

Title of Rule: Revision to the RHC Rule Concerning Adding Provider Types to RHC Visit, Section 8.740
Rule Number: MSB 21-08-10-B
Division / Contact / Phone: Fee-For-Service Rates / Erin Johnson /4370

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 purpose of this rule is to change the definition of a payable encounter at Rural Health Clinics. The amended rule adds licensed professional counselors, licensed marriage and family therapists, and licensed addiction counselors to the provider types that can generate a billable encounter.

This rule is necessary to maintain access to mental health services at RHCs. Without the rule, RHCs would be unable to provide services with the provider types that had been providing the services in the past. The change maintains care practices that have been present since prior to July 1, 2018.

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 Medical Assistance Program changed coverage on July 1, 2018 to pay for short term behavioral health services as a state plan benefit for all Medicaid clients enrolled in the Behavioral Health Managed Care program. Previously these services were only available through the Managed Care Entities for clients enrolled in the behavioral health program. RHCs have been providing the services as contractors with the Managed Care Entities that cover behavioral health for Colorado Medicaid. When providing services under the managed care plan, visits with licensed professional counselors, licensed marriage and family therapists, and licensed addiction counselors were paid as encounters to the RHC using the prospective payment system. If we did not add these providers to the definition of an RHC visit, we would be out of compliance for paying for these services. If we no longer paid RHCs for these services, it would have a great detrimental effect on behavioral health services provided in rural areas. Therefore, this rule is necessary for the preservation of public health, safety and welfare as well as to comply with state or federal law.

3. Federal authority for the Rule, if any:

1902(bb) SSA

4. State Authority for the Rule:

Initial Review
Proposed Effective Date

08/13/2021

Final Adoption
Emergency Adoption

08/13/2021

DOCUMENT #07

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

Initial Review
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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.

Medicaid clients that receive care at Rural Health Clinics will be impacted by this rule. The emergency rule will support access to care and continuity of care at RHCs. No class of persons will bear any costs of the proposed rule. Medicaid clients will benefit from 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.

The proposed impact is neutral to Medicaid clients. The services were available at RHCs previously through the behavioral health managed care program. Medicaid policy changed to allow these services through fee for service coverage.

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.

There are no costs probable with this rule change. It continues coverage of the services with no change to the payment mechanism. Overall, this policy change is expected to save funds when implemented by all providers including RHCs.

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

There are no probable costs associated with the proposed rule. Probable benefits of action will align coverage between RHCs and FQHCs and other behavioral health providers. With inaction, there may be some probable cost savings due to RHC providers being unable to be paid for a subset of behavioral health services. There are no foreseen probable benefits of inaction. Probable detriments are that many Medicaid clients in rural areas will have their behavioral health treatment fragmented. RHCs will not be able to provide these services and be paid.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no other methods that are less costly or less intrusive to achieve the purpose of the proposed rule.

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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.

The Department has considered not changing the rule as an alternative method to achieve the integration of physical and mental health. That method would have been detrimental to the integration of the short term behavioral health policy. There is no other way to pay for the RHC services except through the Prospective Payment System methodology under the Social Security Act (Title XIX, Section 1902(bb)). The short-term behavioral health policy fosters integration of physical and behavioral health from a single health care entity. To facilitate integration without this rule for RHCs would be to abandon the short-term behavioral health policy for a large number of clients living in rural areas because there would be no way to pay for these services. The alternative methods would not achieve the purpose of this rule.

1 **8.740 RURAL HEALTH CLINICS**

2 **8.740.1 DEFINITIONS**

3 Rural Health Clinic means a clinic or center that:

- 4 1. Has been certified as a Rural Health Clinic under Medicare.
- 5 2. Is located in a rural area, which is an area that is not delineated as an urbanized area by
6 the Bureau of the Census.
- 7 3. Has been designated by the Secretary of Health and Human Services as a Health
8 Professional Shortage Area (HPSA) through the Colorado Department of Public Health
9 and Environment.
- 10 4. Is not a rehabilitation facility or a facility primarily for the care and treatment of mental
11 diseases.

12 Visit means a face-to-face encounter, or an interactive audio (including but not limited to
13 telephone and relay calls), interactive video (including but not limited to interactive audiovisual
14 modalities), or interactive data communication (including but not limited to live chat and excluding
15 text messaging, electronic mail, and facsimile transmission) encounter between a clinic client and
16 any health professional providing the services set forth in 8.740.4. Any health benefits provided
17 through interactive audio, interactive video, or interactive data communication must meet the
18 same standard of care as in-person care

19 **8.740.2 REQUIREMENTS FOR PARTICIPATION**

- 20 8.740.2.A. A Rural Health Clinic shall be certified under Medicare.
- 21 8.740.2.B. A Rural Health Clinic providing laboratory services shall be certified as a clinical
22 laboratory in accordance with 10 C.C.R 2505-10, Section 8.660.

