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EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

CHAPTER 20 - MEDICAID PAYMENTS AND PROVIDERS

SUBCHAPTER 00 - N/A

PART 4 - MEDICAID PAYMENTS FOR STERILIZATION AND HYSTERECTOMY SERVICES

4.1 Scope and Purpose

A. This Part outlines the requirements and limitations pertaining to Medicaid payments for sterilization and hysterectomy services.

4.2 Authority

A. Federal Authority

1. Federal Law: The Rhode Island Medicaid Program provides health care coverage authorized by Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-8, and Title XXI of the Social Security Act, 42 U.S.C. §§ 1397aa-1397mm.

2. Federal Regulations: 42 C.F.R. Part 441, Subpart F (2023).

2. The Rhode Island Medicaid State Plan and Section 1115 demonstration waiver granted under the authority of 1115 of the Social Security Act, 42 U.S.C. § 1315.

B. State Authority

1. R.I. Gen. Laws § 40-8-13 and § 42-7.2-11.

4.3 Incorporated Materials

A. These Regulations hereby adopt and incorporate 42 C.F.R. Part 441, Subpart F (2023) by reference, not including any further editions or amendments thereof, and only to the extent that the provisions therein are not inconsistent with these regulations.

4.4 Definitions

A. As used in this Part, these terms have the following meanings:

1. "Emergency abdominal surgery" means an abdominal surgical procedure, including but not limited to a cesarean section, performed in emergency circumstances, where the healthcare provider performing the procedure has determined that delay would risk the life, safety, or wellbeing of the patient.
2. "Hysterectomy" means a medical procedure or operation for the purpose of removing the uterus.
3. "Institutionalized individual" means an individual who is: involuntarily confined or detained, under a civil or criminal statute in a correctional or rehabilitative facility, including a psychiatric hospital or other facility for the care and treatment of mental illness; or confined, under a voluntary commitment, in a psychiatric hospital or other facility for the care and treatment of mental illness.
4. "Beneficiary" means a person who is eligible for Medicaid coverage of healthcare services under this Title.
5. "Mentally incompetent individual" means an individual who has been declared mentally incompetent by a federal, state, or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes that include the ability to consent to sterilization.
6. "Premature delivery" means delivery of a baby on any day prior to the estimated delivery date.
7. "Sterilization" means any medical procedure, treatment, or operation for the purpose of rendering an individual permanently incapable of reproducing, except for a hysterectomy.

4.5 Covered Services

- A. Pursuant to 42 C.F.R. § 441.253 (2023), Medicaid pays for sterilization services provided to a member only if:
 1. The beneficiary has voluntarily given informed consent for the sterilization procedure in the manner and at the time described in Sections 4.7 and 4.8 of this Part, and such consent is documented in the manner described in 4.7 and 4.8 of this Part;
 2. The beneficiary is at least twenty-one (21) years of age at the time consent is obtained; and
 3. The beneficiary is not a mentally incompetent individual or an institutionalized individual.

B. Pursuant to 42 C.F.R. § 441.255 (2023), Medicaid pays for hysterectomy services provided to a beneficiary only if the hysterectomy is performed exclusively for non-sterilization purposes. In addition, at least one of the following conditions must be met:

1. The member (and/or their legal representative, if applicable) was informed, orally and in writing, before the procedure that the hysterectomy would render them permanently unable to reproduce, and the beneficiary (and/or their legal representative, if applicable) signed a written acknowledgement of receipt of this information before the procedure occurred; or
2. The physician who performed the hysterectomy certifies in writing to Rhode Island Medicaid, as described in Section 4.9 of this Part, that the beneficiary was sterile before the hysterectomy was performed; or
3. The physician who performed the hysterectomy certifies in writing to Rhode Island Medicaid, as described in Section 4.9 of this Part, that the beneficiary required a hysterectomy because of a life-threatening emergency in which the physician determined that prior acknowledgement was not possible.

C. Pursuant to 42 C.F.R. § 441.255 (2023), Medicaid pays for hysterectomy services provided to a beneficiary who becomes eligible for Medicaid after the procedure has already occurred but is eligible for retroactive Medicaid coverage under Part 40-05-3 of this Title only if the hysterectomy was performed exclusively for non-sterilization purposes. In addition, at least one of the following conditions must be met:

1. The physician who performed the hysterectomy certifies in writing to Rhode Island Medicaid, as described in Section 4.9 of this Part, that the beneficiary (and/or their representative, if applicable) was informed, orally and in writing, before the procedure that the hysterectomy would render them permanently unable to reproduce; or
2. The physician who performed the hysterectomy certifies in writing to Rhode Island Medicaid, as described in Section 4.9 of this Part, that the beneficiary was sterile before the hysterectomy was performed; or
3. The physician who performed the hysterectomy certifies in writing to Rhode Island Medicaid, as described in Section 4.9, that the beneficiary required a hysterectomy because of a life-threatening emergency in which the physician determined that prior acknowledgement was not possible.

