



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, March 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 22-01-17-A, Revision to the Medical Assistance Act Rule concerning Hospice Room and Board, Section 8.550.9.C

Medical Assistance. The proposed rule implements Colorado Senate Bill 21-214, which establishes a state-only room and board payment to qualified hospice providers that render hospice care in a licensed hospice facility to an eligible Medicaid-enrolled member who has a hospice diagnosis, is eligible for nursing facility care and, despite attempts to secure a bed, is unable to secure a Medicaid bed in a nursing facility due to COVID-19 impacts, complexity of medical care, behavioral health issues, or other issues as determined by the Department. Room and board reimbursement is available to qualified hospice providers who provided such services during the period beginning the last quarter of the 2020-21 state fiscal year through the 2021-22 state fiscal year, within existing appropriations.

The authority for this rule is contained in CRS § 25.5-4-424 (2021) and Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 22-01-17-B, Revision to the Medical Assistance Act Rule concerning Qualified Residential Treatment Programs, Section 8.765

Medical Assistance. Revises the rules for child-serving residential facilities to include the new Qualified Residential Treatment Program (QRTP) license type. The new license type will take effect October 1, 2021 in accordance with the federal Family First Prevention Services Act (FFPSA) and there will be a grace period until June 30, 2022 for all facilities enrolled with Medicaid to be in compliance. The revision will allow the Department to reimburse new QRTP facilities in compliance with the FFPSA and align Department rule with the Colorado Department of Human Services' new QRTP license type. QRTPs will provide a trauma-informed model of care to address the needs, including clinical needs, of children with serious emotional or behavioral disorders or disturbances.

The authority for this rule is contained in Pub.L. 115-123, Div. E, Title VII, § 50734, Feb. 9, 2018, 132 Stat. 252; 42 CFR 440.160 (2021); Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021), CRS § 25.5-5-202(1)(i) (2021).

MSB 22-01-17-C, Revision to the Medical Assistance Act Rule concerning Subacute Care, Section 8.300

Medical Assistance. During the Coronavirus Disease 2019 (COVID-19) public health emergency, subacute care may be administered by an enrolled hospital in its inpatient hospital or alternate care facilities. Subacute care in a hospital setting shall be equivalent to the level of care administered by a skilled nursing facility for skilled nursing and intermediate care services as defined in 10 CCR 2505-10, Sections 8.406 and 8.409. Patients may be admitted to subacute care after an inpatient admission, or directly from an emergency department, observation status, or primary care referral to the administering hospital. Subacute care will be paid at the rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in skilled nursing facilities under the State Plan. Adding subacute care to the covered hospital services in an inpatient hospital, or an associated alternate care facility, increases access to such services for the duration of the COVID-19 public health emergency.

The authority for this rule is contained in 42 CFR §447, Subpart C (2020); C.R.S. 25.5-5-102(1)(a) (2019) and Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021).

MSB 21-06-04-A, Revision to the Medical Assistance Rule concerning HCBS Cost Containment Rule Revision, Section 8.506

Medical Assistance. The rules implementing the cost containment process, 10 C.C.R. 2505-10, Sections 8.506, are being updated to reflect the removal of the requirement for Case Managers to submit a Cost Containment Form to the Utilization Review Contractor (URC) when the cost of an individual's services increases or decreases by a Department prescribed amount. Additionally, the rules will be updated to add in the requirement for Case Managers to submit a review to the URC not only upon initial enrollment into the HCBS-CHCBS waiver, but also at annual certification to ensure the individual continues to meet targeting criteria for the waiver.

