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, February 11, 2022, 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 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, 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.

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

MSB 21-04-26-A, Revision to the Medical Assistance Rule Concerning the Pharmacy Rate Methodology, Section 8.800

Medical Assistance. The Department is updating the outpatient pharmacy rate methodology for clotting factor drugs by incorporating Average Acquisition Cost (AAC) and Clotting Factor Maximum Allowable Cost (CFMAC) rates, effective April 1, 2022. The incorporation of AAC and CFMAC will result in rates better aligned with acquisition costs. This update will impact pharmacy providers' reimbursement for clotting factor drugs. This change is necessary for the Department to better manage drug expenditures for clotting factor drugs.

In addition, the Department received guidance from CMS which said state Medicaid programs have full discretion in determining how often a Cost of Dispensing survey must be conducted. Therefore, to allow for more contractor funding flexibilities and to reduce the administrative work related to the Cost of Dispensing survey for pharmacy providers, the Department is modifying the two-year timeframe to "periodically".

The authority for this rule is contained in 42 USC 1396r-8(e); Sections 25.5-4-401, 25.5-5-202(1)(a)(I), C.R.S. (2021); Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 21-10-19-A, Revision to the Special Financing Rule concerning FFY 2021-22 Healthcare Affordability & Sustainability (HAS) Fees & Supplemental Payments Amendment, Section 8.3000

Medical Assistance. This rule is being amended to reflect the changes necessary for the federal fiscal year (FFY) 2021-22 Hospital Affordability and Sustainability (HAS) provider fees and supplemental payments. Inpatient per-diem fees and outpatient percentage fees have been updated to account for changes to estimated Medicaid expansion costs, estimated administration costs, and HAS supplemental payments. The rule also includes revisions to the disproportionate share hospital (DSH) supplemental payment for the FFY 2022 DSH allotment increase from the

Centers for Medicare and Medicaid Services (CMS) and revisions to the hospital quality incentive payment (HQIP) supplemental payment for changes recommended by the HQIP subcommittee and the Colorado Healthcare Affordability and Sustainability Enterprise (CHASE) Board. Lastly, there are some minor revisions to further clarify the scope of the CHASE and how it operates.

The Department submitted a state plan amendment (SPA) on 12/8/2021 to the CMS and expects approval in the next several months. In addition, the Department presented FFY 2021-22 HAS provider fees and supplemental payments to the CHASE Board on 12/14/2021, which approved the fees and payments. FFY 2021-22 provider fees and supplemental payments will be implemented only after the CMS and the MSB approval.

For FFY 2021-22, hospitals will pay $1.14 billion in fees, which will generate $3.54 billion in federal funds for Colorado. Hospitals will receive $1.59 billion in supplemental and quality incentive payments. Currently, more than 610,000 Coloradans are enrolled in Medicaid and CHP+ coverage financed with hospital provider fees. As the HAS provider fee funds the Department's administrative costs, there is no impact on state General Fund.

The authority for this rule is contained in 42 CFR 433.68 and 42 U.S.C. § 1396b(w); Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021), Sections 25.5-4-402.4(4)(b), (g), C.R.S. (2021).

MSB 21-12-26-A, Revision to the Medical Assistance Act Rule concerning Base Wage Requirement for Direct Care Workers, Section 8.511

Medical Assistance. The rule requires all Direct Care Workers to receive a minimum base wage of $15 per hour for services named within and effective January 1, 2022. The rule requires providers to notice eligible staff and provide required reporting. The purpose of this rule is to enforce the base wage requirement, enforce provider reporting responsibilities, and utilize the unique funding opportunity of the American Rescue Plan Act (ARPA) to increase and bolster the direct care workforce. Colorado is one of the nation's fastest aging states, 70% of older adults will need long-term care, and they increasingly seek Home and Community-Based services. The need for workers has been outpacing the supply for many years. Additionally, impacts of the COVID-19 pandemic on the direct care workforce has highlighted that these workers bear great health and safety risks while earning some of the state's lowest wages. Colorado will continue to lose necessary workers and fail to adequately recruit new workers if it does not raise wages to align with the value and importance of these workers' critical services.

