Title of Rule: Revision to the Medical Assistance Rule concerning Federally Qualified Health Center Reimbursement, Section 8.700.6
Rule Number: MSB 21-05-10-A
Division / Contact / Phone: Rates Division / Erin Johnson / 4370

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 purpose of this rule revision is to adjust the FQHC rate setting process to consider the changes in utilization and cost due to Covid-19. The pandemic has caused utilization to drop at FQHCs and costs have changed as well. To avoid setting unreasonable rates, this rule revision will set rates for FQHC cost reports with fiscal year ends between May 31, 2021 and March 31, 2022 using the previous year's rates multiplied 2.7%. The previous year's rates set using cost reports with fiscal year ends between May 31, 2020 and March 31, 2021 were set using the previous year's rates multiplied by the Medicare Economic Index (MEI).

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:

   42 U.S.C.A § 1396a(bb).

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   Sections 25.5-5-408(1)(d), C.R.S. (2021)

Initial Review	**06/11/21**	Final Adoption	**08/13/21**
Proposed Effective Date	**10/10/21**	Emergency Adoption	

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.

   Federally Qualified Health Centers will be impacted by this rule. This rule revision will set reasonable FQHC rates for time periods where costs and visits were dramatically impacted by the Covid-19 pandemic. FQHCs will benefit from this rule because their rates will neither skyrocket nor drop due to the extreme changes caused by the pandemic.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   FQHC rates will increase by 2.7%. FQHC rates usually increase annually by an overall average of 2.3% per year. However, due to Covid-19 related changes to cost and utilization, the Department believes 2.7% is a more reasonable increase.

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 revision will impact the Department and State revenues. Instead of having unpredictable and potentially very high FQHC rates, we will have predictable and reasonable FQHC rates for the near future. The Department will be better able to budget FQHC payments and not see an alarming increase in FQHC payments.

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

   If the Department does not adopt this rule change, FQHC rates will be more unstable and less predictable. It is likely FQHC rates will increase greatly, causing the Department to spend more on FQHCs than expected.

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

   There are no other methods that are less costly or less intrusive to achieve the purpose of the proposed rule.

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 has considered other ways to set FQHC rates such as using estimates for pandemic months or another inflationary factor, such as the MEI. The inflationary factor of 2.7% was chosen based on historical FQHC data and information from FQHC's experience during the pandemic.

8.700 FEDERALLY QUALIFIED HEALTH CENTERS

8.700.6 REIMBURSEMENT

8.700.6.A FQHCs shall be reimbursed separate per visit encounter rates based on 100% of reasonable cost for physical health services, dental services, and specialty behavioral health services. An FQHC may be reimbursed for up to three separate encounters with the same client occurring in one day and at the same location, so long as the encounters submitted for reimbursement are any combination of the following: physical health encounter, dental encounter, or specialty behavioral health encounter. Distinct dental encounters are allowable only when rendered services are covered and paid by the Department's dental Administrative Service Organization (ASO). Distinct specialty behavioral health encounters are allowable only when rendered services are covered and paid by either the Regional Accountable Entity (RAE) or through the short-term behavioral health services in the primary care setting policy.

8.700.6.B The following services are reimbursed separately from the FQHC encounter rate. These services shall be reimbursed in accordance with the following:

1. Long-Acting Reversible Contraception (LARC) devices shall be reimbursed separately from the FQHC encounter rate. In addition to payment of the encounter rate for the insertion of the device(s), the LARC device(s) must be billed in accordance with Section 8.730 and shall be reimbursed the lower of:

    a. Submitted charges; or

    b. Fee schedule as determined by the Department.

2. Services provided in an inpatient hospital setting shall be reimbursed the lower of:

    a. Submitted charges; or

    b. Fee schedule as determined by the Department.

3. The provision of complete dentures and partial dentures must be billed in accordance with Section 8.201. and Section 8.202. and shall be reimbursed the lower of:

    a. Submitted charges; or

    b. Fee schedule as determined by the Department.

4. Dental services provided in an outpatient hospital setting shall be reimbursed the lower of:

    a. Submitted charges; or

    b. Fee schedule as determined by the Department.

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5. The Prenatal Plus Program shall be billed and reimbursed in accordance with Section 8.748.

