

Title of Rule: Revision to the Medical Assistance Act Rule concerning Electronic Consultation (eConsults), Sections 8.095
Rule Number: MSB 23-02-09-A
Division / Contact / Phone: Health Policy 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).

The proposed rule will authorize Electronic Consultation (eConsults), which is an asynchronous dialogue initiated by a Primary Care Medical Provider (PCMP) or other qualified health care professional seeking a Specialty Provider’s expert opinion without a face-to-face member encounter with the Specialty Provider. eConsults must be initiated by a PCMP, and responded to by a Specialty Provider, through the Department’s authorized eConsults Platform. The eConsult Platform is a web-based and application-based electronic system authorized by the Department that allows for an asynchronous exchanges between PCMPs and Specialty Providers to securely share health information and discuss member care. Specialty Providers are reimbursed only for closed eConsults that are delivered, and responded to, through the eConsult Platform.

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. (2023);
CRS §§ 25.5-4-103 (25.7), 25.5-5-321.5

Initial Review

Final Adoption

12/08/23

Proposed Effective Date

01/30/24 Emergency Adoption

DOCUMENT #04

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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 whose needs can be addressed via eConsult rather than face-to-face referrals and the specialty providers who provide eConsults.

As described below, the Department anticipates approximately 1 million in initial costs to the Medicaid program to set up and maintain the eConsult platform.

These startup costs will ultimately be offset by the anticipated cost savings to the Medicaid program.

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

This regulation will improve the quality of care for members by facilitating access to specialty clinical care, information, guidance, and support. As a result, access to specialist care will be more timely, permitting for earlier diagnosis and intervention, and improving member management of chronic conditions. Additionally, because eConsults will reduce the number of inappropriate referrals, it will promote efficient and cost-effective use of healthcare resources.

Providing timely access to high-quality care for members. Providing timely access to specialty clinical care guidance and information while minimizing inappropriate referrals. Assisting with early diagnosis and improving member management of chronic conditions. Using health care resources efficiently and cost effectively. Improving overall member and provider experience.

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.

Prior to implementation the Department expects to spend \$1,050,000 in start up costs to create the eConsult platform, and an additional \$787,500 for CMS certification of the platform. Of those costs, \$1,000,000 expected to be paid in FY 2023-24, \$50,000 for reporting design costs expected to be paid in FY 2023-24, and costs absorbed within existing Department pool hours for design and development. Separate from the start-up costs to create the platform the Department also has

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\$787,500 in funding for CMS certification of the platform to allow the department to use this new e-consult program expected to be paid in FY 2024-25.

Upon implementation of the eConsult Platform, the Department expects up to \$1,566,798 total funds per fiscal year in provider reimbursement costs for eConsults.

The Department expects up to (\$3,807,809) total funds in avoided costs from a reduction in face-to-face specialist visits. Therefore, the Department expects net savings of up to (\$2,241,011) total funds, including (\$751,739) General fund savings and \$39,396 Cash Fund costs per full fiscal year following implementation.

As a result, the Department's anticipated total startup costs will be offset by the net savings of the program within the first fiscal year following implementation.

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 setting up and maintaining the electronic eConsult Platform. The probable benefits of the proposed rule are outlined in the answer to question two above and the expected savings from face-to-face specialist visits resulting in a net reduction in service costs. As described in question three, the Department expects the ultimate cost savings to more than offset the initial costs of the proposed rule. The probable cost of inaction is the inability of primary care medical providers to electronically consult with specialty providers and avoid inappropriate face-to-face referrals, which can negatively impact timely access to care. There are no probable benefits of inaction because the program will also be a cost savings measure.

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 methods or less intrusive methods for authorizing eConsults.

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 authorizing eConsults.

8.095 Telemedicine

8.095.1.A DEFINITIONS

1. Electronic Consultation (eConsult) means an asynchronous dialogue initiated by a ~~Treating Practitioner Primary Care Medical Provider~~ seeking a ~~Consulting Practitioner's Specialty Provider's~~ expert opinion without a face-to-face member encounter with the ~~Consulting Practitioner Specialty Provider~~.
2. Electronic Consultation Platform (eConsult Platform) means a web-based and application-based electronic system authorized by the Department that allows for an asynchronous exchange between a ~~Primary Care Medical Providers~~ ~~Treating Practitioner~~ and a ~~Consulting Practitioner Specialty Providers~~ to securely share health information and discuss member care. An eConsult Platform may be either:
 - a. State Platform: A platform contracted with the Department as the state's eConsult Platform.
 - b. Approved Platform: Any platform other than the State Platform that meets the criteria identified by the Department.
3. Electronic Health Entity (eHealth Entity) means a group practice that delivers services exclusively through telemedicine and is enrolled in a provider type that has an eHealth specialty. eHealth entities:
 - a. Cannot be Primary Care Medical Providers;
 - b. Can be either in-state or out-of-state.
24. Facilitated Visit means a Telemedicine visit where the rendering provider is at a distant site and the member is physically present with a support staff team member who can assist the provider with in-person activities.
35. HIPAA means the federal "Health Insurance Portability and Accountability Act of 1996", PUB. L. 104-191, as amended, which is incorporated herein by reference. Pursuant to C.R.S. § 24-4-103(12.5) (2022), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.
46. Primary Care Medical Provider (PCMP) means an individual physician, advanced practice nurse or physician assistant, who contracts with a Regional Accountable Entity (RAE) in the Accountable Care Collaborative (ACC), with a focus on primary care, general practice, internal medicine, pediatrics, geriatrics, or obstetrics and gynecology.
57. ~~Specialty Provider Consulting Practitioner~~ means a provider who has education, training, or qualifications in a specialty field other than primary care
8. Telemedicine means the delivery of medical and health-care services and any diagnosis, consultation, or treatment using interactive audio (including but not limited to telephone and relay calls), interactive video (including but not limited to interactive audiovisual modalities), or interactive data communication (including but not limited to live chat and excluding text messaging, electronic mail, and facsimile transmission).

