

Title of Rule: Revision to the Medical Assistance Health Programs Benefits Management Rule Concerning Family Planning, Section 8.730  
Rule Number: MSB 14-10-15-B  
Division / Contact / Phone: Health Programs Benefits and Operations / Melanie Reece / x3693

## 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 which will be placed in its own rule under 8.770; remove hysterectomy and place it in the new women's health rule under 8.731; and reformat the existing family planning services 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 Part 50, Subpart B; 42 CFR § 440.230.

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2014);  
25.5-10-231 and 25.5-10-232, C.R.S. (2014)

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

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

**MSR**  
**DOCUMENT #09**

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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 clients and providers of Family Planning 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 improve client access to appropriate, high quality, cost-effective and evidence-based services while improving the health outcomes of Medicaid clients. Established criteria within rule will provide guidance to clients and providers regarding benefit coverage. For example, this rule explicitly and clearly defines the requirements for giving informed consent for sterilization. Given the nature of this procedure, it is important that clients and providers are fully aware of the nature and consequences associated with this procedure.

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 increase client access to appropriate services and allow the Department to administer benefits in compliance with federal and state regulations, as well as clinical best practices and quality standards. Defining this benefit in rule will educate clients about their benefits and provide better guidance to service providers. The cost of inaction could result in decreased access to services, poor quality of care, and/or lack of compliance with state and federal guidance.

All of the above translates into appropriate cost-effective care administered by the state.

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

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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.

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 also documents its benefit coverage policies in written coverage standards. The benefit coverage policies must be written into rule to have the force of rule.

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## 8.730 FAMILY PLANNING SERVICES

### 8.730.1 DEFINITIONS

Family Planning Services means physical examinations, diagnoses, treatments, supplies, prescriptions and follow-up services provided to individuals of child-bearing age, including minors who can be considered to be sexually active, in a physician's office, physician's clinic, outpatient or inpatient hospital setting, family planning provider, Federally Qualified Health Center, Rural Health Clinic or a Colorado Department of Health and Environment facility.

Institutionalized Individual means an individual who is (a) involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of a mental illness; or (b) confined, under a voluntary commitment in a mental hospital or other facility for the care and treatment of mental illness.

Life-Endangering Circumstance means:

1. The presence of a medical condition, other than a psychiatric condition, as determined by the attending physician, which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term; or

2. The presence of a psychiatric condition, which represents a serious and substantial threat to the life of the pregnant woman if the pregnancy continues to term. In such cases, unless the pregnant woman has been receiving prolonged psychiatric care, the attending physician shall obtain consultation from a licensed physician specializing in psychiatry confirming the presence of such a psychiatric condition.

Mentally Incompetent Individual means an individual who has been declared mentally incompetent by a federal, state or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes that include the ability to consent to sterilization.

Sterilization means any medical procedure, treatment or operation (except for a hysterectomy) for the purpose of rendering an individual permanently incapable of reproducing and requires informed consent.

### 8.730.2 STERILIZATION

8.730.2.A. Sterilization may be provided as a benefit of the Colorado Medical Assistance Family Planning benefit when the individual has voluntarily given written informed consent and at least 30 days, but no more than 180 days have passed between the date of informed consent and the date of sterilization.

8.730.2.B. The time limitations in 8.730.2A do not apply in the case of premature delivery or emergency abdominal surgery, if at least 72 hours have passed since the date of consent. In the case of premature delivery, the informed consent must have been given at least 30 days before the expected date of delivery.

8.730.2.C. Sterilization is not a Colorado Medical Assistance Family Planning benefit for an individual who is under the age of 21, mentally incompetent, or institutionalized.

