

Title of Rule: Revision to the Medical Assistance Rule concerning Maternity Services  
Episode Based Payments, Section 8.733  
Rule Number: MSB 20-01-07-A  
Division / Contact / Phone: Rates Division / Trevor Abeyta / 303-866-6192

## 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 rule implements a voluntary maternity bundled payment pilot program. The rule is being implemented because improving maternal health is a key goal of the State of Colorado. The bundled payment program will incentivize obstetricians who improve the delivery of care; this will improve outcomes for the mother and neonate.

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:

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2020);

Initial Review  
Proposed Effective Date

**04/10/2020**  
**10/30/2020**

Final Adoption  
Emergency Adoption

**09/11/2020**

**DOCUMENT #02**

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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 members and neonates who utilize services at participating obstetrical practices. The member will benefit from an improved care experience throughout the episode and the program will incentivize the delivering obstetrician to avoid unnecessary procedures such as elective c-sections. Participating obstetricians will also be impacted, and they can earn a higher reimbursement than the fee schedule by coordinating care for the member throughout the episode and ensuring success of the episode.

In the second year of the program, obstetricians who choose to participate will be accountable for a share of the costs which exceed the episode budget.

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 bundled payment will improve the care experience for mothers participating in the program. Participating obstetrical practices in the first year can only earn greater than the fee schedule reimbursement for successfully influencing episode outcomes. In the second year of the pilot participating obstetricians can earn either more than the fee schedule reimbursement and downside risk will be implemented for episodes where appropriate care was not provided.

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.

The rule is being funded through budget request R-9 contained within the November 2019 Department budget request. The request includes two additional employees to administer the program as well as money used to implement necessary MMIS changes for the program. The rule is expected to save the state money as providers learn to improve care pathways and reduce unnecessary complications during a maternity episode.

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

If this rule were not implemented there would be no program implemented to improve maternal outcomes in the state.

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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 or less intrusive methods. Bundled payments are used nationally by commercial health plans, employer insurance, and government agencies to improve outcomes for patients. Bundled payments have been shown to be highly effective at improving care pathways and eliminating unnecessary complications.

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 is not aware of any alternative methods for incentivizing providers to improve maternal and neonatal health.

1 **8.732.6. PRIOR AUTHORIZATION**

2 8.732.6.A. Prior Authorization is not required for services under § 8.732.

3 **8.733 EPISODE BASED PAYMENTS**

4 **8.733.1 DEFINITIONS**

5 8.733.1.A. **Episode** means a defined group of related Medicaid covered services provided to a  
6 specific patient over a specific period of time. An Episode includes the Delivery Episode Trigger;  
7 Prenatal Pre-Trigger Window; Delivery Trigger Window; and Post-Partum Window.

8 1. **Delivery Episode Trigger** means the date of a qualifying live delivery event.

9 2. **Prenatal Pre-Trigger Window** means the 280-day period prior to the delivery episode  
10 trigger window and includes all relevant care for the patient provided during that period.

11 3. **Delivery Trigger Window** means the period of time when the mother is in the hospital  
12 for the delivery episode trigger.

13 4. **Postpartum Window** means the 90-day time period following the delivery episode  
14 trigger window and includes all relevant care and any complications that might occur for  
15 the mother during that period.

16 8.733.1.B. **Episode Cohort** means a Principal Accountable Provider's (PAP) maternity Episodes  
17 eligible for either positive or negative incentives after exclusions, high cost outliers, and services  
18 not relevant to the Prenatal Pre-Trigger, Delivery Trigger, and Post-Partum Windows have been  
19 removed .

20 8.733.1.C. **Gross Episode Performance** means the aggregated average performance of a PAP  
21 compared to each prospective target set by each Threshold without the Department's share  
22 calculated, for either the Substance Use Disorder (SUD) or Non-SUD subsets of Episodes.

23 8.733.1.D. **High-Risk Pregnancy** means pregnancy that threatens the health or the life of the  
24 mother or her fetus. Risk factors can include existing health conditions, weight and obesity,  
25 multiple births, older maternal age, and other factors.

26 8.733.1.E. **Net Episode Performance** means the Gross Episode Performance of a PAP multiplied  
27 by the Department's share of fifty percent, for either the SUD or Non-SUD subsets of Episodes.

28 8.733.1.F. **Performance Period** means a twelve-month period, beginning on the first day of a  
29 calendar year, for which the Department will measure Episode performance of all providers  
30 delivering services during the course of a specific Episode. For an Episode to be included within  
31 the Performance Period, the end date for the Episode must fall within the Performance Period.

32 8.733.1.G. **Principal Accountable Provider (PAP)** means the provider that is held accountable for  
33 both the quality and cost of care delivered to a patient for an entire Episode. PAPs for maternity  
34 Episodes are willing obstetrical groups who agree in writing to participate in the model with the  
35 Department.

