



Certification Page Regular and Emergency Rules

Revised September 2016

☐ **Emergency Rules** (After completing all of Sections 1 through 3, proceed to Section 5 below)

☒ **Regular Rules**

1. General Information

a. Agency/Board Name Wyoming Department of Health		
b. Agency/Board Address 6101 Yellowstone Road, Suite 210	c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Amy Buxton	f. Agency Liaison Telephone Number 307-777-5081	
g. Agency Liaison Email Address amy.buxton@wyo.gov		h. Adoption Date 7/31/2018
i. Program Medicaid		

2. Legislative Enactment For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

☒ No. ☐ Yes. Please provide the Enrolled Act Numbers and Years Enacted:

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.

(Please use the Additional Rule Information form for more than 10 chapters and attach it to this certification)

Chapter Number: 12	Chapter Name: Home Health Services	☐ New ☒ Amended ☐ Repealed
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3. State Government Notice of Intended Rulemaking

a. Date on which the Proposed Rule Packet (consisting of the Notice of Intent as per W.S. 16-3-103(a), Statement of Principal Reasons, strike and underscore format and a clean copy of each chapter of rules were: **May 24, 2018**

- approved as to form by the **Registrar of Rules**; and
- provided to the **Legislative Service Office** and **Attorney General**:

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. ☐ No. ☐ Yes. ☒ N/A

b. A public hearing was held on the proposed rules. ☒ No. ☐ Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

c. If applicable, describe the **emergency** which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

5. Final Filing of Rules

a. Date on which the Certification Page with original signatures and final rules were sent to the **Attorney General's Office for the Governor's signature**: **7/31/2018**

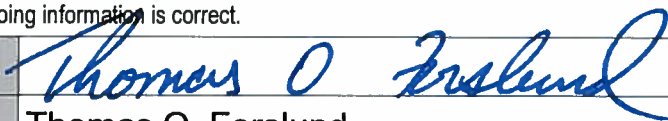
b. Date on which final rules were approved as to form by the **Secretary of State** and sent to the **Legislative Service Office**: **7/31/2018**

c. ☒ The Statement of Reasons is attached to this certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual



Printed Name of Signatory

Thomas O. Forslund

Signatory Title

Director

Date of Signature

7/31/2018

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature

Date of Signature

CHAPTER 12

Home Health Services

Wyoming Medicaid Rules

Statement of Reasons

The Wyoming Department of Health proposes to amend Chapter 12 of the Department's Medicaid Rules pursuant to its statutory authority in the Wyoming Medical Assistance and Services Act at Wyoming Statutes §§ 42-4-101 through -121. Chapter 12 governs home health services covered by Wyoming Medicaid, methods and standards for reimbursing providers for such services, and guidelines for service delivery. The Department is promulgating the above-referenced Rule to comply with current Wyoming Medicaid policy and procedure, including requiring prior authorization and tightening language for covered services. The amendment also updates the rule's formatting and standard provisions in order to comply with current requirements.

As required by Wyoming Statute § 16-3-103(a)(i)(G), this proposed change meets minimum substantive state statutory requirements.

Chapter 12
Home Health Services

Public Comment Summary

No public comments were received during the public commenting period.

CHAPTER 12

HOME HEALTH SERVICES

Section 1. Authority.

This Chapter is promulgated by the Department of Health pursuant to the Medical Assistance and Services Act at Wyoming Statutes §§ 42-4-101 through -306.

Section 2. Purposes and Applicability.

(a) This Chapter establishes the scope of the home health services covered by Medicaid and the methods and standards of reimbursing providers for such services.

(b) The Department may issue Provider Manuals and Provider Bulletins to providers or other affected parties to interpret the provisions of this Chapter. Such Provider Manuals or Provider Bulletins shall be consistent with and reflect the policies contained in this Chapter. The provisions contained in Provider Manuals or Provider Bulletins shall be subordinate to the provisions of this Chapter.

(c) The requirements of Title XIX of the Social Security Act, 42 C.F.R., Chapter IV, Subchapter C, Part 440, Subpart A applies to this Chapter.

(d) Wyoming's Medicaid State Plan applies to this Chapter.

Section 3. Incorporation by Reference.

(a) For any code, standard, rule or regulation incorporated by reference in these rules:

(i) The Department of Health has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules.

(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (b) of this section; and

(iii) The incorporated code, standard, rule or regulation is maintained at the Department of Health and is available for public inspection and copying at cost at the same location.

(b) Each item is incorporated by reference and is further identified as follows:

(i) Referenced in Section 2 of this Chapter is Title XIX of the Social Security Act, 42 CFR, Ch. IV, Subch. C, Pt. 440, Subpart A which is incorporated as of the effective date of this Chapter and can be found at <http://www.ecfr.gov>.

(ii) Referenced in Section 2 of this Chapter is Wyoming's Medicaid State Plan,

which is incorporated as of the effective date of this Chapter and, can be found at <http://www.health.wyo.gov/healthcarefin/medicaid/spa>.

