

Emergency Rule

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—MO HealthNet Division Chapter 20—Pharmacy Program

EMERGENCY AMENDMENT

13 CSR 70-20.031 List of Drugs for Which Prior Authorization Is Required and Drugs Excluded from Coverage Under the MO HealthNet Pharmacy Program. The division is adding a new section (1), amending sections (2) and (5), and renumbering as necessary.

PURPOSE: This amendment updates language in section (1) to add exclusions and definition for abortifacient drugs or devices, and revises sections (2) and (5).

EMERGENCY STATEMENT: *This emergency amendment updates language in section (1) to add exclusions and a definition for abortifacient drugs or devices to distinguish such drugs and devices from covered family planning services under section 208.152.1(12), RSMo, and also revises sections (2) and (5). This emergency amendment is necessary to provide needed clarification to implement section 208.152.1(12), RSMo, as passed during the first extraordinary session of 2021 of the 101st General Assembly, preserving a compelling governmental interest in prohibiting the expenditure of appropriated funds for abortions, or for abortifacient drugs or devices when used to induce an abortion, unless an exception otherwise exists under state or federal law. This emergency action is required for the department to comply with section 208.152.1(12), RSMo and with Missouri's legal requirements to protect the health, safety, and welfare of all Missourians at all stages of life pursuant to section 1.205, RSMo. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The department believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed October 21, 2021, becomes effective November 4, 2021, and expires May 2, 2022.*

(1) Exclusions—As used in section 208.152.1(12), RSMo, any “abortifacient drug or device” includes: mifepristone when used to induce an abortion; misoprostol when used to induce an abortion; manual vacuum aspirator (MVA) when used to induce an abortion; or any drug or device approved by the federal Food and Drug Administration (FDA) that the FDA has found on or after the effective date of section 208.152.1(12), RSMo, that is intended to cause the destruction of an unborn child as defined in section 188.015, RSMo.

[(1)](2) Exclusions—As specified in the Social Security Act, Section 1927(d)(1)(B), states may exclude or otherwise restrict coverage of certain covered outpatient drugs. Section 1927(d)(2) of the Social Security Act provides a listing of the categories of drugs that [are permissible for exclusion] states may exclude. Drugs included on this list may be excluded from coverage entirely or restricted by diagnosis as determined by the state.

[(2)](3) As specified in Section 1927(d)(1) of the Social Security Act, states may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of Section 1927(d)(5) of the Social Security Act.

[(3)](4) List of drugs or categories of drugs for which prior authorization is required for certain specified indications, and those which are excluded from reimbursement through the MO HealthNet Pharmacy Program shall be made available through—

(A) MO HealthNet provider manuals, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at <http://manuals.momed.com/manuals/>, September 27, 2018. This rule does not incorporate any subsequent amendments or additions;

(B) Provider Bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at <https://dss.mo.gov/mhd/providers/pages/bulletins.htm>, September 27, 2018. This rule does not incorporate any subsequent amendments or additions; or

(C) Forms, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at <http://manuals.momed.com/manuals/presentation/forms.jsp>, September 27, 2018. This rule does not incorporate any subsequent amendments or additions.

[(4)](5) The division reserves the right to [a]ffect changes in the list of drugs for which prior authorization is required and for which reimbursement is not available by amending this rule.

AUTHORITY: *sections 1.205, 208.153, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. 2021. Original rule filed Dec. 13, 1991, effective Aug. 6, 1992. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 21, 2021, becomes effective Nov. 4, 2021, and expires May 2, 2022. An emergency amendment and a proposed amendment covering this same material will be published in the Dec. 1, 2021, issue of the Missouri Register.*

PUBLIC COST: *This emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective. These proposed changes will not require systems work or require additional personnel and can be implemented using current resources.*

PRIVATE COST: *This emergency amendment will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective. A review of MO HealthNet claims history indicates the agency has received no claims for payment in the past two state fiscal years (claims information readily available) for mifepristone when used to induce an abortion, misoprostol when used to induce an abortion, manual vacuum aspirator (MVA) when used to induce an abortion, or any drug or device approved by the FDA on or after the effective date of section 208.152.1(12), RSMo that is intended to cause the destruction of an unborn child as defined in section 188.015, RSMo.*