36 8.733.1.H. **Threshold** means the prospective target for performance for both the upper and lower  
37 incentive benchmarks for the SUD and non-SUD subsets within a PAP's Episode Cohort.

1 1. **Acceptable** means the dollar value such that a provider with an average reimbursement  
2 above the dollar value incurs a negative incentive payment.

3 2. **Commendable** means the specific dollar value such that a provider with an average  
4 reimbursement below the dollar value is eligible for a positive incentive payment if all  
5 Quality Metrics linked to the incentive payment are met.

6 8.733.1.I. **Quality Metrics** means measures determined by the Department that will be used to  
7 evaluate the quality of care delivered during a specific Episode, including the extent to which care  
8 reduces disparate outcomes based on race and ethnicity and improves patient experience.

## 9 8.733.2 **MATERNITY**

### 10 8.733.2.A. **Maternity Bundled Payment Pilot Program**

11 1. Using Episode-based payments, the Department modifies its payment methodology for  
12 maternity services, as defined at Section 8.732, to PAPs to recognize the quality and  
13 efficiency, and economy of maternity services provided, including the extent to which  
14 services reduce health disparities and improve patient experience.

15 2. Maternity Episode definitions and appropriate Quality Metrics are based on evidence-  
16 based practices derived from peer-reviewed medical literature, public health data on  
17 infant and maternal morbidity and mortality and effective responses, historical provider  
18 performance, and clinical information furnished by providers rendering services during  
19 maternity Episodes.

20 3. Medicaid-covered services during a maternity Episode will be included from the Prenatal  
21 Pre-Trigger Window, Delivery Trigger Window, and Post-Partum Window. The services  
22 considered as a part of the episode shall not be limited solely to those provided by the  
23 PAP.

24 4. The Department through a stakeholder advisory process that is majority currently or  
25 former Medicaid members who have received maternity services and majority people of  
26 color shall review the maternity bundled payment pilot. The process shall meet and  
27 review data on the maternity bundled payment pilot at least quarterly.

### 28 29 8.733.2.BB. **Maternity Episode Program Incentive Payments**

30 1. Incentive payments to a PAP are based upon an Episode Cohort within a Performance  
31 Period.

32 2. Incentive payments may be positive or negative and are made retrospectively after the  
33 end of the Performance Period. Negative incentives are financial penalties incurred the  
34 PAP.

35 a. In a PAP's first year of participation in the Maternity Bundled Payment Pilot  
36 Program, only positive incentives will apply while the PAP learns pathways to  
37 improve the quality, efficiency, and economy of care provided.

38 b. In a PAP's second year of participation in the Maternity Episode Program positive  
39 incentives and negative incentives in the form of financial penalties for the PAP  
40 will apply.

1 3. When calculating a PAP's Episode Cohort, the Department excludes the Episodes which  
2 have the presence of the following:

3 a. The member is dually eligible for Medicare and Medicaid at any time during the  
4 Episode.

5 b. Third-party liability on any claim within a maternity Episode.

6 c. PAP provided no prenatal services for to the member.

7 d. Member died during Episode.

8 e. Incomplete set of claims for an Episode.

9 f. No professional claim for delivery.

10 4. When calculating a PAP's Episode Cohort, the Department will remove high-cost outliers  
11 via a statistical methodology determined by the Department's actuarial contractor.

12 5. When calculating a PAP's Episode Cohort, the Department will remove services which  
13 are not part of the relevant care for the Prenatal Pre-Trigger, Delivery Episode, and Post-  
14 Partum Windows.

15 6. Each participating PAP will have two sets of Acceptable and Commendable Thresholds  
16 calculated based on their historical Episode payments.

17 a. The first set of Thresholds will be calculated based on historical spending for  
18 Episodes which contain a flag for SUD.

19 b. The second set of Thresholds will be calculated based on historical for Episodes  
20 which do not contain a flag for SUD.

21 c. It is the responsibility of the PAP to review each set of Acceptable and  
22 Commendable Thresholds provided by the Department before the start of the  
23 Performance Period.

24 7. Incentive payments for a PAP's Episodes within the Performance Period will be  
25 calculated in two separate subsets.

26 a. The first subset is Episodes which have a flag for SUD.

27 b. The second subset is Episodes which do not have a flag for SUD.

