

Title of Rule: Revision to the Medical Assistance Rule concerning Maternity Services Episode Based Payments, Section 8.733  
Rule Number: MSB 22-04-27-A  
Division / Contact / Phone: Managed Care Rates and Payment Reform / Ke Zhang / 2748

## 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 implemented a maternity bundled payment program in 2020 with a detailed program rule in place under the Medical Assistance Rule concerning Maternity Services Episode Based Payments, Section 8.733. The goal of the program is to improve pregnant and birthing members' health outcomes by improving obstetrical care service quality while reducing cost. The program gives providers performance linked opportunities to earn extra incentive payments besides the fee-for-service reimbursement for maternity services. A few key program implementation updates have been implemented during the first program year (Nov. 2020 – Oct. 2021), including adding mental health considerations into the current threshold setting process, and removing downside risk implementation. This rule update aims to include those program updates and fix a few language alignments issues.

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);

Initial Review  
Proposed Effective Date

**05/15/22**  
**07/30/22**

Final Adoption  
Emergency Adoption

**06/10/22**

**DOCUMENT #12**

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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.

This rule update will impact pregnant and birthing members and neonates who utilize services from participating obstetrical practices. The impacted members will benefit from an improved care experience throughout the episode and the program will incentivize the participating obstetricians to promote screening, referral and treatment for deliveries with substance use disorder and mental health conditions. Participating obstetricians will also be impacted. They will have a higher chance to receive a greater incentive shared savings by coordinating and improving care for the members throughout the episode and will not face any financial penalties because of the removal of downside risk in the program, which was originally included in the initial 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.

Participating obstetricians have the opportunity to earn extra incentive payments besides the fee-for-service reimbursement through the program. The updated rule will provide the participating providers a higher chance to receive a greater amount of incentive shared savings if they meet the program's quality improvement and cost saving goals. In addition, the updated rule removes the downside risk, so providers will not be liable for negative incentives.

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.

Probable costs include budget for providing future stakeholder engagement, program data and performance reporting, program evaluation, and future program updates. With the updated rule, the program is expected to save the state money in the long term as providers learn to improve care quality and reduce unnecessary cost.

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

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If this rule update were not implemented, key program updates based on internal and external stakeholders' feedback will not be correctly and formally reflected by the administrative rules of the program. Thus, there would be confusion and misunderstanding from providers and stakeholders in terms of the operational details of the program moving forward, which will negatively impact the Department's accountability and credibility as the administrative party of this program.

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

This rule update is a revision of an existing program rule. Thus, there is no less costly or less intrusive methods. Bundled payments are used nationally by commercial health plans, employer insurance, and government agencies to improve outcomes for patients. Bundled payments have been shown to be effective at improving care quality and eliminating unnecessary cost. The program updates reflected by this rule update is essential for program success moving forward.

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 program updates reflected by this rule update is based on external and internal stakeholders' feedback and the Department's leadership decisions on a few program operational details. The Department is not aware of any alternative methods/updates for improving this program at the moment.

1 **8.733 EPISODE BASED PAYMENTS**

2 **8.733.1 DEFINITIONS**

3 8.733.1.A. **Episode** means a defined group of related Medicaid covered services provided to a  
4 specific patient over a specific period of time. ~~An~~A Maternal Episode includes the Delivery  
5 Episode Trigger; Prenatal Pre-Trigger Window; Delivery Trigger Window; and Post-Partum Post-  
6 Trigger Window.

7 1. **Delivery Episode Trigger** means the date of a qualifying live delivery event.

8 2. **Prenatal Pre-Trigger Window** means the 280-day period prior to the delivery episode  
9 trigger window and includes all relevant care for the patient provided during that period.

10 3. **Delivery Trigger Window** means the time period ~~of time~~ when the mother is in the  
11 hospital for the delivery episode trigger.

12 4. **Postpartum Post-Trigger Window** means the ~~90~~60-day time period following the  
13 delivery episode trigger window and includes all relevant care and any complications that  
14 might occur for the mother during that period.

