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Title of Rule: Revision to the Medical Assistance Rule concerning Adding Provider Types to FQHC Visit
Rule Number: MSB 18-06-15-A
Division / Contact / Phone: Benefits / Richard Delaney / 303 866-3436

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 18-06-15-A, Revision to the Medical Assistance Rule concerning Adding Provider Types to FQHC Visit
3. This action is an adoption an amendment of:
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):
Sections(s) 8.700 - 8.700.3, 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)? Yes
If yes, state effective date: 11/9/2018
Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the existing text at 8.700 with the proposed text beginning at 8.700.1 through the end of 8.700.5.A. This rule is effective November 9, 2018.

*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).

The rule changes the definition of a payable encounter at Federally Qualified Health Centers. The amended rule adds the supervised mental health license candidates to the provider types that can generate a billable encounter.

The rule is necessary to maintain access to mental health services at FQHCs. Without the rule, FQHCs will be unable to provide the services with the provider types that had been providing the services in the past. The change maintains care practices that were present prior to July 1, 2018.

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:

The Medical Assistance Program changed coverage on July 1, 2018, to pay for short term behavioral health services without a specific diagnosis as a state plan benefit for all Medicaid clients enrolled in the Behavioral Health Managed Care program. Previously these services were only available through the Managed Care Entities (previously known as Behavioral Health Organizations) for clients enrolled in the behavioral health program and covered for specific diagnoses. Federally Qualified Health Centers (FQHCs) have been providing the services as contractors with the Managed Care Entities that cover behavioral health for Colorado Medicaid. When providing the services under the managed care program, visits with individuals supervised by licensed clinical social workers, licensed psychologists, licensed marriage and family therapists, and licensed professional counselors are paid as encounters to the FQHCs using the prospective payment system. With the change in coverage allowing HCPF to pay for those services as state plan benefits, an emergency rulemaking is necessary to comply with federal law or to preserve the public health, safety, and welfare, in accordance with C.R.S. § 24-4-103(6).

1. To preserve public health, safety, and welfare.

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Several Federally Qualified Health Centers and their trade organization, Colorado Community Health Network have repeatedly affirmed to HCPF that failure to pay for the short term behavioral health services by individuals supervised as part of their training for a license by licensed psychotherapists will result in those services not being provided. The health, safety, and welfare of patients needing short term behavioral health services from FQHCs will be at risk without a timely change in rule, which can only be accomplished through an emergency rulemaking.

3. Federal authority for the Rule, if any:

42 USC 1396a(bb)

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2017);

State authority for coverage of services is in C.R.S. 25.5-5-102(d) Physician services and 25.5-5-102(m) Federally qualified health centers. State authority for reimbursement is C.R.S. 25.5-4-401(1)(a).

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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.

Medicaid clients that receive care at Federally Qualified Health Centers will be affected. This emergency rule will support access to care and continuity of care at FQHCs. No class of persons will bear any costs of the proposed rule. Medicaid clients will benefit from 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.

The proposed impact is neutral to Medicaid clients. The services were available at FQHCs prior to July 1, 2018 through the behavioral health managed care program, Medicaid policy changed to allow these services through fee for service coverage and expand coverage to not require a specific diagnosis for the care. This rule makes payment as fee for service duplicate what was available prior to July 1, 2018 for clients with specific diagnoses.

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.

There are no costs probable with this rule change. It continues coverage of the services but changes payment mechanism. Overall the policy change is expected to save funds when implemented by all providers including FQHCs.

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

There are no probable costs associated with the proposed rule. Probable benefits of action will align coverage of behavioral health services between FQHC providers and fee schedule providers. With inaction, there may be some probable cost savings due to FQHC providers being unable to be paid for a subset of behavioral health services. There are no foreseen probable benefits of inaction. Probable detriments are that many Medicaid clients will have their behavioral health treatment fragmented. FQHCs will not be able to provide the services as fee schedule services

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so the clients will receive initial care from a non-integrated behavioral health entity then most likely integrate with the FQHCs services after their 6 sessions are complete.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The changes are the most cost efficient approach to the new policy.

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.

The Department considered not changing the rule as an alternative method to achieve the integration of physical and mental health. That method would have been detrimental to the 6 sessions integration policy. There is no other way to pay for FQHC services except through the Prospective Payment System methodology under the Social Security Act (Title XIX, Section 1902(bb)). The 6 sessions policy was implemented to foster integration of physical and behavioral health from a single health care entity. To facilitate integration without this rule for FQHCs would be to abandon the 6 sessions policy for a large number of Medicaid clients because there would be no way to pay for services by licensure candidates at the FQHCs. The alternative methods would not achieve the purpose of the rule.