6. The Nurse Home Visitor Program shall be billed and reimbursed in accordance with Section 8.749.

7. An FQHC that operates its own pharmacy that serves Medicaid clients must obtain a separate Medicaid billing number for pharmacy and bill all prescriptions utilizing this number in accordance with Section 8.800.

8. Antagonist injections for substance use disorders provided at the FQHC shall be reimbursed the lower of:

   a. Submitted charges; or

   b. Fee schedule as determined by the Department.

9. COVID-19 vaccine administration provided at the FQHC shall be reimbursed the lower of:

   a. Submitted charges; or

   b. Fee schedule as determined by the Department

10. Monoclonal Antibody COVID-19 infusion administration provided at the FQHC shall be reimbursed the lower of:

    a. Submitted charges; or

    b. Fee schedule as determined by the Department.

8.700.6.C A physical health encounter, a dental encounter, and a specialty behavioral health encounter on the same day and at the same location shall count as three separate visits.

1. Encounters with more than one health professional, and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit, except when the client, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment.

8.700.6.D Encounter rates calculations

Effective July 1, 2018, FQHCs will be paid three separate encounter rates for three separate services: physical health services, dental services, and specialty behavioral health services. Physical health services are covered services reimbursed through the Department's MMIS, except the short-term behavioral health services in the primary care setting policy. Dental services are services provided by a dentist or dental hygienist that are reimbursed by the Department's dental ASO. Specialty behavioral health services are behavioral health services covered and reimbursed by either the RAE or by the MMIS through the short-term behavioral health services in the primary care setting policy. The Department will perform an annual reconciliation to ensure each FQHC has been paid at least their per visit Prospective Payment System (PPS) rate. If an FQHC has been paid below their per visit PPS rate, the Department shall make a one-time payment to make up for the difference.

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1 1. The PPS rate is defined by Section 702 of the Medicare, Medicaid and SCHIP
2 Benefits Improvement and Protection Act (BIPA) included in the Consolidated
3 Appropriations Act of 2000, Public Law 106-554, Dec. 21, 2000. BIPA is
4 incorporated herein by reference. No amendments or later editions are
5 incorporated.

6 Copies are available for a reasonable charge and for inspection from the
7 following person at the following address: Custodian of Records, Colorado
8 Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO
9 80203. Any material that has been incorporated by reference in this rule may be
10 examined at any state publications depository library.

11 2. Each alternative payment rate shall be the lower of the service specific annual
12 rate or the service specific base rate. The annual rate and the base rate shall be
13 calculated as follows:

14 a. The annual rate for the physical health rate shall be the FQHCs current
15 year's audited, calculated, and inflated cost per visit for physical health
16 services and visits. The annual rate for the dental rate shall be the
17 FQHCs current year's audited, calculated, and inflated cost per visit for
18 dental services and visits provided by a dentist or dental hygienist. The
19 annual rate for the specialty behavioral health rate shall be the FQHCs
20 current year's audited, calculated, and inflated cost per visit for
21 behavioral health services and visits either covered and reimbursed by
22 the RAE or by the short-term behavioral health services in the primary
23 care setting policy.

24 b. The new base rates shall be the audited, calculated, inflated, and
25 weighted average encounter rate for each separate rate, for the past
26 three years. Base rates are recalculated (rebased) annually. Initial Base
27 rates shall be calculated when the Department has two year's data of
28 costs and visits.

29 c. Beginning July 1, 2020, a portion of the FQHCs physical health
30 alternative payment methodology rates are at-risk based on the FQHC's
31 quality modifier. An FQHC's quality modifier is determined by the
32 FQHC's performance on quality indicators in the previous Calendar Year.

33 3. New FQHCs shall file a preliminary FQHC Cost Report with the Department.
34 Data from the preliminary report shall be used to set reimbursement base rates
35 for the first year. The base rates shall be calculated using the audited cost report
36 showing actual data from the first fiscal year of operations as an FQHC. These
37 shall be the FQHCs base rates until the FQHC's final base rates are set.

38 a. New base rates may be calculated using the most recent audited
39 Medicaid FQHC cost report for those FQHCs that have received their
40 first federal Public Health Service grant with the three years prior to
41 rebasing, rather than using the inflated weighted average of the most
42 recent three years audited encounter rates.

