



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 8, 2024, 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 23-08-02-A, Revision to the Medical Assistance Rule concerning the Program of All-Inclusive Care for the Elderly (PACE), Section 8.497 (Zack Gibbons, Office of Community Living)

Medical Assistance. The Centers for Medicare and Medicaid Services (CMS) took the lead in conducting audits of PACE organizations in coordination with the Department. In recent years, CMS has changed their audit schedule, creating an opportunity for the Department to initiate its own auditing process. Because of this, Senate Bill 22-203 was adopted in order for the Department to implement a state-specific regulatory set in Colorado. The ultimate purpose of this rule change is for the Department to establish minimum regulatory standards and rules for the PACE program in order to sufficiently ensure the health, safety, and welfare of PACE participants.

The following is a brief summary of key points covered in the rule:

- Incorporation of the federal rule set by reference throughout to avoid conflict with the federal rule.
- Department-specific application requirements for an entity seeking to become a PACE organization in Colorado, or an existing PACE organization seeking to expand its service area.
- Violations for which the Department may impose sanctions, along with authority to suspend new participant enrollment of, and suspend payment to, PACE organizations.
- Training requirements of PACE staff members.
- Minimum standards of transportation services, including maintenance of vehicles and qualifications of drivers.
- Allowable use of telehealth for provision of services delivered under PACE.

The authority for this rule is contained in 42 C.F.R. §460.190; Sections 25.5-5-412, C.R.S. 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 The HB23-1183 Implementation, Section 8.800.A and 8.800.7 (Korri Conilogue, Pharmacy office)

Medical Assistance. HB23-1183 requires the Department to review and determine if an exception to step therapy is granted if the prescribing provider submits a prior authorization request with justification and supporting clinical documentation for treatment of a serious or complex medical condition.

Therefore, the Department recommends rule revisions at 10 CCR 2505-10, Section 8.800.A, to define "Serious or Complex Medical Condition" and "Step Therapy". In addition, the Department recommends rule revisions at Section 8.800.7, to describe the exception to step therapy process for drugs used to treat a Serious or Complex Medical Condition pursuant to HB23-1183.

The authority for this rule is contained in Sections 25.5-1-301 through 25.5-1-303 (2023).

MSB 23-11-03-A, New High Utilizer Supplemental Payment, NF Parolees Supplemental Payment, Post Eligibility Treatment of Income (PETI) Dental Benefit Removal, Sections 8.443 & 8.482 (Christine Bates, Office of Community Living)

Medical Assistance. Section 8.443.23 is being added due to House Bill (HB) 23-1228 allowing for a new supplemental payment for nursing facilities with 75% or higher Medicaid population or the facility is the only nursing facility in the county. This is referred to as the "High Medicaid Utilizer Supplemental Payment". The purpose is to support the financial stability of these facilities.

Section 8.443.24 is being added due to SB 22-196 allowing the Department of Health Care Policy & Financing (HCPF) and the Department of Corrections (DOC) to work together to support individuals who have been paroled and are in need of nursing facility services. The nursing facilities will receive a supplemental payment to provide additional support services beyond what is typically expected to be provided for these individuals. This is referred to as "Nursing Facility Parolees Supplemental Payment".

Section 8.482.33 is being amended to take out dental services as a benefit of the Post Eligibility Treatment of Income (PETI) program due to Senate Bill (SB) 23-314 that removed adult dental Medicaid State Plan benefit limits.

The authority for this rule is contained in Sections 25.5-1-301 through 25.5-1-303 (2023).

MSB 23-12-19-A, Revision to the Medical Assistance Act Psychiatric Residential Treatment Facility (PRTF) Reporting Requirements, Section 8.765.6 (Erica Schaler, Compliance Section)

Medical Assistance. The proposed rule aligns existing critical incident reporting requirements with Colorado Department of Human Services (CDHS) 7.701.52 (12 CCR 2509-8; 7.701.52) Reports.

The authority for this rule is contained in 42 CFR §441 Subpart D; CRS 27-50-510; CRS 26-20-103 et. seq.; CRS 22-32-147 and Sections 25.5-1-301 through 25.5-1-303 (2023).

MSB 24-01-29-A, Revision to the Medical Assistance Rule concerning Non Emergent Medical Transportation, Sections 8.014 & 8.125 (Sarah Geduldig, Fraud, Waste, and Abuse Division)

Medical Assistance. This rule change is occurring because there has been an increase in suspected fraud within the Non Emergent Medical Transportation (NEMT) benefit. This has resulted in a CMS approved temporary moratorium of newly enrolling NEMT providers for at least six (6) months. While this Moratorium is in place, the Department is working on statutes, rules, regulations and guidance to address concerns and issues that were discovered through reviewing the suspected fraud scheme. This proposed emergency rule is being put in place in order to clarify provider expectations, reduce the risk of suspected fraud, and protect the health, safety, and welfare of our members. To do this, the proposed revisions include changes to the screening and credentialing of NEMT providers, clarifying the obligations of drivers compared to the state designated entity, and removing outdated language related to licensing requirements by the public Utilities Commission (PUC).

The authority for this rule is contained in 42 CFR 455.450(e) and Sections 25.5-1-301 through 25.5-1-303 (2023).