

## DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

### Medical Services Board

#### MEDICAL ASSISTANCE - SECTION 8.500

##### 10 CCR 2505-10 8.500

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### **8.500 HOME AND COMMUNITY BASED SERVICES FOR THE DEVELOPMENTALLY DISABLED (HCB-DD) WAIVER**

**8.500.1** This section hereby incorporates the terms and provisions of the federally-approved Home and Community Based Services for Persons with Developmentally Disabilities waiver (HCBS-DD) CO.0007.R06.00. To the extent that the terms of that federally-approved waiver are inconsistent with the provisions of this section, the waiver will control.

##### **8.500.1 DEFINITIONS**

ACTIVITIES OF DAILY LIVING (ADL) means basic self care activities including bathing, bowel and bladder control, dressing, eating, independent ambulation, and needing supervision to support behavior, medical needs and memory/cognition.

ADVERSE ACTION means a denial, reduction, termination or suspension from the HCBS-DD Waiver or a HCBS Waiver service.

APPLICANT means an individual who is seeking a long term care eligibility determination and who has not affirmatively declined to apply for Medicaid or participate in an assessment.

CLIENT means an individual who has met long term care (LTC) eligibility requirements, is enrolled in and chooses to receive LTC services, and receives LTC services.

CLIENT REPRESENTATIVE means a person who is designated by the client to act on the client's behalf. A client representative may be: (A) a legal representative including, but not limited to a court-appointed guardian, a parent of a minor child, or a spouse; or (B) an individual, family member or friend selected by the client to speak for or act on the client's behalf.

COMMUNITY CENTERED BOARD (CCB) means a private corporation, for profit or not for profit, which when designated pursuant to Section 27-10.5-105, C.R.S., provides case management services to clients with developmental disabilities, is authorized to determine eligibility of such clients within a specified geographical area, serves as the single point of entry for clients to receive services and supports under Section 27-10.5-101, C.R.S. *et seq*, and provides authorized services and supports to such clients either directly or by purchasing such services and supports from service agencies.

COST CONTAINMENT means limiting the cost of providing care in the community to less than or equal to the cost of providing care in an institutional setting based on the average aggregate amount. The cost of providing care in the community shall include the cost of providing home and community based services and Medicaid state plan benefits including long term home health services and targeted case management.

COST EFFECTIVENESS means the most economical and reliable means to meet an identified need of the client.

DEPARTMENT means the Colorado Department of Health Care Policy and Financing, the single State Medicaid agency.

DEVELOPMENTAL DISABILITY means a disability that is manifested before the person reaches twenty-two (22) years of age, which constitutes a substantial disability to the affected individual, and is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation. Unless otherwise specifically stated, the federal definition of "developmental disability" found in 42 U.S.C. § 6000, *et seq.*, shall not apply.

"Impairment of General Intellectual Functioning" means that the person has been determined to have an intellectual quotient equivalent which is two or more standard deviations below the mean (seventy (70) or less assuming a scale with a mean of 100 and a standard deviation of fifteen (15)), as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. The standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent. When an individual's general intellectual functioning cannot be measured by a standardized instrument, then the assessment of a qualified professional shall be used.

"Adaptive Behavior Similar to That of a Person With Mental Retardation" means that the person has overall adaptive behavior which is two or more standard deviations below the mean in two or more skill areas (communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work), as measured by an instrument which is standardized, appropriate to the person's living environment, and administered and clinically determined by a qualified professional. These adaptive behavior limitations are a direct result of, or are significantly influenced by, the person's substantial intellectual deficits and may not be attributable to only a physical or sensory impairment or mental illness.

"Substantial Intellectual Deficits" means an intellectual quotient that is between seventy-one (71) and seventy-five (75) assuming a scale with a mean of one hundred (100) and a standard deviation of fifteen (15), as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. The standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent.

DIVISION FOR DEVELOPMENTAL DISABILITIES (DDD) means the Operating Agency for Home and Community Based Services for persons with Developmental Disabilities (HCBS-DD) within the Colorado Department of Human Services.

EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT) means the child health component of Medicaid State Plan for Medicaid eligible children up to the age of twenty-one (21).

FAMILY means a relationship as it pertains to the client and is defined as:

A mother, father, brother, sister or any combination,

Extended blood relatives such as grandparent, aunt, uncle, cousin,

An adoptive parent,

One or more individuals to whom legal custody of a client with a developmental disability has been given by a court

A spouse; or,

The client's children.

**FUNCTIONAL ELIGIBILITY** means that the applicant meets the criteria for long term care services as determined by the Department's prescribed instrument.

**FUNCTIONAL NEEDS ASSESSMENT** means a comprehensive face-to-face evaluation using the Uniform Long Term Care instrument and medical verification on the Professional Medical Information Page to determine if the client meets the institutional level of care (LOC).

**GROUP RESIDENTIAL SERVICES AND SUPPORTS (GRSS)** means residential habilitation provided in group living environments of four (4) to eight (8) clients receiving services who live in a single residential setting, which is licensed by the Colorado Department of Public Health and Environment as a residential care facility or residential community home for persons with developmental disabilities and certified by the Operating Agency.

**GUARDIAN** means an individual at least twenty-one years (21) of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated client pursuant to appointment by a court. Guardianship may include limited, emergency or temporary substitute court appointed guardian but not a guardian ad litem.

**Home And Community Based Services (HCBS) Waiver** means services and supports authorized through a 1915(c) waiver of the Social Security Act and provided in community settings to a client who requires a level of institutional care that would otherwise be provided in a hospital, nursing facility or intermediate care facility for the mentally retarded (ICF-MR).

**INDIVIDUAL RESIDENTIAL SERVICES AND SUPPORTS (IRSS)** means residential habilitation services provided to three (3) or fewer clients in a single residential setting or in a host home setting that does not require licensure by the Colorado Department of Public Health and Environment. IRSS settings are certified by the Operating Agency.

**LEGALLY RESPONSIBLE PERSON** means the parent of a minor child, or the client's spouse.

**INSTITUTION** means a hospital, nursing facility, or Intermediate Care Facility for the Mentally Retarded (ICF-MR) for which the Department makes Medicaid payment under the Medicaid State Plan.

**INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED (ICF-MR)** means a publicly or privately operated facility that provides health and habilitation services to a client with mental retardation or related conditions.

**LEVEL OF CARE (LOC)** means the specified minimum amount of assistance a client must require in order to receive services in an institutional setting under the Medicaid State Plan.

**LONG TERM CARE (LTC) SERVICES** means services provided in nursing facilities or intermediate care facilities for the mentally retarded (ICF-MR), or home and community based services (HCBS), long term home health services or the program of all-inclusive care for the elderly (PACE), swing bed and hospital back up program (HBU).

**MEDICAID ELIGIBLE** means an applicant or client meets the criteria for Medicaid benefits based on the applicant's financial determination and disability determination.

**MEDICAID STATE PLAN** means the federally approved document that specifies the eligibility groups that a state serves through its Medicaid program, the benefits that the state covers, and how the state addresses additional federal Medicaid statutory requirements concerning the operation of its Medicaid program.

**MEDICATION ADMINISTRATION** means assisting a client in the ingestion, application or inhalation of medication, including prescription and non-prescription drugs, according to the directions of the attending physician or other licensed health practitioner and making a written record thereof.

**NATURAL SUPPORTS** means informal relationships that provide assistance and occur in the client's everyday life including, but not limited to, community supports and relationships with family members, friends, co-workers, neighbors and acquaintances.

**OPERATING AGENCY** means the Department of Human Services, Division for Developmental Disabilities, which manages the operations of the Home and Community Based Services-for persons with Developmental Disabilities (HCBS-DD), HCBS-Supported Living Services (HCBS-SLS) and HCBS-Children's Extensive Supports (HCBS-CES) waivers under the oversight of the Department of Health Care Policy and Financing.

**ORGANIZED HEALTH CARE DELIVERY SYSTEM (OHCDs)** means a public or privately managed service organization that provides, at minimum, targeted case management and contracts with other qualified providers to furnish services authorized in the Home and Community Based Services-for persons with Developmental Disabilities (HCBS-DD), HCBS-Supported Living Services (HCBS-SLS) and HCBS-Children's Extensive Supports (HCBS-CES) waivers.

**POST ELIGIBILITY TREATMENT OF INCOME (PETI)** means the determination of the financial liability of an HCBS Waiver client as defined in 42 CFR 435.217.

**PRIOR AUTHORIZATION** means approval for an item or service that is obtained in advance either from the Department, the Operating Agency, a State Fiscal Agent or the Case Management Agency.

**PROFESSIONAL MEDICAL INFORMATION PAGE (PMIP)** means the medical information form signed by a licensed medical professional used to verify the client needs institutional level of care.

**PROGRAM APPROVED SERVICE AGENCY** means a developmental disabilities service agency or typical community service agency as defined in 2 CCR 503-1 16.200 *et seq.*, that has received program approval to provide HCBS-DD Waiver services.

**PUBLIC CONVEYANCE** means public passenger transportation services that are available for use by the general public as opposed to modes for private use, including vehicles for hire.

**RELATIVE** means a person related to the client by virtue of blood, marriage, adoption or common law marriage.

**RETROSPECTIVE REVIEW** means the Department or the Operating Agency's review after services and supports are provided to ensure the client received services according to the service plan and standards of economy, efficiency and quality of service.

**SERVICE PLAN** means the written document that specifies identified and needed services, to include Medicaid and non-Medicaid services regardless of funding source, to assist a client to remain safely in the community and developed in accordance with the Department and the Operating Agency's rules set forth in 10 CCR 2505-10 Section 8.400.

**SUPPORT** is any task performed for the client where learning is secondary or incidental to the task itself or an adaptation is provided.

**SUPPORTS INTENSITY SCALE (SIS)** means the standardized assessment tool that gathers information from a semi-structured interview of respondents who know the client well. It is designed to identify and measure the practical support requirements of adults with developmental disabilities.

**TARGETED CASE MANAGEMENT (TCM)** means a Medicaid State Plan benefit for a target population which includes facilitating enrollment, locating, coordinating and monitoring needed HCBS waiver services and coordinating with other non-waiver resources, including, but not limited to medical, social, educational and other resources to ensure nonduplication of waiver services and the monitoring of effective and efficient provision of waiver services across multiple funding sources.

**THIRD PARTY RESOURCES** means services and supports that a client may receive from a variety of programs and funding sources beyond natural supports or Medicaid. They may include, but are not limited to, community resources, services provided through private insurance, non-profit services and other government programs.

**WAIVER SERVICE** means optional services defined in the current federally approved waiver documents and do not include Medicaid State Plan benefits.

#### **8.500.2 HCBS-DD WAIVER ADMINISTRATION**

8.500.2.A HCBS-DD shall be provided in accordance with the federally approved waiver document and these rules and regulations, and the rules and regulations of the Colorado Department of Human Services, Division for Developmental Disabilities, 2 CCR 503-1 and promulgated in accordance with the provision of § 25.5-6-404(4), C.R.S.

