



COLORADO

Department of Health Care
Policy & Financing

Medical Services Board

MINUTES OF THE MEETING OF THE MEDICAL SERVICES BOARD

303 East 17th Avenue 11th Floor Conference Room, Denver, CO 80203
May 10, 2024

Call to Order

Mr. Honea called the meeting to order at 9:06 a.m.

Roll Call

The Board Coordinator called the roll. There were sufficient members for a quorum with ten members participating.

A. Members Present

Laura Carroll, Cecile Fraley, Morgan Honea, William Kinnard, James McLaughlin, Barry Martin and An Nguyen.

B. Members Excused

Simon Hambidge, Christina Mulkey and Vincent Scott

C. Staff Present

Adela Flores-Brennan, Medicaid Director; Jennifer Weaver, Attorney General; and Chris Sykes, Board Administrator

Announcements

Mr. Honea announced the next Medical Services Board Meeting will be held at 1735 S Public Rd 1st Floor, Lafayette, CO 80026 on Friday, June 14, 2024 at 9:00 a.m.

It is the policy of this Board and the Department to remind everyone in attendance that this facility is private property. Please do not block the doors or stand around the edges of the room. Please silence cell phones while in the meeting room.

Approval of Minutes

Mr. McLaughlin moved for the approval of the November minutes. The motion was seconded by Dr. Martin. The minutes were approved, 7:0.

Rules

A. Emergency Adoption Agenda

Document 12, MSB 24-04-05-A, Revision to the Medical Assistance Act Rule concerning Doula Services, Section 8.734

Erica Schaler, Policy Development and Implementation Section, and Brooke Greenky, (Health Programs Office) presented the rule and presented the definition of doula services in rule. The rule is an emergency to comply with the legislative mandate contained in SB 23-228. Stakeholder engagement was reviewed including stakeholder topics.

Board Discussion – Board discussion included the level of CPR training required will be specified in the rule. A conversation regarding the use of the emergency tract was held. Doula’s save lives, especially within minority populations.

Public Testimony – Katie Wallet, Colorado Center on Law and Policy, surprised this is an emergency rule given stakeholder engagement. Support the rule and surprised CPR training is included in the rule.

Galia Spychalska, Parent, not sure why rule is emergency.

Dr. Martin moved for the emergency adoption of Document 12. Ms. Carroll seconded the motion.

The Board voted the emergency adoption of Document 12, 7:0.

Document 14, MSB 24-04-18-B, Revision to the Medical Assistance Act Rule concerning Doula Services, Section 8.200.2.D.a

Erica Schaler, Policy Development and Implementation Section, presented the rule and explained this rule revision is required to remove any impediments to enacting the Doula Services rule. Doula’s are not regulated by DORA and would need physician oversight. An exception is being be made because oversight not necessary.

Board Discussion – Board discussion included what doula services means for the state and helping support birthing individuals. Without physician oversight, what processes are in place to ensure care. Individuals operate under a code of conduct with audit checks. Safeguards for providers include certifications, attestation of number of births and experience pathway. Letters of recommendation from individuals helped and service providers is also included.

Public Testimony – Galia Spychalska, Parent, agree that Doula’s help minority communities.

Mr. McLaughlin moved for the emergency adoption of Document 14. Dr. Fraley seconded the motion.

The Board voted the emergency adoption of Document 14, 7:0.

Document 13, MSB 24-04-11-A, Revision to the Medical Assistance Act concerning the Coverage of FDA-Approved Imported Drugs, Section 8.800.4.B Korri Conilogue, Pharmacy Office, presented the rule and explained emergency rulemaking is necessary for active syphilis outbreak and lack of medicine to treat. There is a great impact on unborn children. Current drug shortages have made the FDA authorize temporary importation. The rule allows the importation of necessary drugs and promotes access to care.

Board Discussion – Board discussion included an appreciation for the emergency explanation.

Public Testimony – NA

Dr. Kinnard moved for the emergency adoption of Document 13. Dr. Nguyen seconded the motion.

The Board voted the emergency adoption of Document 13, 7:0.

B. Final Adoption by Consent

Document 01, MSB 23-12-20-A, Revision to the Medical Assistance Act Rule concerning Payment for Inpatient Hospital Services 8.300.1; Document 02, MSB 24-01-03-B, Revisions to the Medical Assistance Rule Concerning the Hospital Expenditure Report Data Collection, 8.4000; Document 03, MSB 23-10-25-B, Revision to the Medical Assistance Act Rule concerning Electronic Visit Verification (EVV) Provider Types, Section 8.001.A.2 and Document 04, MSB 24-03-01-A Revision to the Medical Assistance Nursing Facility Reimbursement Rule concerning Pay for Performance and Medicare costs Sections 8.440.2.A, 8.441.5.H, 8.441.5.L, and 8.443.12.

