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Title of Rule: Revision to the Medical Assistance Act Rule concerning Prudent Layperson Standard for Emergency Care Services, Sections 8.300.1, 8.320.1, 8.754.2, 8.754.5
Rule Number: MSB 22-01-04-A
Division / Contact / Phone: Health Programs / 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 22-01-04-A, Revision to the Medical Assistance Act Rule concerning Prudent Layperson Standard for Emergency Care Services, Sections 8.300.1, 8.320.1, 8.754.2, 8.754.5

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) 8.300.1, 8.320.1, 8.754.2, 8.754.5 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)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.300.1 with the proposed text beginning at 8.300.1.I through the end of 8.300.1.I. Replace the current text at 8.320 with the proposed text beginning at 8.320.1.D through the end of 8.320.1.D. Replace the current text at 8.754 with the proposed text beginning at 8.754.2.A through the end of 8.754.2.A.6. Replace the current text at 8.754 with the proposed text beginning at 8.754.5.E through the end of 8.754.5.E. This rule is effective June 30, 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).

   This rule revision will update the Emergency Care Services definition in the Hospital Services rule to include required language regarding the prudent layperson standard and reference that definition in the Client Co-Payment rule to align with federal regulations. In addition, it requires hospitals to comply with the requirements of federal law for assessing whether a member's services qualify as emergency care services and are therefore exempt from cost sharing.

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:

3. Federal authority for the Rule, if any:

   42 CFR §§ 447.51, .54(d)(2), 42 CFR 438.114(a)

4. State Authority for the Rule:

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

Initial Review	**04/08/22**	Final Adoption	**05/13/22**
Proposed Effective Date	**06/30/22**	Emergency Adoption	

DOCUMENT #06

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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 seeking emergency care services and hospitals will be affected by this rule. The prudent layperson standard will be applied to determine if member cost sharing is applicable. Hospitals will bear the cost of determining whether the services qualify as emergency care services.

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 Department anticipates no fiscal impact from the proposed rule change.

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.

   Hospitals will be responsible for applying the emergency care services definition when determining whether members are responsible for cost sharing associated with non-emergency services. The Department does not anticipate any changes to the costs to the Department as costs sharing for non-emergency services are already incorporated into the Departments budget.

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

   The probable cost of the proposed rule is hospitals applying the prudent layperson standard when determining whether services meet the emergency care services definition. The benefit of the proposed rule is aligning with federal regulations. The cost of inaction is misalignment with federal regulations. 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 to align with federal regulations.

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 with federal regulations.

8.300 HOSPITAL SERVICES

8.300.1 Definitions

8.300.1.I. Emergency Care Services, for the purposes of this rule, means services for a medical condition, including active labor and delivery, manifested by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, ~~for which the absence of immediate medical attention~~ could reasonably ~~be~~ expect~~ed~~ the absence of immediate medical attention to result in: (1) placing the client's health in serious jeopardy, (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part.

8.320 COMMUNITY CLINIC, INCLUDING FREESTANDING EMERGENCY DEPARTMENTS

8.320.1 Definitions

D. Emergency Care Services, for the purposes of this rule, ~~means services for a medical condition, including active labor and delivery, manifested by acute symptoms of sufficient severity, including severe pain, for which the absence of immediate medical attention could reasonably be expected to result in: (1) placing the client's health in serious jeopardy, (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part~~has the same meaning as Section 8.300.1.I.

8.754.1 CLIENT CO-PAYMENT

8.754.2 NON-EMERGENCY SERVICES

Non-emergency services rendered in the hospital outpatient emergency room are subject to a $6.00 co-payment per visit.

8.754.2.A. Providers may not assess a $6.00 co-payment for non-emergency services provided in the emergency room unless they have first:

1. Determined that the medical condition does not meet the threshold for emergency care services, as defined at 10 C.C.R. 2505-10, Section 8.300.1.I;

2. Informed the client that the condition does not require emergency care services;

3. Informed the client of the amount of their cost sharing obligation for non-emergency services provided in the emergency room;

4. Provided the client with the name and location of an available and accessible alternative non-emergency services provider; and

5. Determine that the alternative provider can provide services to the individual in a timely manner with the imposition of a lesser cost sharing amount or no cost sharing if the individual is otherwise exempt from cost sharing; and

1.6. Provide a referral to coordinate scheduling for treatment by the alternative provider.

8.754.5.E. All emergency care services.

1. Emergency care services means for all Medicaid clients care for any condition which is life threatening or requires immediate medical interventionis defined in Section 8.300.1.I.

2. Emergency treatment can be given in the emergency room, the outpatient department, or a physician's office.

3. The attending medical personnel shall define the emergent nature of the recipient's condition.

4. For cases where it is not clear if an emergency exists, a triage of the recipient member may will be conducted as set forth in 10 C.C.R. 2505-10, Section 8.253.6to determine if the member's condition meets the threshold for emergency care services, as defined in Section 8.300.1.I.

5. There shall be no co-payment charge for the triage.