15 8.733.1.B. **Episode Cohort** means a Principal Accountable Provider's (PAP) maternity Episodes  
16 eligible for either positive or negative incentives after exclusions, ~~high~~-cost outliers, and services  
17 not relevant to the Prenatal Pre-Trigger, Delivery Trigger, and Post-Partum Post-Trigger Windows  
18 have been removed.

19 8.733.1.C. **Gross Episode Performance** means the aggregated average performance of a PAP  
20 compared to each prospective target set by each Threshold without the Department's share  
21 calculated, for either the ~~Substance Use Disorder (SUD)~~Behavioral Health or Non-~~SUD~~Behavioral  
22 Health subsets of Episodes.

23 8.733.1.D. **High-Risk Pregnancy** means pregnancy that threatens the health or the life of the  
24 mother or her fetus. Risk factors can include existing health conditions, weight and obesity,  
25 multiple births, older maternal age, and other factors.

26 8.733.1.E. **Net Episode Performance** means the Gross Episode Performance of a PAP multiplied  
27 by the Department's share of fifty percent, for either the ~~SUD~~Behavioral Health or Non-  
28 ~~SUD~~Behavioral Health subsets of Episodes.

29 8.733.1.F. **Performance Period** means a twelve-month period, beginning on the first day ~~of a~~  
30 ~~calendar year~~each November, for which the Department will measure Episode performance of all  
31 providers delivering services during the course of a specific Episode. For an Episode to be  
32 included within the Performance Period, the end date for the Episode must fall within the  
33 Performance Period.

34 8.733.1.G. **Principal Accountable Provider (PAP)** means the provider that is held accountable for  
35 both the quality and cost of care delivered to a patient for an entire Episode. PAPs for maternity  
36 Episodes are willing obstetrical groups who agree in writing to participate in the ~~model~~program  
37 with the Department.

1 8.733.1.H. **Threshold** means the prospective cost target for performance for both the upper and  
2 lower incentive benchmarks for the SUD Behavioral Health and non-SUD Behavioral Health  
3 subsets within a PAP's Episode Cohort.

4 1. **Acceptable** means the dollar value such that a provider with an average reimbursement  
5 above/below the dollar value incurs a negative/positive incentive payment.

6 2. **Commendable** means the specific dollar value such that a provider with an average  
7 reimbursement below the dollar value is eligible for a positive incentive payment if all  
8 Quality Metrics linked to the incentive payment are met.

9 8.733.1.I. **Quality Metrics** means measures determined by the Department that will be used to  
10 evaluate the quality of care delivered during a specific Episode, including the extent to which care  
11 reduces disparate outcomes based on race and ethnicity and improves patient experience.

## 12 8.733.2 MATERNITY

13 8.733.2.A. Maternity Bundled Payment Pilot Program

14 1. Using Episode-based payments, the Department modifies its payment methodology for  
15 maternity services, as defined at Section 8.732, ~~to~~for PAPs to recognize the quality and  
16 efficiency of maternity services provided , including the extent to which services reduce  
17 health disparities and improve patient experience.

18  
19 2. Maternity Episode definitions and appropriate Quality Metrics are based on evidence-  
20 based practices derived from peer-reviewed medical literature, public health data on  
21 infant and maternal morbidity and mortality and effective responses, historical provider  
22 performance, and clinical information furnished by providers rendering services during  
23 maternity Episodes.

24 3. Medicaid-covered services during a maternity Episode will be included ~~from~~by the  
25 Prenatal Pre-Trigger Window, Delivery Trigger Window, and Post-Partum Post-Trigger  
26 Window. The services considered as a part of the episode shall not be limited solely to  
27 those provided by the PAP.

28 4. The Department through a stakeholder advisory process that is majority currently or  
29 former Medicaid members who have received maternity services and majority people of  
30 color shall review the maternity bundled payment ~~pilot program~~. The process shall meet  
31 and review data on the maternity bundled payment ~~pilot program~~ at least quarterly.

32 8.733.2.B. Maternity Episode Program Incentive Payments

33 1. Incentive payments to a PAP are based upon an Episode Cohort within a Performance  
34 Period.