Dr. Martin moved for the final adoption of Document 01, 02, 03 & 04. Mr, McLaughlin seconded the motion.

The Board voted the final adoption of Document 01, 02, 03 & 04, 7:0.

C. Final Adoption

Document 05, MSB 24-01-25-A, Revision to the Colorado Indigent Care Program Rule concerning CICP Social Security Number and Other Minor Updates, Section 8.900

Taryn Graf, Special Financing Division, presented the rule and explained the rule addresses how CICP applicants no longer need to provide a SSN on the application. An additional request to remove the requirement from the Medicaid applications was also made.

Board Discussion – NA

Public Testimony – Bethany Pray, Colorado Center on Law and Policy, appreciate discussion with staff.

Mr. McLaughlin moved for the final adoption of Document 05. Ms. Carroll seconded the motion.

The Board voted the final adoption of Document 05, 7:0.

Document 06, MSB 24-02-13-A, Revision to the Medical Assistance Act Rule concerning Safety Net Providers Language Update, Section 8.750

Alex Lyons, Policy Development and Implementation Section, presented the rule and explained the purpose of the rule is to ensure the rule uses the same language as used by the Behavioral Health Administration. Reviewed stakeholder feedback received last month and spoke about a minor citation change from last month.

Board Discussion – NA

Public Testimony – Galia Spsychaska, parent, feel not included in rulemaking per Title 24 issues.

Dr. Fraley moved for the final adoption of Document 06. Ms. Carroll seconded the motion.

The Board voted the final adoption of Document 06, 7:0.

Document 07, MSB 24-02-29-B, Revision to the Medical Assistance Act concerning Private Duty Nursing Benefit Rule, Section 8.540

Candace Bailey, Office of Community Living, presented the rule and explained that significant stakeholder engagement was performed from the previous month. No substantive changes were made, only enhancing clarity of the regulations. Revised technology dependence in definition section to be broader. No changes to policy and no changes regarding access to care.

Board Discussion – Board discussion included a conversation regarding denials and that they remain consistent, around 2-3%. Partial denials fluctuate, based on the PAR received. Medical necessity is the most common reason for partial denials. A comparison of the denial rate in PDN versus overall Medicaid is difficult because it is not apples to apples. Clarifying the rule language is meant to lessen procedural denials. A discussion concerning the 24 hour limit of care for PDN was held, with concurrent services being offered when approved. The vendor is paid to assess eligibility and the denied PAR's go to the Department for sign off. The data collected on PARs is forward facing on the public website. The PAR process is federally driven. All requests start from physician and the vendor cannot overrule Department.

Public Testimony – Christy Blakely, Family Voices, participated in the stakeholder process. Appreciate the rule as written. It is the hope that the rule revision assists in partial denial rate dropping.

Galia Spychaska, Parent, request denial of the rule. Children being denied disproportionately and is a violation of federal law. Staff countered that the rule does not increase children's denials.

Katie Wallet, Colorado Center on Law and Policy, rule development was a great process. Rule revisions allow for more access and we support the rule as written. The rule does need to evolve and the Department is committed to continue working on the rule.

Andrea Reitzel, All for Kids Home Health, struggle for PDN services for children. Appreciate clarification of the 24 hour limit by the Department. Appreciate clarity in data from public to the Department. One on one contact is requested and hopefully office hours address the request. There are issues with the school assessment versus the Department assessment.

Susan Root, Private Duty Nurse, the vendor does not take into consideration the physician decision. A request to table the rule was given. The reconsideration process is peer to peer.

Erica Drury, MGA Homecare, appreciate the rule stakeholder engagement opportunities. Implementation is key – how will the vendor be trained on the new rule? Look at analyzing outcomes. Request that the Department remain open to sharing outcomes when appropriate.

Jim Melancon, Aveanna Healthcare, technical denials could be fast tracked as opposed to medical needing more digging in.

Dr. Nguyen left – 10:55 AM

Mr. McLaughlin moved for the final adoption of Document 07. Dr. Kinnard seconded the motion.

The Board voted the final adoption of Document 07, 6:0.

5 minute break

D. Initial Approval

Document 08, MSB 24-01-03-C, Revision to the Medical Assistance Rule Concerning the Hospital Community Benefit Accountability, 8.5000

James Johnston, Special Financing Division, presented the rule and explained HB 23-1243 expanded on previous legislation. More comprehensive community involvement was sought. Public meetings will be held and the Department is required to report to the Legislature on the highest priority areas and new investment categories. Legislation enacts corrective plans issued by the Department. Time is built in for the reporting lag. A review of the stakeholder engagement performed was given.