8.500.2.B In the event a direct conflict arises between the rules and regulations of the Department and the Operating Agency, the provisions of § 25.5-6-404(4), C.R.S., shall apply and the regulations of the Department shall control.

8.500.2.C The HCBS-DD Waiver is operated by the Department of Human Services, Division for Developmental Disabilities under the oversight of the Department of Health Care Policy and Financing.

8.500.2.D The HCBS-DD Waiver provides the necessary support to meet the daily living needs of a client who requires access to 24-hour support in a community-based residential setting.

8.500.2.E HCBS-DD Waiver services are available only to address those needs identified in the functional needs assessment and authorized in the service plan and when the service or support is not available through the Medicaid state plan, EPSDT, natural supports or third party resources.

8.500.2.F THE HCBS-DD WAIVER:

1. Shall not constitute an entitlement to services from either the Department or the Operating Agency,
2. Shall be subject to annual appropriations by the Colorado General Assembly,
3. Shall ensure enrollments do not to exceed the federally approved capacity, and
4. May limit the enrollment when utilization of the HCBS-DD Waiver program is projected to exceed the spending authority.

### **8.500.3 GENERAL PROVISIONS**

8.500.3.A The following provisions shall apply to the Home and Community Based Services for persons with developmental disabilities (HCBS-DD) waiver.

1. Home and Community Based Services for persons with developmental disabilities (HCBS-DD) shall be provided as an alternative to ICF-MR services for a client with developmental disabilities.
2. HCBS-DD is waived from the requirements of Section 1902(a)(10)(B) of the Social Security Act concerning comparability of services. The availability of some services may not be consistent throughout the State of Colorado.
3. A client enrolled in the HCBS-DD Waiver shall be eligible for all other Medicaid services for which the client qualifies and shall first access all benefits available under the Medicaid State Plan or Medicaid EPSDT prior to accessing services under the HCBS-DD Waiver. Services received through the HCBS-DD Waiver may not duplicate services available through the state plan.

### **8.500.4 CLIENT ELIGIBILITY**

8.500.4.A To be eligible for the HCBS-DD Waiver an individual shall meet the target population criteria as follows:

1. Be determined to have a developmental disability,
2. Be eighteen (18) years of age or older,
3. Require access to services and supports twenty-four (24) hours a day,
4. Meet ICF-MR level of care as determined by the functional needs assessment, and
5. Meet the Medicaid financial determination for LTC eligibility as specified in 10 CCR 2505-10, Section 8.100, *et seq.*

8.500.4.B The client shall maintain eligibility by meeting the criteria as set forth in 10 CCR 2505-10, Section 8.500.6.A.1 and .2 and the following:

1. Receives at least one (1) HCBS waiver service each calendar month.
2. Is not simultaneously enrolled in any other HCBS waiver.
3. Is not residing in a hospital, nursing facility, ICF-MR, correctional facility or other institution.
4. Is served safely in the community with the type and amount of waiver services available and within the federally approved capacity and cost containment limits of the waiver.
5. Resides in a GRSS or IRSS setting.

8.500.4.C When the HCBS-DD Waiver reaches capacity for enrollment, a client determined eligible for the waiver shall be eligible for placement on a wait list in accordance with these rules at 10 CCR 2505-10, Section 8.500.7.

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**8.500.5 HCBS-DD WAIVER SERVICES**

8.500.5.A The following services are available through the HCBS-DD Waiver within the specific limitations as set forth in the federally approved HCBS-DD Waiver.

1. Behavioral Services are services related to a client's developmental disability which assist a client to acquire or maintain appropriate interactions with others.
  - a. Behavioral services shall address specific challenging behaviors of the client and identify specific criteria for remediation of the behaviors.
  - b. A client with a co-occurring diagnosis of a developmental disability and mental health diagnosis covered in the Medicaid State Plan shall have identified needs met by each of the applicable systems without duplication but with coordination by the behavioral services professional to obtain the best outcome for the client.
  - c. Services covered under Medicaid EPSDT or a covered mental health diagnosis in the Medicaid State Plan, covered by a third party source or available from a natural support are excluded and shall not be reimbursed.
  - d. Behavioral Services include:
    - i) Behavioral Consultation Services include consultations and recommendations for behavioral interventions and development of behavioral support plans that are related to the client's developmental disability and are necessary for the client to acquire or maintain appropriate adaptive behaviors, interactions with others and behavioral self management.
    - ii) Intervention modalities shall relate to an identified challenging behavioral need of the client. Specific goals and procedures for the behavioral service shall be established.
    - iii) Behavioral consultation services are limited to eighty (80) units per service plan year. One unit is equal to fifteen (15) minutes of service.
    - iv) Behavioral plan assessment services include observations, interviews of direct care staff, functional behavioral analysis and assessment, evaluations and completion of a written assessment document.
    - v) Behavioral Plan Assessment Services are limited to forty (40) units and one (1) assessment per service plan year. One unit is equal to fifteen (15) minutes of service.
    - v). Individual and Group Counseling Services include psychotherapeutic or psycho educational intervention that:
      - 1) Is related to the developmental disability in order for the client to acquire or maintain appropriate adaptive behaviors, interactions with others and behavioral self-management, and
      - 2) Positively impacts the client's behavior or functioning and may include cognitive behavior therapy, systematic desensitization, anger management, biofeedback and relaxation therapy.

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- 3) Counseling services are limited to two-hundred and eight (208) units per service plan year. One (1) unit is equal to fifteen (15) minutes of service. Services for the sole purpose of training basic life skills, such as activities of daily living, social skills and adaptive responding are excluded and not reimbursed under behavioral services.
  - vii) Behavioral Line Services include direct one-to-one implementation of the Behavioral Support Plan and is:
    - 1) Under the supervision and oversight of a behavioral consultant,
    - 2) To include acute, short term intervention at the time of enrollment from an institutional setting, or
    - 3) To address an identified challenging behavior of a client at risk of institutional placement and to address an identified challenging behavior that places the client's health and safety or the safety of others at risk.
    - 4) Behavioral Line Services are limited to nine hundred and sixty (960) units per service plan year. One (1) unit is equal to fifteen (15) minutes of service. Requests for an Behavioral Line Services shall be prior authorized in accordance with the Operating Agency's procedures.
  - 2. Day Habilitation Services and Supports include assistance with the acquisition, retention or improvement of self-help, socialization and adaptive skills that take place in a non-residential setting, separate from the client's private residence or other residential living arrangement, except when services are necessary in the residence due to medical or safety needs.
    - a. Day habilitation activities and environments shall foster the acquisition of skills, appropriate behavior, greater independence and personal choice.
    - b. Day Habilitation Services and Supports encompass three (3) types of habilitative environments: specialized habilitation services, supported community connections, and prevocational services.
    - c. Specialized Habilitation (SH) services are provided to enable the client to attain the maximum functioning level or to be supported in such a manner that allows the client to gain an increased level of self-sufficiency. Specialized habilitation services:
      - i) Are provided in a non-integrated setting where a majority of the clients have a disability,
      - ii) Include assistance with self-feeding, toileting, self-care, sensory stimulation and integration, self-sufficiency and maintenance skills, and
      - iii) May reinforce skills or lessons taught in school, therapy or other settings and are coordinated with any physical, occupational or speech therapies listed in the service plan.

- d. Supported Community Connections Services are provided to support the abilities and skills necessary to enable the client to access typical activities and functions of community life, such as those chosen by the general population, including community education or training, retirement and volunteer activities. Supported community connections services:
  - i) Provide a wide variety of opportunities to facilitate and build relationships and natural supports in the community while utilizing the community as a learning environment to provide services and supports as identified in a client's service plan,
  - ii) Are conducted in a variety of settings in which the client interacts with persons without disabilities other than those individuals who are providing services to the client. These types of services may include socialization, adaptive skills and personnel to accompany and support the client in community settings,
  - iii) Provide resources necessary for participation in activities and supplies related to skill acquisition, retention or improvement and are provided by the service agency as part of the established reimbursement rate, and
  - iv) May be provided in a group setting or may be provided to a single client in a learning environment to provide instruction when identified in the service plan.
  - v) Activities provided exclusively for recreational purposes are not a benefit and shall not be reimbursed.
- e. Prevocational Services are provided to prepare a client for paid community employment. Services consist of teaching concepts including attendance, task completion, problem solving and safety, and are associated with performing compensated work.
  - i) Prevocational Services are directed to habilitative rather than explicit employment objectives and are provided in a variety of locations separate from the participant's private residence or other residential living arrangement.
  - ii) Goals for Prevocational Services are to increase general employment skills and are not primarily directed at teaching job specific skills.
  - iii) Clients shall be compensated for work in accordance with applicable federal laws and regulations and at less than fifty (50) percent of the minimum wage. Providers that pay less than minimum wage shall ensure compliance with the Department of Labor Regulations.
  - iv) Prevocational Services are provided to support the client to obtain paid community employment within five (5) years. Prevocational services may continue longer than five (5) years when documentation in the annual service plan demonstrates this need based on an annual assessment.
  - v) A comprehensive assessment and review for each person receiving Prevocational Services shall occur at least once every five (5) years to determine whether or not the person has developed the skills necessary for paid community employment.