35 2. Incentive payments may be positive or negative and are made retrospectively after the  
36 end of the Performance Period. Negative incentives are financial penalties incurred the  
37 PAP. Since program participation is voluntary, PAPs are only subject to positive  
38 incentives.

1 ~~a. In a PAP's first year of participation in the Maternity Bundled Payment Pilot~~  
2 ~~Program, only positive incentives will apply while the PAP learns pathways to~~  
3 ~~improve the quality, efficiency, and economy of care provided.~~

4 ~~b. In a PAP's second year of participation in the Maternity Episode Program positive~~  
5 ~~incentives and negative incentives in the form of financial penalties for the PAP~~  
6 ~~will apply.~~

7 3. When calculating a PAP's Episode Cohort, the Department excludes the Episodes which  
8 have the presence of the following:

9 a. The member is dually eligible for Medicare and Medicaid at any time during the  
10 Episode.

11 b. Third-party liability on any claim within a maternity Episode.

12 c. PAP provided no prenatal services for to the member.

13 d. Member died during Episode.

14 e. Incomplete set of claims for an Episode.

15 f. No professional claim for delivery.

16 4. When calculating a PAP's Episode Cohort, the Department will remove ~~high~~-cost outliers  
17 via a statistical methodology determined by the Department's actuarial contractor.

18 5. When calculating a PAP's Episode Cohort, the Department will remove services which  
19 are not part of the relevant care for the Prenatal Pre-Trigger, Delivery Episode, and Post-  
20 Partum Post-Trigger Windows.

21 6. Each participating PAP will have two sets of Acceptable and Commendable Thresholds  
22 calculated based on their historical Episode payments.

23 a. The first set of Thresholds will be calculated based on historical spending for  
24 Episodes which contain a flag for SUD-Behavioral Health (including Substance  
25 Use Disorder (SUD) or Mental Health).

26 b. The second set of Thresholds will be calculated based on historical for Episodes  
27 which do not contain a flag for SUD-Behavioral Health (SUD and Mental Health).

28 c. It is the responsibility of the PAP to review each set of Acceptable and  
29 Commendable Thresholds provided by the Department before the start of the  
30 Performance Period.

31 7. Incentive payments for a PAP's Episodes within the Performance Period will be  
32 calculated in two separate subsets.

33 a. The first subset is Episodes which have a flag for SUD-Behavioral Health (SUD  
34 or Mental Health).

b. The second subset is Episodes which do not have a flag for Behavioral Health (SUD- or Mental Health).

8. In order for a PAP to be eligible for positive incentives for a subgroup, the PAP must do the following:

a. Meet the Quality Metrics set for each Performance Period by the Department. The Department shall present on quality measures to the Program Improvement Advisory Committee (PIAC) before measures are tied to payment. The Subject to data availability and quality limitations, the Department at a minimum shall monitor the following within the limitations of data availability and data quality:

~~–The Department shall review all findings through the stakeholder advisory process identified in 8.733.2.A (4) and if performance improvement is warranted tie the measure to payment; warranted, update the list of quality metrics monitored. Subject to the limitations of data availability, if the Department seeks improved PAP performance for a quality metric, that quality metric may be tied to payment.~~

~~i. b. During the first year that a PAP joins the program, all quality metrics will be tracking/reporting only (including tie-to-payment metrics) to create a baseline; starting the second year that the PAP joins the program, quality metrics that are tied to payment will apply.~~

Patient education

ii. All cause readmissions

iii. Severe maternal morbidity

iv. Maternal Gestational Hypertension, Pre-eclampsia, HELLP syndrome, eclampsia

v. Premature birth

vi. Patient Experience

b. Provide the same or greater number of services and the same or higher level of resources to members within the subgroup who experience racism as are provided to members who do not experience racism

9. ~~9.~~ If the PAP's aggregated average Gross Episode Performance for each subset is lower than each Commendable Threshold, the PAP shall receive a positive incentive payment.