23 **8.740.3 CLIENT CARE POLICIES**

- 24 8.740.3.A. The Rural Health Clinic's health care services shall be furnished in accordance with
25 written policies that are developed with the advice of a group of professional personnel that
26 includes one or more physicians and one or more physician assistants or nurse practitioners. At
27 least one member of the group shall not be a member of the Rural Health Clinic staff.
- 28 8.740.3.B. The policies shall include:
 - 29 1. A description of the services the Rural Health Clinic furnishes directly and those furnished
30 through agreement or arrangement. See section 8.740.4.A.4.
 - 31 2. Guidelines for the medical management of health problems that include the conditions
32 requiring medical consultation and/or client referral, the maintenance of health care
33 records and procedures for the periodic review and evaluation of the services furnished
34 by the Rural Health Clinic.
 - 35 3. Rules for the storage, handling and administration of drugs and biologicals.

36 **8.740.4 SERVICES**

- 1 8.740.4.A. The following services may be provided by a certified Rural Health Clinic:
- 2 1. General services
- 3 a. Outpatient primary care services that are furnished by a physician assistant,
4 clinical psychologist, clinical social worker, nurse practitioner, ~~or~~ nurse midwife,
5 licensed professional counselor, licensed marriage and family therapist, or
6 licensed addiction counselor as defined in their respective practice acts.
- 7 b. Part-time or intermittent visiting nurse care.
- 8 c. Services and medical supplies, other than pharmaceuticals, that are furnished as
9 a result of professional services provided under 8.740.4.A.1.a and b.
- 10 2. Laboratory services. Rural Health Clinics furnish basic laboratory services essential to
11 the immediate diagnosis and treatment of the client.
- 12 3. Emergency services. Rural Health Clinics furnish medical emergency procedures as a
13 first response to common life-threatening injuries and acute illness and must have
14 available the drugs and biologicals commonly used in life saving procedures.
- 15 4. Services provided through agreements or arrangements. The Rural Health Clinic has
16 agreements or arrangements with one or more providers or suppliers participating under
17 Medicare or Medicaid to furnish other services to clients, including inpatient hospital care;
18 physician services (whether furnished in the hospital, the office, the client's home, a
19 skilled nursing facility, or elsewhere) and additional and specialized diagnostic and
20 laboratory services that are not available at the Rural Health Clinic.

21 8.740.5 PHYSICIAN RESPONSIBILITIES

- 22 8.740.5.A. A physician shall provide medical supervision and guidance for physician assistants and
23 nurse practitioners, prepare medical orders, and periodically review the services furnished by the
24 clinic. A physician shall be present at the clinic for sufficient periods of time to fulfill these
25 responsibilities and must be available at all times by direct means of communications for advice
26 and assistance on client referrals and medical emergencies. A clinic operated by a nurse
27 practitioner or physician assistant may satisfy these requirements through agreements with one
28 or more physicians.

29 8.740.6 ALLOWABLE COSTS

- 30 8.740.6.A. The following types and items of cost shall be included in allowable costs to the extent
31 that they are covered and reasonable:
- 32 1. Compensation for the services of a physician who owns, is employed by, or furnishes
33 services under contract to a Rural Health Clinic.
- 34 2. Compensation for the duties that a supervising physician is required to perform.
- 35 3. Costs of services and supplies incident to the services of a physician, physician assistant,
36 clinical psychologist, clinical social worker, nurse practitioner, ~~or~~ nurse-midwife, licensed
37 professional counselor, licensed marriage and family therapist, or licensed addiction
38 counselor.

1 4. Overhead costs, including clinic or center administration, costs applicable to use and
2 maintenance of the entity and depreciation costs.

3 5. Costs of services purchased by the Rural Health Clinic.

4 **8.740.7 REIMBURSEMENT**

5 8.740.7.A. The Department shall reimburse Rural Health Clinics a per visit encounter rate.
6 Encounters with more than one health professional, and multiple encounters with the same health
7 professional that take place on the same day and at a single location constitute a single visit,
8 except when the client, after the first encounter, suffers illness or injury requiring additional
9 diagnosis or treatment.

10 8.740.7.B. The encounter rate shall be the higher of:

11 1. The Prospective Payment System (PPS), as defined by Section 702 of the Medicare,
12 Medicaid and SCHIP Benefits Improvement and Protection Act (BIPA) included in the
13 Consolidated Appropriations Act of 2000, Public Law 106-554, BIPA is incorporated
14 herein by reference. No amendments or later editions are incorporated. The Acute Care
15 Benefits Section Manager at the Colorado Department of Health Care Policy and
16 Financing may be contacted at 1570 Grant Street, Denver, Colorado 80203, for a copy of
17 BIPA, or the materials may be examined at any publications depository library.

18 2. The Medicare rate.

19 a. The Medicare rate for hospital based Rural Health Clinics with fewer than 50
20 beds shall be based on actual costs.

21 b. The Medicare rate for all other Rural Health Clinics is the Medicare upper
22 payment limit for Rural Health Clinics.

23 8.740.7.C. The Department will reimburse Long-Acting Reversible Contraception (LARC) and Non-
24 surgical Transcervical Permanent Female Contraceptive Devices separate from the Rural Health
25 Clinic per visit encounter rate. Reimbursement will be the lower of:

26 1. 340B acquisition costs;

27 2. Submitted charges; or

28 3. Fee schedule as determined by the Department.

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