

Title of Rule: Revision to the Medical Assistance Rule concerning COVID-19 Suspension of Annual Recertification for Long Term Oxygen Certificate of Medical Necessity
Rule Number: MSB 20-04-27-A
Division / Contact / Phone: Health Programs Office / Russ Zigler / 303-866-5927

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).

For the duration of the Coronavirus Disease 2019 (COVID-19) public health emergency, the Department is suspending the requirement to recertify the Certificate of Medical Necessity (CMN) for clients receiving long-term oxygen therapy every twelve months. A CMN recertification will be required for such clients as soon as practicable after the COVID-19 public health emergency has ended. The purpose of the rule is to reduce the risk of exposure to COVID-19 for clients who would otherwise be required to see a physician, or other licensed professional responsible for their care, to obtain the annual CMN recertification.

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:

Suspending the annual Certificate of Medical Necessity (CMNS) recertification requirement for clients on long term oxygen therapy, and thereby reducing the risk of exposure to COVID-19 for clients who would otherwise be required to see a physician, or other licensed professional responsible for their care, to obtain the required CMN recertification, is imperatively necessary for the preservation of public health, safety, and welfare.

3. Federal authority for the Rule, if any:

Families First Coronavirus Response Act, 416 P.L. 127, § 6008 (2020); 42 C.F.R. 440.70(b)(3) (2020)

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2019);
Section 25.5-4-416 (2019)

Initial Review
Proposed Effective Date

5/8/2020

Final Adoption
Emergency Adoption

5/8/2020

DOCUMENT #15

Title of Rule: Revision to the Medical Assistance Rule concerning COVID-19
Suspension of Annual Recertification for Long Term Oxygen Certificate
of Medical Necessity
Rule Number: MSB 20-04-27-A
Division / Contact / Phone: Health Programs Office / Russ Zigler / 303-866-5927

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.

Clients receiving long term oxygen therapy are affected by the proposed rule and will benefit from this rule. There are no anticipated costs to this 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 qualitative impact of the proposed rule is clients normally required to recertify their Certificate of Medical Necessity for long term oxygen therapy will not be required to recertify for the duration of the COVID-19 public health emergency. Such clients must recertify the CMN as soon as practicable after the COVID-19 public health emergency ends, as declared by the governor of Colorado.

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 anticipated costs to the Department or to any other agency to implement or enforce the proposed rule. There is no anticipated effect on state revenues.

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

There are no probable costs of the proposed rule. The benefit of the proposed rule is reducing the risk of exposure to COVID-19 for clients who would normally be required to visit a physician, or other licensed professional responsible for their care, in order to obtain their annual CMN recertification. There are no benefits of inaction. The cost of inaction is potential increased risk of COVID-19 exposure to clients receiving long term oxygen therapy.

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 to achieve the purpose of the proposed rule.

Title of Rule: Revision to the Medical Assistance Rule concerning COVID-19
Suspension of Annual Recertification for Long Term Oxygen Certificate
of Medical Necessity

Rule Number: MSB 20-04-27-A

Division / Contact / Phone: Health Programs Office / Russ Zigler / 303-866-5927

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 to remove the requirement that clients on long term oxygen therapy obtain their annual CMN recertification.

1 **8.580.5.C. Long Term Oxygen Therapy Certificate of Medical Necessity**

2 1. Long Term Oxygen Therapy may be provided to clients for greater than ninety days with
3 a prescription from an OPR provider identified in Section 8.580.3.A and a Certificate of
4 Medical Necessity.

5 a. The Certificate of Medical Necessity must:

6 i. Be obtained by the rendering provider within one hundred twenty days of
7 the client beginning oxygen therapy;

8 ii. Be signed by a physician or licensed professional responsible for care of
9 the client, which includes the medical director of a Nursing Facility;

10 iii. Include the most recent blood gas study or oxygenation assessment,
11 obtained within thirty days of the initial oxygen provision date on the
12 Certificate of Medical Necessity.

13 b. Recertification of the CMN required under Section 8.580.5.C.1 is required every
14 twelve months or when the client's condition changes, whichever comes first.
15 The Pursuant to Public Law 116-127, the Families First Coronavirus Response
16 Act, § 6008, continued coverage of oxygen is required during the Coronavirus
17 Disease 2019 (COVID-19) public health emergency as it was covered prior the
18 emergency. For the duration of the COVID-19 public health emergency, the CMN
19 recertification required every twelve months under this section, and the
20 requirement for annual review pursuant to 42 C.F.R. 440.70(b)(3)(iii), is
21 suspended. Clients must obtain recertification as soon as practicable after the
22 COVID-19 public health emergency ends, as declared by the President of the
23 United States on March 13, 2020, and every twelve months thereafter.

24 i. Clients certified for twenty-four consecutive months no longer require a
25 Certificate of Medical Necessity for oxygen, but still require a
26 documented annual review pursuant to 42 C.F.R. 440.70(b)(3)(iii).
27 Documented annual reviews include a renewed prescription for oxygen
28 or other medical record documentation.

29 2. Suppliers must have a completed and current Certificate of Medical Necessity on file to
30 support claims for oxygen therapy and oxygen equipment for non-ventilator dependent
31 clients aged twenty and older requiring long term oxygen therapy lasting ninety days or
32 more. For clients certified for twenty-four consecutive months, the most recent certified
33 Certificate of Medical Necessity must be on file.

34