Title of Rule: Creation of the Medical Assistance Act Rule Concerning Pediatric Behavioral Therapy, Section 8.281
Rule Number: MSB 25-09-04-A
Division / Contact / Email: Rachel Larson/Health Policy Office/rachel.larson@state.co.us

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 Department seeks to create a rule for the Pediatric Behavioral Therapy (PBT) benefit. This rule will outline member eligibility, provider types and credentialing requirements, reimbursement and prior authorizations, among other areas. The PBT rule will help clarify and better regulate this benefit area, and will improve service quality and safety for Medicaid members. Within Medicaid, the cost of the PBT benefit has been growing at roughly twice the overall program's growth rate. That trajectory is not sustainable for the state and ultimately puts this benefit—and others—at risk. The rule will increase consistency and accountability for enrolled providers, protect program integrity, and ensure safety for our Health First Colorado members by clearly outlining the requirements of the program. For reference, when the rule discusses a Provider Attestation form, that form is attached as part of this rule packet.

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 Department is advancing Pediatric Behavioral Therapy (PBT) provider requirements through an emergency rule to address urgent compliance issues and ensure continued access to safe, high-quality services for children enrolled in Health First Colorado, to ensure the continued receipt of federal matching funds, and to minimize any risk of further disallowance of funds from the Centers for Medicare and Medicaid Services (CMS).

   The Department has recently learned that some staff delivering Applied Behavioral Analysis (ABA) therapy do not meet national standards for training and supervision. Recent federal audit activities identified tens of millions of dollars in Health First Colorado reimbursements for services provided by uncredentialed behavioral technicians. Currently, credentialing for these technicians is not clearly required in our regulations. This creates a health and safety and financial risk. Preliminary audit findings suggest as much as $59 million should be repaid to the federal Centers for Medicare and Medicaid Services because uncredentialed technicians were reimbursed by Colorado Medicaid, and because of improper service documentation and billing for unapproved services. Colorado Medicaid has limited funds, and

we are also experiencing a severe state budget crisis. Colorado cannot risk having to pay additional funds back to the CMS because of this issue. Without this emergency rule, Colorado risks losing federal matching funds, which cover approximately half of all PBT service costs. Any loss in funds will impact services and the health, safety and welfare of all Health First Colorado members.

Additionally, it is imperative that technicians working with vulnerable children with high-needs receive services from qualified workers. Otherwise, there exists a safety and quality of care/treatment risk for some of our most vulnerable members who may be receiving services from individuals without formal training or certification.

Therefore, to preserve public health, safety and welfare for Health First Colorado members, and to comply with federal and state program requirements for preventing fraud, waste, and abuse, it is imperatively necessary to bring this proposed rule creation on an emergency basis.

3. Federal authority for the Rule, if any:

   42 C.F.R. Part 441 Subpart B—Early and Periodic Screening and Diagnosis and Treatment of Individuals Under Age 21

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S.

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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.

   Health First Colorado members will benefit from the addition of the PBT rule language as they will experience more consistency and higher quality care based on explicit requirements for registered behavioral technician credentialing. Enrolled providers will benefit from the clarity presented in this rule creation. Providers will need to become up-to-date with registration requirements and will bear the cost for meeting this long-standing national training and credentialing standard.

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

   Quantitatively, this rule update will assist in protecting the federal funding for this benefit by requiring providers to meet national standards. Qualitatively, the rule addition will result in better care for members and more accountability for providers.

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 does not anticipate any costs to the Department or to any other state agency as a result of the proposed rule. The rulemaking clarifies existing benefit standards for Pediatric Behavioral Therapy services under Health First Colorado and does not create new services, or expand member eligibility. As such, no additional resources will be required for implementation or enforcement. Likewise, there is no anticipated effect on state revenues from the adoption of this rule

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

   There are no benefits to inaction since provider registration requirements are required for federal funding in this benefit area and will improve member safety. The benefits of the proposed rule include member safety, provider accountability, increased clarity, and consistency across this benefit area.

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

After considering alternatives, there are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

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 considered keeping this benefit out of rule given that the coverage source falls within EPSDT, which is already outlined in rule. However, due to confusion among providers and members, the Department decided building out a rule section for this benefit was necessary.

COLORADO
Department of Health Care Policy & Financing

Behavioral Therapy Provider Attestation

Provider Type 84, Specialty 831; Provider Type 15, Specialty 220

Provider Request

Provider Name: _____ National Provider Identifier (NPI) _____

I attest that I have licensing, credentials, experience and/or training as indicated below:

Note: Check all that apply in the applicable section.