- vi) Documentation shall be maintained in the file of each client receiving this service that the service is not available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1401 *et seq.*).
  - f. The number of units available for day habilitation services in combination with prevocational services is four thousand eight hundred (4,800). When used in combination with supported employment services, the total number of units available for day habilitation services in combination with prevocational services will remain at four thousand eight hundred (4,800) units and
  - g. The cumulative total, including supported employment services, may not exceed seven thousand one hundred and twelve (7,112) units. One unit equals fifteen (15) minutes of service.
4. Dental services are available to individuals age twenty one (21) and over and are for diagnostic and preventative care to abate tooth decay, restore dental health, are medically appropriate and include preventative, basic and major dental services.
- a. Preventative services include:
    - i). Dental insurance premiums and co-pays/co-insurance,
    - i) Periodic examination and diagnosis,
    - ii) Radiographs when indicated,
    - iv). Non-intravenous sedation,
    - v). Basic and deep cleanings,
    - vi). Mouth guards,
    - vii). Topical fluoride treatment, and
    - X). Retention or recovery of space between teeth when indicated.
  - b. Basic services include:
    - i) Fillings,
    - ii) Root canals,
    - iii) Denture realigning or repairs,
    - iv) Repairs/re-cementing crowns and bridges,
    - v) Non-emergency extractions including simple, surgical, full and partial
    - vi) Treatment of injuries, or
    - vii) Restoration or recovery of decayed or fractured teeth

- c. Major services include:
  - i) Implants when necessary to support a dental bridge for the replacement of multiple missing teeth or is necessary to increase the stability of dentures, crowns, bridges, and dentures. The cost of implants is only reimbursable with prior approval in accordance with Operating Agency procedures.
  - ii) Crowns
  - iii) Bridges
  - iv) Dentures. Implants are a benefit only when the procedure is necessary to support a dental bridge for the replacement of multiple missing teeth, or is necessary to increase the stability of dentures. The cost of implants is reimbursable only with prior approval.
- e. Implants shall not be a benefit for a client who uses tobacco daily due to a substantiated increased rate of implant failures for tobacco users. Subsequent implants are not a benefit when prior implants fail.
- f. Dental services are provided only when the services are not available through the Medicaid state plan due to not meeting the need for medical necessity as defined in Health Care Policy and Financing rules at 10 CCR 2505-10, Section 8011.11 or available through a third party. General limitations to dental services including frequency will follow the Operating Agency's guidelines using industry standards and are limited to the most cost effective and efficient means to alleviate or rectify the dental issue associated with the client.
- g. Dental services do not include cosmetic dentistry, procedures predominated by specialized prosthodontic, maxillo-facial surgery, craniofacial surgery or orthodontia, which includes, but is not limited to:
  - i) Elimination of fractures of the jaw or face,
  - ii) Elimination or treatment of major handicapping malocclusion, or
  - iii) Congenital disfiguring oral deformities.
- h. Cosmetic dentistry is defined as aesthetic treatment designed to improve the appearance of the teeth or smile, including teeth whitening, veneers, contouring and implants or crowns solely for the purpose of enhancing appearance.
- i. Preventative and basic services are limited to \$2,000 per service plan year. Major services are limited to \$10,000 for the five (5) year renewal period of the waiver.
- 4. Non-Medical Transportation enables clients to gain access to Day Habilitation Services and Supports, Prevocational Services and Supported Employment services. A bus pass or other public conveyance may be used only when it is more cost effective than or equivalent to the applicable mileage band.
  - a. Whenever possible, family, neighbors, friends or community agencies that can provide this service without charge must be utilized and documented in the Service Plan.

- b. Non-Medical Transportation to and from day program shall be reimbursed based on the applicable mileage band. Non-Medical Transportation services to and from day program are limited to five hundred and eight (508) units per service plan year. A unit is a per-trip accessed each way to and from day habilitation and supported employment services.
  - c. Non-Medical Transportation does not replace medical transportation required under 42 C.F.R. § 431.53 or transportation services under the Medicaid State Plan, defined at 42 C.F.R. § 440.170(A).
- 5. Residential Habilitation Services and Supports (RHSS) are delivered to ensure the health and safety of the client and to assist in the acquisition, retention or improvement in skills necessary to support the client to live and participate successfully in the community.
  - a. Services may include a combination of lifelong, or extended duration supervision, training or support that is essential to daily community living, including assessment and evaluation, and includes training materials, transportation, fees and supplies.
  - b. The living environment encompasses two (2) types that include individual Residential Services and Supports (IRSS) and Group Residential Services and Supports (GRSS).
  - c. All RHSS environments shall provide sufficient staff to meet the needs of the client as defined in the service plan.
  - d. The following RHSS activities assist clients to reside as independently as possible in the community:
    - i) Self-advocacy training, which may include training to assist in expressing personal preferences, increasing self-representation, increasing self-protection from and reporting of abuse, neglect and exploitation, advocating for individual rights and making increasingly responsible choices,
    - ii) Independent living training, which may include personal care, household services, infant and childcare when the client has a child, and communication skills,
    - iii) Cognitive services, which may include training in money management and personal finances, planning and decision making,
    - iv) Implementation of recommended follow-up counseling, behavioral, or other therapeutic interventions. Implementation of physical, occupational or speech therapies delivered under the direction of a licensed or certified professional in that discipline.
    - v) Medical and health care services that are integral to meeting the daily needs of the client and include such tasks as routine administration of medications or tending to the needs of clients who are ill or require attention to their medical needs on an ongoing basis,

- vi) Emergency assistance training including developing responses in case of emergencies and prevention planning and training in the use of equipment or technologies used to access emergency response systems,
  - vii) Community access services that explore community services available to all people, natural supports available to the client and develop methods to access additional services, supports, or activities needed by the client,
  - viii) Travel services, which may include providing, arranging, transporting or accompanying the client to services and supports identified in the service plan, and
  - ix) Supervision services which ensure the health and safety of the client or utilize technology for the same purpose.
- e. All direct care staff not otherwise licensed to administer medications must complete a training class approved by the Colorado Department of Public Health and Environment and successfully complete a written test and a practical and competency test.
- f. Reimbursement for RHSS does not include the cost of normal facility maintenance, upkeep and improvement, other than such costs for modifications or adaptations to a facility required to assure the health and safety of clients or to meet the requirements of the applicable life safety code.
- 6. Specialized Medical Equipment and Supplies include:
  - a. Devices, controls or appliances that enable the client to increase the client's ability to perform activities of daily living,
  - b. Devices, controls or appliances that enable the client to perceive, control or communicate within the client's environment,
  - c. Items necessary to address physical conditions along with ancillary supplies and equipment necessary to the proper functioning of such items,
  - d. Durable and non-durable medical equipment not available under the Medicaid State Plan that is necessary to address client functional limitations, or
  - e. Necessary medical supplies in excess of Medicaid State Plan limitations or not available under the Medicaid State Plan.
  - f. All items shall meet applicable standards of manufacture, design and installation.
  - g. Specialized medical equipment and supplies exclude those items that are not of direct medical or remedial benefit to the client.

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7. Supported Employment includes intensive, ongoing supports that enable a client, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who because of the client's disabilities needs supports to perform in a regular work setting.
- a. Supported Employment may include assessment and identification of vocational interests and capabilities in preparation for job development, and assisting the client to locate a job or job development on behalf of the client.
  - b. Supported Employment may be delivered in a variety of settings in which clients interact with individuals without disabilities, other than those individuals who are providing services to the client, to the same extent that individuals without disabilities employed in comparable positions would interact.
  - c. Supported Employment is work outside of a facility-based site, which is owned or operated by an agency whose primary focus is service provision to persons with developmental disabilities.
  - d. Supported Employment is provided in community jobs, enclaves or mobile crews.
  - e. Group Employment including mobile crews or enclaves shall not exceed eight (8) clients.
  - f. Supported Employment includes activities needed to sustain paid work by clients including supervision and training.
  - g. When Supported Employment services are provided at a work site where individuals without disabilities are employed, service is available only for the adaptations, supervision and training required by a client as a result of the client's disabilities.
  - h. Documentation of the client's application for services through the Colorado Department of Human Services Division of Vocational Rehabilitation shall be maintained in the file of each client receiving this service. Supported employment is not available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education CCT (20 U.S.C. § 1401 *et seq*).
  - i. Supported Employment does not include reimbursement for the supervisory activities rendered as a normal part of the business setting.
  - j. Supported Employment shall not take the place of nor shall it duplicate services received through the Division of Vocational Rehabilitation.
  - k. The limitation for Supported Employment services is seven thousand one hundred and twelve (7,112) units per service plan year. One (1) unit equals fifteen (15) minutes of service.
  - l. The following are not a benefit of Supported Employment and shall not be reimbursed:
    - i) Incentive payments, subsidies or unrelated vocational training expenses, such as incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment,

- ii) Payments that are distributed to users of supported employment, and
  - iii) Payments for training that are not directly related to a client's supported employment.
- 8. Vision Services include eye exams or diagnosis, glasses, contacts or other medically necessary methods used to improve specific dysfunctions of the vision system when delivered by a licensed optometrist or physician for a client who is at least twenty-one (21) years of age.
  - a. Lasik and other similar types of procedures are only allowable when:
    - i) The procedure is necessary due to the client's documented specific behavioral complexities that result in other more traditional remedies being impractical or not cost effective.
    - ii) Prior authorized in accordance with Operating Agency procedures.

#### **8.500.6 SERVICE PLAN**

8.500.6.A The Case Management Agency shall complete a Service Plan for each client enrolled in the HCBS-DD Waiver in accordance with 10 CCR 2505-10 Section 8.400.

8.500.6.B The Service Plan shall:

- 1. Address client's assessed needs and personal goals, including health and safety risk factors, either by waiver services or through other means,
- 2. Be in accordance with the Department's rules, policies and procedures, and
- 3. Include updates and revisions at least annually or when warranted by changes in the client's needs.

8.500.6.C The Service Plan shall document that the client has been offered a choice:

- 1. Between waiver services and institutional care,
- 2. Among waiver services, and
- 3. Among qualified providers.

#### **8.500.7 WAITING LIST PROTOCOL**

8.500.7.A There shall be one waiting list for persons eligible for the HCBS-DD Waiver when the total capacity for enrollment or the total appropriation by the general assembly has been met.

8.500.7.B The name of a person eligible for the HCBS-DD Waiver program shall be placed on the waiting list by the community centered board making the eligibility determination.

8.500.7.C When an eligible person is placed on the waiting list for HCBS-DD Waiver services, a written notice of action including information regarding client rights and appeals shall be sent to the person or the person's legal guardian in accordance with the provisions of 10 CCR 2505-10 Section 8.057 *et seq.*

8.500.7.D The placement date used to establish a person's order on a waiting list shall be:

1. The date on which the person was initially determined to have a developmental disability by the community centered board; or
2. The fourteenth (14) birth date if a child is determined to have a developmental disability by the community centered board prior to the age of fourteen.

8.500.7.E As openings become available in the HCBS-DD Waiver program in a designated service area, that community centered board shall report that opening to the Operating Agency.

8.500.7.F Persons whose name is on the waiting list shall be considered for enrollment to the HCBS-DD Waiver in order of placement date on the waiting list. Exceptions to this requirement shall be limited to:

1. An emergency situation where the health and safety of the person or others is endangered and the emergency cannot be resolved in another way. Emergencies are defined by the following criteria:
  - a. Homeless: the person does not have a place to live or is in imminent danger of losing the person's place of abode.
  - b. Abusive or neglectful situation: the person is experiencing ongoing physical, sexual or emotional abuse or neglect in the person's present living situation and the person's health, safety or well-being is in serious jeopardy.
  - c. Danger to others: the person's behavior or psychiatric condition is such that others in the home are at risk of being hurt by him/her. Sufficient supervision cannot be provided by the current caretaker to ensure safety of the person in the community.
  - d. Danger to self: a person's medical, psychiatric or behavioral challenges are such that the person is seriously injuring/harming self or is in imminent danger of doing so.

8.500.7.G Enrollments may be reserved to meet statewide priorities that may include:

1. A person who is eligible for the HCBS-DD Waiver and is no longer eligible for services in the foster care system due to an age that exceeds the foster care system limits,
2. Persons who reside in long term care institutional settings who are eligible for the HCBS-DD Waiver and have a requested to be placed in a community setting, and
3. Persons who are in an emergency situation.