1       ~~8.730.2.D. An individual shall have given informed consent for sterilization when the person~~  
2 ~~to whom consent was given offered to answer any questions concerning the procedure, provided~~  
3 ~~a copy of the consent form, obtained a signed copy of the consent form and orally provided the~~  
4 ~~following information:~~

5       ~~1. The individual is free to withhold or withdraw consent to the procedure at any time before~~  
6 ~~the sterilization without affecting the right to future care or treatment and without loss or~~  
7 ~~withdrawal of any federally funded program benefits to which the individual might otherwise be~~  
8 ~~entitled.~~

9       ~~2. A description of available alternative methods of family planning and birth control.~~

10       ~~3. The sterilization procedure is considered to be irreversible.~~

11       ~~4. An explanation of the specific sterilization procedure to be performed.~~

12       ~~5. A description of the discomforts and risks that may accompany or follow the sterilization~~  
13 ~~procedure including an explanation of the type and possible effects of any anesthetic to be used.~~

14       ~~6. A description of the benefits or advantages that may be expected as a result of the~~  
15 ~~sterilization.~~

16       ~~7. The sterilization will not be performed for at least 30 days from consent except under the~~  
17 ~~circumstances specified in 8.730.2.B.~~

18       ~~8.730.2.E. Arrangements shall be made to ensure the information specified in 8.730.2.D is~~  
19 ~~effectively communicated to any individual who is blind, deaf or otherwise handicapped.~~

20       ~~8.730.2.F. An interpreter shall be provided if the individual to be sterilized does not~~  
21 ~~understand the language used on the consent form or the language used by the person obtaining~~  
22 ~~consent.~~

23       ~~8.730.2.G. The individual to be sterilized may have a witness of his or her choice present~~  
24 ~~when consenting to the procedure.~~

25       ~~8.730.2.H. The consent form requirements of 8.730.2.J shall be met.~~

26       ~~8.730.2.I. Informed consent for sterilization cannot be obtained when an individual is:~~

27       ~~1. In labor or childbirth;~~

28       ~~2. Seeking to obtain or obtaining an abortion; or~~

29       ~~3. Under the influence of substances that impair the individual's decision making capabilities.~~

30       ~~8.730.2.J. A sterilization consent form shall be signed and dated by:~~

31       ~~1. The individual to be sterilized;~~

32       ~~2. The interpreter, if one was provided;~~

33       ~~3. The person who obtained the consent; and~~

34       ~~4. The physician who will perform the sterilization procedure.~~

35       ~~8.730.2.K. If an interpreter is provided, the interpreter shall, by signing the consent form,~~  
36 ~~certify that he or she translated the information presented orally, read the consent form and~~  
37 ~~explained its contents to the individual and that to the best of the interpreter's knowledge the~~  
38 ~~individual understood the information provided.~~

1 ~~8.730.2.L. The person who obtained the consent shall, by signing the consent form, certify~~  
2 ~~that he or she provided the individual with all of the information set forth in 8.730.2.D above and~~  
3 ~~to the best of his or her knowledge, the individual appeared mentally competent, and knowingly~~  
4 ~~and voluntarily consented to be sterilized.~~

5 ~~8.730.2.M. The physician performing the sterilization shall, by signing the consent form,~~  
6 ~~certify that:~~

7 ~~1. He or she provided the individual with all of the information set forth in 8.730.2.D above.~~

8 ~~2. To the best of his or her knowledge the individual appeared mentally competent, and~~  
9 ~~knowingly and voluntarily consented to be sterilized.~~

10 ~~3. Except in the case of premature delivery or emergency abdominal surgery, the physician~~  
11 ~~shall further certify that at least 30 days have passed between the date of the individual's~~  
12 ~~signature on the consent form and the date upon which the sterilization was performed.~~

13 ~~a. In the case of premature delivery or emergency abdominal surgery performed within 30~~  
14 ~~days of consent, the physician shall certify that the sterilization was performed less than 30 days,~~  
15 ~~but more than 72 hours after informed consent was obtained because of premature delivery or~~  
16 ~~emergency abdominal surgery, and~~

17 ~~b. In the case of premature delivery, shall state the expected date of delivery, or~~

18 ~~c. In the case of abdominal surgery, shall describe the emergency.~~

### 19 ~~8.730.3 HYSTERECTOMIES~~

20 ~~8.730.3.A. A hysterectomy is a benefit of the Colorado Medical Assistance Program when~~  
21 ~~performed solely for medical reasons and when the following conditions are met:~~

22 ~~1. The person who secures the authorization to perform the hysterectomy has informed the~~  
23 ~~individual or her representative if any, orally and in writing that the hysterectomy will render the~~  
24 ~~individual permanently incapable of reproducing; and;~~

