



## COLORADO

Department of Health Care  
Policy & Financing

Medical Services Board

### MINUTES OF THE MEETING OF THE MEDICAL SERVICES BOARD

303 East 17th Avenue 11th Floor Conference Room, Denver, CO 80203

November 8, 2019

#### Call to Order

Ms. Moorer called the meeting to order at 9:03 a.m.

#### Roll Call

The Board Coordinator called the roll. There were sufficient members for a quorum with ten members participating.

#### Members Present

Christy Blakely, Cecile Fraley, Patricia Givens, Simon Hambidge, Bregitta Hughes, Jessica Kuhns, Charolette Lippolis, Amanda Moorer, An Nguyen and David Pump.

#### Members Excused

Donna Roberts

#### Staff Present

Tracy Johnson, Medicaid Director; Jennifer Weaver, Attorney General; and Chris Sykes, Board Coordinator

#### Announcements

Ms. Moorer announced the next Medical Services Board Meeting will be held at 303 East 17th Avenue 11th Floor Conference Room, Denver, CO 80203 on Friday, December 13, 2019 at 9:00 a.m.

It is the policy of this Board and the Department to remind everyone in attendance that this facility is private property. Please do not block the doors or stand around the edges of the room. Please silence cell phones while in the meeting room.

#### Approval of Minutes

Ms. Kuhns moved for the approval of the October minutes. The motion was seconded by Dr. Hambidge. The minutes were approved, 7:0:2.



## Rules

### A. Emergency Adoption Agenda

Document 10, MSB 19-10-25-A, Revision to the Medical Assistance Rule concerning In-Home Support Services Definitions, Section 8.552.1

Erin Thatcher, Benefits and Services Management Division, presented the rule and explained the revisions pertain to the definitions section as required by the Office of Legislative Legal Services to align the rule with statute.

Board Discussion – NA.

Public Testimony – Betsy Murray – Home Care Association of Colorado - provided testimony regarding Document 06 regarding the inclusion of unemployment insurance.

David Bolin – Accent on Independence – support changes to the rule.

Dr. Lippolis moved for the emergency adoption of Document 10. Dr. Nguyen seconded the motion.

The Board voted the emergency adoption of Document 10, 10:0.

### B. Consent Adoption Agenda

Document 01, MSB 19-07-02-A, Revision to the Medical Assistance Rule concerning HCBS Benefit Home Accessibility Adaptations for the CES and SLS Waivers, Sections 8.500.94.B.6 and 8.503.40.A.5

Document 03, MSB 19-07-24-A, Revision to the Medical Assistance Rule concerning Home and Community Based Services for the Elderly Blind and Disabled, 8.485; Life Skills Training, Home Delivered Meals, Peer Mentorship, and Transition Setup, 8.553

Document 04, MSB 19-08-05-A, Revision to the Medical Assistance Rule concerning MAGI Medical Assistance rule updates, Sections 8.100.1, 8.100.3 and 8.100.4

Dr. Hambidge moved for the final adoption of Document 01, 03 & 04. Dr. Givens seconded the motion.

The Board voted the final adoption of Documents 01, 03 & 04, 10:0.

### C. Final Adoption Agenda

Document 02, MSB 19-08-13-B, Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Residential Habilitation and Individual Residential Services and Supports (IRSS), Section 8.609

Cassandra Keller, Benefits and Services Management Division, presented the rule and explained revisions to the initial presentation incorporated stakeholder feedback received. A review of the changes was provided.

Board Discussion – NA

Public Testimony – Ellen Jensby - Alliance – appreciate work with staff.

Dr. Givens moved for the final adoption of Document 02. Ms. Kuhns seconded the motion.

The Board voted the final adoption of Document 02, 10:0.

Document 05, CHP 19-07-03-A, Revision to the Child Health Plan Plus Rule concerning Prenatal Dental, Section 210w

Russ Zigler, Operations Section, presented the rule and explained revisions align the rule with the legislation passed last May.

Board Discussion – NA

Public Testimony – NA

Dr. Nguyen moved for the final adoption of Document 05. Dr. Hambidge seconded the motion.

The Board voted the final adoption of Document 05, 10:0.

Document 06, MSB 19-08-02-A, Revision to the Medical Assistance Rule concerning Increase of the Reimbursement Rate Reserved for Compensation of Direct Care Workers, Section 8.507

Erin Thatcher, Benefits and Services Management Division, Anthony Howard, Financial Monitoring Unit, presented the rule and explained the rule ensures agencies pass through as required by SB 238. A review of SB 238 reporting was given and how it aligns with HB 1407 requirements.

Board Discussion – Board discussion included that unemployment insurance is also not included in HB 1407 as pass through and the inclusions listed in rule.

Public Testimony – David Bolin – Alliance – support the rule with caveat – explained the history of the HB1407 discussion at the legislature. The submittal of accounting records is an over step. Records are only used in case of an audit – much like the IRS.

Lorin Chevalier – People Care Health Services – agree with the spirit of the rule. 2 areas of concern, the noninclusion of unemployment insurance and the potential privacy issue with records being released. The records retained are not public.

Melissa Benjamin – Colorado Care Workers – address concerns of SB 238 and explained why unemployment insurance is not included.

Mr. Pump moved for the final adoption of Document 06. Ms. Kuhns seconded the motion.

