

Title of Rule: Revision to the Medical Assistance Act Rule concerning Bariatric Surgery,  
Section 8.300.3.C  
Rule Number: MSB 23-06-20-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).

Senate Bill 23-176, at C.R.S. § 25.5-5-336, prohibits the use of Body Mass Index (BMI) when determining medical necessity for individuals diagnosed with certain types of eating disorders. To align with the statute, the proposed rule removes the use of BMI in determining bariatric surgery medical necessity for individuals diagnosed with those types of eating disorders.

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:

Emergency rule-making is imperatively necessary to align Department rule with C.R.S. § 25.5-5-336.

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. (2018);  
Section 25.5-5-336, C.R.S. (2023)

Initial Review  
Proposed Effective Date

**07/14/23**

Final Adoption  
Emergency Adoption

**09/08/23**  
**07/14/23**

**DOCUMENT #08**

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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 diagnosed with the eating disorders identified in C.R.S. § 25.5-5-336, who are candidates for bariatric surgery, 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.

Body Mass Index will not be considered when determining bariatric surgery for members diagnosed with eating disorders identified in C.R.S. § 25.5-5-336.

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 assumes no fiscal impact. It also assumes that only a small number of members will be affected by this bill. Furthermore, the Department believes that prohibiting providers from using BMI to determine medical necessity will have a minimal effect on the number of members with eating disorders being admitted and discharged from residential facilities, as well as the length of time these members stay in such facilities. Any changes in utilization resulting from the bill would be accounted for through the budget process.

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

The costs of the proposed rule are included in the response to question #3. The benefits of the proposed rule are aligning Department rule with state statute. The cost of inaction is misalignment between Department rule 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 is no less costly method to align Department rule with 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 is no alternative method for aligning Department rule with state statute.

1 **8.300 HOSPITAL SERVICES**

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5 **8.300.3 Covered Hospital Services**

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9 **8.300.3.C. Bariatric Surgery**

10 1. Eligible ~~Clients~~Members

11 a. All currently enrolled Medicaid ~~clients~~members over the age of sixteen when:

12 i) The ~~client~~member has clinical obesity; and

13 ii) It is Medically Necessary.

14 2. Eligible Providers

15 a. Providers must enroll in Colorado Medicaid.

16 b. Surgeons must be trained and credentialed in bariatric surgery procedures.

17 c. Preoperative evaluations and treatment may be performed by:

18 i) Primary care physician,

19 ii) Nurse Practitioner,

20 iii) Physician Assistant,

21 iv) Registered dietician,

22 v) ~~Mental Behavioral~~ health providers available through the ~~Client~~member's  
23 Behavioral Health Organization.

24 3. Eligible Places of Service

25 a. All surgeries shall be performed at a Hospital, as defined at 8.300.1.

26 i) Facilities must have safety protocols in place specific to the care and  
27 treatment of bariatric ~~client~~members.

1 b. Pre- and Post- operative care may be performed at a physician's office, clinic, or  
2 other medically appropriate setting.

3 4. Covered Services and Limitations

4 a. Colorado Medicaid covers participating providers for one bariatric procedure per  
5 ~~client~~member lifetime unless a revision is appropriate based one of the identified  
6 complications.

7 i) Appropriate revision procedures are identified at section 8.300.3.C.4.d.

8 b. Covered primary procedures Include:

9 i) Roux-en-Y Gastric Bypass;

10 ii) Adjustable Gastric Banding;

11 iii) Biliopancreatic Diversion with or without Duodenal Switch;

12 iv) Vertical-Banded Gastroplasty;

13 v) Vertical Sleeve Gastroplasty.

14  
15 c. Criteria for Primary Procedures

16 When determining medical necessity or the appropriate level of care for  
17 members diagnosed with an eating disorder as defined in the most recent edition  
18 of the Diagnostic and Statistical Manual of Mental Disorders, the Body Mass  
19 Index (BMI), ideal body weight, or any other standard requiring an achieved  
20 weight must not be used, in accordance with the requirements of Sections 25.5-  
21 5-336(1-2) (2023). Such members must meet criteria in Sections  
22 8.300.3.C.4.c.iii-iv, and Section 8.300.3.C.4.c.v if under age 18. All ~~Clients~~other  
23 members must meet the first four following criteria, ~~clients~~members under age  
24 18 must also meet criteria five:

25 i) The ~~client~~member is clinically obese with one of the following:

26 1) BMI of 40 or higher, or

27 2) BMI of 35-40 with objective measurements documenting one or  
28 more of the following co-morbid conditions:

29 a) Severe cardiac disease;

30 b) Type 2 diabetes mellitus;

31 c) Obstructive sleep apnea or other respiratory disease;

32 d) Pseudo-tumor cerebri;

33 e) Hypertension;