25 ~~2. The individual or her representative, if any, has acknowledged in writing receiving that~~  
26 ~~information.~~

27 ~~8.730.3.B. The fiscal agent for the Medical Assistance Program shall be provided with a copy~~  
28 ~~of that written acknowledgment. The acknowledgement must be received before reimbursement~~  
29 ~~for any services related to the procedure will be made.~~

30 ~~8.730.3.C. Hysterectomy is not a benefit of the Medical Assistance Program when:~~

31 ~~1. It is performed solely for the purpose of rendering an individual permanently incapable of~~  
32 ~~reproducing; or~~

33 ~~2. There was more than one purpose to the procedure and the hysterectomy would not have~~  
34 ~~been performed but for the purpose of rendering the individual permanently incapable of~~  
35 ~~reproducing.~~

36 ~~8.730.3.D. A written acknowledgment of sterility from the recipient is not required if the~~  
37 ~~following circumstances exist:~~

38 ~~1. The individual is already sterile at the time of the hysterectomy; or~~

1       2. The individual requires a hysterectomy because of a life-threatening emergency in which  
2 the physician determines prior acknowledgement is not possible.

3       8.730.3.E. If an acknowledgement of sterility is not required because of the above  
4 exceptions, the physician who performs the hysterectomy must certify in writing either

5       1. The individual was already sterile, stating the cause of that sterility; or

6       2. The hysterectomy was performed under a life-threatening emergency situation in which  
7 the physician determined prior acknowledgement was not possible. The physician must include a  
8 description of the emergency.

9       8.730.3.F. The fiscal agent must receive the physician's certification before reimbursement  
10 for the services will be made.

#### 11       8.730.4 ABORTION SERVICES

12       8.730.4.A. Abortion services shall only be a benefit of the Colorado Medical Assistance  
13 Program when the pregnancy is causing a life-endangering circumstance or in cases of sexual  
14 assault or incest.

15       8.730.4.B. In cases of a life-endangering circumstance, the physician must make every  
16 reasonable effort to preserve the lives of the pregnant woman and the unborn child. A licensed  
17 physician shall perform the procedure in a licensed health care facility. Such services may be  
18 performed in other than a licensed health care facility if, in the medical judgment of the physician,  
19 the life of the pregnant woman is substantially threatened and a transfer to a licensed health care  
20 facility would further endanger the life of the pregnant woman. Such medical services may be  
21 performed in other than a licensed health care facility if the medical services are necessitated by  
22 a life-endangering circumstance and if there is no licensed health care facility within a thirty-mile  
23 radius of the place where such medical services are performed.

24       8.730.4.C. Any claim for payment must be accompanied by a case summary which includes  
25 the following information:

26       1. Name, address and age of the pregnant woman;

27       2. Gestational age of the unborn child;

28       3. Description of the medical condition which necessitated the abortion;

29       4. Services performed;

30       5. Facility in which the abortion was performed; and

31       6. Date of service.

32       8.730.4.D. A claim for payment must also be accompanied by at least one of the following  
33 forms with additional supporting documentation that confirms the life-endangering circumstances:

34       1. Hospital admission summary.

35       2. Hospital discharge summary.

36       3. Consultant findings and reports.

37       4. Laboratory results and findings.

38       5. Office visit notes.

1 ~~6. Hospital progress notes.~~

2 ~~8.730.4.E. An evaluation by a licensed physician specializing in psychiatry must accompany~~  
3 ~~the claim for reimbursement for the abortion if a psychiatric condition represents a serious and~~  
4 ~~substantial threat to the pregnant woman's life if the pregnancy continues to term.~~

5 **8.730 FAMILY PLANNING SERVICES**

6 **8.730.1 Definitions**

7 **Family Planning Services** mean those services provided to individuals of child-bearing age,  
8 including sexually active minors, with the intent to delay, prevent, or plan for a pregnancy. Family  
9 Planning Services may include physical examinations, diagnoses, treatments, counseling,  
10 supplies (including all FDA-approved contraceptives, with the exception of spermicides and  
11 female condoms), prescriptions, and follow-up services.