8.500.7.H Enrollments shall be authorized to persons based on the criteria set forth by the general assembly in appropriations when applicable.

#### **8.500.8 CLIENT RESPONSIBILITIES**

8.500.8.A A client or guardian is responsible to:

1. Provide accurate information regarding the client's ability to complete activities of daily living,

2. Assist in promoting the client's independence,
3. Cooperate in the determination of financial eligibility for Medicaid,
4. Notify the case manager within thirty (30) days after:
  - a. Changes in the client's support system, medical, physical or psychological condition or living situation including any hospitalizations, emergency room admissions, placement to a nursing home or intermediate care facility for the mentally retarded (ICF-MR),
  - b. The client has not received an HCBS waiver service during one (1) month,
  - c. Changes in the client's care needs,
  - d. Problems with receiving HCBS Waiver services,
  - e. Changes that may affect Medicaid financial eligibility including prompt reporting of changes in income or assets.

#### **8.500.9 PROVIDER REQUIREMENTS**

8.500.9.A A private or profit or not for profit agency or government agency shall meet the minimum provider qualifications as set forth in the HCBS Waiver and shall:

1. Conform to all state established standards for the specific services they provide under HCBS-DD,
2. Maintain program approval and certification from the Operating Agency,
3. Maintain and abide by all the terms of their Medicaid provider agreement with the Department and with all applicable rules and regulations set forth in 10 CCR 2505-10, Section 8.130,
4. Discontinue services to a client only after documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services,
5. Have written policies governing access to duplication and dissemination of information from the client's records in accordance with state statutes on confidentiality of information at § 25.5-1-116, C.R.S., as amended,
6. When applicable, maintain the required licenses from the Colorado Department of Public Health and Environment, and
7. Maintain client records to substantiate claims for reimbursement according to Medicaid standards.
8. HCBS-DD providers shall comply with:
  - a. All applicable provisions of Section 27-10.5, C.R.S. et seq. and all rules and regulations as set forth in 2 CCR 503-1, Section 16 et seq.,
  - b. All federal program reviews and financial audits of the HCBS-DD Waiver services,

- c. The Operating Agency's on-site certification reviews for the purpose of program approval, on-going program approval, monitoring or financial and program audits,
- d. Requests from the County Departments of Social/Human Services to access records of clients receiving services held by Case Management Agencies as required to determine and re-determine Medicaid eligibility
- e. Requests by the Department or the Operating Agency to collect, review and maintain individual or agency information on the HCBS-DD Waiver, and
- f. Requests by the Case Management Agency to monitor service delivery through targeted case management activities.

**8.500.10 TERMINATION OR DENIAL OF HCBS-DD MEDICAID PROVIDER AGREEMENTS**

8.500.10.A The Department may deny or terminate an HCBS-DD Medicaid Provider Agreement when:

- 1. The provider is in violation of any applicable certification standard or provision of the provider agreement and does not adequately respond to a corrective action plan within the prescribed period of time. The termination shall follow procedures at 10 CCR 2505-10, Section 8.130 *et seq.*
- 2. A change of ownership occurs. A change in ownership shall constitute a voluntary and immediate termination of the existing provider agreement by the previous owner of the agency and the new owner must enter into a new provider agreement prior to being reimbursed for HCBS-DD services.
- 3. The provider or its owner has previously been involuntarily terminated from Medicaid participation as any type of Medicaid service provider.
- 4. The provider or its owner has abruptly closed, as any type of Medicaid provider, without proper prior client notification.
- 5. The provider fails to comply with requirements for submission of claims pursuant to 10 CCR 2505-10, Section 8.040.2 or after actions have been taken by the Department, the Medicaid Fraud Control Unit or their authorized agents to terminate any provider agreement or recover funds.
- 6. Emergency termination of any provider agreement shall be in accordance with the procedures at 10 CCR 2505-10, Section 8.050.

**8.500.11 ORGANIZED HEALTH CARE DELIVERY SYSTEM**

8.500.11.A The Organized Health Care Delivery System (OHCDS) for the HCBS-DD Waiver is the Community Centered Board as designated by the Operating Agency in accordance with § 27-10.5-103 C.R.S..

8.500.11.B The OHCDS is the Medicaid provider of record for a client whose services are delivered through the OHCDS.

8.500.11.C The OHCDS shall maintain a Medicaid provider agreement with the Department to deliver HCBS according to the current federally approved waiver.

8.500.11.D The OHCDS may contract or employ for delivery of HCBS waiver services.

8.500.11.E The OCHDS shall:

1. Ensure that the contractor or employee meets minimum provider qualifications as set forth in the HCBS waiver,
2. Ensure that services are delivered according to the waiver definitions and as identified in the client's service plan,
3. Ensure the contractor maintains sufficient documentation to support the claims submitted, and
4. Monitor the health and safety for HCBS clients receiving services from a subcontractor.

8.500.11.F The OHCDs is authorized to subcontract and negotiate reimbursement rates with providers in compliance with all federal and state regulations regarding administrative, claim payment and rate setting requirements. The OCHDS shall:

1. Establish reimbursement rates that are consistent with efficiency, economy and quality of care,
2. Establish written policies and procedures regarding the process that will be used to set rates for each service type and for all providers,
3. Ensure that the negotiated rates are sufficient to promote quality of care and to enlist enough providers to provide choice to clients,
4. Negotiate rates that are in accordance with the Department's established fee for service rate schedule and Operating Agency procedures,
  - a. Manually priced items that have no maximum allowable reimbursement rate assigned, nor a manufacturer's suggested retail price (MSRP), shall be reimbursed at the lesser of the submitted charges or the sum of the manufacturer's invoice cost, plus 13.56 percent.
5. Collect and maintain the data used to develop provider rates and ensure that the data includes costs for services to address the client's needs, that are allowable activities within the HCBS service definition and that supports the established rate,
6. Maintain documentation of provider reimbursement rates and make it available to the Department, its Operating Agency or Centers for Medicare and Medicaid Services (CMS), and
7. Report by August 31st of each year, the names, rates and total payments made to the contractor.

#### **8.500.12 PRIOR AUTHORIZATION REQUESTS**

8.500.12.A Prior Authorization Requests (PAR) shall be in accordance with 10 CCR 2505-10, Section 8.058.

8.500.12.B A PAR shall be submitted to the Operating Agency through the Department's designated information management system.

8.500.12.C The Case Management Agency shall comply with the policies and procedures for the PAR review process as set forth by the Department and the Operating Agency.

8.500.12.D The Case Management Agency shall submit the PAR in compliance with all applicable regulations and ensure requested services are:

1. Consistent with the client's documented medical condition and functional capacity as indicated in the functional needs assessment,
2. Adequate in amount, frequency and duration in order to meet the client's needs and within the limitations set forth in the current federally approved waiver, and
3. Not duplicative of another authorized service, including services provided through:
  - a. Medicaid State Plan benefits,
  - b. Third party resources,
  - c. Natural supports,
  - d. Charitable organizations, or
  - e. Other public assistance programs.
4. Services delivered without prior authorization shall not be reimbursed except for provision of services during an emergency pursuant to 10 CCR 2505-10, Section 8.058.4.

**8.500.13 RETROSPECTIVE REVIEW PROCESS**

8.500.13.A Services provided to a client are subject to a Retrospective Review by the Department and the Operating Agency. This Retrospective Review shall ensure that services:

1. Identified in the service plan are based on the client's identified needs as stated in the functional needs assessment,
2. Have been requested and approved prior to the delivery of services,
3. Provided to a client are in accordance with the service plan, and
4. Provided within the specified HCBS service definition in the federally approved HCBS-DD Waiver,

8.500.13.B When the retrospective review identifies areas of noncompliance, the Case Management Agency or provider shall be required to submit a plan of correction that is monitored for completion by the Department and the Operating Agency.

8.500.13.C The inability of the provider to implement a plan of correction within the timeframes identified in the plan of correction may result in temporary suspension of claims payment or termination of the provider agreement.

8.500.13.D When the provider has received reimbursement for services and the review by the Department or Operating Agency identifies that it is not in compliance with requirements, the amount reimbursed will be subject to the reversal of claims, recovery of amount reimbursed, suspension of payments, or termination of provider status.

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**8.500.14 PROVIDER REIMBURSEMENT**

8.500.14.A Providers shall submit claims directly to the Department's Fiscal Agent through the Medicaid Management Information System (MMIS); or through a qualified billing agent enrolled with the Department's Fiscal Agent.

8.500.14.B Provider claims for reimbursement shall be made only when the following conditions are met:

1. Services are provided by a qualified provider as specified in the federally-approved HCBS-DD Waiver,
2. Services have been prior authorized,
3. Services are delivered in accordance to the frequency, amount, scope and duration of the service as identified in the client's service plan, and
4. Required documentation of the specific service is maintained and sufficient to support that the service is delivered as identified in the service plan and in accordance with the service definition.

8.500.14.C Provider claims for reimbursement shall be subject to review by the Department and the Operating Agency. This review may be completed after payment has been made to the provider.

8.500.14.D When the review identifies areas of noncompliance, the provider shall be required to submit a plan of correction that is monitored for completion by the Department and the Operating Agency.

8.500.14.E When the provider has received reimbursement for services and the review by the Department or Operating Agency identifies that the service delivered or the claims submitted is not in compliance with requirements, the amount reimbursed will be subject to the reversal of claims, recovery of amount reimbursed, suspension of payments, or termination of provider status.

8.500.14.F Except where otherwise noted, payment is based on a statewide fee schedule. State developed fee schedule rates are the same for both public and private providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the provider bulletin accessed through the Department's fiscal agent's web site.