4.6 Assurance of Member Rights

- A. Medicaid providers shall not use any form of coercion in the provision of sterilization or hysterectomy services. No Medicaid provider, nor any employee or other agent of a Medicaid provider, may mislead any beneficiary into believing that a decision to have or not have a sterilization will adversely affect the beneficiary's entitlement to benefits or services for which the beneficiary would otherwise be eligible.
- B. A beneficiary's consent for sterilization is considered informed and voluntary only if such consent is obtained and documented as required by Sections 4.7 and 4.8 of this Part.

4.7 Informed Consent for Sterilization

- A. The person who obtains consent (physician, nurse, or counselor, for example) must orally provide all of the following information and advice to the beneficiary requesting sterilization:
1. Advice that the beneficiary is free to withhold or withdraw consent at any time before the sterilization procedure without affecting the right to future care or treatment and without loss of any federal- or state-funded program benefits to which the individual might be otherwise entitled, such as Medicaid benefits;
 2. A description of available alternative methods of family planning and birth control;
 3. Advice that the sterilization procedure is considered irreversible;
 4. A thorough explanation of the specific sterilization procedure to be performed;
 5. A full description of the discomforts and risks that may accompany or follow the procedure, including an explanation of the type and possible effects of any anesthetic to be used;
 6. A full description of the benefits or advantages the member may expect as a result of the sterilization; and
 7. Advice that the sterilization will not be performed for at least thirty (30) days, except under the circumstances specified in Section 4.8 of this Part.
- B. The person who obtains consent must also:
1. Offer to answer any questions the member may have about the sterilization procedure;

2. Give the beneficiary a copy of the consent form;
 3. Make suitable arrangements to ensure that the information and advice required by Section 4.7(A) are effectively communicated to any beneficiary who is blind, deaf, or who may for any other reason experience difficulty understanding the information;
 4. Provide an interpreter if the beneficiary does not understand the oral and written language used by the person obtaining consent; and
 5. Allow the beneficiary to have a witness or witnesses of the member's choice present when consent is obtained.
- C. Providers must use a consent form containing the same information that is included in the appendix to 42 CFR 442 Subpart F.
1. The beneficiary, interpreter (if one is required), any witnesses of the beneficiary's choice, and the person who obtained the consent for sterilization must all sign and date the consent form at the time of consent.
 2. On or after the date of the sterilization procedure, the physician must sign and date the consent form.
 3. All signatures must be original signatures rather than typewritten or stamped in any manner.

4.8 Timing of Informed Consent Prior to Sterilization

- A. A beneficiary's consent for sterilization must be obtained at least thirty (30) days, but not more than 180 days, before the date of the sterilization procedure, except in the case of premature delivery or emergency abdominal surgery.
- B. In the case of a premature delivery or emergency abdominal surgery, if at least 72 hours have passed since the beneficiary gave informed consent in the manner specified in Section 4.7 of this Part, a beneficiary may consent to be sterilized at the time of the premature delivery or emergency abdominal surgery. In the case of premature delivery, the informed consent must have been given at least thirty (30) days before the expected date of delivery.
- C. A beneficiary's consent for sterilization will not be considered informed or voluntary if such consent is obtained or given while the beneficiary requesting sterilization is:
1. In labor or childbirth;
 2. Seeking to obtain or obtaining an abortion; or

3. Under the influence of alcohol or other substances that affect the individual's state of awareness.

D. Shortly before the performance of the sterilization procedure, the physician performing the sterilization must orally inform the beneficiary of all of the information and advice specified in Section 4.7 of this Part.

4.9 Provider Billing Requirements

A. Provider Billing for Sterilization Procedures.

1. All providers must bill with the appropriate sterilization diagnosis and service codes and must attach a copy of the completed consent form to each claim made to Rhode Island Medicaid for sterilization services.
2. When more than one provider bills Rhode Island Medicaid related to a sterilization procedure, each provider must submit a copy of the completed consent form with the claim.

B. Provider Billing for Hysterectomy Procedures

1. All providers must bill with the appropriate hysterectomy diagnosis and service codes.
2. If the beneficiary signed a written acknowledgement that the hysterectomy would render them permanently unable to reproduce, as described in Section 4.5 of this Part, all providers who bill Rhode Island Medicaid related to the hysterectomy must attach a copy of the signed written acknowledgement to each claim made to Rhode Island Medicaid for hysterectomy services.
3. If the beneficiary did not sign a written acknowledgement that the hysterectomy would render them permanently unable to reproduce, the provider must attach a copy of a completed and signed provider's certification as required by Sections 4.5(B) and 4.5(C) of this Part. The signature must be an original signature rather than typewritten or stamped in any manner.

4.10 Severability

If any provisions of these regulations or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of these regulations which can be given effect, and to this end the provisions of these regulations are declared to be severable.