

Title of Rule: Revision to the Medical Assistance Act Rule concerning Qualified Residential Treatment Programs, Section 8.765
Rule Number: MSB 21-07-26-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).

Revises the rules for child-serving residential facilities to include the new Qualified Residential Treatment Program (QRTP) license type. The new license type will take effect October 1, 2021 in accordance with the federal Family First Prevention Services Act (FFPSA) and there will be a grace period until June 30, 2022 for all facilities enrolled with Medicaid to be in compliance. The revision will allow the Department to reimburse new QRTP facilities in compliance with the FFPSA and align Department rule with the Colorado Department of Human Services' new QRTP license type. QRTPs will provide a trauma-informed model of care to address the needs, including clinical needs, of children with serious emotional or behavioral disorders or disturbances.

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:

The Qualified Residential Treatment Program provisions of the Family First Prevention Services Act, Pub.L. 115-123, Div. E, Title VII, § 50734, Feb. 9, 2018, 132 Stat. 252, were to go into effect October 1, 2018. However, the U.S. Department of Health and Human Services issued Program Instruction PI-18-07 permitting requests for delayed effective dates up to two years past the statutory deadline. The Colorado Department of Human Services applied for, and received, an extension until December 31, 2020, but no later than September 29, 2021. This rule is imperatively necessary to comply with federal law to implement the delayed effective date for the Family First Prevention Services Act provisions pertaining to Qualified Residential Treatment Programs and to align with the parallel Colorado Department of Human Services license.

3. Federal authority for the Rule, if any:

Pub.L. 115-123, Div. E, Title VII, § 50734, Feb. 9, 2018, 132 Stat. 252

42 CFR 440.160 (2021)

Initial Review

Proposed Effective Date

10/01/21

Final Adoption

Emergency Adoption

09/10/21

DOCUMENT #04

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4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2018);
CRS § 25.5-5-202(1)(i) (2021)

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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.

Members currently residing in Residential Child Care Facilities (RCCF), and RCCF providers, will be impacted by the proposed 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.

RCCF providers will have costs associated with changing their model of care and the requirement that QRTPs be 16 beds or less. For our members, services provided in a QRTP will be trauma-informed and designed to address the needs, including clinical needs, of children with serious emotional or behavioral disorders or disturbances, in a setting limited to 16 beds. Members who require this level of care will receive services within the state and better tailored to their needs.

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 the proposed rule to be budget neutral because RCCF services will be phased out and the same funds will be applied QRTP payment.

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

The probable costs of the proposed rule are RCCF providers being required to obtain the Qualified Residential Treatment Program license. The probable benefit of the proposed rule is aligning with the Federal Family First Prevention Services Act (FFPSA) and aligning with Colorado Department of Human Services license requirements. The probable cost of inaction is non-compliance with the FFPSA. There are no probable 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 to align Department rule with the FFPSA and with Colorado Department of Human Services license requirements.

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 align Department rule with the FFPSA and with Colorado Department of Human Services license requirements.

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DOCUMENT #04

1 **8.765 SERVICES FOR CLIENTS IN ~~PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES OR~~**
2 **~~RESIDING IN~~ RESIDENTIAL CHILD CARE FACILITIES AS DEFINED BELOW**

3 **8.765.1 DEFINITIONS**

4 Assessment means the process of continuously collecting and evaluating information to develop a client's
5 profile on which to base a Plan of Care, service planning, and referral.

6 Clinical Staff means medical staff that are at a minimum licensed at the level of registered nurse,
7 performing within the authority of the applicable practice acts.

8 Colorado Client Assessment Record (CCAR) means a clinical instrument designed to assess the
9 behavior/mental health status of a medically eligible client. The CCAR is used to identify current diagnosis
10 and clinical issues facing the client, to measure progress during treatment and to determine mental health
11 medical necessity. This instrument is used for children in the custody of a county department of
12 human/social services or Division of youth corrections and for those children receiving mental health
13 services in an RCCF through the Child Mental Health Treatment Act.

14 Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is the Colorado Medicaid program's
15 benefit under Section 8.280 for children and adolescents that provides a comprehensive array of
16 prevention, diagnostic, and treatment services for low-income infants, children and adolescents under
17 age 21.

18 Emergency Safety Intervention means the use of Restraint and Seclusion as an immediate response to
19 an Emergency Safety Situation.