**8.500.15 INDIVIDUAL RIGHTS**

8.500.15.A Individual rights shall be in accordance with 27-10.5-101 C.R.S. *et seq.*

**8.500.16 APPEAL RIGHTS**

8.500.16.A The CCB shall provide the long term care notice of action form to applicants and clients within ten (10) business days regarding their appeal rights in accordance with 10 CCR 2505-10, Section 8.057 *et seq.* When:

1. The applicant is determined to not have a developmental disability,
2. The applicant is found eligible or ineligible for LTC services,
3. The applicant is determined eligible or ineligible for placement on a waitlist for Medicaid LTC services,

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4. An adverse action occurs that affects the client's waiver enrollment status,
  5. An adverse action occurs that affects the provision of the client's waiver services, or
  6. The applicant or client requests such information.
- 8.500.16.B The CCB shall represent their decision at the Office of Administrative Courts as described in 10 CCR 2505-10, Section 8.057 et seq. when CCB has made a denial or adverse action against a client.
- 8.500.16.C The CCB shall notify all providers in the client's service plan within ten (10) business day of the adverse action.
- 8.500.16.D The CCB shall notify the County Department of Human/Social Services income maintenance technician within ten (10) business day of an adverse action that affects Medicaid financial eligibility.
- 8.500.16.E The applicant or client shall be informed of an adverse action if the client is determined ineligible as set forth in client eligibility and the following:
1. The client cannot be served safely within the cost containment as identified in the HCBS-DD Waiver,
  2. The client is placed in an institution for treatment with a duration that continues for more than thirty (30) days,
  3. The client is detained or resides in a correctional facility, or
  4. The client enters an institute for mental health with a duration that continues for more than thirty (30) days.
- 8.500.16.F The client shall be notified, pursuant to 10 CCR 2502-10 Section 8.057.2.A, when the following results in an adverse action that does not relate to HCBS-DD Waiver client eligibility requirements:
1. A waiver service is reduced, terminated or denied because it is not a demonstrated need in the functional needs assessment,
  2. A waiver service is terminated or denied because is not available through the current federally-approved waiver,
  3. A service plan or waiver service exceeds the limits as set forth in the in the federally-approved waiver,
  4. The client or client representative has failed to schedule an appointment for the functional needs assessment, service plan, or six (6) month visit with the case manager two (2) times in a thirty (30) day consecutive period,
  5. The client or client representative has failed to keep three (3) scheduled assessment appointments within a thirty (30) consecutive day period,
  6. The client enrolls in a different long term care program, or

7. The client moves out of state. The client shall be discontinued effective upon the day after the date of the move.
    - a. A client who leaves the state on a temporary basis, with intent to return to Colorado, according to Income Maintenance Staff Manual at 9 CCR 2503-1, Section 3.140.2,, shall not be terminated unless one or more of the other client eligibility criteria are no longer met.
  8. The client voluntarily withdraws from the waiver program. The client shall be terminated from the waiver effective upon the day after the date on which the client's request is documented.
- 8.500.16.G The CCB shall not send the LTC notice of action form when the basis for termination is death of the client, but shall document the event in the client record. The date of action shall be the day after the date of death.

**8.500.17 QUALITY ASSURANCE**

- 8.500.17.A The monitoring HCBS-DD Waiver services and the health and well-being of service recipients shall be the responsibility of the Operating Agency, under the oversight of the Department.
- 8.500.17.B The Operating Agency, shall conduct reviews of each agency providing HCBS-DD Waiver services or cause to have reviews to be performed in accordance with guidelines established by the Department or Operating Agency. The review shall apply rules and standards developed for programs serving individuals with developmental disabilities.
- 8.500.17.C The Operating Agency shall maintain or cause to be maintained for three (3) years a complete file of all records, documents, communications, and other materials which pertain to the operation of the HCBS-DD Waiver programs or the delivery of services. The Department shall have access to these records at any reasonable time.
- 8.500.17.D The Operating Agency shall recommend to the Department the suspension of payment, denial or termination of the Medicaid Provider Agreement for any agency which it finds to be in violation of applicable standards and which does not adequately respond by submitting a corrective action plan to the Operating Agency within the prescribed period of time or does not fulfill a corrective action plan within the prescribed period of time.
- 8.500.17.E After having received the denial or termination recommendation and reviewing the supporting documentation, the Department shall take the appropriate action within a reasonable timeframe agreed upon the Department and the Operating Agency

**8.500.18 CLIENT PAYMENT - POST ELIGIBILITY TREATMENT OF INCOME**

- 8.500.18.A A client who is determined to be Medicaid eligible through the application of the three hundred percent (300%) income standard at 10 CCR 2505-10 § 8.100.7.A, is required to pay a portion of the client's income toward the cost of the client's HCBS-DD services after allowable income deductions.
- 8.500.18.B This Post Eligibility Treatment of Income(PETI) assessment shall:
1. Be calculated by the Case Management Agency using the form specified by the Operating Agency.
  2. Be calculated during the client's initial or continued stay review for HCB-DD services;

3. Be recomputed as often as needed, by the case management agency in order to ensure the client's continued eligibility for the HCBS-DD waiver;

8.500.18.C In calculating PETI assessment, the case management agency must deduct the following amounts, in the following order, from the individual's total income including amounts disregarded in determining Medicaid eligibility:

1. A maintenance allowance equal to 300% the current and/SSI-CS standard plus an earned income allowance based on the SSI treatment of earned income up to a maximum of two hundred forty five dollars (\$245) per month;
2. For a client with only a spouse at home, an additional amount based on a reasonable assessment of need but not to exceed the SSI standard; and
3. For a client with a spouse plus other dependents at home, or with other dependents only at home, an amount based on a reasonable assessment of need but not to exceed the appropriate AFDC grant level; and
4. Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including:
  - a. Health insurance premiums (other than Medicare), deductibles, or coinsurance charges (including Medicaid copayments); and
  - b. Necessary medical or remedial care recognized under State law but not covered under the Medicaid State Plan.

8.500.18.D Case Management Agencies are responsible for informing individuals of their PETI obligation on a form prescribed by the Operating Agency.

8.500.18.E PETI payments and the corresponding assessment forms are due to the Operating Agency during the month following the month for which they are assessed.

#### **8.500.90 SUPPORTED LIVING SERVICES WAIVER (SLS)**

The section hereby incorporates the terms and provisions of the federally approved Home and Community Based Supported Living Services (HCBS-SLS) Waiver, CO.0293. To the extent that the terms of the federally approved waiver are inconsistent with the provisions of this section, the waiver shall control.

HCBS-SLS services and supports which are available to assist persons with developmental disabilities to live in the person's own home, apartment, family home, or rental unit that qualifies as an HCBS-SLS setting. HCBS-SLS services are not intended to provide twenty four (24) hours of paid support or meet all identified client needs and are subject to the availability of appropriate services and supports within existing resources.

#### **8.500.90 DEFINITIONS**

ACTIVITIES OF DAILY LIVING (ADL) means basic self care activities including bathing, bowel and bladder control, dressing, eating, independent ambulation,, and needing supervision to support behavior, medical needs and memory/cognition.

ADVERSE ACTION means a denial, reduction, termination or suspension from the HCBS-SLS waiver or a specific HCBS-SLS waiver service(s).

**APPLICANT** means an individual who is seeking a Long Term Care eligibility determination and who has not affirmatively declined to apply for Medicaid or participate in a assessment.

**AUTHORIZED REPRESENTATIVE (AR)** means an individual designated by the client or the legal guardian, if appropriate, who has the judgment and ability to direct Consumer Directed Attendant Support Services on the client's behalf and meets the qualifications as defined at 10 CCR 2505-10, Sections 8.510.6 and 8.510.7.

**CLIENT** means an individual who has met Long Term Care (LTC) eligibility requirements, is enrolled in and chooses to receive LTC services, and subsequently receives LTC services.

**CLIENT REPRESENTATIVE** means a person who is designated by the client to act on the client's behalf. A client representative may be: (a) a legal representative including, but not limited to a court-appointed guardian, a parent of a minor child, or a spouse; or, (b) an individual, family member or friend selected by the client to speak for and/or act on the client's behalf.

**COMMUNITY CENTERED BOARD (CCB)** means a private corporation, for profit or not for profit, which when designated pursuant to Section 27-10.5105, C.R.S., provides case management services to clients with developmental disabilities, is authorized to determine eligibility of such clients within a specified geographical area, serves as the single point of entry for clients to receive services and supports under Section 27-10.5-105, C.R.S. *et seq.*, and provides authorized services and supports to such persons either directly or by purchasing such services and supports from service agencies.

**CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES (CDASS)** means the service delivery option for services that assist an individual in accomplishing activities of daily living when included as a waiver benefit that may include health maintenance, personal care, homemaker activities.

**COST CONTAINMENT** means limiting the cost of providing care in the community to less than or equal to the cost of providing care in an institutional setting based on the average aggregate amount. The cost of providing care in the community shall include the cost of providing Home and Community Based Services, and Medicaid State Plan Benefits including Long Term Home Health services, and targeted case management.

**COST EFFECTIVENESS** means the most economical and reliable means to meet an identified need of the client.

**DEPARTMENT** means the Colorado Department of Health Care Policy and Financing, the single State Medicaid agency.

**DEVELOPMENTAL DISABILITY** means a disability that is manifested before the person reaches twenty-two (22) years of age, which constitutes a substantial disability to the affected individual, and is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation. Unless otherwise specifically stated, the federal definition of "Developmental Disability" found in 42 U.S.C., Section 6000, *et seq.*, shall not apply.

Impairment of general intellectual functioning" means that the person has been determined to have an intellectual quotient equivalent which is two or more standard deviations below the mean (Seventy (70) or less assuming a scale with a mean of one hundred (100) and a standard deviation of fifteen (15)), as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. The standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent. When an individual's general intellectual functioning cannot be measured by a standardized instrument, then the assessment of a qualified professional shall be used.

Adaptive behavior similar to that of a person with mental retardation means that the person has overall adaptive behavior which is two or more standard deviations below the mean in two or more skill areas (communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work), as measured by an instrument which is standardized, appropriate to the person's living environment, and administered and clinically determined by a qualified professional. These adaptive behavior limitations are a direct result of, or are significantly influenced by, the person's substantial intellectual deficits and may not be attributable to only a physical or sensory impairment or mental illness.

Substantial intellectual deficits means an intellectual quotient that is between seventy one (71) and seventy five (75) assuming a scale with a mean of one hundred 100 and a standard deviation of fifteen (15), as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. The standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent.

DIVISION FOR DEVELOPMENTAL DISABILITIES (DDD) means the Operating Agency for Home and Community bBased Services-Supported Living Services (HCBS-SLS) to persons with developmental disabilities within the Colorado Department of Human Services.

EARLY AND PERIODIC SCREENING AND DIAGNOSIS AND TREATMENT (EPSDT) means the child health component of the Medicaid State Plan for Medicaid eligible children up to age 21.

FAMILY means a relationship as it pertains to the client and includes the following:

A mother, father, brother, sister or,

Extended blood relatives such as grandparent, aunt or uncle

Cousins or,

An adoptive parent; or,

One or more individuals to whom legal custody of a client with a developmental disability has been given by a court; or,

A spouse; or

The client's children.

FISCAL MANAGEMENT SERVICES ORGANIZATION (FMS) means the entity contracted with the Department as the employer of record for attendants to provide personnel management services, fiscal management services, and skills training to an authorized representative or a client receiving CDASS.

FUNCTIONAL ELIGIBILITY means that the applicant meets the criteria for Long Term Care services as determined by the Department's prescribed instrument.

FUNCTIONAL NEEDS ASSESSMENT means a comprehensive face-to-face evaluation using the uniform long term care instrument and medical verification on the professional medical information page to determine if the applicant or client meets the institutional level of care (LOC).

**GUARDIAN** means an individual at least twenty-one (21) years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated client pursuant to appointment by a court. Guardianship may include a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

**HOME AND COMMUNITY BASED SERVICES (HCBS) WAIVERS** means services and supports authorized through a 1915(c) waiver of the social security act and provided in community settings to a Client who requires a level of institutional care that would otherwise be provided in a hospital, nursing facility or intermediate care facility for the mentally retarded (ICF-MR).