43 4. The Department shall audit the FQHC cost report and calculate the new annual
44 and base reimbursement rates. If the cost report does not contain adequate
45 supporting documentation, the FQHC shall provide requested documentation
46 within ten (10) business days of request. Unsupported costs shall be unallowable
47 for the calculation of the FQHCs new encounter rate.

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a. Freestanding and hospital-based FQHCs shall file the Medicaid cost reports with the Department on or before the 90th day after the end of the FQHCs' fiscal year. FQHCs shall use the Medicaid FQHC Cost Report developed by the Department to report annual costs and encounters. An extension of up to 75 days may be granted based upon circumstances. Failure to submit a cost report within 180 days after the end of a freestanding FQHCs' fiscal year shall result in suspension of payments.

b. The new reimbursement encounter rates for FQHCs shall be effective 120 days after the FQHCs fiscal year end. The old reimbursement encounter rates (if less than the new audited rate) shall remain in effect for an additional day above the 120-day limit for each day the required information is late; if the old reimbursement encounter rates are more than the new rate, the new rates shall be effective the 120th day after the FQHCs fiscal year end.

c. Effective December 11, 2020, FQHC cost reports with fiscal year ends between May 31, 2020 and March 31, 2021 will be set using the previous year's rates multiplied by the Medicare Economic Index (MEI).

d. Effective September 28, 2021, FQHC cost reports with fiscal year ends between May 31, 2021 and March 31, 2022 will be set using the previous year's rates multiplied by 2.7%.

5. If an FQHC changes its scope of service after the year in which its base PPS rate was determined, the Department will adjust the FQHC's PPS rate in accordance with section 1902(bb) of the Social Security Act.

a. An FQHC must apply to the Department for an adjustment to its PPS rate whenever there is a documented change in the scope of service of the FQHC. The documented change in the scope of service of the FQHC must meet all of the following conditions:

i. The increase or decrease in cost is attributable to an increase or decrease in the scope of service that is a covered benefit, as described in Section 1905(a)(2)(C) of the Social Security Act, and is furnished by the FQHC.

ii. The cost is allowable under Medicare reasonable cost principles set forth in 42 CFR Part 413.5.

iii. The change in scope of service is a change in the type, intensity, duration, or amount of services, or any combination thereof.

iv. The net change in the FQHC's per-visit encounter rate equals or exceeds 3% for the affected FQHC site. For FQHCs that file consolidated cost reports for multiple sites in order to establish the initial PPS rate, the 3% threshold will be applied to the

1 average per-visit encounter rate of all sites for the purposes of
2 calculating the cost associated with a scope-of-service change.

3 v. The change in scope of service must have existed for at least a
4 full six (6) months.

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7 b. A change in the cost of a service is not considered in and of itself a
8 change in scope of service. The change in cost must meet the conditions
9 set forth in Section 8.700.6.D.5.b and the change in scope of service
10 must include at least one of the following to prompt a scope-of-service
11 rate adjustment. If the change in scope of service does not include at
12 least one of the following, the change in the cost of services will not
13 prompt a scope-of-service rate adjustment.

14 i. The addition of a new service not incorporated in the baseline
15 PPS rate, or deletion of a service incorporated in the baseline
16 PPS rate;

17 ii. The addition or deletion of a covered Medicaid service under the
18 State Plan;

19 iii. Changes necessary to maintain compliance with amended state
20 or federal regulations or regulatory requirements;

21 iv. Changes in service due to a change in applicable technology
22 and/or medical practices utilized by the FQHC;

23 v. Changes resulting from the changes in types of patients served,
24 including, but not limited to, populations with HIV/AIDS,
25 populations with other chronic diseases, or homeless, elderly,
26 migrant, or other special populations that require more intensive
27 and frequent care;

28 vi. Changes resulting from a change in the provider mix, including,
29 but not limited to:

30 a. A transition from mid-level providers (e.g. nurse
31 practitioners) to physicians with a corresponding change
32 in the services provided by the FQHC;

33 b. The addition or removal of specialty providers (e.g.
34 pediatric, geriatric, or obstetric specialists) with a
35 corresponding change in the services provided by the
36 FQHC (e.g. delivery services);

37 c. Indirect medical education adjustments and a direct
38 graduate medical education payment that reflects the
39 costs of providing teaching services to interns and/or
40 residents; or,

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1 d. Changes in operating costs attributable to capital
2 expenditures (including new, expanded, or renovated
3 service facilities), regulatory compliance measures, or
4 changes in technology or medical practices at the
5 FQHC, provided that those expenditures result in a
6 change in the services provided by the FQHC.