- 1 f) Hyperlipidemia;
- 2 g) Severe joint or disc disease that interferes with daily
- 3 functioning;
- 4 h) Intertriginous soft-tissue infections, nonalcoholic
- 5 steatohepatitis, stress urinary incontinence, recurrent or
- 6 persistent venous stasis disease, or significant
- 7 impairment in Activities of Daily Living (ADL).
- 8 ii) The BMI level qualifying the clientmember for surgery (>40 or >35 with
- 9 one of the above co-morbidities) must be of at least two years' duration.
- 10 A clientmember's BMI may fluctuate around the required levels during
- 11 this period around the required levels, and will be reviewed on a case-by-
- 12 case basis.
- 13 iii) The clientmember must have made at least one clinically supervised
- 14 attempt to lose weight lasting at least six consecutive months or longer
- 15 within the past eighteen months of the prior authorization request,
- 16 monitored by a registered dietician that is supervised by a physician,
- 17 nurse practitioner, or physician's assistant.
- 18 iv) Medical and psychiatric contraindications to the surgical procedure must
- 19 have been ruled out through:
- 20 1) A complete history and physical conducted by or in consultation
- 21 with the requesting surgeon; and
- 22 2) A psychiatric or psychological assessment, conducted by a
- 23 licensed mental behavioral health professional, no more than
- 24 three months prior to the requested authorization. The
- 25 assessment must address both potential psychiatric
- 26 contraindications and clientmember's ability to comply with the
- 27 long-term postoperative care plan.
- 28 v) For clientmembers under the age of eighteen, the following must be
- 29 documented:
- 30 1) The exclusion or diagnosis of genetic or syndromic obesity, such
- 31 as Prader-Willi Syndrome;
- 32 2) Whether female clientmembers have attained Tanner stage IV
- 33 breast development; and
- 34 3) Whether bone age studies estimate the attainment of 95% of
- 35 projected adult height.
- 36 4) Mental health evaluations for clientmembers age 17 must
- 37 address issues specific to these clientmembers' maturity as it
- 38 relates to compliance with postoperative instructions.
- 39 d. Revision Procedures

- 1 i) Colorado Medicaid covers Revisions of a surgery for clinical obesity if it  
2 is used to correct complications such as slippage of an adjustable gastric  
3 band, intestinal obstruction, or stricture, following a primary procedure.
- 4 ii) Indications for surgical revision:
- 5 1) Weight loss to 20% below the ideal body weight;
- 6 2) Esophagitis, unresponsive to nonsurgical treatment;
- 7 3) Hemorrhage or hematoma complicating a procedure;
- 8 4) Excessive bilious vomiting following gastrointestinal surgery;
- 9 5) Complications of the intestinal anastomosis and bypass;
- 10 6) Stomal dilation, documented by endoscopy;
- 11 7) Documented slippage of the adjustable gastric band;
- 12 8) Pouch dilation documented by upper gastrointestinal  
13 examination or endoscopy producing weight gain of 20% of  
14 more, provided that:
- 15 a) The primary procedure was successful in inducing  
16 weight loss prior to the pouch dilation; and
- 17 b) The clientmember has been compliant with a prescribed  
18 nutrition and exercise program following the procedure  
19 (weight and BMI prior to surgery, at lowest stable point,  
20 and at current time must be submitted along with  
21 surgeon's statement to document compliance with diet  
22 and exercise);
- 23 9) Other and unspecified post-surgical non-absorption  
24 complications.
- 25
- 26 e. Non-Covered Services:
- 27 i) For ClientMembers with clinically diagnosed COPD (Chronic Obstructive  
28 Pulmonary Disease), including Chronic Bronchitis or Emphysema.
- 29 ii) Repeat procedures not associated with surgical complications.
- 30 iii) Cosmetic Follow-up: Weight loss following surgery for clinical obesity can  
31 result in skin and fat folds in locations such as the medial upper arms,  
32 lower abdominal area, and medial thighs. Surgical removal of this skin  
33 and fat for solely cosmetic purposes is not a covered benefit.
- 34 iv) During pregnancy.

35 5. Prior Authorization Requirements

1 All bariatric surgical procedures require prior authorization, which must include:

- 2 a) The ClientMember's height, weight, BMI with duration.
- 3 b) A list and description of each co-morbid condition, with attention to any  
4 contraindication which might affect the surgery including all objective  
5 measurements.
- 6 c) A detailed account of the ClientMember's clinically supervised weight loss  
7 attempt(s), including duration, medical records of attempts, identification of the  
8 supervising clinician, and evidence of successful completion and compliance.
- 9 d) A current psychiatric or psychological assessment regarding contraindications for  
10 bariatric surgery, as described in 8.300.3.C.4.c(iv)(2).
- 11 e) A statement written or agreed to by the clientmember, detailing for the  
12 interdisciplinary team the clientmember's:
- 13 i) Commitment to lose weight;
- 14 ii) Expectations of the surgical outcome;
- 15 iii) Willingness to make permanent life-style changes;
- 16 iv) Be willing to participate in the long-term postoperative care plan offered  
17 by the surgery program, including education and support, diet therapy,  
18 behavior modification, and activity/exercise components; and
- 19 v) If female, clientmember's statement that she is not pregnant or breast-  
20 feeding and does not plan to become pregnant within two years of  
21 surgery.
- 22 f) A description of the post-surgical follow-up program.
- 23 g) For clientmembers under the age of eighteen, documentation of the physical  
24 criteria requirements at 8.300.3.C.4.c(v).
- 25