☐ Doctoral degree with a specialty in psychiatry (PhD), medicine (MD) or clinical psychology (PhD) and am actively licensed by the state board of examiners. Attach a copy of the license; **and**

- ☐ have completed 400 hours of training **and/or**
- ☐ have direct supervised experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.

☐ Doctoral degree in one of the behavioral or health sciences. Attach a copy of diploma or transcript; **and**

- ☐ have completed 800 hours of specific training **and/or**
- ☐ experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.

☐ Nationally certified as a Board-Certified Behavior Analyst (BCBA) or Qualified Autism Service Practitioner-Supervisor (QASP). Attach a copy of the certification. In lieu of BCBA Certificate, a screen shot from the Behavioral Analyst Certification Board (BACB) or Qualified Applied Behavior Analysis Credentialing Board website indicating name, location, level, number, and valid date span is acceptable.

☐ Master's degree or higher, in behavioral health sciences or education. Attach a copy of diploma or transcript; **and**

- ☐ licensed teacher with an endorsement of school psychologist. Attach a copy of the license; **or**
- ☐ licensed teacher with an endorsement of special education or early childhood special education. Attach a copy of the license; **or**
- ☐ credentialed as a related services provider (Physical Therapist, Occupational Therapist, or Speech Therapist. Attach a copy of the license;

and one of the following:

- ☐ have completed 1,000 hours of direct supervised training **or**
- ☐ experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.

Provider Signature _____

- Evidence of license (if applicable) must be included.
- Evidence of training must be included: written documentation including dates, hours (with total) and signature of supervisor.
- Evidence of behavioral therapy experience must be included: written documentation indicating experience signed by supervisor.
- Upload all documents on 'Attachments and Fees' page of the Online Provider Enrollment application.

8.280 EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT

8.281 PEDIATRIC BEHAVIORAL THERAPY

8.281.1 PURPOSE

8.281.1.A. This section establishes standards for Pediatric Behavioral Therapy (PBT) services covered by Health First Colorado for members under age 21, including member eligibility, provider qualifications, covered services, documentation, prior authorization, reimbursement, and program integrity.

8.281.1.B. Services must be provided in a manner that is individualized, culturally competent, developmentally appropriate, and family-centered.

8.281.1.C. Section 8.281 applies only to Pediatric Behavioral Therapy services delivered outside of the Health First Colorado behavioral health benefit and do not govern behavioral health services covered through managed care entities.

8.281.2 DEFINITIONS

8.281.2.A. **Asynchronous** refers to processes or interactions that occur independently of simultaneous participation or coordination in time. It denotes a mode in which tasks, communications, or operations proceed without requiring all elements to align or execute concurrently.

8.281.2.B. **At Risk For Delay** refers to the potential for a child to experience significant delays in reaching developmental milestones in one or more areas (communication, motor, cognitive, social-emotional, adaptive) due to certain biological or environmental factors. This risk may not be tied to a specific condition but indicates that the child is vulnerable to developmental delays without intervention.

8.281.2.C. **Behavioral Therapy** means evidence-based behavioral interventions used to modify socially significant behaviors and increase adaptive functioning.

8.281.2.D. **Behavioral Therapy Provider Attestation** means a Department-approved form that is required for Health First Colorado enrollment for Pediatric Behavioral Therapy billing providers. Providers must attest that they have the appropriate licensing, credentials, experience and/or training required of eligible billing providers as outlined in the Behavioral Therapy Provider Attestation form.

8.281.2.E. **Diagnostic Evaluation** means a comprehensive, standardized clinical assessment performed by a qualified licensed professional to determine whether an individual meets the criteria for an Autism Spectrum Disorder (ASD) or another developmental/behavioral condition. A diagnostic evaluation may be performed by a psychologist, developmental pediatrician, neurologist, or other credentialed clinician. The tools used for a diagnostic evaluation may include, but are not limited to:

1. Standardized diagnostic tools such as the Autism Diagnostic Observation Schedule (ADOS-2), Autism Diagnostic Interview-Revised (ADI-R);

2. Developmental, cognitive, and adaptive functioning measures (e.g., Vineland, cognitive/IQ testing); and

3. Review of medical, educational, and psychosocial history.

8.281.2.F. **Initial Pediatric Therapy Assessment** means a comprehensive standardized assessment performed by a qualified licensed or certified professional before treatment has begun in order to determine what treatment needs an individual requires and develop a comprehensive treatment plan.

8.281.2.G. **Periodic Pediatric Therapy Reassessment** means a standardized assessment performed by a qualified licensed or certified professional at periodic intervals during an individual's course of treatment in order to determine if a current treatment plan is still valid and the individual is meeting any goals.