28 8. In order for a PAP to be eligible for positive incentives for a subgroup, the PAP must do  
29 the following:

30 a. Meet the Quality Metrics set for each Performance Period by the Department.  
31 [The Department shall present on quality measures to the Program Improvement](#)  
32 [Advisory Committee \(PIAC\) before measures are tied to payment. The](#)  
33 [Department at a minimum shall monitor the following within the limitations of data](#)  
34 [availability and data quality. The Department shall review all findings through the](#)  
35 [stakeholder advisory process identified in 8.733.2.A \(4\) and if performance](#)  
36 [improvement is warranted tie the measure to payment:](#)

1 i. Patient education

2 ii. All cause readmissions

3 iii. Severe maternal morbidity

4 iv. Maternal Gestational Hypertension, Pre-eclampsia, HELLP syndrome,  
5 eclampsia

6 v. Premature birth

7 vi. Patient Experience ;

8 b. Provide the same or greater number of services and the same or higher level of  
9 resources to members within the subgroup who experience ~~health disparities~~  
10 ~~based on race and ethnicity racism~~ as are provided to members who do not  
11 experience ~~health disparities based on race and ethnicity racism.~~

12  
13 9. If the PAP's aggregated average Gross Episode Performance for each subset is lower  
14 than each Commendable Threshold, the PAP shall receive a positive incentive payment.

15 10. If the PAP's aggregated average Gross Episode Performance for each subset is higher  
16 than each Acceptable Threshold, the PAP shall incur a negative incentive payment inf the  
17 form of a financial penalty.

18 11. A PAP's Net Episode Performance for incentives is calculated by multiplying the Gross  
19 Episode Performance of each subset by fifty percent.

20 12. If the average Episode reimbursement for each subset is between each set of Acceptable  
21 and Commendable Thresholds, the PAP shall not receive a positive incentive payment or  
22 incur a negative incentive payment.

23 13. Incentive payments are separate from, and do not alter, the reimbursement methodology  
24 for Medicaid covered services set forth in Department rules and guidance.

25 14. Consideration of the aggregate cost and quality of care is not a retrospective review of  
26 the medical necessity of care rendered to any particular member.

27 15. Nothing in this rule prohibits the Department from engaging in any retrospective review or  
28 other program integrity activity.

29 16. In a PAP's second year of participation when negative incentives apply, the PAP may  
30 contest the Department's determination of Episodes above the Acceptable Threshold.  
31 PAPs who contest the Department's determination must submit in writing the reason for  
32 contesting the determination within 60 calendar days of receiving the notice of negative  
33 incentive limit. The Department will review all contested determinations within 30  
34 calendar days of receipt of the notice. The PAP has the right to file an appeal with the  
35 Office of Administrative Courts in accordance with Section 8.050.3.

36 8.733.2.C Maternity Bundled Payment Pilot Program Participation

- 1 1. Participation is not mandatory in the Maternity Bundled Payment pilot program for  
2 obstetrical groups.
- 3 2. Participation in the maternity bundled payment pilot program is limited to obstetrical  
4 groups that have a minimum delivery volume of 500 Medicaid covered births per state  
5 fiscal year for the most recent two years.
- 6 2. Participation by obstetrical groups in the Maternity Bundled Payment does not limit a  
7 patient's ability to change providers mid-episode for any reason.
- 8 3. Obstetrical groups who participate in the maternity bundled payment will allow the  
9 Department to extract clinical data from their electronic medical records by their second  
10 performance year in the program. Information extracted from electronic medical records  
11 will be used by the Department to monitor the quality of care and number of services  
12 being provided to members within the subgroup who experience health disparities based  
13 on race and ethnicity.
- 14 4. Obstetrical groups who participate in the maternity bundled payment will be required  
15 participate cultural competency training selected by the Department, to be inclusive of the  
16 importance of racial congruence between patients and providers and hiring and retention  
17 strategies for maintaining a diverse staff.
- 18 5.3. Obstetrical groups that are interested in becoming PAPs will do the following:
  - 19 a. Submit a letter of intent to participate in the pilot program to the following  
20 address:
    - 21 i. Bundled Payment Pilot Program, 1570 Grant St. Denver, CO 80203
  - 22 b. The letter shall outline the following:
    - 23 ii. The reason for wanting to participate in the program.
    - 24 iii. The number of Medicaid covered births the group delivered in the most  
25 recent two years.
    - 26 iv. The number of non-Medicaid covered births the group delivers.
    - 27 v. Whether the group is participating in a bundled payment program with any  
28 other payers.
- 29 6. The Department will notify all potential PAPs who meet the criteria listed above in writing of  
30 their Acceptable and Commendable Thresholds for both subsets of Episodes.
- 31 7. The potential PAP shall review the Thresholds and notify the Department in a final  
32 acceptance letter of their intent to join the Maternity Bundled Payment Pilot Program.
- 33 6-8. The acceptance letter shall be binding for the PAP unless the PAP is disenrolled or unable to  
34 continue providing Medicaid services.

35 **8.735 TRANSGENDER SERVICES**

36