquisition cost of the drug, but in general this will increase reimbursement rates associated with this drug compared to inaction. The benefits of this rule are a probable reduction in deaths relating to opioid overdoses within the Health First Colorado population.

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 probable costs to the Department were considered in HB 22-1326. However, the Department is also seeking State Plan authority from Centers for Medicare and Medicaid Services for this modified payment method. This authority will allow for federal funding, thereby reducing the cost of this change to the State of Colorado.

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

A probable benefit to the rule is wider distribution of a life-saving drug to the portion of the Health First Colorado population at-risk for opioid overdoses, in comparison to our current authority, which does not provide additional payment for take-home Naloxone.

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

There are no less or intrusive methods for achieving the purpose of the proposed rule.

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.

The Department considered modification of its DRG payment bundles in order to better accommodate the cost

8.300 HOSPITAL SERVICES

8.300.5 Payment for Inpatient Hospital Services

8.300.5.D ~~Long-Acting Reversible Contraceptives~~ APR-DRG Payment Methodology Exclusions

1. Long-acting reversible contraceptives (LARC) devices, inserted following a delivery, are excluded from the DRG Relative Weight calculation and are paid according to the Department's fee schedule.
2. Pursuant to § 25.5-5-509, C.R.S. opiate antagonists identified by the Department shall be paid according to the Department's fee schedule when dispensed to a medical assistance recipient upon discharge.

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Title of Rule: Revision to the Medical Assistance Rule Concerning the Rural Provider
Access and Affordability Stimulus Grant Program, Section 8.8000
Rule Number: MSB 23-03-01-A
Division / Contact / Phone: Special Financing / Nancy Dolson / 303-866-3698

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 23-03-01-A, Revision to the Medical Assistance Rule
Concerning the Rural Provider Access and Affordability Stimulus
Grant Program, Section 8.8000.
3. This action is an adoption of: new rules
4. Rule sections affected in this action (if existing rule, also give Code of Regulations
number and page numbers affected):
Sections(s) OP Pages, 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: 03/10/23
Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.8000 with the proposed text beginning at 8.8000 through
the end of 8.8000. This rule is effective March 10, 2023.

*to be completed by MSB Board Coordinator

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Title of Rule: Revision to the Medical Assistance Rule Concerning the Rural Provider Access and Affordability Stimulus Grant Program, Section 8.8000
Rule Number: MSB 23-03-01-A
Division / Contact / Phone: Special Financing / Nancy Dolson / 303-866-3698

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).

Create rules to administer the Rural Provider Access and Affordability Stimulus Grant Program established through the enactment of Senate Bill 22-200 including a methodology to determine which rural providers are qualified for grant funds, permissible uses of grant money, and reporting requirements for grant recipients.

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: The enabling legislation, Senate Bill 22-200, requires that the Medical Services Board promulgate rules for the administration of the Rural Provider Access and Affordability Stimulus Grant Program. The legislation also created the Rural Provider Access and Affordability Advisory Committee to begin meeting in September 2022 and charged the committee with making formal recommendations to the Department on the administration of the grant program including the proposed rule. The timeline for the advisory committee’s work must meet the requirements set in legislation at Section 25.5-1-207 (5), C.R.S.

3. Federal authority for the Rule, if any:

American Rescue Plan Act of 2021 (ARPA), Public Law 117-2

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2022);
Section 25.5-1-207 (5), C.R.S. (2022)

Initial Review
Proposed Effective Date

Final Adoption
Emergency Adoption

DOCUMENT #

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Title of Rule: Revision to the Medical Assistance Rule Concerning the Rural Provider Access and Affordability Stimulus Grant Program, Section 8.8000

Rule Number: MSB 23-03-01-A

Division / Contact / Phone: Special Financing / Nancy Dolson / 303-866-3698

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.

Colorado hospitals in rural communities and their associated clinics will benefit from the proposed rule by helping these providers modernize their information technology systems which tend to lag behind their urban and suburban counterparts. Residents of rural Colorado will benefit as the program will support reducing health care costs in communities, add jobs, stimulate the economy, improve access to care, and mitigate rural health disparities.

The funding for the Rural Provider Access and Affordability Stimulus Grant Program comes from federal funds with no cost to the state or local communities.