20 Emergency Safety Situation means unanticipated behavior of the client that places the client or others at
21 serious threat of violence or injury if no intervention occurs and that calls for Emergency Safety
22 Intervention.

23 Emergency Services means emergency medical and crisis management services.

24 Independent Assessment means a process to assess the strengths and needs of the child using an age-
25 appropriate, evidence-based, validated, functional assessment tool. The assessment determines whether
26 treatment in a Qualified Residential Treatment Program (QRTP) provides the most effective and
27 appropriate level of care for the child in the least restrictive environment, in accordance with Colorado
28 Department of Human Services regulations.

29 Independent Team means a team certifying the need for Psychiatric Residential Treatment Facility
30 (PRTF) services that is independent of the Referral Agency and includes a physician who has
31 competence in the diagnosis and treatment of mental illness and knowledge of the client's condition.

32 Interdisciplinary Team means staff in a PRTF comprised of a physician, and a Licensed Mental Health
33 Professional, registered nurse or occupational therapist responsible for the treatment of the client.

34 Licensed Mental Health Professional means a psychologist licensed pursuant to part 3 of article 43 of title
35 12, C.R.S., a psychiatrist licensed pursuant to part 1 of article 36 of title 12, C.R.S., a clinical social
36 worker licensed pursuant to part 4 of article 43 of title 12, C.R.S., a marriage and family therapist licensed
37 pursuant to part 5 of article 43 of title 12, C.R.S., a professional counselor licensed pursuant to part 6 of
38 article 43 of title 12, C.R.S., or a social worker licensed pursuant to part 4 of article 43 or title 12, C.R.S.,
39 that is supervised by a licensed clinical social worker. Sections 12-43-301, et seq, 12-36-101, et seq, 12-
40 43-401, et seq, 12-43-501, et seq and 12-43-601, et seq, C.R.S. (2005) are incorporated herein by
41 reference. No amendments or later editions are incorporated. Copies are available for inspection from the
42 following person at the following address: Custodian of Records, Colorado Department of Health Care

- 1 Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Any material that has been
2 incorporated by reference in this rule may be examined at any state publications repository library.
- 3 Medication Management Services means review of medication by a physician at intervals consistent with
4 generally accepted medical practice and documentation of informed consent for treatment.
- 5 Multidisciplinary Team means staff in a Residential Child Care Facility (RCCF) providing mental health
6 services comprised of at least one Licensed Mental Health Professional and other staff responsible for
7 the treatment of the client and may include a staff member from the Referral Agency.
- 8 Plan of Care means a treatment plan designed for each client and family, developed by an
9 Interdisciplinary or Multidisciplinary Team.
- 10 Prone Position means a client lying in a face down or front down position.
- 11 Psychiatric Residential Treatment Facility (PRTF) means a facility that is not a hospital and provides
12 inpatient psychiatric services for individuals under age 21 under the direction of a physician, licensed
13 pursuant to part 1 of article 36 of title 12, C.R.S.
- 14 Qualified Residential Treatment Programs (QRTP) means a facility that provides residential trauma-
15 informed treatment that is designed to address the needs, including clinical needs, of children with
16 serious emotional or behavioral disorders or disturbances. As appropriate, QRTP treatment facilitates the
17 participation of family members in the child's treatment program, including siblings, and documents
18 outreach to family members, including siblings.
- 19 Referral Agency means the Division of Youth Corrections, County Departments of Human/Social Services
20 who have legal custody of a client, Behavioral Healthcare Organization or Community Mental Health
21 Center that refers the client to a PRTF or RCCF for the purpose of placement through the Child Mental
22 Health Treatment Act.
- 23 Restraint includes Drug Used as a Restraint, Mechanical Restraint and Personal Restraint.
- 24 Drug Used as a Restraint means any drug that is administered to manage a client's behavior in a way
25 that reduces the safety risk to the client or to others; has the temporary affect of restricting the client's
26 freedom of movement and is not a standard treatment for the client's medical or psychiatric condition.
- 27 Mechanical Restraint means any device attached or adjacent to the client's body that the client cannot
28 easily remove that restricts freedom of movement or normal access to the client's body.
- 29 Personal Restraint means personal application of physical force without the use of any device, for the
30 purpose of restraining the free movement of the client's body. This does not include briefly holding a client
31 without undue force in order to calm or comfort, or holding a client's hand to safely escort the client from
32 one area to another. This does not include the act of getting the client under control and into the required
33 position for Restraint.
- 34 Residential Child Care Facility (RCCF) means any facility that provides out-of-home, 24-hour care,
35 protection and supervision for children in accordance with 12 C.C.R. 2509-8, Section 7.705.91.A.
- 36 Seclusion means the involuntary confinement of a client alone in a room or an area from which the client
37 is physically prohibited from leaving.

