

Title of Rule: Revision to the Medical Assistance Health Programs Benefits and Operations Division Rule Concerning Family Planning Services Section 8.730.4 and 8.770 Abortion Services
Rule Number: MSB 14-09-16-B
Division / Contact / Phone: HPO B&O / Valerie Baker-Easley / x3684

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 Department is updating this rule to remove Abortion Services from the Family Planning rule 8.730.4 and moving it to 8.770 as a stand alone rule.

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:

§1905(a) of the Social Security Act, codified at 42 U.S.C. 1396d(a)(2); 42 CFR § 440.230 and 42 CFR § 441.200-208.

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2014);
25.5-3-106, C.R.S. (2014)

Initial Review **04/10/2015**
Proposed Effective Date **07/01/2015**

Final Adoption **05/08/2015**
Emergency Adoption

MSR

DOCUMENT #05

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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 will impact only those clients who meet federal criteria as eligible for the service and qualified medical providers of the 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.

Clearly defined and updated rules will clarify the federal mandatory requirements for coverage of abortion services, and will provide guidance to clients and providers regarding benefit coverage.

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.

This rule does not have any costs to the Department or any other agency as a result of its implementation and enforcement.

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

Clearly defined and updated rules will clarify the federal mandatory requirements for coverage of abortion services, and will provide guidance to clients and providers regarding benefit coverage. The cost of inaction would result in lack of compliance with federal law.

All of the above translates into cost savings for the state.

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 for achieving the purpose of this rule. The department must appropriately define amount, scope and duration of this benefit in order to responsibly manage it.

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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 less costly methods or less intrusive methods for achieving the purpose of this rule because the Department define the amount, scope, and duration of its benefits. The Department also documents its benefit coverage policies in written coverage standards. The benefit coverage policies must be written into rule to have the force of law.

1 **8.730.4 ABORTION SERVICES**

2 ~~8.730.4.A. Abortion services shall only be a benefit of the Colorado Medical Assistance Program~~
3 ~~when the pregnancy is causing a life-endangering circumstance or in cases of sexual~~
4 ~~assault or incest.~~

5 ~~8.730.4.B. In cases of a life-endangering circumstance, the physician must make every~~
6 ~~reasonable effort to preserve the lives of the pregnant woman and the unborn child. A~~
7 ~~licensed physician shall perform the procedure in a licensed health care facility. Such~~
8 ~~services may be performed in other than a licensed health care facility if, in the medical~~
9 ~~judgment of the physician, the life of the pregnant woman is substantially threatened and~~
10 ~~a transfer to a licensed health care facility would further endanger the life of the pregnant~~
11 ~~woman. Such medical services may be performed in other than a licensed health care~~
12 ~~facility if the medical services are necessitated by a life-endangering circumstance and if~~
13 ~~there is no licensed health care facility within a thirty-mile radius of the place where such~~
14 ~~medical services are performed.~~

15 ~~8.730.4.C. Any claim for payment must be accompanied by a case summary which includes the~~
16 ~~following information:~~

- 17 ~~1. Name, address and age of the pregnant woman;~~
- 18 ~~2. Gestational age of the unborn child;~~
- 19 ~~3. Description of the medical condition which necessitated the abortion;~~
- 20 ~~4. Services performed;~~
- 21 ~~5. Facility in which the abortion was performed; and~~
- 22 ~~6. Date of service.~~

23 ~~8.730.4.D. A claim for payment must also be accompanied by at least one of the following forms~~
24 ~~with additional supporting documentation that confirms the life-endangering~~
25 ~~circumstances:~~

- 26 ~~1. Hospital admission summary.~~
- 27 ~~2. Hospital discharge summary.~~
- 28 ~~3. Consultant findings and reports.~~
- 29 ~~4. Laboratory results and findings.~~
- 30 ~~5. Office visit notes.~~
- 31 ~~6. Hospital progress notes.~~

32 ~~8.730.4.E. An evaluation by a licensed physician specializing in psychiatry must accompany the~~
33 ~~claim for reimbursement for the abortion if a psychiatric condition represents a serious~~
34 ~~and substantial threat to the pregnant woman's life if the pregnancy continues to term.~~

35 **8.770 ABORTION SERVICES**

1 **8.770.1. Definitions**

2 Life-Endangering Circumstance means:

- 3 1. The presence of a medical condition, other than a psychiatric condition, as
4 determined by the attending physician, which represents a serious and
5 substantial threat to the life of the pregnant woman if the pregnancy continues to
6 term; or
- 7 2. The presence of a psychiatric condition, which represents a serious and substantial
8 threat to the life of the pregnant woman if the pregnancy continues to term. In
9 such cases, unless the pregnant woman has been receiving prolonged
10 psychiatric care, the attending physician shall obtain consultation from a licensed
11 physician specializing in psychiatry confirming the presence of such a psychiatric
12 condition.

13 **8.770.2. Client Eligibility**

14 8.770.2.A. All Colorado Medicaid-enrolled clients are eligible.

15 **8.770.3. Provider Eligibility**

16 8.770.3.A. All Colorado Medicaid enrolled providers in compliance with CRS § 25.5-3-106 are
17 eligible to perform abortion services.

18 **8.770.4. Covered Services**

19 8.770.4.A. Abortion services are only covered when the life of the mother would be endangered if
20 the fetus were carried to term; or when the pregnancy is the result of an act of rape or incest.

21 8.770.4.B. In cases of a life-endangering circumstance, the physician must make every
22 reasonable effort to preserve the lives of the pregnant woman and the unborn child.

23 8.770.4.C. A licensed physician shall perform the procedure in a licensed health care facility.
24 When the pregnancy substantially threatens the life of the client, and the transfer to a licensed
25 health care facility would, in the medical judgment of the attending physician, further threaten the
26 life of the client, the abortion may be provided outside of a licensed health care facility.

27 8.770.4.D. Any claim for payment must be accompanied by a case summary that includes the
28 following information:

- 29 1. Name, address, and age of the pregnant woman;
- 30 2. Gestational age of the unborn child;
- 31 3. Description of the medical condition which necessitated the abortion;
- 32 4. Services performed;
- 33 5. Facility in which the abortion was performed; and
- 34 6. Date of service.

1 8.770.4.E. A claim for payment for an abortion that is the result of life-endangering circumstances
2 must also be accompanied by at least one of the following forms with additional supporting
3 documentation that confirms the life-endangering circumstances:

4 1. Hospital admission summary

5 2. Hospital discharge summary

6 3. The findings and reports from consultants that provide opinions regarding the
7 health of the client

8 4. Laboratory results and findings

9 5. Office visit notes

10 6. Hospital progress notes

11 8.770.4.F. A claim for payment for an abortion that is the result of rape or incest must be
12 accompanied by a Department-approved certification statement confirming the circumstances of
13 the abortion.

14 8.770.4.G. An evaluation by a licensed physician specializing in psychiatry must accompany the
15 claim for reimbursement for the abortion if a psychiatric condition represents a serious and
16 substantial threat to the pregnant woman's life if the pregnancy continues to term.

17 **8.770.5. Prior Authorization Requirements (PAR)**

18 8.770.5.A. Prior authorization is not required for this service.