12 **Institutionalized Individual** means an individual who is (a) involuntarily confined or detained,  
13 under a civil or criminal statute, in a correctional or rehabilitative facility (including a mental  
14 hospital or other facility) for the care and treatment of a mental illness; or (b) confined, under a  
15 voluntary commitment in a mental hospital or other facility, for the care and treatment of a mental  
16 illness.

17 **Mentally Incompetent Individual** means an individual who has been declared mentally  
18 incompetent by a federal, state, or local court for any purpose, unless the individual has been  
19 declared competent for purposes that include the ability to consent to sterilization.

20 **Sterilization** means any medical procedure, treatment, or operation (except for a hysterectomy)  
21 for the purpose of rendering an individual permanently incapable of reproducing and that requires  
22 informed consent.

23 **8.730.2 Client Eligibility**

24 8.730.2.A. All Medicaid clients of childbearing age are eligible for family planning services.

25 **8.730.3 Provider Eligibility**

26 8.730.3.A. The following Medicaid enrolled providers may offer family planning services:

27 1. Physician

28 2. Osteopath

29 3. Nurse Practitioner

30 4. Certified Nurse-Midwife

31 5. Physician Assistant

- 1           6. Clinical Nurse Specialist
- 2           7. Certified Registered Nurse Anesthetist
- 3           8 .Family Planning Clinic
- 4           9 .Public Health Agency
- 5           10 .Non-physician Practitioner Group

6   8.730.3.B. Eligible places of service include:

- 7           1. Office
- 8           2. Clinic
- 9           3. Family Planning Clinic
- 10          4. Public Health Agency
- 11          5. Home
- 12          6. School
- 13          7. School-based Health Center
- 14          8. Federally Qualified Health Center
- 15          9. Rural Health Center
- 16          10. Hospital
- 17          11. Ambulatory Surgery Center

18   **8.730.4 Covered Services**

19   8.730.4.A. Office Visits

- 20          1.       A comprehensive, annual family planning visit is covered only once per state
- 21            fiscal year, no less than ten months apart, and may include: physical examinations,
- 22            diagnoses, treatments, counseling, supplies, contraceptives and, prescriptions, and
- 23            Additional follow-up visits and services are covered when medically necessary.

24   8.730.4.B. Sterilization

- 25          1.       Sterilization is covered for a client who is:
- 26            a.      21 years of age or older;

- 1           b. Is mentally competent;
- 2           c. Is not institutionalized; and
- 3           d. Has given written informed consent where at least one of the following conditions  
4           apply:
  - 5               i. At least 30 days, but no more than 180 days have passed between the  
6               date of informed consent and the date of sterilization;
  - 7               ii. In the case of premature delivery, the informed consent must have been  
8               given at least 30 days before the expected date of delivery and at least  
9               72 hours have passed since the date of informed consent; or
  - 10              iii. In the case of emergency abdominal surgery, at least 72 hours have  
11              passed since the date of informed consent.
- 12          2. A client with an intellectual and developmental disability is protected under  
13          C.R.S. 25.5-10-231 and C.R.S. 25.5-10-232 with respect to sterilization rights and  
14          competency to give consent for sterilization.
  - 15              a. The above statutes are applicable except for clients aged between eighteen  
16              and twenty-one years. For any signed sterilization consent to be considered  
17              valid, any client, including those with an intellectual and developmental  
18              disability, is required to be 21 years or older.

19   8.730.4.C. Contraceptives

- 20          1. All FDA-approved contraceptives, including emergency contraceptives, are a  
21          covered benefit (with the exclusion of spermicides and female condoms).

22   **8.730.5 Documentation**

23   8.730.5.A. Services

- 24          1. For family planning services and supplies, the provider shall document the  
25          intention of the service as it relates to delay, prevention, or for planning a pregnancy.