38

39 **[SECTIONS 8.765.2-13 ARE UNAFFECTED BY THIS RULE CHANGE]**

1 **8.765.14 QUALIFIED RESIDENTIAL TREATMENT PROGRAM (QRTP)**

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3 **8.765.14.A CLIENT ELIGIBILITY**

- 4
- 5 1. Children up to age eighteen (18) years old and for those persons up to twenty-one (21)
6 years old who consent to the placement or are placed by court order, for whom an
7 assessment determines that the child's needs cannot be met in a less restrictive, family-
8 based setting because of their serious emotional or behavioral disorders or disturbances.
- 9 2. Managed Care Entities must use the Independent Assessment to inform medical
10 necessity determinations.
- 11 3. For children in the custody of a county department of human/social services or Division of
12 youth corrections Youth Services and for those children receiving mental health services
13 in a Qualified Residential Treatment Program (QRTP) through the Child and Youth
14 Mental Health Treatment Act, the Independent Assessment will determine mental health
15 medical necessity.
16

17 **8.765.14.B QRTP AND PROVIDER ELIGIBILITY**

- 18 1. Beginning October 1, 2021, to be eligible for Colorado Medicaid reimbursement, a QRTP
19 must:
- 20 a. Be enrolled with Colorado Medicaid;
- 21 b. Be licensed by the Colorado Department of Human Services (CDHS), Provider
22 Services Unit (PSU), as a Child Care Facility with QRTP indicated as the Service
23 Type in accordance with CDHS regulations;
- 24 c. Be accredited by:
- 25 i. The Joint Commission on Accreditation of Healthcare Organizations
26 (JCAHO),
- 27 ii. The Commission on Accreditation of Rehabilitation Facilities (CARF),
- 28 iii. The Council on Accreditation of Services for Families and Children, or
- 29 iv. Any other independent, not-for-profit accrediting organization approved
30 by the Secretary of Health and Human Services.
- 31 d. Submit an attestation form to the Department with the facility's Colorado Medicaid
32 enrollment application with Colorado Medicaid that attests:
- 33 i. The facility has no more than sixteen (16) beds, including all beds at a
34 single address or on adjoining properties regardless of program or facility
35 type;
- 36 ii. The facility does not share a campus with a Psychiatric Residential
37 Treatment Facility (PRTF);

1 iii. For facilities more than one (1) mile but less than ten (10) miles apart by
2 road from another overnight facility controlled by the same ownership or
3 governing body, the other overnight facility meets the following criteria:

- 4 1. The facility maintains its own license;
5 2. The facility has dedicated staff that ensures a stable treatment
6 environment;
7 3. Residents do not move between the facility and another during
8 the episode of care

9 iv. For facilities less than one (1) mile apart, but not on the same campus or
10 adjoining properties, the QRTP is in a home-like structure (cottage,
11 house, apartment) located farther than 750 feet from another overnight
12 facility within a community setting that includes publicly used
13 infrastructure (roads, parks, shared spaces, etc.).

14 2. Eligible providers.

15 a. The following services must be rendered by an enrolled Licensed Mental Health
16 Professionals in a QRTP:

- 17 i. Individual therapy,
18 ii. Group therapy, and
19 iii. Family therapy.

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26 **8.765.14.C COVERED SERVICES**

27 1. Medically necessary services pursuant to Section 8.076.1.8 that are not excluded in
28 Section 8.765.14.D and are:

- 29 a. Included in the member's stabilization plan created by the QRTP in accordance
30 Colorado Department of Human Services (CDHS) regulations.
31 b. Included in the member's individual child and family plan created by the QRTP in
32 accordance with CDHS regulations.
33 c. Included in the member's discharge and aftercare plan created by the QRTP in
34 accordance with CDHS regulations.

35 2. All EPSDT services not specified in Sections 8.765.14.C.1-3 are covered under Section
36 8.280.

