



# 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, November 8, 2019, beginning at 9:00 a.m., in the eleventh floor conference room at 303 East 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](mailto:chris.sykes@state.co.us) or the 504/ADA Coordinator [hcpf504ada@state.co.us](mailto: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, 1570 Grant Street, 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](http://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 19-08-02-A, Revision to the Medical Assistance Rule concerning Increase of the Reimbursement Rate Reserved for Compensation of Direct Care Workers, Section 8.507**

Medical Assistance. . The statute authorizing the Home Care Employees' Compensation and Training, Section 25.5-6-16, C.R.S. was approved pursuant to SB 19-238.

The authority for this rule is contained Section 25.5-6-16, C.R.S (2019) and sections 25.5-1-301 through 25.5-1-303, C.R.S. (2018).

### **MSB 19-07-02-A, Revision to the HCBS Benefit Rules Concerning Home Accessibility Adaptations for the CES and SLS Waivers, Sections 8.500.94.B.6 and 8.503.40.A.5**

Medical Assistance. The rules set forth at 10 CCR 2505-10 §8.500.94.B.6 and §8.503.40.A.5 are being revised to incorporate significant changes developed over the last year to the Home Accessibility Adaptations (HAA) benefit available to clients on the Children's Extensive Supports (CES) and Supported Living Services (SLS) waivers. The cornerstone of these changes has been monthly stakeholder meetings related to the process changes and rule development. Within the partnership with DOH, the Department has focused on ways to increase the quality of work done throughout the state and reduce the difficulties encountered by clients during the home modification process. The main goals of these changes have been 1), reducing miscommunication and shortening timeframes by clarifying policy and creating standard forms for use; 2), increased physical inspections by DOH to promote high quality work; 3), provider billing clarification; and 4) policy and process alignment with the Home Modification benefit for other waivers. Department staff established and have met with the Home Modification Stakeholder Workgroup monthly since December 2018 for input and recommendations on these changes.

The authority for this rule is contained Section 1902(a)(10)(B) and Section 1915(c) of the Social Security Act; Section 25.5-6-409 (2018) and sections 25.5-1-301 through 25.5-1-303, C.R.S. (2018).

### **MSB 19-08-13-B, Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Residential Habilitation and Individual Residential Services and Supports (IRSS), Section 8.609**

Medical Assistance. The Department is proposing to make comprehensive revisions to the Residential Habilitation and Individual Residential Services and Supports (IRSS) regulations within the Developmental Disabilities (DD) Waiver. Over the past two years, the Department and stakeholders have had increasing concerns for the health, safety and welfare of participants receiving residential services due to a lack of oversight of residential settings. Due to the nature of the service, Host Homes, one model of service available to DD waiver participants, do not all receive surveys and inspections through the Colorado Department of Public Health and Environment (CDPHE). Seeing a need for enhanced oversight of this service, the Department put forth a budget request to the Joint Budget Committee (JBC). The budget request, approved, for the 2019-2020 fiscal year, will transfer funds to the Department of Local Affairs (DOLA) to create an inspection program of all Host Homes.

In order to implement the inspection program with DOLA, revisions to the regulations are necessary to incorporate the inspection and oversight requirements. The Department is also taking this opportunity to make needed changes to the Residential Habilitation regulations. The changes include: incident reporting requirements; contract requirements for the Program Approved Service Agency (PASA) and Host Home provider; Colorado Adult Protective Services (CAPS) background check requirements; HCBS Settings Final Rule inclusions; responsibilities for the home environment; additional safety provisions; updated language and person centered language throughout; and restructured the rule for improved clarity and organization.

The authority for this rule is contained Section 1902(a)(10)(B) and Section 1915(c) of the Social Security Act; section 25.5-6-313(1) and sections 25.5-1-301 through 25.5-1-303, C.R.S. (2018).

#### **MSB 19-08-13-A, Revision to the Medical Assistance Rule Concerning Hospital Expenditure Report Data Collection, Section 8.4000**

Medical Assistance. The recent adoption of House Bill 19-1001, Hospital Transparency Measures to Analyze Efficiency, codified at 25.5-4-402.8, C.R.S., requires the Department of Health Care Policy and Financing to develop and publish a report on hospital uncompensated care costs titled the Hospital Expenditure Report. To accomplish this, hospitals are required to report audited financial statements, Medicare Cost Reports, and additional self-reported data (utilization, financial, and physician and hospital acquisitions). The proposed rule provides definitions of key terms and details the data collection process including specifying the hospital statements to be collected.

