

Title of Rule: Revision to the Medical Assistance Health Programs Benefit Rule Concerning Pediatric Personal Care Services Rule, 10 CCR 2505-10, Section 8.535

Rule Number: MSB 15-07-29-A

Division / Contact / Phone: HPBOD / Amanda Forsythe / x6459

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 Centers for Medicare and Medicaid Services (CMS) informed the Department that it may not include protective oversight as a covered service under the Pediatric Personal Care Services benefit. In response, the Department removed the protective oversight provision from the EPSDT Personal Care Services State Plan Amendment, which was subsequently approved by CMS on June 18, 2015. This emergency rule change aligns the Pediatric Personal Care Services administrative rule with the State Plan by striking the protective oversight provision, thereby bringing the Department into compliance with CMS requirements.

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 Centers for Medicare and Medicaid Services (CMS) informed the Department that it may not include protective oversight as a covered service under the Pediatric Personal Care Services benefit. In response, the Department removed the protective oversight provision from the EPSDT Personal Care Services State Plan Amendment, which was subsequently approved by CMS on June 18, 2015. This emergency rule change aligns the Pediatric Personal Care Services administrative rule with the State Plan by striking the protective oversight provision, thereby bringing the Department into compliance with CMS requirements.

3. Federal authority for the Rule, if any:

42 U.S.C. § 1396d and 42 C.F.R. § 441, Subpart B

4. State Authority for the Rule:

C.R.S. § 25.5-1-301 through 25.5-1-303, C.R.S. (2014);
C.R.S. § 25.5-5-102(1)(g); and C.R.S. § 25.5-4-105

Initial Review

Final Adoption

Proposed Effective Date

09/11/2015

Emergency Adoption

09/11/2015

DOCUMENT #01

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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.

This rule change will impact Medicaid clients under 21 years of age, as well as providers of Pediatric Personal 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.

This rule change removes protective oversight services as a covered benefit under the Pediatric Personal Care Services rule.

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 implementation and enforcement of the proposed rule change will have no costs to the Department or any other agency. Thus, there is no anticipated effect on state revenues. The Department has notified providers and clients of this change in a series of public meetings, including the Children's Services Steering Committee and Personal Care Benefit update meetings. Based on external stakeholder feedback, the communications have been effective and seem to have addressed the concerns of providers and clients. The messaging was completed within pre-existing communications strategies and channels, with no impact on the Department budget. The Department does not foresee any additional impact.

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

The benefit of the proposed rule change is that the Department will be in compliance with Federal requirements as enforced by CMS. The Department has removed protective oversight services from the personal care benefit section of the Colorado state plan. However, CMS can still make a finding of noncompliance based on the Department's failure to actually comply with a Federal requirement, regardless of whether the state plan itself complies with that requirement. If CMS finds that Department's administration of the state plan fails to comply substantially with any of the relevant Federal requirements, CMS may withhold payments to Colorado--in whole or in part--until satisfied regarding the Department's compliance. 42 C.F.R. § 430.35.

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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 or less intrusive methods for achieving the purpose of the proposed rule change.

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 achieving the purpose of the proposed rule change, as the Department must comply with federal CMS requirements.