Title of Rule: Revision to the Medical Assistance Rule concerning Long Term Acute Care and Rehabilitation Per Diem Reimbursement, Section 8.300.5.D.3
Rule Number: MSB 19-01-28-A
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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).

As the rule is currently written, the use of the term 'Freestanding' will incorrectly exclude two Long Term Acute Care locations. To leave the language as is will eliminate the budget neutral implementation of the new per diem reimbursement methodology. To correct this, the Department is removing the term “Freestanding” and specifying that the categories of Long-Term Care Hospital, Rehabilitation Hospital, and Spine/Brain Injury Specialist Hospital exclude distinct part units and satellite locations. The update will ensure all intended Long Term Acute Care Hospitals and Rehabilitation Hospitals are included in the new reimbursement methodology while distinct part units and satellite locations remain on their existing reimbursement methodology outlined in rule 10 CCR 2505-10; Section 8.300.

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. (2018);
   Section 25.5-4-402(1), C.R.S. (2018)
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.

Long Term Acute Care Hospitals or Rehabilitation Hospitals providing Inpatient Hospital Services which do not fit the definition of 'Freestanding' will be impacted. The term 'Freestanding' implied a hospital that owned/rented an entire building on independently owned land. Hospitals that rented a floor or building located on a hospital campus were incorrectly excluded by the use of 'Freestanding'. By specifying that the categories of Long-Term Care Hospital, Rehabilitation Hospital, and Spine/Brain Injury Specialist Hospital exclude hospital distinct part units and hospital satellite locations the rule will clearly define hospitals that are and are not included in the per diem reimbursement methodology and ensure there are no conflicts with existing reimbursement methodology language.

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 goal of the specialty hospital per diem implementation is to create a better reimbursement model that benefits both the Department and Specialty Hospitals while allowing an even distribution of Medicaid clients among the specified Hospital groups. Under the APR-DRG methodology, disparities in base rates among hospitals incentivizes over-utilization in some hospitals and under-utilization in others. By creating a standardized per diem for each group the disparities will be eliminated and there will no longer be an adverse incentive that will impact utilization in this way. Unfortunately, in MSB 18-07-23-A the term "freestanding" was used to exclude distinct part units and satellite locations which inappropriately excluded some specialty hospitals that are located within another hospital but that are still a unique entity.

This proposed rule corrects the language from MSB 18-07-23-A so that the intended quantitative and qualitative impacts from that earlier rule are realized.

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.

This proposed rule should have no costs to the Department, any other agency, or state revenues as it only corrects language from MSB 18-07-23-A.
4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

MSB 18-07-23-A was intended to be budget neutral, however, if the language from that rule is not updated with this proposed rule then it will no longer be budget neutral. Inaction would lead to an increase in Department expenditure and perpetuate the disparities that were intended to be fixed by MSB 18-07-23-A.

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

The proposed update in language is the least costly option for the Department.

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.

No alternative methods were considered.
8.300 HOSPITAL SERVICES

8.300.5 Payment for Inpatient Hospital Services

8.300.5.D Payments to Non-DRG Hospitals for Inpatient Services

1. Payments to Psychiatric Hospitals

a. *The Department shall reimburse Psychiatric Hospitals for inpatient services provided to Medicaid clients on a per diem basis. Inpatient services provided to Medicaid clients in Psychiatric Hospitals shall be reimbursed on a per diem basis. The per diem rates shall follow a step-down methodology. Each step has a corresponding per diem rate based on historical Medicaid payment rates and evaluation of Hospital data concerning the relationship between Hospital costs and client length of stay. Criteria for each step are described below:*

   i. Step 1: Day 1 through Day 7

   ii. Step 2: Day 8 through remainder of care at acute level

b. Hospital rates may be adjusted annually on July 1 to account for changes in funding by the General Assembly and inflationary adjustments as determined by the Medicare Economic Index.

2. Payment to State-Owned Psychiatric Hospitals

*The Department shall reimburse State-Owned Psychiatric Hospitals on an interim basis. State-owned Psychiatric Hospitals shall receive reimbursement on an interim basis according to a per diem rate. The Department will determine the per diem rate based on an estimate of 100% of Medicaid costs from the Hospital's Medicare cost report. Periodically, the Department will audit actual costs and may require a cost settlement to insure reimbursement is 100% of actual costs.*
audited Medicaid costs. A periodic cost audit is conducted and any necessary cost
settlement is done to bring reimbursement to 100% of actual audited Medicaid costs.

3. Payments to Freestanding Long-Term Care and Freestanding Rehabilitation Hospitals

The Department shall reimburse Long-Term Care, Rehabilitation, and Spine/Brain Injury
Treatment Specialist Hospitals for inpatient services provided to Medicaid patients on a
per diem basis. Inpatient services provided to Medicaid clients in Freestanding Long-Term
Care Hospital, Freestanding Rehabilitation Hospital or Spine/Brain Injury Treatment
Specialist Hospital (Excludes Hospital Distinct Part Units and Hospital Satellite Locations)
shall be reimbursed on a per diem basis. The per diem rates shall follow a step-down methodology based on length of stay, with a decrease of five (5) percent with each step. Each step shall be assigned a corresponding per diem rate based on historical Medicaid payment rates and evaluation of Hospital data concerning the relationship between Hospital costs and client length of stay. The Department may adjust hospital rates annually on July 1 to account for changes in funding by the General Assembly. The criteria for each of the steps are described below:

a. Payments to Freestanding Long-Term Care Hospitals as defined in 8.300.4:
   i. Step 1: Day 1 through Day 21
   ii. Step 2: Day 22 through Day 35
   iii. Step 3: Day 36 through Day 56
   iv. Step 4: Day 57 through remainder of stay

b. Payments to Freestanding Rehabilitation Hospitals as defined in 8.300.4:
   i. Step 1: Day 1 through Day 6
   ii. Step 2: Day 7 through Day 10
   iii. Step 3: Day 11 through Day 14
   iv. Step 4: Day 14 through remainder of stay

c. Payments to Spine/Brain Injury Treatment Specialty Hospitals as defined in 8.300.4:
   i. Step 1: Day 1 through Day 28
ii. Step 2: Day 29 through Day 49

iii. Step 3: Day 50 through Day 77

iv. Step 4: Day 78 through remainder of stay

d. The Classification-specific base per diem for 2019, the year of this methodology implementation shall be calculated using the following method:

i. The Department shall assign the claims submitted by each hospital for fiscal year 2017 to one of the following peer groups based on definitions from 8.300.1 (Excludes Hospital Distinct Part Units and Hospital Satellite Locations):

1) **Freestanding** Long-Term Care Hospital

2) **Freestanding** Rehabilitation Hospital

3) Spine/Brain Injury Treatment Specialty Hospital

ii. The Department shall process Medicaid inpatient hospital claims from state fiscal year 2017 through the methodology described in Section 8.300.5.D.3 a-c. This will create per diems that are budget neutral to fiscal year 2017.

iii. The Department shall adjust the per diems annually to reflect budget changes. For state fiscal year 2018, rates shall be increased by 1.4%. For state fiscal year 2019, rates to reflect budget increases for state fiscal year 2018, increase by shall be increased 1%. The Department shall adjust rates in subsequent years to reflect budget increases for state fiscal year 2019 and adjusted by the percentage changes in the budget for future fiscal years as appropriated by the General Assembly.