

Title of Rule: Revision to the Medical Assistance Rule concerning Abortion Services, Section 8.770
Rule Number: MSB 22-02-27-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).

The proposed rule aligns Department rule with current policy and the requirements of Senate Bill 21-142, enacted at Colorado Revised Statute, Section 25.5-4-415, which authorized providers licensed by the state and acting within their scope of practice and federal regulations to perform abortions reimbursed by Medicaid, and removed the requirement that abortions reimbursed by Medicaid be performed in a licensed health care facility.

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. (2021);
C.R.S. § 25.5-4-415 (2021)

Initial Review
Proposed Effective Date

05/30/22

Final Adoption
Emergency Adoption

04/08/22

DOCUMENT #05

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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 receiving an abortion are affected by the proposed rule and non-physician providers, licensed by the state and acting within their scope of practice and federal regulations, performing Medicaid-reimbursed abortions are affected 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.

Members are not restricted to receiving abortions at licensed health care facilities and non-physician providers, licensed by the state and acting within their scope of practice and federal regulations, are reimbursed by Medicaid for performing abortions.

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 fiscal note for Senate Bill 21-142 assumed some abortions may be performed at different facilities and by providers other than physicians, but that the amount of abortions performed will be unchanged. As such, no increase in medical services expenditures was anticipated.

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

There are no probable costs for the proposed rule. The benefit of the proposed rule is aligning Department rule with current policy and state statute. The cost of inaction is misalignment between Department rule, current policy, and state statute. 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.

There are no less costly methods or less intrusive methods for aligning Department rule with current policy and state statute.

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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 current policy and state statute.

1 **8.770 ABORTION SERVICES**

2 **8.770.1. Definitions**

3 Life-Endangering Circumstance means:

- 4 1. The presence of a medical condition, other than a psychiatric condition, as determined by
5 the attending physician, which represents a serious and substantial threat to the life of
6 the pregnant woman if the pregnancy continues to term; or
- 7 2. The presence of a psychiatric condition, which represents a serious and substantial
8 threat to the life of the pregnant woman if the pregnancy continues to term. In such
9 cases, unless the pregnant woman has been receiving prolonged psychiatric care, the
10 attending physician shall obtain consultation from a licensed physician specializing in
11 psychiatry confirming the presence of such a psychiatric condition.

12 **8.770.2. Client Eligibility**

13 8.770.2.A. All Colorado Medicaid-enrolled clients are eligible.

14 **8.770.3. Provider Eligibility**

15 8.770.3.A. All Colorado Medicaid enrolled providers in compliance with CRS § 25.5-3-106 are
16 eligible to perform abortion services.

17 **8.770.4. Covered Services**

18 8.770.4.A. Abortion services are only covered when the life of the mother would be endangered if
19 the fetus were carried to term; or when the pregnancy is the result of an act of rape or incest.

20 8.770.4.B. In cases of a life-endangering circumstance, the physician must make every reasonable
21 effort to preserve the lives of the pregnant woman and the ~~unborn child~~fetus.

22 8.770.4.C. A provider who is licensed physician by the state and acting within the scope of the
23 provider's license and in accordance with applicable federal regulations shall perform the
24 procedure ~~in a licensed health care facility. When the pregnancy substantially threatens the life of~~
25 ~~the client, and the transfer to a licensed health care facility would, in the medical judgment of the~~
26 ~~attending physician, further threaten the life of the client, the abortion may be provided outside of~~
27 ~~a licensed health care facility.~~

28 8.770.4.D. Any claim for payment must be accompanied by a case summary that includes the
29 following information:

- 30 1. Name, address, and age of the pregnant woman;
- 31 2. Gestational age of the ~~unborn child~~fetus;
- 32 3. Description of the medical condition which necessitated the abortion;
- 33 4. Services performed;
- 34 5. Facility in which the abortion was performed; and

1 6. Date of service.

2 8.770.4.E. A claim for payment for an abortion that is the result of life-endangering circumstances
3 must also be accompanied by a Department-approved certification statement confirming the life-
4 endangering circumstance of the abortion and at least one of the following forms with additional
5 supporting documentation that confirms the life-endangering circumstances:

6 1. Hospital admission summary

7 2. The findings and reports from consultants that provide opinions regarding the health of
8 the client

9 3. Laboratory results and findings

10 4. Office visit notes

11 5. Hospital progress notes

12 8.770.4.F. A claim for payment for an abortion that is the result of rape or incest must be
13 accompanied by a Department-approved certification statement confirming the circumstances of
14 the abortion.

15 8.770.4.G. An evaluation by a licensed physician specializing in psychiatry must accompany the
16 claim for reimbursement for the abortion if a psychiatric condition represents a serious and
17 substantial threat to the pregnant woman's life if the pregnancy continues to term.

18 **8.770.5. Prior Authorization Requirements (PAR)**

19 8.770.5.A. Prior authorization is not required for this service.

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