The authority for this rule is contained 25.5-4-402.8, C.R.S (2019) and sections 25.5-1-301 through 25.5-1-303, C.R.S. (2018).

#### **MSB 19-07-24-A, Home and Community Based Services for the Elderly Blind and Disable, 8.485; Life Skills Training, Home Delivered Meals, Peer Mentorship, and Transition Setup, 8.553, Sections 8.485 and 8.553**

Medical Assistance. The proposed revisions to 8.485.61 (B) concern eligibility requirements for Home and Community Based Services (HCBS) Elderly, Blind, and Disabled (EBD) services. The rule states that the single entry point agency shall only certify HCBS-EBD eligibility for those clients who meet the target group definition including, in part, persons living with AIDS. Section 25.5-6-501 et seq. concerning Home and Community Based Services for persons with health complexes related to acquired immunity deficiency syndrome was repealed. Therefore, the Department proposes to strike language pertaining to persons living with AIDs. This change will not preclude a person living with AIDs from being eligible as long as they meet all of the eligibility criteria.

Section 8.553 regulates Home and Community Based Services of Life Skills Training 8.553.3, Home Delivered Meals 8.553.4, Peer Mentorship 8.553.5, and Transition Setup Services 8.553.6. Section

8.553.2 concerns service access and authorization to those services. The Department proposes revisions to correct the numbering format of the needs-based requirements within 8.553.2. Within each Section 8.553 service subpart, 8.553.3 - 8.553.6, includes a conflict of interest provision that precludes providers of the service from performing case management functions to the same individual. The conflict of interest provision for each respective service can be found in rule at: Life Skills Training 8.553.3.C.2; Home Delivered Meals 8.553.4.D.5; Peer Mentorship 8.553.5.C.1; and Transition Setup 8.553.6.D.3. In the current language, the conflict of interest provisions are not wholly consistent with Federal Regulation 42 C.F.R Section 441.301(c)(1)(vi). The respective provisions of in 8.553 do not include the exception language in the federal regulation., C.F.R. 441.301(c)(1)(vi). Without the exception language, the rule provisions conflict with federal law. To align with Federal law requirement to Department must include the exception language with the conflict-free requirement to ensure a full representation of the scope of the extent to which conflict protections do and do not apply. The Department proposes to revise the respective sections of CCR 8.553 revised to fully align with C.F.R. 441.301 (c)(1)(vi), pertaining to both the conflict of interest and the exception.

The authority for this rule is contained 42 U.S.C. §1396n(c) and The Social Security Act, §1915(c); 42 C.F.R Section 441.301(c)(1)(vi); *Olmstead v. L.C.*, 527 U.S. 581 (1999); sections 25.5-1-301 through 25.5-1-303, C.R.S. (2018).

#### **MSB 19-08-05-A, Revision to the Medical Assistance Rule concerning MAGI Medical Assistance rule updates, Sections 8.100.1,8100.3 and 8.100.4**

Medical Assistance. The proposed rule change will amend 10 CCR 2505-10 sections 8.100.1,8.100.3 and 8.100.4 based on 42 C.F.R 435.603 as this pertains to the Modified Adjusted Gross Income (MAGI)-based methodologies. Most of the revisions stem from the Tax Cuts and Jobs Act, which eliminated some allowable deductions and modifications to alimony rules. Among these changes are certain exclusions to the current policy regarding allowable deductions to calculate the adjusted gross income, such as tuition and fees, moving expenses, and alimony paid out. There will also be newly added deductions such as pre-tax retirement accounts, education expenses and flexible spending accounts to calculate an individuals adjusted gross income to determine MAGI- Medical Assistance. Other revisions to the current policy are on excludable income types such as a difficulty of care payment and alimony received to determine eligibility for MAGI-Medical Assistance programs. Lastly, added clarification will be added to our rules for a child/tax dependent who is applying for benefits and who lives with someone other than a parent, if they have income, their income will be used to determine their eligibility.

The authority for this rule is contained 42 CFR 435.603,Section 36B(d)(2) of the Internal Revenue Code, Section 1902( e)(14) of the Act, Section 131 of the Internal Revenue Code, Title 26 U.S.Code 62 and 26 U.S.C 19, Tax cuts and Jobs Act (Pub.L. No. 115-123, :BBA of 2018) and sections 25.5-1-301 through 25.5-1-303, C.R.S. (2018).