**INSTITUTION** means a hospital, nursing facility, or intermediate care facility for the mentally retarded (ICF-MR) for which the Department makes Medicaid payment under the State plan.

**INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED (ICF-MR)** means a public or private facility that provides health and habilitation services to a client with developmental disabilities or related conditions.

**LEGALLY RESPONSIBLE PERSON** means the parent of a minor child, or the client's spouse.

**LEVEL OF CARE (LOC)** means the specified minimum amount of assistance that a client must require in order to receive services in an institutional setting under the state plan. **LONG TERM CARE (LTC) SERVICES** means services provided in nursing facilities or intermediate care facilities for the mentally retarded (ICF-MR), or home and community based services (HCBS), long term home health services, swing bed and hospital back up program (HBU).

**MEDICAID ELIGIBLE** means an applicant or client meets the criteria for Medicaid benefits based on the applicant's financial determination and disability determination.

**MEDICAID STATE PLAN** means the federally approved document that specifies the eligibility groups that a state serves through its Medicaid program, the benefits that the State covers, and how the State addresses additional Federal Medicaid statutory requirements concerning the operation of its Medicaid program.

**MEDICATION ADMINISTRATION** means assisting a client in the ingestion, application or inhalation of medication including prescription and non-prescription drugs according to the directions of the attending physician or other licensed health practitioner and making a written record thereof.

**NATURAL SUPPORTS** means informal relationships that provide assistance and occur in a client's everyday life including, but not limited to, community supports and relationships with family members, friends, co-workers, neighbors and acquaintances.

**OPERATING AGENCY** means the Department of Human Services, Division for Developmental Disabilities, which manages the operations of the Home and Community Based Services-for persons with Developmental Disabilities (HCBS-DD), HCBS-Supported Living Services (HCBS-SLS) and HCBS-Children's Extensive Supports (HCBS-CES) waivers under the oversight of the Department of Health Care Policy and Financing.

**ORGANIZED HEALTH CARE DELIVERY SYSTEM (OHCDs)** means a public or privately managed service organization that provides, at minimum, targeted case management and contracts with other qualified providers to furnish services authorized in the Home and Community Based Services for the Developmentally Disabled (HCBS-DD), Home and Community Based Services Supported Living Services (HCBS-SLS) and Home and Community Based Services Children's Extensive Support (HCBS-CES) waivers.

POST ELIGIBILITY TREATMENT OF INCOME (PETI) means the determination of the financial liability of an HCBS waiver client as defined in 42 C.F.R 435.217.

PRIOR AUTHORIZATION means approval for an item or service that is obtained in advance either from the Department, the Operating Agency, a State fiscal agent or the case management agency.

PROFESSIONAL MEDICAL INFORMATION PAGE (PMIP) means the medical information form signed by a licensed medical professional used to verify the client needs institutional level of care.

PROGRAM APPROVED SERVICE AGENCY means a developmental disabilities service agency or typical community service agency as defined in 2 CCR 503-1, Section 16.200 *et seq.*, that has received program approval to provide HCBS-SLS services.

PUBLIC CONVEYANCE means public passenger transportation services that are available for use by the general public as opposed to modes for private use including vehicles for hire.

Reimbursement rates means the maximum allowable Medicaid reimbursement to a provider for each unit of service.

RELATIVE means a person related to the client by virtue of blood, marriage, adoption or common law marriage.

RETROSPECTIVE REVIEW means the Department or the Operating Agency's review after services and supports are provided to ensure the client received services according to the service plan and standards of economy, efficiency and quality of service

SERVICE PLAN means the written document that specifies identified and needed services to include Medicaid eligible and non-Medicaid eligible services, regardless of funding source, to assist a client to remain safely in the community and developed in accordance with the Department and the Operating Agency's peratin set forth in 10 CCR 2505-10, Section 8.400.

SERVICE PLAN AUTHORIZATION LIMIT (SPAL) means an annual upper payment limit of total funds available to purchase services to meet the client's ongoing needs., Each SPAL is determined by the Department and Operating Agency based on the annual appropriation for the HCBS-SLS waiver, the number of clients in each level, and projected utilization.

SUPPORT is any task performed for the client where learning is secondary or incidental to the task itself or an adaptation is provided.

SUPPORTS INTENSITY SCALE (SIS) means the standardized assessment tool that gathers information from a semi- structured interview of respondents who know the client well. It is designed to identify and measure the practical support requirements of adults with developmental disabilities.

“SUPPORT LEVEL” MEANS A NUMERIC VALUE DETERMINED USING AN ALGORITHM THAT PLACES CLIENTS INTO GROUPS WITH OTHER CLIENTS WHO HAVE SIMILAR OVERALL SUPPORT NEEDS.

TARGETED CASE MANAGEMENT (TCM) means a Medicaid State plan benefit for a target population which includes facilitating enrollment, locating, coordinating and monitoring needed HCBS waiver services and coordinating with other non-waiver resources such as medical, social, educational and other resources to ensure non-duplication of waiver services and the monitoring of effective and efficient provision of waiver services across multiple funding sources.

THIRD PARTY RESOURCES means services and supports that a client may receive from a variety of programs and funding sources beyond natural supports or Medicaid that may include, but are not limited to community resources, services provided through private insurance, non-profit services and other government programs.

WAIVER SERVICE means optional services defined in the current federally approved waiver documents and do not include Medicaid State plan benefits.

**8.500.91 HCBS-SLS WAIVER ADMINISTRATION**

8.500.91.A HCBS-SLS shall be provided in accordance with the federally approved waiver document and these rules and regulations, and the rules and regulations of the Colorado Department of Human Services, Division for Developmental Disabilities, 2 CCR 503-1 and promulgated in accordance with the provision of Section 25.5-6-404(4), C.R.S.

8.500.91.B In the event a direct conflict arises between the rules and regulations of the Department and the Operating Agency, the provisions of Section 25.5-6-404(4), C.R.S. shall apply and the regulations of the Department shall control.

8.500.10.C The HCBS-SLS Waiver is operated by the Department of Human Services, Division for Developmental Disabilities under the oversight of the Department of Health Care Policy and Financing.

8.500.910.E HCBS-SLS services are available only to address those needs identified in the functional needs assessment and authorized in the service plan when the service or support is not available through the Medicaid State plan, EPSDT, natural supports, or third party payment resources.

8.500.91.F The HCBS-SLS Waiver:

1. Shall not constitute an entitlement to services from either the Department or the Operating Agency,
2. Shall be subject to annual appropriations by the Colorado General Assembly,
3. Shall ensure enrollments into the HCBS-SLS Waiver do not exceed the federally approved waiver capacity, and
4. May limit the enrollment when utilization of the HCBS-SLS Waiver program is projected to exceed the spending authority.

**8.500.92 GENERAL PROVISIONS**

8.500.92.A The following provisions shall apply to the Home and Community Based Services-Supported Living Services (HCBS-SLS) Waiver:

1. HCBS-SLS shall be provided as an alternative to ICF-MR services for an eligible client with developmental disabilities.
2. HCBS-SLS is waived from the requirements of Section 1902(a)(10)(b) of the Social Security Act concerning comparability of services. The availability and comparability of services may not be consistent throughout the State of Colorado.

3. A client enrolled in the HCBS-SLS Waiver shall be eligible for all other Medicaid services for which the client qualifies and shall first access all benefits available under the Medicaid State plan or Medicaid EPSDT prior to accessing services under the HCBS-SLS Waiver. Services received through the HCBS-SLS Waiver may not duplicate services available through the State Plan

**8.500.93 CLIENT ELIGIBILITY**

8.500.93.A To be eligible for the HCBS-SLS Waiver an individual shall meet the target population criteria as follows:

1. Be determined to have a developmental disability
2. Be eighteen (18) years of age or older,
3. Does not require twenty-four (24) hour supervision on a continuous basis which is reimbursed as a HCBS-SLS service,
4. Is served safely in the community with the type or amount of HCBS-SLS waiver services available and within the federally approved capacity and cost containment limits of the waiver,
5. Meet ICF-MR level of care as determined by the Functional Needs Assessment
6. Meet the Medicaid financial determination for LTC eligibility as specified at 10 CCR 2505-10, Section 8.100 *et seq.*; and,
7. Reside in an eligible HCBS-SLS setting. SLS settings are the client's residence, which is defined as the following:
  - a. A living arrangement, which the client owns, rents or leases in own name,
  - b. The home where the client lives with the client's family or legal guardian, or
  - c. A living arrangement of no more than three (3) persons receiving HCBS-SLS residing in one household, unless they are all members of the same family.
8. The client shall maintain eligibility by continuing to meet the HCBS-SLS eligibility requirements and the following:
  - a. Receives at least one (1) HCB-SLS waiver service each calendar month,
  - b. Is not simultaneously enrolled in any other HCBS waiver, and
  - c. Is not residing in a hospital, nursing facility, ICF-MR, correctional facility or other institution.
9. When the HCBS-SLS waiver reaches capacity for enrollment, a client determined eligible for a waiver shall be placed on a wait list in accordance with these rules.10 CCR 2505-10, Section 8.500.96 *et seq.*

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**8.500.94 HCBS-SLS WAIVER SERVICES**

8.500.94.A The following services are available through the HCBS-SLS Waiver within the specific limitations as set forth in the federally approved HCBS-SLS Waiver.

1. Assistive technology includes services, supports or devices that assist a client to increase, maintain or improve functional capabilities. This may include assisting the client in the selection, acquisition, or use of an assistive technology device and includes:
  - a. The evaluation of the assistive technology needs of a client, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the client in the customary environment of the client,
  - b. Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices,
  - c. Training or technical assistance for the client, or where appropriate, the family members, guardians, caregivers, advocates, or authorized representatives of the client,
  - d. Warranties, repairs or maintenance on assistive technology devices purchased through the HCBS-SLS Waiver, and
  - e. Adaptations to computers, or computer software related to the client's disability. This specifically excludes cell phones, pagers, and internet access unless prior authorized in accordance with the Operating Agency procedure.
  - f. Assistive technology devices and services are only available when the cost is higher than typical expenses, and are limited to the most cost effective and efficient means to meet the need and are not available through the Medicaid state plan or third party resource.
  - g. Assistive technology recommendations shall be based on an assessment provided by a qualified provider within the provider's scope of practice.
  - h. When the expected cost is to exceed \$2,500 per device three estimates shall be obtained and maintained in the case record.
  - i. Training and technical assistance shall be time limited, goal specific and outcome focused.
  - j. The following items and services are specifically excluded under HCBS-SLS waiver and not eligible for reimbursement:
    - i) Purchase, training or maintenance of service animals,
    - ii) Computers,
    - iii) Items or devices that are generally considered to be entertainment in nature including but not limited to CDs, DVDs, iTunes®, any type of game,
    - iv) Training or adaptation directly related to a school or home educational goal or curriculum.