Board Discussion – Board discussion included that the stakeholder feedback section of the presentation was great! The public meeting requirement is from the statute and that is why it is in rule.

Public Testimony – Peter Manetta, Colorado Association of Local Public Health Officials, the 2008 Affordable Care Act required community involvement. Some communities do it well. Sharing best practices is a good idea.

Megan Axelrod, Colorado Hospital Association, pleased with opportunity to engage. Oversight is extensive and appreciate the engagement. Have technical changes for final adoption, the community investment definition needs work.

Katie Wallet, Colorado Center on Law and Policy, excited about the rule and appreciate working with staff. Technical changes to language is needed, the rule prohibits naming the hospital named in the correction action plan until due, ask for it upon assignment.

Dr. Martin moved for the initial approval of Document 08. Mr. McLaughlin seconded the motion.

The Board voted the initial approval of Document 08, 6:0.

Document 09, MSB 24-02-29-A, Revision to the Medical Assistance Eligibility Rules concerning Redetermination of Eligibility, Section 8.100.3.P

Ana Bordallo, Office of Medicaid Operations, presented the rule and explained the rule revisions incorporate the 30 days renewal ex parte process in rule. Checklist going out with renewal request allows for individuals to return information when needed. Federal changes require the Department to make changes in the future.

Board Discussion – NA

Public Testimony – Galia Spsychalska, parent, change of beneficiary assignment troublesome. Exclusions are not included in the rule. Feedback goes to other sections of the rule, not sections for this revision. Staff commit to working with the stakeholder.

Bethany Pray, Colorado Center on Law and Policy, wish the timeline was before the PHE unwind. Active voice is best, members are required to return no more than 10 days than when the letter was sent. The County shall grant requests for good cause.

Ms. Carroll moved for the initial approval of Document 09. Dr. Fraley seconded the motion.

The Board voted the initial approval of Document 09, 6:0.

Document 10, MSB 23-11-29-A, Revision to the Medical Assistance Act Rule concerning Member Appeals, Sections 8.057.1 and 8.057.3-.5

Russ Zigler and Jami Gazerro, Policy Development and Implementation Section, Rachel Entrican, Legal Division, presented the rule and explained the informal dispute resolution process is not an action. The informal dispute resolution process is only for eligibility actions. The rule revisions clarify the road to the informal dispute resolution process. Reviewed the statute governing the appeals process. Reviewed the new Service Delivery Agency definition, which is aligned

with the Human Services definition. All benefits will be granted during the appeal process. The rule revisions have some technical language cleanup. Stakeholders request members may appeal without receiving a notice. Stakeholder engagement was reviewed and themes received in the meetings held. Reviewed request to expand informal dispute resolution process. Reviewed clarifying language need. Summary of the Administrative Law Judges' decisions were reviewed.

Board Discussion – Board discussion included an appreciation for the staff work on the rule presentation and information given to the Board. Challenges caused by workforce challenges was discussed and how the Department supports counties. A discussion of the cases that were dismissed was held and how clarifying language in the rule will allow the merits of the case, the medical need of members, be discussed and litigated.

Public Testimony – Galia Spsychalska, parent, concern regarding decrease in days from 90 days down to 60 days, the rule does not lessen the days. Rule fails to maintain benefits during the appeal process and also protect presumptive eligibility.

Katie Wallet, Colorado Center on Law and Policy, support the work of the Department.

Mr. Honea moved to table Document 10. Ms. Carroll seconded the motion.

The Board voted to table Document 10, 6:0.

Laura Carroll left the meeting – 12:55 pm

Dr. Nguyen rejoined the meeting at 12:57 pm

Document 11, MSB 23-12-13-A, Case Management Redesign (CMRD) Outdated Language Repeal, Sections 8.300, 8.400, 8.500, & 8.600

Tiffani Domokos and Cassandra Keller, Office of Community Living, moved to the June agenda.

Board Discussion –

Public Testimony – NA

E. Consent Discussion

No consent

F. Closing Motion

Dr. Kinnard moved to close the rules portion of the agenda. The motion was seconded by Mr. McLaughlin.

Open Comments

- Mannel Singh, Colorado Consumer Health Initiative, spoke about CHASE issues that were addressed in the presentation given by Nancy Dolson.

Department Presentations

- CHASE Update and Expected Rules to Come – Nancy Dolson, Special Financing Division

The meeting was adjourned at 1:37 p.m.

The next scheduled meeting of the Medical Services Board is at 9:00 a.m. on Friday, June 14, 2024 at 1735 S Public Rd 1st Floor, Lafayette, CO 80026.

Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator at 303- 866-4416 or chris.sykes@state.co.us or the 504/ADA Coordinator hcpf504ada@state.co.us at least one week prior to the meeting.