26   8.730.5.B. Sterilization Consent Form

- 27          1. Submission of a valid signed sterilization consent form is required prior to  
28          reimbursement. The sterilization consent form shall be signed and dated by:
  - 29              a. The client to be sterilized;
  - 30              b. The interpreter, if one was provided;
  - 31              c. The person who obtained the consent; and

- 1           d.       The physician who will perform the sterilization procedure.
- 2           2.       If an interpreter is provided, the interpreter shall, by signing the consent form,  
3           certify that he or she translated the information presented orally, read the consent  
4           form and explained its contents to the client, and that, to the best of the interpreter's  
5           knowledge, the client understood the information provided.
- 6           3.       The person who obtained the consent shall, by signing the consent form, certify  
7           that he or she provided the client with all of the information set forth in 8.730.5.B.6.  
8           and, to the best of his or her knowledge, the client appeared mentally competent, and  
9           knowingly and voluntarily consented to be sterilized.
- 10          4.       The physician performing the sterilization shall, by signing the consent form,  
11          certify that:
  - 12           a.       He or she provided the client with all of the information set forth in  
13           8.730.5.B.6;
  - 14           b.       To the best of his or her knowledge the client appeared mentally  
15           competent, and knowingly and voluntarily consented to be sterilized;
  - 16           c.       Except in the case of premature delivery or emergency abdominal  
17           surgery, the physician shall further certify that at least 30 days but less than  
18           180 days have passed between the date of the client's signature on the  
19           consent form and the date upon which the sterilization was performed;
  - 20           d.       In the case of premature delivery or emergency abdominal surgery  
21           performed within 30 days of consent, the physician shall certify that the  
22           sterilization was performed less than 30 days, but more than 72 hours, after  
23           informed consent was obtained because of premature delivery or emergency  
24           abdominal surgery; and,
  - 25           e.       In the case of premature delivery, the physician shall state the expected  
26           date of delivery, or in the case of emergency abdominal surgery, the  
27           physician shall describe the emergency.
- 28          5.       Informed consent for sterilization cannot be obtained when a client is:
  - 29           a.       In labor or childbirth;
  - 30           b.       Seeking to obtain or obtaining an abortion; or
  - 31           c.       Under the influence of substances that impair the individual's decision  
32           making capabilities.
- 33          6.       Informed consent is valid only when the client has been offered and given:
  - 34           a.       Answers to any questions concerning the procedure;

- 1           b.     A copy of the consent form;
- 2           c.     A copy of the signed consent form; and,
- 3           d.     Orally provided the following information:
  - 4               i.     The ability to withhold or withdraw consent to the procedure at any time
  - 5               6             before the sterilization without affecting the right to future care or
  - 7               7             treatment and without loss or withdrawal of any federally funded program
  - 8               8             benefits to which the client might otherwise be entitled.
  - 9               9
  - 10              ii.    A description of available alternative methods of family planning and birth
  - 11              10           control.
  - 12              11           iii.   That the sterilization procedure is considered to be irreversible.
  - 13              12           iv.    An explanation of the specific sterilization procedure to be performed.
  - 14              13           v.     A description of the discomforts and risks that may accompany or follow
  - 15              14           the sterilization procedure including an explanation of the type and
  - 16              15           possible effects of any anesthetic to be used.
  - 17              16           vi.    A description of the benefits or advantages that may be expected as a
  - 18              17           result of the sterilization.
  - 19              18           vii.   That the sterilization will not be performed for at least 30 days but less
  - 20              19           than 180 days from consent except under the circumstances specified in
  - 21              20           8.730.4.B.1.d.ii, or 8.730.4.B.1.d.iii.
  - 22              21           7.     The consent is not valid unless the information specified in 8.730.5.B.6. is
  - 23              22           effectively communicated to any client who is blind, deaf, or otherwise disabled.
  - 24              23           8.     An interpreter shall be provided if the client to be sterilized does not understand
  - 25              24           the language used on the consent form or the language used by the person obtaining
  - 26              25           consent.
  - 27              26           9.     The client to be sterilized may have a witness of his or her choice present when
  - 27           consenting to the procedure.

27   **8.730.5. Non-covered Services**

28   8.730.5.A. The following services are not benefits for Medicaid clients:

- 29           1. Spermicide
- 30           2. Female Condoms
- 31           3. Sterilization reversal

1 4. Infertility treatment and testing

2 **8.730.6. Prior Authorization**

3 8.730.6.A. Prior authorization is not required for family planning services.

4 **8.730.7. Reimbursement**

5 8.730.7.A. Reimbursement for family planning services requires an appropriate Family Planning  
6 diagnostic code along with use of the family planning (FP) modifier.

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