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

MSB 21-08-04-A, Medicaid Nursing Facilities Demonstration of Need with Technical Changes Revision to the Medical Assistance Program Requirements for Nursing Facilities, Section 8.400

Medical Assistance. The Colorado General Assembly passed House Bill 21-1227, authorizing the Department to develop a "demonstration of need" to provide a consistent way that Medicaid beds can be approved for new Nursing Facilities that were not Medicaid-certified prior to June 30, 2021. This bill includes technical changes related to the nursing facility statute that will allow private pay or Medicare-only nursing facilities to add up to five Medicaid beds without becoming fully Medicaid certified. A rule change is needed to develop clear and consistent criteria for the Department to use when considering new Nursing Facility Medicaid bed approval. The demonstration of need will

establish a process that considers demographic need, innovative practices, and quality of the provider. The technical changes in the rule revision will serve to reduce transfer trauma for nursing facility residents. The Department's goal is to ensure that Colorado's growing older adult population will have access to new, outstanding nursing facilities statewide, as well as provide enough Medicaid beds in response to the steady increase in older adult Medicaid enrollment.

The authority for this rule is contained in 42 CFR Part 483, subpart B; C.R.S. 25.5-6-209 (2021), amended 25.5-6-201 and 25.5-6-202 (2021) and Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 22-01-30-B, Revision to the Medical Assistance Act Rule concerning HB21-1275 Pharmacy Implementation, Section 8.800.5

Medical Assistance. The pharmacy office is implementing HB21-1275 which requires the Department to A) reimburse pharmacists for all services that are allowed in Part 6 of Article 280 of Title 12 and B) to allow pharmacists to dispense, administer and be reimbursed for long acting injectables for both mental illness and substance use disorders through the pharmacy or medical benefit.

In order to implement part B of HB21-1275, the Department must modify Section 8.800.5 to allow pharmacists and pharmacies to bill for long acting injectables for both mental illness and substance use disorders for reimbursement through the pharmacy or medical benefit even if the product is administered in a physician's office or clinic.

The authority for this rule is contained in Section 25.5-5-511 through 512, C.R.S. (2020) Section 25.5-102(1)(a), C.R.S. (2021) and Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 22-01-30-C, Revision to the Medical Assistance Rule concerning Pharmacy Reimbursement, Section 8.200.2.B and C

Medical Assistance. The proposed rule implements requirements of Colorado House Bill 21-1275, under which pharmacists may provide covered Health First Colorado (Colorado Medicaid) services, in accordance with the scope of practice for pharmacists as described by the Colorado Department of Regulatory Agencies rules, without a physician order.

The authority for this rule is contained in 42 CFR 440.120(a) (2021); CRS § 25.5-5-511(2)(a) (2021) and Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 22-01-30-D, Revision to the FQHC Rule Concerning Reimbursement for Antiviral Medication for COVID-19, Section 8.700.6.B

Medical Assistance. Pending federally financial participation approval from the Centers for Medicare and Medicaid, the purpose of this rule is to change Federally Qualified Health Center (FQHC) reimbursement for the antiviral medication, remdesivir, when administered in an outpatient setting. Remdesivir is an antiviral medication for COVID-19 that stops the virus from spreading in the body and reduces time to recovery. Remdesivir treatments are expensive, and the current FQHC encounter rate does not cover the cost of providing the drug. This rule will revise reimbursement to reimburse FQHCs at the fee schedule amount for the cost of the remdesivir antiviral medication,

once the Department receives approval for federal financial participation from the Centers for Medicare and Medicaid.

The authority for this rule is contained in 1902(bb) SSA; State Plan: Attachment 3.1-A 2.c. and Attachment 4.19-B; CRS 25.5-5-102(1)(m) and Sections 25.5-1-301 through 25.5-1-303 (2021).

MSB 22-01-30-A, Revision to the DMEPOS Rule Concerning Pharmacists Prescribing COVID-19 at-home over-the-counter tests, Section 8.590

Medical Assistance. The purpose of this rule is to allow pharmacists to prescribe at-home over-the-counter COVID-19 tests for reimbursement under the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) benefit. The basis of this rule is that CMS has mandated coverage of these tests which are available at pharmacies. Pharmacies are enrolled as DMEPOS providers and can bill for the tests, however a prescription is required.

The authority for this rule is contained in 1905(7) SSA; State Plan: Attachment 3.1-A 7.g. and Attachment 4.19-B; CRS 25.5-4-416 and Sections 25.5-1-301 through 25.5-1-303 (2021).