8.281.2.H. **Treatment Plan** means a written plan developed by an enrolled provider, as defined in this section, outlining therapeutic goals and behavior-change strategies based on a clinical assessment.

8.281.3 MEMBER ELIGIBILITY

8.281.3.A. Health First Colorado members are eligible for Pediatric Behavioral Therapy Services if they:

1. Are under the age of 21;

2. Are enrolled in Health First Colorado;

3. Have a documented neurodevelopmental condition identified through behavioral and developmental characteristics (e.g., Autism Spectrum Disorder, developmental delay, or other functional behavioral conditions) or be at risk for delay for those under the age of three;

4. Have a documented recommendation of services; and

5. Have an individualized treatment plan indicating medical necessity for pediatric behavioral therapy services with every Prior Authorization Request submission.

8.281.4 PROVIDER REQUIREMENTS

8.281.4.A. Health First Colorado providers eligible to provide Pediatric Behavioral Therapy services must:

1. Be enrolled as a provider in Health First Colorado;

2. Be licensed or certified by an appropriate credentialing body as listed in the Behavioral Therapy Attestation;

3. Have a completed and approved Behavioral Therapy Provider Attestation that is required for all billing providers;

4. Provide covered services within their scope of practice under their certification or licensure;

5. Complete annual background checks for any service providers they supervise;

6. Ensure certification and/or licensure for the following service providers they supervise:

a. **Registered Behavioral Technicians (RBT)** must have a high school diploma; have completed 40 hours of training that meets Behavioral Analyst Certification Board (BACB) specifications; have passed the competency exam administered by the BACB; and receive ongoing supervision per the requirements of the BACB; and

b. **Applied Behavior Analysis Technicians (ABAT)** must be 18 or older; have a high school diploma; have completed 40 hours of approved coursework or training; have completed 15 or more supervised hours following approved coursework or training; adhere to a 5% quarterly supervision requirement; and have passed the competency exam administered by the Qualified Applied Behavior Analysis Credentialing Board (QABACB).

7. Have no sanctions or disciplinary actions by the applicable state licensing board and/or their credentialing body.

8.281.5 COVERED SERVICES

8.281.5.A. Services must be based upon the individual member's needs and give consideration to the member's age, school attendance requirements, and other daily activities as documented in the treatment plan.

8.281.5.B. Services must be delivered in a clinically appropriate setting for the behavior being treated.

8.281.6 BENEFIT LIMITATIONS

8.281.6.A. Initial pediatric therapy assessments are limited for each member to one session per provider every 12 calendar months.

8.281.6.B. Periodic pediatric therapy reassessments are limited for each member to one session per provider every 12 calendar months.

8.281.6.C. Additional sessions of initial pediatric therapy assessments and Periodic pediatric therapy reassessments may be authorized by the Department if medically necessary.

8.281.7 DOCUMENTATION AND CHARTING REQUIREMENTS

8.281.7.A. Providers must follow certification or licensure requirements for charting and documentation. At a minimum, providers must document the services they provide, and their observations of the member's condition and progress, for each request for reimbursement submitted to Health First Colorado.

B. Providers must comply with federal regulations for signatures related to electronic billing formats.

8.281.8 REIMBURSEMENT

8.281.8.A. Pediatric Behavioral Therapy services will be reimbursed according to the Health First Colorado Fee Schedule. Providers must:

1. Use accurate Current Procedural Terminology (CPT)/ Healthcare Common Procedure Coding System (HCPCS) codes;

2. Apply appropriate modifiers when required; and

3. Submit claims supported by complete documentation.

8.281.9 PRIOR AUTHORIZATION REQUIREMENTS

8.281.9.A. Prior Authorization is required for all Pediatric Behavioral Therapy services.

1. Requests must include:

a. Documentation and justification of medical necessity;

b. Assessment summary; and

c. Treatment plan with goals, hours requested, and provider qualifications.

8.281.10 NON-COVERED SERVICES

8.281.10.A. The following are not covered under this benefit:

1. Academic tutoring;

2. Therapy for non-clinical behavior goals (e.g., etiquette);

3. Intervention services rendered when measurable functional improvement is not expected and services are not necessary to maintain function or prevent deterioration;

4. Vocational rehabilitation;

5. Custodial care, such as nap time. Developing, restoring or maintaining self-help, daily living, or safety skills as part of an Applied Behavior Analysis (ABA) treatment plan does not constitute custodial care and are covered;

6. Experimental therapies not supported by evidence-based practice;

7. Services not delivered or supervised by a qualified provider; and

8. Asynchronous supervision or reviews.

8.290 SCHOOL HEALTH SERVICES

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