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 Rural Provider Access and Affordability Stimulus Grant Program will drive financial sustainability for hospitals and clinics in rural areas of Colorado by investing \$9.6 million in health care affordability and health care access related projects:

- \$4.8 million in health care affordability projects, such as shared analytics platforms, telehealth supports, and enabling shared care management between rural providers
- \$4.8 million in health care access projects, such as extending hours for primary and behavioral health care, telemedicine including remote monitoring supports, new or expanded access sites including surgery, chemotherapy, and advanced imaging

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 General Assembly appropriated \$400,000 to the Department to administer the Rural Provider Access and Affordability Stimulus Grant Program when it enacted Senate Bill 22-200. These funds are sufficient to administer the program and no

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costs to other agencies are expected. The funds for the Rural Provider Access and Affordability Stimulus Grant Program are federal funds from the American Rescue Plan Act of 2021 (ARPA) and there is no impact on state revenues.

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

Adopting the proposed rules to administer the Rural Provider Access and Affordability Stimulus Grant Program will allow the Department to grant \$9.6 million of federal funds to rural providers as directed by the General Assembly to improve health care affordability and access and stimulate the economies in rural Colorado.

Because the legislation directs the Medical Services Board to promulgate rules so the Department can administer the grant program, 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.

Because the legislation directs the Medical Services Board to promulgate rules so the Department can administer the grant program, there are no less costly or intrusive methods for achieving the purpose of the proposed rule.

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.

Because the legislation directs the Medical Services Board to promulgate rules so the Department can administer the grant program, there are no alternatives to rule making than the proposed rule. The proposed rule includes those elements necessary to administer the grant program and were developed and supported by the Rural Provider Access and Affordability Advisory Committee established by the legislation.

8.8000 Rural Provider Access and Affordability Stimulus Grant Program

8.8000.A PURPOSE AND LEGAL BASIS

1. Pursuant to C.R.S. § 25.5-1-207, the Rural Provider Access and Affordability Stimulus Grant Program provides grants to qualified providers to improve health care affordability and access to health care services in rural communities and to drive financial sustainability for rural hospitals and clinics.

8.8000.B DEFINITIONS

1. Advisory Committee means the rural provider access and affordability advisory committee as defined in section 25.5-1-207 (3), C.R.S.
2. Department means the Colorado Department of Health Care Policy and Financing.
3. Health Care Access Project means a project that expands access to health care in Rural Communities including but not limited to:
 - a. Extending hours for access to primary care or behavioral health services,
 - b. Investing in dual track emergency department management,
 - c. Expanding access to Telemedicine including remote monitoring support,
 - d. Providing new or replacement Hospital beds,
 - e. Expanding access to long term care and recovery care in skilled nursing facilities, and
 - f. Creating or expanding sites that provide surgical care, chemotherapy, imaging, and advanced imaging including computerized tomography scans.
4. Health Care Affordability Project means a project that modernizes the information technology infrastructure of Qualified Rural Providers including but not limited to:
 - a. Creating a shared analytics platform and care coordination platforms among Qualified Rural Providers, and
 - b. Enabling technologies, including telehealth and e-consult systems, that allow Qualified Rural Providers to communicate, share clinical information, and consult electronically to manage patient care.
5. Hospital means a hospital licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S. or an affiliate owned or controlled as defined in section 25.5-4-402.8 (1)(b), C.R.S., by the hospital.
6. Qualified Rural Provider means a Hospital located in a Rural Community in Colorado that has a lower net patient revenue or fund balance compared with other Rural Hospitals.
7. Rural Community means a county with a population of fewer than fifty thousand residents; or a municipality with a population of fewer than twenty-five thousand residents if the municipality is not contiguous to a municipality with a population of twenty-five thousand or more residents.

8. Rural Stimulus Grant means funding received from the rural provider access and affordability grant program established in section 25.5.1-207, C.R.S.

9. Telemedicine means the delivery of medical services as defined at section 12-240-104 (6), C.R.S.

8.8000.C GRANT AWARD PROCEDURES

1. Rural Stimulus Grants will be awarded through an application process.

a. A request for grant application form shall be issued by the Department and posted for public access on the Department's website at <https://hcpf.colorado.gov/research-data> at least 30 days prior to the application due date.

b. A Qualified Rural Provider may submit applications for more than one project or may submit a joint application with another Qualified Rural Provider.

