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Title of Rule: Revision to the Medical Assistance Act Rule concerning Qualified Residential Treatment Programs and Residential Child Care Facilities.
Rule Number: MSB 22-02-10-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 22-02-10-A, Revision to the Medical Assistance Act Rule concerning Qualified Residential Treatment Programs and Residential Child Care Facilities.

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) 8.212.1, 8.765.8, and 8.765.13, 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 8.212.1.A.13 with the proposed text beginning at 8.212.1.A.13 through the end of 8.212.1.A.13. Replace the current text at 8.212.1.B with the proposed text beginning at 8.212.1.B through the end of 8.212.1.B.1. Replace the current text at 8.765.8.F with the proposed text beginning at 8.765.8.F through the end of 8.765.8.F. Replace the current text at 8.765.13.A with the proposed text beginning at 8.765.13 through the end of 8.765.13.A. 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).

   In order to comply with the Family First Prevention Services Act (U.S.H.R. 1892 – Bipartisan Budget Act of 2018, Title VII (February 9, 2018)), the Department will not reimburse for services provided in Residential Child Care Facilities after June 2022, except for Early and Periodic Screening, Diagnostic, and Treatment services. The proposed rule also adds Qualified Residential Treatment Programs to the list of providers in Section 8.212.1.A.13. This section currently exempts Regional Accountable Entities (RAEs) from covering services provided under the Community Behavioral Health Services program for children in the custody of the Colorado Department of Human Services' Division of Child Welfare or Division of Youth Corrections who are placed into Psychiatric Residential Treatment Facilities or Residential Child Care Facilities. Under the proposed rule, RAEs will also be exempted from covering such services provided in Qualified Residential Treatment Programs.

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:

   Pub.L. 115-123, Div. E, Title VII, § 50734, Feb. 9, 2018, 132 Stat. 252

   42 CFR 440.160 (2021)

4. State Authority for the Rule:

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

   CRS § 25.5-5-202(1)(i) (2021)

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

DOCUMENT #07

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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 currently residing in Residential Child Care Facilities (RCCF), and RCCF providers, will be impacted by the proposed rule.

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

   RCCF providers will have costs associated with changing their model of care and the requirement that Qualified Residential Treatment Programs (QRTPs) be 16 beds or less in order to be reimbursed after June 30, 2022. For our members, services provided in a QRTP will be trauma-informed and designed to address the needs, including clinical needs, of children with serious emotional or behavioral disorders or disturbances, in a setting limited to 16 beds. Members who require this level of care will receive services within the state and better tailored to their needs.

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 Department anticipates the proposed rule to be budget neutral because RCCF services will be phased out and the RCCF funds will instead be applied to QRTP payment.

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

   The probable costs of the proposed rule are RCCF providers being required to obtain the Qualified Residential Treatment Program license. The probable benefit of the proposed rule is aligning with the Federal Family First Prevention Services Act (FFPSA) and aligning with Colorado Department of Human Services license requirements. The probable cost of inaction is non-compliance with the FFPSA. There are no probable benefits to inaction.

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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 costly methods or less intrusive methods to align Department rule with the FFPSA and with Colorado Department of Human Services license requirements.

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 to align Department rule with the FFPSA and with Colorado Department of Human Services license requirements.

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8.212 COMMUNITY BEHAVIORAL HEALTH SERVICES

8.212.1 ENROLLMENT

8.212.1.A. The following individuals are not eligible for enrollment in the Community Behavioral Health Services program:

1. Qualified Medicare Beneficiary only (QMB-only).

2. Qualified Disabled and Working Individuals (QDWI)

3. Qualified Individuals 1 (QI 1).

4. Special Low Income Medicare Beneficiaries (SLMB).

5. Undocumented aliens, including non-qualified, undocumented and qualified aliens who have not met the five-year bar who are eligible for Federal Medicaid for care and services related to the treatment of an approved medical condition.

6. Individuals enrolled in the Program of All-Inclusive Care for the Elderly (PACE).

7. Individuals who are inpatient at the Colorado Mental Health Institute at Pueblo or the Colorado Mental Health Institute at Fort Logan who are:

   a. Found by a criminal court to be Not Guilty by Reason of Insanity (NGRI);

   b. Found by a criminal court to be Incompetent to Proceed (ITP); or

   c. Ordered by a criminal court to a State Institute for Mental Disease (IMD) for evaluation (e.g. Competency to proceed, sanity, conditional release revocation, pre-sentencing).

8. Individuals between ages 21 and 64 who receive inpatient treatment who are inpatient at the Colorado Mental Health Institute at Pueblo or the Colorado Mental Health Institute at Fort Logan.

9. Individuals who are NGRI and who are in the community on Temporary Physical Removal (TPR) from the Colorado Mental Health Institute at Pueblo and who are eligible for Medicaid are exempted from the Community Behavioral Health Services program while they are on TPR. TPR individuals remain under the control and care of the Institute.

10. Classes of individuals determined by the Department to require exclusion from the Community Behavioral Health Services program, defined as individuals residing in State Regional Centers for people with developmental disabilities and associated satellite residences for more than 90 days.

11. Individuals who receive an individual exemption as set forth at Section 8.212.2.

12. Individuals while determined presumptively eligible for Medicaid.

13. Children or youth in the custody of the Colorado Department of Human Services -Division of Child Welfare or Division of Youth Corrections who are placed by those agencies in a Psychiatric Residential Treatment Facility (PRTF) as defined in C.R.S. 25.5-4-103, ~~or a~~

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Residential Child Care Facilit~~y~~ies (RCCF) or Qualified Residential Treatment Programs (QRTP), as defined in C.R.S. 26-6-102.

8.212.1.B. All other Medicaid clients shall be enrolled in the Community Behavioral Health Services program, and into a behavioral health organization in the client's geographic area.

1. The Department automatically re-enrolls a client into the same behavioral health organization if there is a loss of Medicaid eligibility of two months or less.

8.765 SERVICES FOR CLIENTS IN RESIDENTIAL CHILD CARE FACILITIES AS DEFINED BELOW

8.765.8 MENTAL HEALTH BENEFITS FOR CLIENTS IN AN RCCF

8.765.8.F. Beginning July 1, 2022, only services rendered under Early and Periodic Screening, Diagnosis and Treatment in accordance with Section 8.280 are a covered RCCF benefit.

8.765.13 REIMBURSEMENT FOR MENTAL HEALTH SERVICES IN A ~~T~~RCCF

8.765.13.A. Reimbursement for Mental Health Services in a RCCF shall be the lower of billed charges or the maximum unit rate of reimbursement. Beginning July 1, 2022, RCCF services will be not reimbursable unless provided under Early and Periodic Screening, Diagnosis and Treatment in accordance with Section 8.280.