

Title of Rule: Revision to the Medical Assistance Act Rule concerning Home Health Providers
Rule Number: MSB 20-11-30-A
Division / Contact / Phone: Health Programs / 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).

This rule revision aligns the home health services rule with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, and federal regulation, by adding nurse practitioners, clinical nurse specialists, and physician assistants to the definition of "ordering physician." "Ordering Physician", in turn, is changed to "Ordering Practitioner."

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:

This rule revision is imperatively necessary to align the home health services rule with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, and federal regulations, by adding nurse practitioners, clinical nurse specialists, and physician assistants to the definition of "ordering physician."

3. Federal authority for the Rule, if any:

CARES Act, PL. 116-136 § 3708, March 27, 2020, 134 Stat 281; 42 CFR 440.70(a)(2) (2020)

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2020);
CRS § 25.5-5-202(I) (2019)

Initial Review
Proposed Effective Date

03/15/21

Final Adoption
Emergency Adoption

01/08/21

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.

Clients receiving home health services, and the providers of such services, will be affected by the proposed rule. Both classes will benefit from the proposed rule, which expands access to care by allowing a broader range of providers to render home health 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.

Clients will have access to a broader range of providers, increasing access to care and provider choice. Home health providers may utilize a broader range of health care practitioners to render services.

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 Department anticipates that aligning the definition of ordering physician with federal regulation by adding: nurse practitioners, clinical nurse specialists, and physician assistants; will not result in any cost to the Department or any other agency. The Department assumes that this rule change does not impact the number of clients approved or increase the amount of services approved since these new ordering practitioners would not be approving any additional services.

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

The benefit of the proposed rule is aligning Department rule with federal statute and regulation. There are no known costs of the proposed rule. The cost of inaction is misalignment between Department rule and federal statute and regulation. There are no benefits to inaction.

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 aligning Department rule with federal statute and regulation.

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 for aligning Department rule with federal statute and regulation.

1 **8.520 HOME HEALTH SERVICES**

2 **8.520.1. Definitions**

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5 8.520.1.N. Ordering ~~Physician-Practitioner~~ means the client's primary care physician, nurse
6 practitioner, clinical nurse specialist, physician assistant, or other physician specialist. For clients
7 in a hospital or nursing facility, the Ordering ~~Physician-Practitioner~~ is the physician appropriate
8 qualified personnel responsible for writing discharge orders until such time as the client is
9 discharged. This definition may include an alternate physician-practitioner authorized by the
10 Ordering ~~Physician-Practitioner~~ to care for the client in the Ordering ~~Physician's-Practitioner's~~
11 absence.

12 ...

13 8.520.1.Q. Plan of Care means a coordinated plan developed by the Home Health Agency, as
14 ordered by the Ordering ~~Physician-Practitioner~~ for provision of services to a client at his or her
15 residence, and periodically reviewed and signed by the physician-practitioner in accordance with
16 Medicare requirements. This shall be written on the CMS-485 ("485") or a document that is
17 identical in content, specific to the discipline completing the plan of care.

18 ...

19 **8.520.5.B. Certified Nurse Aide Services**

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21 10. The usual frequency of all tasks is as ordered by the Ordering ~~Physician-Practitioner~~ on
22 the Plan of Care unless otherwise noted.

23 ...

24 13. Certified Nurse Aide Limitations

25 a. In accordance with the Colorado Nurse Aide Practice Act, a CNA shall only
26 provide services that have been ordered on the Home Health Plan of Care as
27 written by the Ordering ~~Physician-Practitioner~~.

28 ...

29 **8.520.5.C. Therapy Services**

30 1. Therapies are only covered:

31 a. In acute home health care; or

32 b. Clients 20 years of age or younger may receive long-term home health therapy
33 when services are medically necessary.

- 1 c. When the client's Ordering ~~Physician-Practitioner~~ prescribes therapy services,
2 and the therapist is responsible for evaluating the client and creating a treatment
3 plan with exercises in accordance with practice guidelines.

4 ...