7 c. The following items do not prompt a scope-of-service rate adjustment:

8 i. An increase or decrease in the cost of supplies or existing
9 services;

10 ii. An increase or decrease in the number of encounters;

11 iii. Changes in office hours or location not directly related to a
12 change in scope of service;

13 iv. Changes in equipment or supplies not directly related to a
14 change in scope of service;

15 v. Expansion or remodel not directly related to a change in scope of
16 service;

17 vi. The addition of a new site, or removal of an existing site, that
18 offers the same Medicaid-covered services;

19 vii. The addition or removal of administrative staff;

20 viii. The addition or removal of staff members to or from an existing
21 service;

22 ix. Changes in salaries and benefits not directly related to a change
23 in scope of service;

24 x. Change in patient type and volume without changes in type,
25 duration, or intensity of services;

26 xi. Capital expenditures for losses covered by insurance; or,

27 xii. A change in ownership.

28 d. An FQHC must apply to the Department by written notice within ninety
29 (90) days of the end of the FQHCs fiscal year in which the change in
30 scope of service occurred, in conjunction with the submission of the
31 FQHC’s annual cost report. Only one scope-of-service rate adjustment
32 will be calculated per year. However, more than one type of change in
33 scope of service may be included in a single application.

34 e. Should the scope-of-service rate application for one year fail to reach the
35 threshold described in Section 8.700.6.D.5.b.4, the FQHC may combine
36 that year’s change in scope of service with a valid change in scope of
37 service from the next year or the year after. For example, if a valid
38 change in scope of service that occurred in FY 2016 fails to reach the
39 threshold needed for a rate adjustment, and the FQHC implements

another valid change in scope of service during FY2018, the FQHC may submit a scope-of-service rate adjustment application that captures both of those changes. An FQHC may only combine changes in scope of service that occur within a three-year time frame, and must submit an application for a scope-of-service rate adjustment as soon as possible after each change has been implemented. Once a change in scope of service has resulted in a successful scope-of-service rate adjustment, either individually or in combination with another change in scope of service, that change may no longer be used in an application for another scope-of-service rate adjustment.

f. The documentation for the scope-of-service rate adjustment is the responsibility of the FQHC. Any FQHC requesting a scope-of-service rate adjustment must submit the following to the Department:

  i. The Department's application form for a scope-of-service rate adjustment, which includes:

    a. The provider number(s) that is/are affected by the change(s) in scope of service;

    b. A date on which the change(s) in scope of service was/were implemented;

    c. A brief narrative description of each change in scope of service, including how services were provided both before and after the change;

    d. Detailed documentation such as cost reports that substantiate the change in total costs, total health care costs, and total visits associated with the change(s) in scope; and

    e. An attestation statement that certifies the accuracy, truth, and completeness of the information in the application signed by an officer or administrator of the FQHC;

  ii. Any additional documentation requested by the Department. If the Department requests additional documentation to calculate the rate for the change(s) in scope of service, the FQHC must provide the additional documentation within thirty (30) days. If the FQHC does not submit the additional documentation within the specified timeframe, the Department, at its discretion, may postpone the implementation of the scope-of-service rate adjustment.

g. The reimbursement rate for a scope-of-service change applied for January 30, 2017 or afterwards will be calculated as follows:

  i. The Department will first verify the total costs, the total covered health care costs, and the total number of visits before and after the change in scope of service. The Department will also calculate the Adjustment Factor (AF = covered health care

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costs/total cost of FQHC services) associated with the change in scope of service of the FQHC. If the AF is 80% or greater, the Department will accept the total costs as filed by the FQHC. If the AF is less than 80%, the Department will reduce the costs other than covered health care costs (thus reducing the total costs filed by the FQHC) until the AF calculation reaches 80%. These revised total costs will then be the costs used in the scope-of-service rate adjustment calculation.

ii. The Department will then use the appropriate costs and visits data to calculate the adjusted PPS rate. The adjusted PPS rate will be the average of the costs/visits rate before and after the change in scope of service, weighted by visits.