1 9. Treating Practitioner means a member's treating physician or other qualified health care
2 practitioner who is a primary care provider contracted with a Regional Accountable Entity
3 to participate in the Accountable Care Collaborative as a Network Provider.

4 **8.095.2 CLIENT ELIGIBILITY**

5 8.095.2.A. All Colorado Medicaid clients are eligible for medical and behavioral services delivered by
6 telemedicine.

7 **8.095.3 PROVIDER ELIGIBILITY**

8 8.095.3.A. Any licensed provider enrolled with Colorado Medicaid is eligible to provide telemedicine
9 services within the scope of the provider's practice.

10 8.095.3.B. Providers that meet the definition of an eHealth Entity shall enroll as the eHealth
11 specialty.

12 **8.095.4 COVERED SERVICES**

13 8.095.4.A. Covered Telemedicine services must:

- 14 1. Meet the same standard of care as in-person care;
- 15 2. Be compliant with state and federal regulations regarding care coordination;
- 16 3. Be services the Department has approved for delivery through Telemedicine;
- 17 4. Be within the provider's scope of practice and for procedure codes the provider is already
18 eligible to bill;
- 19 5. Be provided only where contact with the provider was initiated by the member for the
20 services rendered; and
- 21 6. Be provided only after the member's consent, either verbal or written, to receive
22 telemedicine services is documented.

23 8.095.4.B. eHealth Entities shall only provide:

- 24 1. Covered Telemedicine services, including Facilitated Visits.

25 8.095.4.C. Beginning February 1, 2024, a ~~PCMP~~Treating Practitioner may request an eConsult with
26 a ~~Consulting Practitioner~~Specialty-Providers. eConsult services must:

27 1. Be requested by the ~~PMCP~~Treating Practitioner through the ~~an~~ Department-approved
28 eConsult Platform;

29 2. Be responded to by the ~~Specialty Provider~~Consulting Practitioner through the ~~an~~
30 Department-approved eConsult Platform;

31 a. The ~~Specialty Provider~~Consulting Practitioner may send the eConsult to another
32 ~~Specialty Provider~~Consulting Practitioner in a different specialty practice through
33 the ~~an~~ Department-approved eConsult Platform, when clinically appropriate.

1 3. The ~~Specialty Provider~~ Consulting Practitioner must, when clinically appropriate, provide
2 clinical guidance pertaining to the eConsult electronically to the requesting PCMP Treating
3 Practitioner through ~~the an~~ Department-approved eConsult Platform; and,

4 4. All dialogue between the PCMP Treating Practitioner and the Specialty Provider
5 Consulting Practitioner pertaining to an eConsult must be through ~~the an~~ Department-approved
6 eConsult Platform.

7 **8.095.5 PRIOR AUTHORIZATION REQUIREMENTS**

8 8.095.5.A. The use of Telemedicine does not change prior authorization requirements for the
9 underlying services provided.

10 **8.095.6 RECORDKEEPING.**

11 8.095.6.A. eHealth Entities must maintain a Release of Information in compliance with current
12 HIPAA standards to facilitate communication with the member's PCMP.

13 **8.095.7 REIMBURSEMENT**

14 8.095.7.A Pursuant to C.R.S. § 25.5-5-320(2) (2022), the reimbursement rate for a Telemedicine
15 service shall, as a minimum, be set at the same rate as the Colorado Medicaid rate for a
16 comparable in-person service.

17 8.095.7.B. eConsults

18 1. eConsults are reimbursed after the eConsult is closed by the requesting PCMP Treating
19 Practitioner and the following conditions are met:

20 a. The eConsult is conducted instead of face-to-face in-person visit referral to a
21 Specialty Provider/Consulting Practitioner;

22 b. The eConsult is provided to the PCMP Treating Practitioner by the Specialty
23 Provider/Consulting Practitioner through ~~the an~~ Department-approved eConsult Platform,
24 with clinical guidance where appropriate; and,

25 c. The eConsult is closed after the PCMP Treating Practitioner reviews the care plan
26 provided by the Specialty Provider/Consulting Practitioner.

27 2. Treating Practitioners may directly submit a procedure code specific fee-for-service claim
28 for reimbursement.

29 3. Consulting Practitioners who utilize an Approved Platform may directly submit a
30 procedure code specific fee-for-service claim for reimbursement for all closed eConsults that
31 meet the criteria in Section 8.095.7.B.1.

32 4. Specialty Providers/Consulting Practitioners who utilize the State Platform must only be
33 reimbursed through the eConsult State Platform for all closed eConsults that meet the criteria in
34 Section 8.095.7.B.1. No reimbursement for eConsults is available to Specialty Providers separate
35 from a Department-approved eConsult Platform

36 5. eConsults must be delivered through an Department-approved eConsult Platform to be
37 eligible for reimbursement.

1 **8.095.8 NON-COVERED SERVICES**

2 8.095.8.A Services not otherwise covered by Colorado Medicaid are not covered when delivered
3 through Telemedicine.

4 8.095.8.B eConsults that are not delivered, and responded to, through the an Department-approved
5 eConsult Platform.

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