37 **8.765.14.D NON-COVERED SERVICES**

38 1. The following services are not covered for members in a QRTP:

- 39 a. Room and board;
40 b. Educational, vocational, and job training services;

1 c. Recreational or social activities; and

2 d. Services provided to inmates of public institutions or residents of Institutions of
3 Mental Disease (IMD).

4 **8.765.14.E PRIOR AUTHORIZATION REQUIREMENTS**

5 1. Prior authorization may be required for this benefit.

6 **8.765.14.F REIMBURSEMENT.**

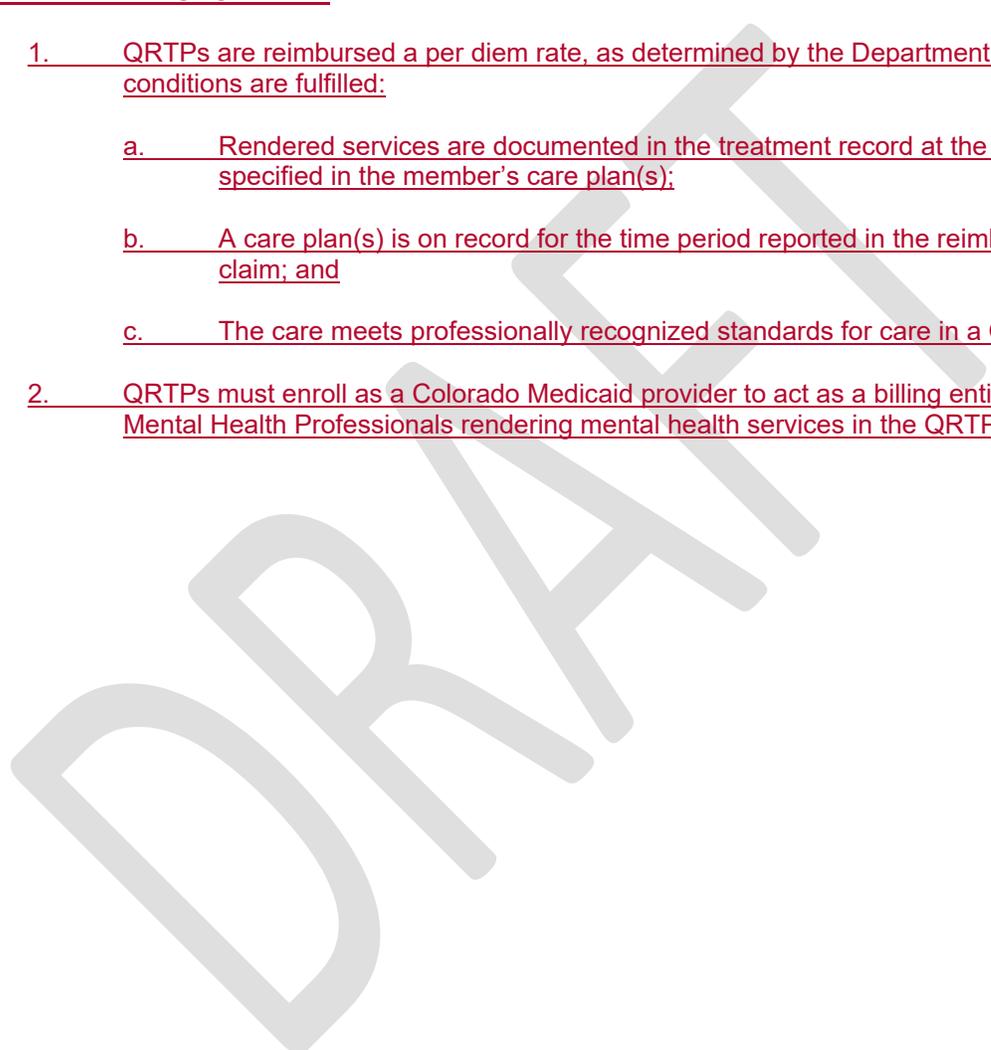
7 1. QRTPs are reimbursed a per diem rate, as determined by the Department, if the following
8 conditions are fulfilled:

9 a. Rendered services are documented in the treatment record at the frequencies
10 specified in the member's care plan(s);

11 b. A care plan(s) is on record for the time period reported in the reimbursement
12 claim; and

13 c. The care meets professionally recognized standards for care in a QRTP.

14 2. QRTPs must enroll as a Colorado Medicaid provider to act as a billing entity for Licensed
15 Mental Health Professionals rendering mental health services in the QRTP.



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