Section 4. Definitions. Except as defined in this Section or as defined in Chapter 1, the terminology used in this Chapter is the standard terminology and has the standard meaning used in accounting, health care, Medicaid, and Medicare.

(a) “Attending physician” means the physician who prescribes home health services or reviews and certifies the plan of treatment.

(b) “Encounter” means a single episode of care on a date of service during which all ordered services are provided, regardless of length of time, except those that cannot be provided at the time due to medical necessity or specific physician orders to frequency or scheduling, i.e. services ordered “every 12 hours” or “3 times a day”.

(c) “Home health agency” means a home health agency as defined by 42 C.F.R. § 440.70.

(d) “Home health aide” means a person that is certified as a nursing assistant/nurse aide by the Wyoming State Board of Nursing, and employed by a home health agency.

(e) “Home health aide service” means a covered service provided pursuant to a plan of treatment by a home health aide under the supervision of a registered nurse.

(f) “Intermittent” means three or fewer encounters per day for home health aide services and skilled nursing services combined.

(g) “Long-term custodial care” means care that has moved beyond the acute state (has become clinically stable) and is expected to be needed for the rest of the client’s life.

(h) “Plan of treatment” means a written treatment plan prepared on CMS Form 485 (or such other form as may be designated by the Department), which is signed and dated by the client’s attending physician, and which specifies the:

(i) Client’s diagnosis;

(ii) Objectives of the plan;

(iii) Client’s prognosis;

(iv) Covered services which are medically necessary for the implementation of the plan; and

(v) Person or persons to provide such services or supplies.

(i) “Supplies” means medical supplies authorized for Medicaid payments under W.S.

§ 42-4-103 and the Rules and Regulations for Medicaid.

Section 5. Provider Participation.

(a) Payments only to providers. No provider that furnishes home health services to a client shall receive Medicaid funds unless the provider is enrolled.

(b) Compliance with Chapter 3. A provider that wishes to receive Medicaid reimbursement for home health services furnished to a client shall meet the requirements of Chapter 3.

Section 6. Covered Services.

(a) The services and supplies specified in subsection (b) shall be covered services if the services are:

- (i) Intermittent;
- (ii) Medically necessary;
- (iii) Ordered by a physician;
- (iv) Documented in a plan of treatment; and
- (v) Expected to last six (6) months or less.

(b) Covered services. The following shall be covered services:

(i) Skilled nursing services provided by a registered nurse for a client's condition while in the acute phase;

(ii) Home health aide services supervised by a registered nurse;

(A) Supervision shall be as follows:

(1) The registered nurse shall be available for consultation in person or by telephone; and

(2) The registered nurse shall make personal visits to the home:

(I) At least every two (2) weeks if the client is receiving skilled nursing care; or

(II) At least every sixty (60) days if the only services the client is receiving are home health aide services. The supervisory visits shall occur while the aide is furnishing services. Supervisory visits shall not be a covered service.

(B) Each home health aide encounter shall include at least one (1) of the following personal care services, but shall include all ordered services that can be provided in one encounter unless medically indicated otherwise:

- (1) Bath (bed, sponge, tub, shower, or shampooing hair);
- (2) Nail or skin care (applying lotion to clients shall not constitute personal care);
- (3) Oral hygiene;
- (4) Toileting and elimination;
- (5) Safe transfers/assisted ambulation;
- (6) Assist with dressing;
- (7) Assisted range of motion/positioning; or
- (8) Assisted nutrition or fluid intake (meal set-up, meal preparation, feeding assistance or meal supervision).

- (iii) Physical therapy services provided by a physical therapist;
- (iv) Speech, hearing, and language services provided by a speech therapist;
- (v) Occupational therapy services provided by an occupational therapist;
- (vi) Medical social services provided by a social worker.

(vii) Disposable medical supplies provided by a provider in accordance with the plan of treatment.

Section 7. Excluded Services.

(a) The following shall not be covered services:

- (i) Long-term custodial care;
- (ii) Homemaker services;
- (iii) Respite care;
- (iv) Home delivered meals;

- (v) Services for clients that are in a hospital or a nursing facility;
 - (vi) Services that are inappropriate in the client's home;
 - (vii) Services that are extensive or for long periods;
 - (viii) Services that are not cost effective;
 - (ix) Services where the desired outcome could be better and faster accomplished in another setting; and
 - (x) Services not included in Section 6 of this Chapter.
- (b) Services where the client must be compliant to achieve measured success and the client is not compliant are not covered services.
- (c) It is inappropriate to break up personal care into multiple episodes for the convenience of the home health agency staff or due to scheduling issues with home health staff. This shall be considered a non-covered service.

Section 8. Prior Authorization.

