



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, September 8, 2023, beginning at 9:00 a.m., in the eleventh floor conference room at 303 E 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 23-07-26-C, Revisions to the Medicaid Assistance Rule Concerning the Health Care Affordability and Sustainability Fee, Section 8.3000

Medical Assistance. This proposed rule change will define a new Colorado Healthcare Affordability and Sustainability Enterprise (CHASE) hospital classification for the safety net hospital that serves Pueblo and the southern Colorado region, Parkview Medical Center. This rule change will ensure continuity of Parkview's CHASE provider fee-funded payments upon its expected acquisition by UCHHealth, allowing continuity of health care services, including birthing services, for the Pueblo region.

The authority for this rule is contained in 42 CFR § 447; 42 CFR § 433.68; Section 25.5-4-402.4(5)(g), C.R.S. (2023) and Sections 25.5-1-301 through 25.5-1-303 (2023).

MSB 23-07-26-B, Revision to the Medical Assistance Rule Concerning Updates to the Agreement Not to Sponsor for Section 8.100.3.D.6

Medical Assistance. The proposed rule change aims to amend 10 CCR 2505-10 Section 8.100.3.D.6 to align with Senate Bill 23-1117 effective August 7, 2023. This change will remove the rule requirement for legal immigrants to agree to execute an affidavit of support when enrolling or receiving Medical Assistance. By removing this requirement, legal immigrants who receive Medical Assistance will no longer face the risk of losing their benefits if they choose to sponsor someone for immigration purposes. The U.S. Centers for Medicare & Medicaid Services (CMS) informed Colorado in 2014 the rule to execute an agreement not to sponsor may violate the equal protection clause under the 14th amendment of Constitution. Federal regulations do not exist for legal immigrants or U.S. citizens to sign an agreement not to sponsor, thereby leaving Colorado susceptible to federal audits. The removal of this rule provides legal Colorado immigrants equitable access in enrolling and receiving Medical Assistance while ensuring Colorado aligns with federal health equity

standards. The Department will update the Colorado Benefits Management System (CBMS) to reflect this change.

The authority for this rule is contained in C.R.S 25.5-3-105, 25.5-5-101(5), and 26-2-111.8(5.5) and Sections 25.5-1-301 through 25.5-1-303 (2023).

MSB 23-07-26-A, Revision to the Medical Assistance Act Rule concerning Bariatric Surgery, Section 8.300.3.C

Medical Assistance. Senate Bill 23-176, at C.R.S. § 25.5-5-336, prohibits the use of Body Mass Index (BMI) when determining medical necessity for individuals diagnosed with certain types of eating disorders. To align with the statute, the proposed rule removes the use of BMI in determining bariatric surgery medical necessity for individuals diagnosed with those types of eating disorders.

The authority for this rule is contained in Section 25.5-5-336, C.R.S. (2023) and Sections 25.5-1-301 through 25.5-1-303 (2023).

MSB 23-05-17-A, Revision to the Medical Assistance Act Rule concerning Hospital Services Rule, Section 8.300

Medical Assistance. The proposed rule change clarifies covered hospital services by moving from time based standards to medical necessity standards. The changes simplify inpatient, outpatient, and observation stay definitions and move the standards from those definitions to the covered services section of the rule. Criteria for medical necessity for inpatient, outpatient, and observation stays were also added to the covered services section. Technical changes were also addressed in this rule change such as changing in-network and out-of-network to in state and out of state. Temporal standards were also removed in the inpatient psychiatric covered services section. Corrective action was defined in rule and clarifying language was added to the utilization management section. This revision provides more clarity to hospitals and providers on medical necessity criteria and determining the appropriate level of care for members. The community clinic, including freestanding emergency departments, rule is also being revised to align with the proposed changes to the hospital services rule.

The authority for this rule is contained in Social Security Act, Section §§ 1905(a)(1-2) [42 U.S.C. 1396d(a)(1-2)] (2022); 42 C.F.R. §§ 440.10-.20 (2023); Sections 25.5-5-102(1)(a-b), C.R.S. (2021) and Sections 25.5-1-301 through 25.5-1-303 (2023).

MSB 23-04-25-B, Revision to the Medical Assistance Act Rule concerning HB23-1130 and HB23-1183 Implementation, Section 8.800.1 and 8.800.7

Medical Assistance. The purpose of this rule change is to implement HB23-1130 and HB23-1183. Therefore, 10 C.C.R. 2505-10, Section 8.800.1, is being amended to define "Serious Mental Illness", "Serious or Complex Medical Condition", and "Step Therapy". 10 C.C.R. 2505-10, Section 8.800.7, is being amended to describe the preliminary determination process for the coverage of FDA approved drugs used to treat serious mental illness and to describe the exception to step therapy process for drugs used to treat a serious or complex medical condition.

The authority for this rule is contained in Section 25.5-4-103 C.R.S (2023); Section 25.5-4-428 C.R.S. (2023); Section 25.5-5-516 (2023) and Sections 25.5-1-301 through 25.5-1-303 (2023).

MSB 23-05-31-A, Revision to the Medical Assistance Act Rule concerning Durable Medical Equipment Oxygen Certificate of Medical Necessity, Section 8.580

Medical Assistance. The proposed rule removes the requirement that oxygen providers obtain a Certificate of Medical Necessity (CMN) for members receiving long term oxygen therapy (oxygen therapy lasting greater than ninety days). Oxygen providers must still obtain a prescription from an eligible prescribing provider, and have the prescription reviewed and renewed annually in accordance with 42 C.F.R. 440.70(b)(3)(iii), for members receiving long term oxygen therapy. The Department is now capable of receiving the information needed for long term oxygen therapy claims through the electronic claims system, making CMN duplicative and unnecessary. Oxygen providers are also required to maintain records of the oxygen therapy services and equipment in accordance with Section 8.580.8.A.1 if additional clinical information is required to document medical necessity.

The authority for this rule is contained in 42 C.F.R. 440.70(b)(3)(iii) (2023); Section 25.5-5-102(1)(f), C.R.S. and Sections 25.5-1-301 through 25.5-1-303 (2023).