8.700 FEDERALLY QUALIFIED HEALTH CENTERS

8.700.1 DEFINITIONS

Federally Qualified Health Center (FQHC) means a hospital-based or freestanding center that meets the FQHC definition found in Title 42 of the Code of Federal Regulations, Part 405, Subpart X (2015). Title 42 of the Code of Federal Regulations, Part 405, Subpart X (2015) is hereby incorporated by reference into this rule. Such incorporation, however, excludes later amendments to or editions of the referenced material. These regulations are available for public inspection at the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Pursuant to C.R.S. 24-4-103(12.5)(V)(b), the agency shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline or rule:

Visit means a one-on-one, face-to-face encounter between a center client and physician, dentist, dental hygienist, physician assistant, nurse practitioner, nurse-midwife, visiting nurse, clinical psychologist, podiatrist, clinical social worker, licensed marriage and family therapist, licensed professional counselor, or licensed addiction counselor providing the services set forth in [Section 8.700.3.A](#). Group sessions do not generate a billable encounter for any FQHC services.

- a. A visit includes a one-on-one, face-to-face encounter between a center client and a supervised person pursuing mental health therapy licensure as a licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or psychologist in the state of Colorado providing services set forth in [Section 8.700.3.A](#). The supervised person must hold a candidate permit as a licensed professional counselor or a candidate permit as a licensed marriage and family therapist, or a candidate permit as a psychologist, or be a licensed social worker. Group sessions do not generate a billable encounter for any FQHC services.

8.700.2 CLIENT CARE POLICIES

8.700.2.A The FQHCs health care services shall be furnished in accordance with written policies that are developed with the advice of a group of professional personnel that includes one or more physicians and one or more physician assistants or nurse practitioners. At least one member of the group shall not be a member of the FQHC staff.

8.700.2.B The policies shall include:

1. A description of the services the FQHC furnishes directly and those furnished through agreement or arrangement. See [Section 8.700.3.A.3](#).
2. Guidelines for the medical management of health problems that include the conditions requiring medical consultation and/or client referral, the maintenance of health care records and procedures for the periodic review and evaluation of the services furnished by the FQHC.
3. Rules for the storage, handling and administration of drugs and biologicals.

8.700.3 SERVICES

8.700.3.A The following services may be provided by a certified FQHC:

1. General services
 - a. Outpatient primary care services that are furnished by a physician, dentist, dental hygienist, physician assistant, nurse practitioner, nurse midwife visiting nurse, clinical psychologist, podiatrist, clinical social worker, licensed marriage and family therapist, licensed professional counselor, ~~or~~ licensed addiction counselor or supervised person pursuing mental health licensure as defined in their respective practice acts.
 - i. Outpatient primary care services that are furnished by a supervised person pursuing mental health therapy licensure as a licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or psychologist in the state of Colorado as defined in their respective practice acts.
 - ~~b.c.~~ Part-time or intermittent visiting nurse care.
 - ~~e.d.~~ Services and medical supplies, other than pharmaceuticals, that are furnished as a result of professional services provided under [Section 8.700.3.A.1.a](#) and b.
2. Emergency services. FQHCs furnish medical emergency procedures as a first response to common life-threatening injuries and acute illness and must have available the drugs and biologicals commonly used in life saving procedures.
3. Services provided through agreements or arrangements. The FQHC has agreements or arrangements with one or more providers or suppliers participating under Medicare or Medicaid to furnish other services to clients, including physician services (whether furnished in the hospital, the office, the client's home, a skilled nursing facility, or elsewhere) and additional and specialized diagnostic and laboratory services that are not available at the FQHC.

8.700.3.B A certified FQHC may also provide any service authorized for payment outside the per visit encounter rate by [Section 8.700.6.B](#).

8.700.4 PHYSICIAN RESPONSIBILITIES

8.700.4.A A physician shall provide medical supervision and guidance for physician assistants and nurse practitioners, prepare medical orders, and periodically review the services furnished by the clinic. A physician shall be present at the clinic for sufficient periods of time to fulfill these responsibilities and must be available at all times by direct means of communications for advice and assistance on patient referrals and medical emergencies. A clinic operated by a nurse practitioner or physician assistant may satisfy these requirements through agreements with one or more physicians.

8.700.5 ALLOWABLE COST

8.700.5.A The following types and items of cost for primary care services are included in allowable costs to the extent that they are covered and reasonable:

1. Compensation for the services of a physician, dentist, dental hygienist, physician assistant, nurse practitioner, nurse-midwife, visiting nurse, qualified clinical psychologist, podiatrist, clinical social worker, licensed marriage and family therapist, licensed professional counselor and licensed addiction counselor and licensure candidates for clinical psychologist, clinical social worker, licensed marriage and family therapist, and

| licensed professional counselor who owns, is employed by, or furnishes services under contract to an FQHC.

2. Compensation for the duties that a supervising physician is required to perform.
3. Costs of services and supplies related to the services of a physician, dentist, dental hygienist, physician assistant, nurse practitioner, nurse-midwife, visiting nurse, qualified clinical psychologist, podiatrist, clinical social worker, licensed marriage and family therapist, licensed professional counselor or licensed addiction counselor.-
4. Overhead cost, including clinic or center administration, costs applicable to use and maintenance of the entity, and depreciation costs.
5. Costs of services purchased by the clinic or center.