5 **8.520.7.D. Plan of Care Requirements**

- 6 1. The client's Ordering ~~Physician-Practitioner~~ shall order Home Health Services in writing,
7 as part of a written Plan of Care. The written Plan of Care shall be updated every 60
8 calendar days but need not be provided to the Department or its Designee unless the
9 client's status has changed significantly, a new PAR is needed, or if requested by the
10 Department or its Designee.
- 11 2. The initial assessment or continuation of care assessments shall be completed by a
12 registered nurse, or by a physical therapist, occupational therapist or speech therapist
13 when no skilled nursing needs are required. The assessment shall be utilized to develop
14 the Plan of Care with provider input and oversight. The written Plan of Care and
15 associated documentation shall be used to complete the CMS-485 (or a document that is
16 identical in content) and shall include:
- 17 a. Identification of the ~~attending physician~~ ~~Ordering Practitioner~~;
- 18 b. ~~Physician-Ordering Practitioner~~ orders;
- 19 c. Identification of the specific diagnoses, including the primary diagnosis, for which
20 Medicaid Home Health Services are requested.
- 21 d. The specific circumstances, client medical condition(s) or situation(s) that require
22 services to be provided in the client's residence rather than in a ~~physician's~~
23 ~~Ordering Practitioner's~~ office, clinic or other outpatient setting including the
24 availability of natural supports and the client's living situation;
- 25 e. A complete list of supplements, and medications, both prescription and over the
26 counter, along with the dose, the frequency, and the means by which the
27 medication is taken;
- 28 f. A complete list of the client's allergies;
- 29 g. A list of all non-routine durable medical equipment used by the client;
- 30 h. A list of precautions or safety measures in place for the client, as well as
31 functional limitations or activities permitted by the client's qualified physician;
- 32 i. A behavioral plan when applicable. Physical Behavioral Interventions, such as
33 restraints, shall not be included in the home health Plan of Care;
- 34 j. A notation regarding the client's ~~physician~~ ~~Ordering Practitioner~~-ordered dietary
35 (nutritional) requirements and restrictions, any special considerations, other
36 restrictions or nutritional supplements;
- 37 k. The Home Health Agency shall indicate a comprehensive list of the amount,
38 frequency, and expected duration of provider visits for each discipline ordered by
39 the client's ~~physician~~ ~~Ordering Practitioner~~, including:

- 1 i) The specific duties, treatments and tasks to be performed during each
2 visit;
- 3 ii) All services and treatments to be provided on the Plan of Care;
- 4 1) Treatment plans for physical therapy, occupational therapy and
5 speech therapy may be completed on a form designed
6 specifically for therapy Plans of Care; and
- 7 iii) Specific situations and circumstances that require a PRN visit, if
8 applicable.
- 9 l. Current clinical summary of the client's health status, including mental status,
10 and a brief statement regarding homebound status of the client;
- 11 m. The client's prognosis, goals, rehabilitation potential and where applicable, the
12 client's specific discharge plan;
- 13 i) If the client's illness, injury or disability is not expected to improve, or
14 discharge is not anticipated, the agency is not required to document a
15 discharge plan;
- 16 ii) The client's medical record shall include the reason that no discharge
17 plan is present;
- 18 n. The attending physicianOrdering Practitioner shall approve the Plan of Care with
19 a dated signature. If an electronic signature is used, the agency shall document
20 that an electronic signature was used and shall keep a copy of the physician's
21 Ordering Practitioner's physical signature on file;
- 22 o. Brief statement regarding the client's support network including the availability of
23 the client's family member/caregiver and if applicable, information on why the
24 client's family member/caregiver is unable or unwilling to provide the care the
25 client requires; and
- 26 p. Other relevant information related to the client's need for Home Health care.
- 27 3. A new Plan of Care shall be completed every 60 calendar days while the client is
28 receiving Home Health Services. The Plan of Care shall include a statement of review by
29 the physicianOrdering Practitioner every 60 days.
- 30 4. Home Health Agencies shall send new Plans of Care and other documentation as
31 requested by the Department or its Designee.

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33 **8.520.8.E. Home Health Telehealth Services**

- 34 1. Home Health Telehealth services require prior authorization.
- 35 2. The Home Health Telehealth PAR shall include all of the following:
- 36 a. A completed enrollment form;

- 1 b. An order for telehealth monitoring signed and dated by the Ordering **Physician**
2 Practitioner or podiatrist;
- 3 c. A Plan of Care, which includes nursing and therapy assessments for clients.
4 Telehealth monitoring shall be included on the CMS-485 form, or a form that
5 contains identical information to the CMS-485, and all applicable forms shall be
6 complete; and
- 7 d. For ongoing telehealth, the agency shall include documentation on how
8 telehealth data has been used to manage the client's care, if the client has been
9 using Home Health Telehealth services.

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11 **8.520.11 Denial, Termination, or Reduction in Services**

12 8.520.11.A. When services are denied, terminated, or reduced by action of the Home Health Agency,
13 the Home Health Agency shall notify the client.

14 8.520.11.B. Termination of services to clients still medically eligible for Coverage of Medicaid Home
15 Health Services:

- 16 1. When a Home Health Agency decides to terminate services to a client who needs and
17 wants continued Home Health Services, and who remains eligible for coverage of
18 services under the Medicaid Home Health rules, the Home Health Agency shall give the
19 client, or the client's designated representative/legal guardian, written advance notice of
20 at least 30 business days. The **attending physician** **Ordering Physician** and the
21 Department's Home Health Policy Specialist shall also be notified.
- 22 2. Written notice to the client, or client's designated representative/legal guardian shall be
23 provided in person or by certified mail, and shall be considered given when it is
24 documented that the recipient has received the notice. The notice shall provide the
25 reason for the change in services
- 26 3. The agency shall make a good faith effort to assist the client in securing the services of
27 another agency.
- 28 4. If there is indication that ongoing services from another source cannot be arranged by the
29 end of the advance notice period, the terminating agency shall ensure client safety by
30 making referrals to appropriate case management agencies or County Departments of
31 Social Services; and the attending physician shall be informed.
- 32 5. Exceptions will be made to the requirement for 30 days advance notice when the provider
33 has documented that there is immediate danger to the client, Home Health Agency, staff,
34 or when the client has begun to receive Home Health Services through a Medicaid HMO.

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