The Board voted the final adoption of Document 06, 10:0.

Document 07, MSB 19-08-13-A, Revision to the Medical Assistance Rule Concerning Hospital Expenditure Report Data Collection, Section 8.4000

Rebecca Parrott & Nancy Dolson, Special Financing Division, presented the rule and provided a review of the legislation and rule. Changes from the initial presentation are Attorney General suggested revisions.

Board Discussion – NA

Public Testimony – NA

Ms. Kuhns moved for the final adoption of Document 07. Dr. Nguyen seconded the motion.

The Board voted the final adoption of Document 07, 10:0.

#### **D. Initial Approval Agenda**

Document 08, MSB 19-09-04-A, Revision to the Medical Assistance Rule concerning Case Management Section Modifications, Sections 8.500.1, 8.500.90, 8.503,8.503.160.E, 8.519

Heather Fladmark, Conflict Free Case Mangement Section, presented the rule and explained rule revisions reflect changes to definitions for clarity and consistency.

Board Discussion – Board discussion included an appreciation of the work on the rule.

Public Testimony - NA

Dr. Lippolis moved for the initial approval of Document 08. Mr. Pump seconded the motion.

The Board voted the initial approval of Document 08, 10:0.

Document 09, MSB 18-10-18-A, Revision to the Medical Assistance Rule Concerning Pooled Trusts, Section 8.100.7.E.6.c

David Smith & Tiffany Walker, Third party Liability & Recovery Section, presented the rule and explained background information on Medicaid trusts. Revisions to the rule request a 50% retainment by HCPF of the remainder, 23 states have

rules. A review of the stakeholder engagement, discussion of comprises presented.

Board Discussion – Board discussion included a review of the court case as an issue and also the stakeholder engagement performed. Eligibility of individuals over the age of 65 was also discussed.

Public Testimony – Susie Germany – elder law attorney –questioned the authority the Department has regarding the proposed revisions.

Eric Kelley – elder law attorney – oppose the rule as it is appropriate for the legislature and not the Department. Current statute allows for 100% retainment by trusts.

Shari Caton – elder law attorney – questioned why the Department is moving forward now as statute allows for 100% retention by trust. A history of the litigation was provided.

Carl Gladstein – elder law attorney – provided a personal example – oppose the rule as there is no authority.

Sandra Sigler – elder law attorney – echo previous comments, oppose the rule and request the rule not go forward.

Kelsey Lesco – Disability Law Colorado – oppose the rule as current state statute and federal law allows 100% retainment.

Eric Solem – elder law attorney – oppose the rule as there is no authority.

Arlene Berringer – elder law attorney – oppose the rule – a review of the master trust agreement, as approved by Medicaid was done. There is no authority as Colorado statute allows 100% retainment.

Megan Brand – Executive Director of Colorado Fund for People with Disabilities – a review of the charitable work done by CFPD was given, including case

management and supporting IDD individuals experiency homelssness. Opposed to proposed rule revisions. Proposed revisions impact 1200 people.

### **10 minute break**

Heidi Haines – ARC of CO – for individuals over 65 with IDD, pooled trusts are invaluable.

Hal Wright – Director of Colorado Fund for People with Disabilities – a review of bank limit on trusts was given and how CFPD fills a need for median income trusts.

Scott Christian – Guardianship Association – personal story – exclusion of over 65 not fair.

Frank Baysore – CFPD – rule adversely affects individuals – provided a personal example. A review of the charitable work through a personal story.

Christoper Brock – Colorado Cross-Disability Coaltion – CFPD charitable fund work is good for the disabled community.

Peter Wall – Fidicuary Services – CFPD charitable work was reviewed. The impact on businesses was reviewed.

Eilileen Doherty – Gerontological Society – oppose rule revisions. A personal story of an individual was shared.

Ryan Zeiger – Personal Assistance Colorado – a review of CFPD charitable work was given, help navigating stressful situations. A statement of a parent thankful for CFPD was read.

Board comments – appreciate the testimony provided at the meeting and expressed confusion regarding the lack of stakeholder comments. A discussion on the legality of the rule was held with Jen Weaver stating the Attorney General

Office reviews all rules for compliance and rulemaking before presentation to MSB. More harm done passing the rule than not passing.

The Department pulled the rule.

#### **E. Consent**

Mr. Pump moved to add Documents 08 to the Consent Agenda. Dr. Lippolis seconded the motion.

The Board voted approval, 9:0.

#### **F. Closing Motion**

Dr. Nguyen moved to close the rules portion of the agenda. The motion was seconded by Ms. Kuhns. The Board voted to close the rules portion of the agenda, 9:0.

### **Open Comments**

### **Department Updates**

Department Updates/Questions – Tracy Johnson, Medicaid Director

#### **The meeting was adjourned at 12:32 p.m.**

The next scheduled meeting of the Medical Services Board is at 9:00 a.m. on Friday, December 13, 2019 at 303 East 17th Avenue 11th Floor Conference Room, Denver, CO 80203.

Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator at 303- 866-4416 or [chris.sykes@state.co.us](mailto:chris.sykes@state.co.us) or the 504/ADA Coordinator [hcpf504ada@state.co.us](mailto:hcpf504ada@state.co.us) at least one week prior to the meeting.