

Emergency Rule

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—MO HealthNet Division Chapter 90—Home Health Program

EMERGENCY AMENDMENT

13 CSR 70-90.010 Home Health-Care Services. The MO HealthNet Division is adding subsection (2)(C), amending sections (7) and (8), and adding section (9).

PURPOSE: This amendment allows the adult expansion group described in Article IV Section 36(c) of the *Missouri Constitution* to receive habilitative services through the Missouri Home Health Program, and updates the incorporated by reference dates.

EMERGENCY STATEMENT: This emergency amendment allows the expanded adult population to receive habilitative services, per Article IV Section 36(c) of the *Missouri Constitution*. The State was legislatively mandated to implement these changes by July 1, 2021, but implementation was stopped due to a lack of funding for the program. On July 22, 2021, the Missouri Supreme Court ordered the Circuit Court of Cole County to issue an order requiring the Department of Social Services to implement Article IV Section 36(c). On August 10, 2021, the Circuit Court issued an order enjoining the department from denying MO HealthNet enrollment to persons eligible for coverage under Article IV Section 36(c) as of July 1, 2021. As a result of this ruling, an emergency amendment is necessary in order to carry out the Court's order within the allowable time frame, and the MO HealthNet Division has a compelling governmental interest to implement that order, which includes providing Home Health services to qualified adult expansion participants. Since Article IV Section 36(c) was passed in August 2020, the department has been developing a package of coverage that will meet the federal requirements for this program. Article IV Section 36(c) requires the department to adhere to 42 USC 1396a(k)(1) or section 2001(a)(2) of the Patient Protection and Affordable Care Act (ACA). Under the ACA, the home health services identified by this amendment must be a part of the package of benefits that will be available to the adult expansion group, and. Also, extending these benefits to the adult expansion group will enable the department to secure a 90% federal medical assistance percentage, which is also required by Article IV Section 36(c). In order for the State to be in compliance with these requirements within the mandated timeframe, an emergency amendment is necessary. If an emergency is not enacted, the MO HealthNet Home Health program would not be in compliance with the court order or the *Missouri Constitution*. As a result, the MO HealthNet Division finds a compelling governmental interest which requires this emergency amendment. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The MO HealthNet Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed October 5, 2021, becomes effective October 20, 2021, and expires April 17, 2022.

(2) Home health services include the following services and items:

(C) Physical, occupational, or speech therapy when the following conditions are met:

1. The participant is age nineteen (19) or over and under age sixty-five (65) and enrolled under the Medicaid eligibility criteria for the adult expansion group as described in Article IV Section 36(c) of the *Missouri Constitution*; and

2. Physical, occupational, or speech therapy is a habilitative service that will help the individual keep, learn, or improve skills and functioning for daily living, in accordance with limitations set forth in section (9) of this rule.

[(C)](D) Intermittent home health aide; and
[(D)](E) Supplies identified as specific and necessary to the delivery of a participant's nursing care and prescribed in the plan of care. Supplies are health care related items that are consumable or disposable, or cannot withstand repeated use by more than one (1) individual, that are required to address an individual medical disability, illness, or injury. Medical supplies are classified as—

1. Routine—medical supplies used in small quantities for patients during the usual course of most home visits; or

2. Non-routine—medical supplies needed to treat a patient's specific illness or injury in accordance with the physician's plan of care and meet further conditions discussed in more detail below.

(7) To be reimbursed by MO HealthNet, all home health services and supplies must be provided in accordance with a written plan of care authorized by the participant's physician. The criteria for the development of the written plan of care and changes to the written plan of care through interim order(s) are described in the *MO HealthNet Division Home Health Provider Manual*. The *MO HealthNet Division Home Health Provider Manual* is 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/>, [December 10, 2019] **September 24, 2021**. This rule does not incorporate any subsequent amendments or additions. Plans of care and interim order(s) are to be maintained in the client record.

(8) Skilled therapy services as described in subsection (2)(B) will be considered reasonable and necessary for treatment if the conditions of paragraphs (8)(A)1.–4. are met.

(9) The combination of physical, occupational, and speech therapy as described in subsection (2)(C) of this rule is limited to a total of twenty (20) visits inclusive of services from all MO HealthNet providers per year.

AUTHORITY: sections 208.153, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. [2019] 2021. This rule was previously filed as 13 CSR 40-81.056. Original rule filed April 14, 1982, effective July 11, 1982. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 5, 2021, effective Oct. 20, 2021, expires April 17, 2022. An emergency amendment and a proposed amendment covering this same material will be published in the Nov. 15, 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. There is no fiscal impact to fee-for-service. Adult expansion group participants will be enrolled in managed care and this service will be provided through the managed care health plan, and the costs of those services are included in the capitation payments that MHD makes to the managed care providers. There is an estimated overall fiscal impact, which would be for managed care, as follows: Home health agencies: \$0 fiscal impact anticipated for proposed changes; and MO HealthNet: \$10,594,584.90 anticipated across all MHD programs, and \$2,648,646.22 fiscal impact anticipated for the Home Health program.

PRIVATE COST: This emergency amendment will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.