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- k. The total cost of home accessibility adaptations, vehicle modifications, and assistive technology shall not exceed \$10,000 over the five year life of the waiver unless an exception is applied for and approved. Costs that exceed this limitation may be approved by the Operating Agency for devices to ensure the health and safety of the client or that enable the client to function with greater independence in the home, or if it decreases the need for paid assistance in another waiver service on a long-term basis. Requests for an exception shall be prior authorized in accordance with the Operating Agency's procedures within thirty (30) days of the request.
2. Behavioral services are services related to the client's developmental disability which assist a client to acquire or maintain appropriate interactions with others.
- a. Behavioral services shall address specific challenging behaviors of the client and identify specific criteria for remediation of the behaviors.
  - b. A client with a co-occurring diagnosis of a developmental disability and mental health diagnosis covered in the Medicaid state plan shall have identified needs met by each of the applicable systems without duplication but with coordination by the behavioral services professional to obtain the best outcome for the client.
  - c. Services covered under Medicaid EPSDT or a covered mental health diagnosis in the Medicaid State Plan, covered by a third party source or available from a natural support are excluded and shall not be reimbursed.
  - d. Behavioral Services:
    - i) Behavioral consultation services include consultations and recommendations for behavioral interventions and development of behavioral support plans that are related to the client's developmental disability and are necessary for the client to acquire or maintain appropriate adaptive behaviors, interactions with others and behavioral self management.
    - ii) Intervention modalities shall relate to an identified challenging behavioral need of the client. Specific goals and procedures for the behavioral service shall be established.
    - iii). Behavioral consultation services are limited to eighty (80) units per service plan year. One (1) unit is equal to fifteen (15) minutes of service.
    - iv) Behavioral plan assessment services include observations, interviews of direct care staff, functional behavioral analysis and assessment, evaluations and completion of a written assessment document.
    - v) Behavioral plan assessment services are limited to forty (40) units and one (1) assessment per service plan year. One (1) unit is equal to fifteen (15) minutes of service.
    - vi) Individual or group counseling services include psychotherapeutic or psychoeducational intervention that:
      - 1) Is related to the developmental disability in order for the client to acquire or maintain appropriate adaptive behaviors, interactions with others and behavioral self-management, and

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- 2) Positively impacts the client's behavior or functioning and may include cognitive behavior therapy, systematic desensitization, anger management, biofeedback and relaxation therapy.
      - 3) Counseling services are limited to two hundred and eight (208) units per service plan year. One (1) unit is equal to fifteen (15) minutes of service. Services for the sole purpose of training basic life skills, such as activities of daily living, social skills and adaptive responding are excluded and not reimbursed under behavioral services.
    - vii) Behavioral line services include direct one on one (1:1) implementation of the behavioral support plan and are:
      - 1) Under the supervision and oversight of a behavioral consultant,
      - 2) To include acute, short term intervention at the time of enrollment from an institutional setting, or
      - 3) To address an identified challenging behavior of a client at risk of institutional placement, and that places the client's health and safety or the safety of others at risk
      - 4) Behavioral line services are limited to nine hundred and sixty (960) units per service plan year. One (1) unit is equal to fifteen (15) minutes of service. All behavioral line services shall be prior authorized in accordance with Operating Agency procedure
  - 3. Day habilitation services and supports include assistance with the acquisition, retention or improvement of self-help, socialization and adaptive skills that take place in a non-residential setting, separate from the client's private residence or other residential living arrangement, except when services are necessary in the residence due to medical or safety needs.
    - a. Day habilitation activities and environments shall foster the acquisition of skills, appropriate behavior, greater independence, and personal choice.
    - b. Day habilitation services and supports encompass three (3) types of habilitative environments; specialized habilitation services, supported community connections, and prevocational services.
    - c. Specialized habilitation (SH) services are provided to enable the client to attain the maximum functional level or to be supported in such a manner that allows the client to gain an increased level of self-sufficiency. Specialized habilitation services:
      - i) Are provided in a non-integrated setting where a majority of the clients have a disability,
      - ii) Include assistance with self-feeding, toileting, self-care, sensory stimulation and integration, self-sufficiency and maintenance skills, and
      - iii) May reinforce skills or lessons taught in school, therapy or other settings and are coordinated with any physical, occupational or speech therapies listed in the service plan.
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- d. Supported community connections services are provided to support the abilities and skills necessary to enable the client to access typical activities and functions of community life, such as those chosen by the general population, including community education or training, retirement and volunteer activities. Supported community connections services:
  - i) Provide a wide variety of opportunities to facilitate and build relationships and natural supports in the community while utilizing the community as a learning environment to provide services and supports as identified in a client's service plan,
  - ii) Are conducted in a variety of settings in which the client interacts with persons without disabilities other than those individuals who are providing services to the client. These types of services may include socialization, adaptive skills and personnel to accompany and support the client in community settings,
  - iii) Provide resources necessary for participation in activities and supplies related to skill acquisition, retention or improvement and are provided by the service agency as part of the established reimbursement rate, and
  - iv) May be provided in a group setting or may be provided to a single client in a learning environment to provide instruction when identified in the service plan.
  - v) Activities provided exclusively for recreational purposes are not a benefit and shall not be reimbursed.
- e. Prevocational services are provided to prepare a client for paid community employment. Services include teaching concepts including attendance, task completion, problem solving and safety and are associated with performing compensated work.
  - i) Prevocational services are directed to habilitative rather than explicit employment objectives and are provided in a variety of locations separate from the participant's private residence or other residential living arrangement.
  - ii) Goals for prevocational services are to increase general employment skills and are not primarily directed at teaching job specific skills.
  - iii) Clients shall be compensated for work in accordance with applicable federal laws and regulations and at less than 50 percent of the minimum wage. Providers that pay less than minimum wage shall ensure compliance with the Department of Labor regulations.
  - iv) Prevocational services are provided to support the client to obtain paid community employment within five years. Prevocational services may continue longer than five years when documentation in the annual service plan demonstrates this need based on an annual assessment.
  - v) A comprehensive assessment and review for each person receiving prevocational services shall occur at least once every five years to determine whether or not the person has developed the skills necessary for paid community employment.

- vi) Documentation shall be maintained in the file of each client receiving this service that the service is not available under a program funded under section 110 of the rehabilitation act of 1973 or the Individuals with Educational Disabilities Act (20 U.S.C. Section 1401 *et seq*).
  - f. Day habilitation services are limited to seven thousand one hundred and twelve (7,112) units per service plan year. One (1) unit is equal to fifteen (15) minutes of service.
  - g. The number of units available for day habilitation services in combination with prevocational services and supported employment shall not exceed seven thousand one hundred and twelve (7,112) units.
4. Dental services are available to individuals age twenty one (21) and over and are for diagnostic and preventative care to abate tooth decay, restore dental health, are medically appropriate and include preventative, basic and major dental services.
- a. Preventative services include:
    - i) Dental insurance premiums and co-payments
    - ii) Periodic examination and diagnosis,
    - iii) Radiographs when indicated,
    - iv) Non-intravenous sedation,
    - v) Basic and deep cleanings,
    - vi) Mouth guards,
    - vii) Topical fluoride treatment,
    - ix)
    - xi) Retention or recovery of space between teeth when indicated, and
  - b. Basic services include:
    - i) Fillings,
    - ii) Root canals,
    - iii) Denture realigning or repairs,
    - iv) Repairs/re-cementing crowns and bridges,
    - v) Non-emergency extractions including simple, surgical, full and partial,
    - vi) Treatment of injuries, or
    - vii) Restoration or recovery of decayed or fractured teeth,

- c. Major services include:
    - i) Implants when necessary to support a dental bridge for the replacement of multiple missing teeth or is necessary to increase the stability of, crowns, bridges, and dentures. The cost of implants is only reimbursable with prior approval in accordance with Operating Agency procedures.
    - ii) Crowns
    - iii) Bridges
    - iv) Dentures
  - d. Dental services are provided only when the services are not available through the Medicaid state plan due to not meeting the need for medical necessity as defined in Health Care Policy and Financing rules at 10 CCR 2505-10, 8011.11 or available through a third party. General limitations to dental services including frequency will follow the Operating Agency's guidelines using industry standards and are limited to the most cost effective and efficient means to alleviate or rectify the dental issue associated with the client
  - e. Implants shall not be a benefit for clients who use tobacco daily due to substantiated increased rate of implant failures for chronic tobacco users.
  - f. Subsequent implants are not a covered service when prior implants fail.
  - g. Full mouth implants or crowns are not covered.
  - h. Dental services do not include cosmetic dentistry, procedures predominated by specialized prosthodontic, maxillo-facial surgery, craniofacial surgery or orthodontia, which includes, but is not limited to:
    - i) Elimination of fractures of the jaw or face,
    - ii) Elimination or treatment of major handicapping malocclusion, or
    - iii) Congenital disfiguring oral deformities.
  - i. Cosmetic dentistry is defined as aesthetic treatment designed to improve the appearance of the teeth or smile, including teeth whitening, veneers, contouring and implants or crowns solely for the purpose of enhancing appearance.
  - j. Preventative and basic services are limited to two thousand (\$2,000) per service plan year. Major services are limited to ten thousand (\$10,000) for the five (5) year renewal period of the waiver.
5. Home Accessibility Adaptations are physical adaptations to the primary residence of the client, that are necessary to ensure the health, and safety of the client or that enable the client to function with greater independence in the home. All adaptations shall be the most cost effective means to meet the identified need. Such adaptations include:
- a. The installation of ramps,
  - b. Widening or modification of doorways,

- c. Modification of bathroom facilities to allow accessibility and assist with needs in activities of daily living,
- d. The installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment supplies that are necessary for the welfare of the client, and
- e. Safety enhancing supports such as basic fences, door and window alarms.
- f. The following items are specifically excluded from home accessibility adaptations and shall not be reimbursed:
  - i) Adaptations or improvements to the home that are considered to be on-going homeowner maintenance and are not related to the client's disability,
  - ii) Carpeting,
  - iii) Roof repair,
  - iv). Central air conditioning,
  - v) Air duct cleaning,
  - vi) Whole house humidifiers,
  - vii) Whole house air purifiers,
  - viii) Installation or repair of driveways and sidewalks,
  - ix) Monthly or ongoing home security monitoring fees,
  - x) Home furnishings of any type, and
  - xii) Luxury upgrades.
- g. When the HCBS-SLS waiver has provided modifications to the client's home and the client moves to another home, those modifications shall not be duplicated in the new residence unless prior authorized in accordance with Operating Agency procedures.

Adaptation to rental units, when the adaptation is not portable and cannot move with the client shall not be covered unless prior authorized in accordance with Operating Agency procedures.
- h. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation to:
  - i. improve entrance or egress to a residence; or,
  - ii. configure a bathroom to accommodate a wheelchair.
- i. Any request to add square footage to the home shall be prior authorized in accordance with Operating Agency procedures.