- (a) Prior authorization of home health services shall be governed by Chapter 3.
- (b) All home health services require prior authorization.
- (c) The failure to obtain prior authorization shall result in the denial of Medicaid payment for the service.
- (d) The provider shall submit the following as part of the prior authorization request.
 - (i) Submission of plan of treatment. The provider shall submit a written request for prior authorization on the forms specified by the Department, including the plan of treatment, before the submission of a claim for such services. The Department may request additional information as necessary to review the plan of treatment.
 - (A) The plan of treatment shall include a statement that the home health services are appropriate and medically necessary.
 - (B) The plan of treatment shall be reviewed, signed, and dated by the attending physician at least once every sixty (60) days.
 - (ii) Face to face visit. All new home health orders shall be accompanied by documentation of a face to face visit having occurred between the client and the attending

physician (ordering provider) within the ninety (90) days prior to the start of home health services.

(iii) Documentation of Medicare status. For clients eligible under both Wyoming Medicaid and Medicare, documentation from the ordering provider shall be included indicating the client is not home-bound and would not qualify for home health services under their Medicare benefits.

(iv) The Department or their designee may request additional information as necessary to review the prior authorization.

(e) Denial of plan of treatment. If a plan of treatment is disapproved, the provider may submit a revised plan of treatment or additional documentation as necessary for the Department's reconsideration.

Section 9. Medicaid Allowable Payment. Medicaid reimbursement shall be the lesser of billed charges and the Medicaid allowable payment.

Section 10. Payment of Claims.

(a) Payment of claims shall be pursuant to Chapter 3.

(b) Providers shall bill each date of service on a separate line of the claim. Span billing is not allowed.

Section 11. Recovery of Overpayments. The Department may recover overpayments pursuant to Chapter 16.

Section 12. Reconsideration or Administrative Hearing.

(a) A provider may request that the Department reconsider a decision to recover overpayments. The request for reconsideration, the reconsideration and any administrative hearing shall be pursuant to the provisions of Chapters 16 and 4.

(b) A client may request an administrative hearing pursuant to Chapter 4 regarding the denial of any services or supplies.

Section 13. Interpretation of Chapter.

(a) The order in which the provisions of this Chapter appear is not to be construed to mean that any one provision is more or less important than any other provision.

(b) The text of this Chapter shall control the titles of its various provisions.

Section 14. Superseding Effect. When promulgated, this Chapter supersedes all prior rules or policy statements issued by the Department, including provider manuals and provider

bulletins, which are inconsistent with this Chapter.

Section 15. Severability. If any portion of this Chapter is found to be invalid or unenforceable, the remainder shall continue in effect.

CHAPTER 12

HOME HEALTH SERVICES

Section 1. Authority.

This Chapter is promulgated by the Department of Health pursuant to the Medical Assistance and Services Act at Wyoming Statutes §§ 42-4-101 through -306 ~~and the Wyoming Administrative Procedure Act at W.S. § 16-3-101 through -115.~~

Section 2. Purposes and Applicability.

(a) This Chapter establishes the scope of the home health services covered by Medicaid and the methods and standards of reimbursing providers ~~of~~ for such services.

(b) The Department may issue Provider Manuals ~~and~~, Provider Bulletins, ~~or both~~, to providers or other affected parties to interpret the provisions of this Chapter. Such Provider Manuals or Provider Bulletins shall be consistent with and reflect the policies contained in this Chapter. The provisions contained in Provider Manuals or Provider Bulletins shall be subordinate to the provisions of this Chapter.

(c) The requirements of Title XIX of the Social Security Act, 42 C.F.R., Chapter IV, Subchapter C, Part 440, Subpart A applies to this Chapter.

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of this Chapter ~~which~~ and can be found at <http://www.ecfr.gov>.

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 - ~~(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (b) of this section; and~~
 - ~~(iii) The incorporated code, standard, rule or regulation is maintained at the Department of Health and is available for public inspection and copying at cost at the same location.~~
- (b) ~~Each rule incorporated by reference and can be found at <http://sos.wy.state.wy.us/rules/> and is further identified as follows:~~
- ~~(i) Referenced in Section 1 is Wyoming Medicaid Rule, Chapter 1—Definitions, adopted by the Department of Health and effective on November 7, 2011.~~
 - ~~(ii) Referenced in Sections 5, 8, and 10 is Wyoming Medicaid Rule, Chapter 3—Provider Participation, adopted by the Department of Health and effective on December 16, 1998.~~
 - ~~(iii) Referenced in Section 12 is Wyoming Medicaid Rule, Chapter 4—Administrative Hearings, adopted by the Department of Health and effective on November 7, 2011.~~
 - ~~(iv) Referenced in Sections 11 and 12 is Wyoming Medicaid Rule, Chapter 16—Program Integrity, adopted by the Department of Health and effective on November 7, 2011.~~
 - ~~(v) Referenced in Section 2 is Title XIX of the Social Security Act, 42 CFR, Ch. IV, Subch. C, Pt. 440, Subpart A, incorporated as of the effective date of this Chapter and can be found at <http://www.ecfr.gov>.~~
 - ~~(vi) Referenced in Section 4 is 42 CFR § 440.70, incorporated as of the effective~~

~~date of this Chapter and can be found at <http://www.ecfr.gov>.~~