iii. The Department will calculate the difference between the current PPS rate and the adjusted PPS rate. The "current PPS rate" means the PPS rate in effect on the last day of the reporting period during which the most recent scope-of-service change occurred.

iv. The Department will check that the adjusted PPS rate meets the 3% threshold described above. If it does not meet the 3% threshold, no scope-of-service rate adjustment will be implemented.

v. Once the Department has determined that the adjusted PPS rate has met the 3% threshold, the adjusted PPS rate will then be increased by the Medicare Economic Index (MEI) to become the new PPS rate.

h. The Department will review the submitted documentation and will notify the FQHC in writing within one hundred twenty (120) days from the date the Department received the application as to whether a PPS rate change will be implemented. Included with the notification letter will be a rate-setting statement sheet, if applicable. The new PPS rate will take effect one hundred twenty (120) days after the FQHC's fiscal year end.

i. Changes in scope of service, and subsequent scope-of-service rate adjustments, may also be identified by the Department through an audit or review process.

i. If the Department identifies a change in scope of services, the Department may request the documentation as described in Section 8.700.6.D.5.g from the FQHC. The FQHC must submit the documentation within ninety (90) days from the date of the request.

ii. The rate adjustment methodology will be the same as described in Section 8.700.6.D.5.h.

iii. The Department will review the submitted documentation and will notify the FQHC by written notice within one hundred twenty

(120) days from the date the Department received the application as to whether a PPS rate change will be implemented. Included with the notification letter will be a rate-setting statement sheet, if applicable.

iv. The effective date of the scope-of-service rate adjustment will be one hundred twenty (120) days after the end of the fiscal year in which the change in scope of service occurred.

j. An FQHC may request a written informal reconsideration of the Department’s decision of the PPS rate change regarding a scope-of-service rate adjustment within thirty (30) days of the date of the Department’s notification letter. The informal reconsideration must be mailed to the Department of Health Care Policy and Financing, 1570 Grant St, Denver, CO 80203. To request an informal reconsideration of the decision, an FQHC must file a written request that identifies specific items of disagreement with the Department, reasons for the disagreement, and a new rate calculation. The FQHC should also include any documentation that supports its position. A provider dissatisfied with the Department’s decision after the informal reconsideration may appeal that decision through the Office of Administrative Courts according to the procedures set forth in 10 CCR 2505-10 Section 8.050.3, PROVIDER APPEALS.

6. The performance of physician and mid-level medical staff shall be evaluated through application of productivity standards established by the Centers for Medicare and Medicaid Services (CMS) in CMS Publication 27, Section 503; “Medicare Rural Health Clinic and FQHC Manual”. If an FQHC does not meet the minimum productivity standards, the productivity standards established by CMS shall be used in the FQHCs’ rate calculation.

7. Pending federal approval, the Department will offer a second Alternative Payment Methodology (APM 2) that will reimburse FQHCs a Per Member Per Month (PMPM) rate. FQHCs may opt into APM 2 annually. This reimbursement methodology will convert the FQHC’s current Physical Health cost per visit rate into an equivalent PMPM rate using historical patient utilization, member designated attribution, and the Physical Health cost per visit rate for the specific FQHC. Physical health services rendered to patients not attributed to the FQHC, or attributed based on geographic location, will pay at the appropriate encounter rate. Dental and specialty behavioral health services for all patients will be paid at the appropriate encounter rate. Year 2 rates for FQHCs participating in APM 2 will be set using trended data. Year 3 rates will be set using actual data.

8. The Department will perform an annual reconciliation to ensure the PMPM reimbursement compensates APM 2 providers in an amount that is no less than their PPS per visit rate. The Department shall perform PPS reconciliations should the FQHC participating in APM 2 realize additional cost, not otherwise reimbursed under the PMPM, incurred as a result of extraordinary circumstances that cause traditional encounters to increase to a level where PMPM reimbursement is not sufficient for the operation of the FQHC.

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1 9. PMPM and encounter rates for FQHC participating in APM 2 shall be effective on
2 the 1st day of the month that falls at least 120 days after an FQHC's fiscal year
3 end.

4 8.700.6.E The Department shall notify the FQHC of its rates.

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