10. ~~10.~~ If the PAP's aggregated average Gross Episode Performance for each subset is higher than each Acceptable Threshold, the PAP ~~shall incur~~ will not be liable for a negative incentive payment ~~in the form of a~~ financial penalty.

11. ~~11.~~ A PAP's Net Episode Performance for incentives is calculated by multiplying the Gross Episode Performance of each subset by fifty percent.

12. ~~12.~~ If the average Episode reimbursement for each subset is between each set of Acceptable and Commendable Thresholds, the PAP shall not receive a positive incentive payment or incur a negative incentive payment.
13. ~~13.~~ Incentive payments are separate from, and do not alter, the reimbursement methodology for Medicaid covered services set forth in Department rules and guidance.
14. ~~14.~~ Consideration of the aggregate cost and quality of care is not a retrospective review of the medical necessity of care rendered to any particular member.
15. ~~15.~~ Nothing in this rule prohibits the Department from engaging in any retrospective review or other program integrity activity.
16. ~~16. In a PAP's second year of participation when negative incentives apply, the PAPPAPs~~ may contest the Department's determination of ~~Episodes above the Acceptable Threshold~~ incentive payment. PAPs who contest the Department's determination must submit in writing the reason for contesting the determination within 60 calendar days of receiving the notice of ~~negative incentive limit~~ payment. The Department will review all contested determinations within 30 calendar days of receipt of the notice. The PAP has the right to file an appeal with the Office of Administrative Courts in accordance with Section 8.050.3.

8.733.2.C Maternity Bundled Payment ~~Pilot~~ Program Participation

1. Participation is not mandatory in the Maternity Bundled Payment ~~pilot~~ program for qualified obstetrical groups.
- ~~2.~~
2. Participation by obstetrical groups in the Maternity Bundled Payment does not limit a patient's ability to change providers mid-episode for any reason.
3. ~~Obstetrical groups~~ Medicaid covered obstetrical who participate in the maternity bundled payment will allow the Department to extract clinical data from their electronic medical records ~~by their second performance year in the program.~~ Information extracted from electronic medical records will be used by the Department to monitor the quality of care and number of services being provided to members within the subgroup who experience health disparities based on race and ethnicity.
4. Obstetrical groups who participate in the maternity bundled payment will be required participate cultural competency training selected by the Department, to be inclusive of the importance of racial congruence between patients and providers and hiring and retention strategies for maintaining a diverse staff.
5. Obstetrical groups that are interested in becoming PAPs ~~will do the following:~~ should submit a program application form on the program webpage (<https://hcpf.colorado.gov/bundled-payments>).
  - ~~a.~~ Submit a letter of intent to participate in the pilot program to the following address:
    - ~~i.~~ Bundled Payment Pilot Program, 1570 Grant St. Denver, CO 80203



1           b. ~~The letter shall outline the following:~~

2                   ii. ~~The reason for wanting to participate in the program.~~

3                   iii. ~~The number of Medicaid covered births the group delivered in the most~~  
4                               ~~recent two years.~~

5                   iv. ~~The number of non-Medicaid covered births the group delivers.~~

6                   v. ~~Whether the group is participating in a bundled payment program with~~  
7                               ~~any other payers.~~

8           6.       The Department will notify all ~~potential PAPs who meet the criteria listed above in writing~~  
9                   ~~of their Acceptable interested providers once the application is received and~~  
10                  ~~Commendable Thresholds for both subsets of Episodes.~~

11           7. ~~The potential PAP shall will arrange meetings for a collaborative review the Thresholds of~~  
12                  ~~the preliminary episode cost thresholds and notify the Department in a final acceptance~~  
13                  ~~letter of their intent to join the Maternity Bundled Payment Pilot Program program details.~~

14           8. ~~The acceptance letter shall be binding for the PAP unless the PAP is disenrolled or~~  
15                  ~~unable to continue providing Medicaid services.~~

16           7.       Once the cost thresholds as well as all program details and requirements are reviewed  
17                  and accepted by the provider, the provider will be asked to sign a Program Participation  
18                  Agreement and a Thresholds Acceptance Letter respond to confirm their participation.

19