2. The application will include:

a. Project overview.

b. Proposed budget including:

i. Total funds requested not to exceed \$650,000 per project per applicant,

ii. Itemized direct expenses,

iii. Indirect expenses limited to federal Negotiated Indirect Costs Rate Agreement (NICRA) or de minimis rate of 10 percent if the applicant does not have an NICRA,

iv. If applicable, documentation of quotes or estimates for construction, equipment, or other expenditures, and

v. If applicable other sources of funding that will be utilized to complete the proposed project.

c. Project timeline to commence no earlier than July 1, 2023 and to conclude no later than December 31, 2026.

d. Description of Qualified Rural Provider's diversity, equity, and inclusion strategy and how diverse community needs are met by the project.

e. Demonstration of financial need.

i. Qualified Rural Providers in the bottom 40% of net patient revenues for the three-year average of 2016, 2017, and 2018 or the bottom 6% fund balance for 2019 as determined by the Department's review of CMS 2552-10 Medicare Cost Reports are considered to meet the financial health requirement.

ii. Other Qualified Rural Providers may submit additional financial supporting information to support their financial need.

- a. For capital investment projects, facility or equipment age.
- b. Impact to health care affordability or access to care.
 - i. Statement of need outlying underlying problem the funding will address.
 - ii. Description of how the project's goals and objectives will be sustained after the Rural Stimulus Grant funds have been expended.
 - iii. Description of how the project will increase access to specialty care, if applicable.
 - iv. Description of how project will improve care coordination, if applicable.
 - v. Description of partner engagement, if applicable.

3. The Advisory Committee will review Rural Stimulus Grant applications and recommend Rural Stimulus Grant awards to the Department's executive director based on the following criteria:

- a. Budget and financial need.
- b. Partner collaboration, support, or engagement.
- c. Completeness of response.
- d. Ability to execute and complete project.
- e. Reasonableness of timeline.
- f. Diversity, equity and inclusion and how diverse communities will be impacted by the project.
- g. County Medicare and Medicaid caseload percentage of population.
- h. Statement of need.
- i. Sustainability of project.
- j. Impact to health care affordability or access to care.

4. The Department's executive director or his or her designee shall make the final Rural Stimulus Grant awards to Qualified Rural Providers.

- a. The total funding for Rural Stimulus Grants is limited to no more than \$9.6 million with no more than \$4.8 million for Health Care Access Projects and no more than \$4.8 million for Health Care Affordability Projects.
- b. The Department may change Rural Stimulus Grant amounts depending on the final number of Rural Stimulus Grants awarded, the availability of Rural Stimulus Grant funds, or the goals stated in the Rural Stimulus Grant application.
- c. Rural Stimulus Grant applicants may request reconsideration of Rural Stimulus Grant awards within 5 business days of award notification in writing to the Department's

executive director. The executive director will respond to the request for reconsideration within 10 business days of receipt.

- d. The Department will execute a grant agreement with each Rural Stimulus Grant recipient.
5. The Department will disburse Rural Stimulus Grant funds no earlier than July 1, 2023 and no later than July 1, 2024. Any money not disbursed by July 1, 2024 will revert to the Economic Recovery and Relief Cash Fund created pursuant section 24-75-228 (2)(a), C.R.S.
6. Rural Stimulus Grant recipients will expend Rural Stimulus Grant funds by the timeline in their grant agreement and no later than December 31, 2026. Any Rural Stimulus Grant funds not expended by Rural Stimulus Grant recipients by December 31, 2026 will be recovered by the Department to be returned to the U.S. Department of the Treasury.

8.8000.D PERMISSIBLE USES OF GRANT AWARDS

1. Rural Stimulus Grant funds must be used for Health Care Affordability Projects or Health Care Access Projects to improve health care affordability and access in Rural Communities.
2. Rural Stimulus Grant funds may not be deposited into a pension fund and may not be used to service debt, satisfy a judgment or settlement, or contribute to a “rainy day” fund.

8.8000.E REPORTING REQUIREMENTS FOR GRANT RECIPIENTS

1. Recipients of Rural Stimulus Grant funds for capital expenditures must submit a written justification as set forth in 31 Code of Federal Regulations 35.6 (b)(4) to the Department.
2. For the duration of the grant agreement, Rural Stimulus Grant recipients must submit a quarterly report to the Department no later than the 10th day of the month following the end of each quarter including but not limited to a brief narrative and itemized expenditure and performance metric data.
3. Rural Stimulus Grant recipients will submit a final report to the Department within 30 calendar days following the end of the grant agreement including an overall narrative and itemization of all expenditures and performance metric data for the total Rural Stimulus Grant award.

8.8000.F RECORD RETENTION AND ACCESS

1. Rural Stimulus Grant recipients must maintain records of expenditures for a minimum of five years after funds have been expended or returned to the Department, whichever is later.
- 4-2. Rural Stimulus Grant recipients must allow the Department and state and federal auditors access to records related to the expenditure of Rural Stimulus Grant funds.