The authority for this rule is contained in Senate Bill 21-286 contained in 25.5-6-18 C.R.S. (2021); FY 2022-23 Department Budget Request approved by JBC on November 1, 2021 and Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021).

MSB 21-12-27-A, Revision to the Medical Assistance Act Rule concerning Pediatric Personal Care Minimum Wage, Section 8.535

Medical Assistance. The rule requires pediatric personal care Direct Care Workers to receive a minimum base wage of $15 per hour for services named within and effective January 1, 2022. The rule requires providers to notice eligible staff and provide required reporting. The purpose of this

rule is to enforce the base wage requirement, enforce provider reporting responsibilities, and utilize the unique funding opportunity of the American Rescue Plan Act (ARPA) to increase and bolster the direct care workforce. The need for workers has been outpacing the supply for many years. Additionally, impacts of the COVID19 pandemic on the direct care workforce has highlighted that these workers bear great health and safety risks while earning some of the state's lowest wages. Colorado will continue to lose necessary workers and fail to adequately recruit new workers if it does not raise wages to align with the value and importance of these workers' critical services.

The authority for this rule is contained Sections 25.5-1-301 through 25.5-1-303, C.R.S..

MSB 21-10-19-B, Revision to the Medical Assistance Health Programs Office Rule Concerning Medicaid Statewide Managed Care System, Section 8.205, 8.209, 8.212 and 8.215

Medical Assistance. The rule establishes an operational component of managed care for Colorado Medicaid, including eligibility, enrollment/disenrollment, covered services, grievances and appeals, and rate setting. Multiple rule sections related to managed care have been revised to align with current statute for the statewide managed care system defined in C.R.S. 25.5-5 Part 4. The changes also reflect the federally authorized waivers for the Accountable Care Collaborative Phase II and the new inpatient substance use disorder benefit.

The authority for this rule is contained in 42 CFR Part 438, Section 1915(b) waiver for the Colorado Medicaid Accountable Care Collaborative, Substance Use Disorder Continuum 1115(a) Waiver (2021); C.R.S. 25.5 Article 5 Part 4 and Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 21-12-27-B, Revision to the Medical Assistance Act Rule concerning the Modification of Outpatient Hospital Payment Rates through EAPG Grouper Update, Section 8.300.6

Medical Assistance. The proposed rule modifies language in the outpatient hospital services payment Section 8.300.6, authorizing the modification of base rate and weight setting to accommodate a transition to a new version of the Enhanced Ambulatory Patient Grouping (EAPG) methodology. Currently, outpatient hospital services are reimbursed through the EAPG methodology, which is a system which is developed and maintained by 3M Health Information Systems. The Department currently reimburses using version 3.10 of EAPGs and will be transitioning to version 3.16 effective January 1, 2022. This is necessary to allow the Department to continue reimbursing hospitals using an up to date versions of the CPT/HCPCS code sets, while adjusting hospital base rates to minimize financial impacts to hospitals through the transition.

The authority for this rule is contained in 42 CFR 440.10 (2021); Section 25.5-102(1)(a), C.R.S. (2021) and Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 21-05-24-A, Revision to the Medical Assistance Rule concerning Maternity Services Episode Based Payments, Section 8.733

Medical Assistance. The Department implemented a maternity bundled payment program in 2020 with a detailed program rule in place under the Medical Assistance Rule concerning Maternity Services Episode Based Payments, Section 8.733. The goal of the program is to improve pregnant and birthing members' health outcomes and member experience by improving obstetrical care service quality and closing health disparities while reducing cost. The program gives providers performance linked opportunities to earn extra incentive payments besides the fee-for-service reimbursement for maternity services. A few key program implementation updates have been implemented during the first program year (Nov. 2020 – Oct. 2021), including adding mental health considerations into the current threshold setting process, delaying downside risk implementation, adding additional incentive on promoting midwifery care, and emphasizing on patient experience and program evaluation. This rule update aims to include those program updates and fix a few language alignments issues.

The authority for this rule is contained in Sections 25.5-1-301 through 25.5-1-303 (2021).