- j. All devices and adaptations shall be provided in accordance with applicable state or local building codes or applicable standards of manufacturing, design and installation. Medicaid state plan, EPSDT or third party resources shall be utilized prior to authorization of waiver services.
  - k. The total cost of home accessibility adaptations, vehicle modifications, and assistive technology shall not exceed \$10,000 over the five-year life of the waiver without an exception granted by the Operating Agency. Costs that exceed this limitation may be approved by the Operating Agency for devices to ensure the health, and safety of the client or that enable the client to function with greater independence in the home, or if it decreases the need for paid assistance in another waiver service on a long-term basis. Requests to exceed the limit shall be prior authorized in accordance with Operating Agency procedure.
6. Homemaker services are provided in the client's home and are allowed when the client's disability creates a higher volume of household tasks or requires that household tasks are performed with greater frequency. There are two types of homemaker services:
- a. Basic homemaker services include cleaning, completing laundry, completing basic household care or maintenance within the client's primary residence only in the areas where the client frequents.
    - i) Assistance may take the form of hands-on assistance including actually performing a task for the client or cueing to prompt the client to perform a task.
    - ii) Lawn care, snow removal, air duct cleaning, and animal care are specifically excluded under the HCBS-SLS waiver and shall not be reimbursed.
  - b. Enhanced homemaker services includes basic homemaker services with the addition of either procedures for habilitation or procedures to perform extraordinary cleaning
    - i) Habilitation services shall include direct training and instruction to the client in performing basic household tasks including cleaning, laundry, and household care which may include some hands-on assistance by actually performing a task for the client or enhanced prompting and cueing.
    - ii) The provider shall be physically present to provide step-by-step verbal or physical instructions throughout the entire task:
      - 1) When such support is incidental to the habilitative services being provided, and
      - 2) To increase the independence of the client,
    - iii) Incidental basic homemaker service may be provided in combination with enhanced homemaker services; however, the primary intent must be to provide habilitative services to increase independence of the client.
    - iv) Extraordinary cleaning are those tasks that are beyond routine sweeping, mopping, laundry or cleaning and require additional cleaning or sanitizing due to the client's disability.

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7. Mentorship services are provided to clients to promote self-advocacy through methods such as instructing, providing experiences, modeling and advising and include:
    - a. Assistance in interviewing potential providers,
    - b. Assistance in understanding complicated health and safety issues,
    - c. Assistance with participation on private and public boards, advisory groups and commissions, and
    - d. Training in child and infant care for clients who are parenting children.
    - e. Mentorship services shall not duplicate case management or other HCBS-SLS waiver services.
    - f. Mentorship services are limited to one hundred and ninety two (192) units (forty eight (48) hours) per service plan year. One (1) unit is equal to fifteen (15) minutes.
    - g. Units to provide training to clients for child and infant care shall be prior authorized beyond the one hundred and ninety two (192) units per service plan year in accordance with Operating Agency procedures.
  8. Non-medical transportation services enable clients to gain access to day habilitation, prevocational and supported employment services. A bus pass or other public conveyance may be used only when it is more cost effective than or equivalent to the applicable mileage band.
    - a. Whenever possible, family, neighbors, friends, or community agencies that can provide this service without charge must be utilized and documented in the service plan.
    - b. Non-medical transportation to and from day program shall be reimbursed based on the applicable mileage band. Non-medical transportation services to and from day program are limited to five hundred and eight (508) units per service plan year. A unit is a per-trip charge assessed each way to and from day habilitation and supported employment services.
    - c. Transportation provided to destinations other than to day program or supported employment is limited to four (4) trips per week reimbursed at mileage band one
    - d. Non-Medical Transportation does not replace medical transportation required under 42 C.F.R. the applicable mileage band. Non-medical traMedicaid State Plan, defined at 42 C.F.R. §440.170(A).
  9. Personal Emergency Response System (PERS) is an electronic device that enables clients to secure help in an emergency. The client may also wear a portable “help” button to allow for mobility. The system is connected to the client’s phone and programmed to a signal a response center once a “help” button is activated. The response center is staffed by trained professionals.
    - a. The client and the client’s case manager shall develop a protocol for identifying who should to be contacted if the system is activated.
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10. Personal Care is assistance to enable a client to accomplish tasks that the client would complete without assistance if the client did not have a disability. This assistance may take the form of hands-on assistance by actually performing a task for the client or cueing to prompt the client to perform a task. Personal care services include:
- a. Assistance with basic self care including hygiene, bathing, eating, dressing, grooming, bowel, bladder and menstrual care.
  - b. Assistance with money management,
  - c. Assistance with menu planning and grocery shopping, and
  - d. Assistance with health related services including first aide, medication administration, assistance scheduling or reminders to attend routine or as needed medical, dental and therapy appointments, support that may include accompanying clients to routine or as needed medical, dental, or therapy appointments to ensure understanding of instructions, doctor's orders, follow up, diagnoses or testing required, or skilled care that takes place out of the home.
  - e. Personal care services may be provided on an episodic, emergency or on a continuing basis. When personal care service is required, it shall be covered to the extent the Medicaid state plan or third party resource does not cover the service.
  - f. If the annual functional needs assessment identifies a possible need for skilled care then the client shall obtain a home health assessment.
11. Professional services are provided by licensed, certified, registered or accredited professionals and the intervention is related to an identified medical or behavioral need. Professional services include:
- a. Hippotherapy includes a therapeutic treatment strategy that uses the movement of the horse to assist in the development or enhancement of skills including gross motor, sensory integration, attention, cognitive, social, behavior and communication.
  - b. Movement therapy includes the use of music or dance as a therapeutic tool for the habilitation, rehabilitation and maintenance of behavioral, developmental, physical, social, communication, or gross motor skills and assists in pain management and cognition.
  - c. Massage includes the physical manipulation of muscles to ease muscle contractures or spasms, increase extension and muscle relaxation and decrease muscle tension and includes watsu.
  - d. Professional services can be reimbursed only when:
    - i) The provider is licensed, certified, registered or accredited by an appropriate national accreditation association in the profession,
    - ii) The intervention is related to an identified medical or behavioral need, and

- iii) The Medicaid State plan therapist or physician identifies the need for the service, establishes the goal for the treatment and monitors the progress of that goal at least quarterly.
  - e. A pass to community recreation centers shall only be used to access professional services and when purchased in the most cost effective manner including day passes or monthly passes.
  - f. The following services are excluded under the HCBS Waiver from reimbursement;
    - i) Acupuncture,
    - ii) Chiropractic care,
    - iii) Fitness trainer =
    - iv) Equine therapy,
    - v) Art therapy,
    - vi) Warm water therapy,
    - viii) Experimental treatments or therapies, and.
    - ix) Yoga.
- 12. Respite service is provided to clients on a short-term basis, because of the absence or need for relief of the primary caregivers of the client.
  - a. Respite may be provided:
    - i) In the client's home and private place of residence,
    - ii) The private residence of a respite care provider, or
    - iii) In the community.
  - b. Respite shall be provided according to individual or group rates as defined below:
    - i) Individual: the client receives respite in a one-on-one situation. There are no other clients in the setting also receiving respite services. Individual respite occurs for ten (10) hours or less in a twenty four (24)-hour period.
    - ii) Individual Day: the client receives respite in a one-on-one situation for cumulatively more than 10 hours in a 24-hour period. A full day is 10 hours or greater within a 24- hour period.
    - iii) Overnight Group: the client receives respite in a setting which is defined as a facility that offers 24 hour supervision through supervised overnight group accommodations. The total cost of overnight group within a 24-hour period shall not exceed the respite daily rate.

- iv) Group: the client receives care along with other individuals, who may or may not have a disability. The total cost of group within a 24-hour period shall not exceed the respite daily rate.
  - c. The following limitations to respite services shall apply:
    - i) Federal financial participation shall not be claimed for the cost of room and board except when provided, as part of respite care furnished in a facility approved pursuant to 2 CCR 503-1, Section 16.221. by the state that is not a private residence.
    - ii) Overnight group respite may not substitute for other services provided by the provider such as personal care, behavioral services or services not covered by the HCBS-SLS Waiver.
    - iii) Respite shall be reimbursed according to a unit rate or daily rate whichever is less. The daily overnight group respite rate shall not exceed the respite daily rate.
- 13. Specialized Medical Equipment and Supplies include: devices, controls, or appliances that are required due to the client's disability and that enable the client to increase the client's ability to perform activities of daily living or to safely remain in the home and community. Specialized medical equipment and supplies include:
  - a. kitchen equipment required for the preparation of special diets if this results in a cost savings over prepared foods;
  - b. specially designed clothing for a client if the cost is over and above the costs generally incurred for a client's clothing;
  - c. maintenance and upkeep of specialized medical equipment purchased through the HCBS-SLS waiver.
  - d. The following items are specifically excluded under the HCBS-SLS waiver and not eligible for reimbursement:
    - i) Items that are not of direct medical or remedial benefit to the client are specifically excluded under the HCBS-SLS waiver and not eligible for reimbursement. These include but are not limited to; vitamins, food supplements, any food items, prescription or over the counter medications, topical ointments, exercise equipment, hot tubs, water walkers, resistance water therapy pools, experimental items or wipes for any purpose other incontinence.
- 14. Supported Employment services includes intensive, ongoing supports that enable a client, for whom competitive employment at or above the minimum wage is unlikely absent the provision of supports, and who because of the client's disabilities needs supports to perform in a regular work setting.
  - a. Supported employment may include assessment and identification of vocational interests and capabilities in preparation for job development, and assisting the client to locate a job or job development on behalf of the client.

- b. Supported employment may be delivered in a variety of settings in which clients interact with individuals without disabilities, other than those individuals who are providing services to the client, to the same extent that individuals without disabilities employed in comparable positions would interact.
- c. Supported employment is work outside of a facility-based site, that is owned or operated by an agency whose primary focus is service provision to persons with developmental disabilities,
- d. Supported employment is provided in community jobs, enclaves or mobile crews.
- e. Group employment including mobile crews or enclaves shall not exceed eight clients.
- f. Supported employment includes activities needed to sustain paid work by clients including supervision and training.
- g. When supported employment services are provided at a work site where individuals without disabilities are employed, service is available only for the adaptations, supervision and training required by a client as a result of the client's disabilities.
- h. Documentation of the client's application for services through the Colorado Department of Human Services Division for Vocational Rehabilitation shall be maintained in the file of each client receiving this service. Supported employment is not available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. § 1401et seq).
- i. Supported employment does not include reimbursement for the supervisory activities rendered as a normal part of the business setting.
- j. Supported employment shall not take the place of nor shall it duplicate services received through the Division for Vocational Rehabilitation.
- k. The limitation for supported employment services is seven thousand one hundred and twelve (7,112) units per service plan year. One (1) unit equals fifteen (15) minutes of service.
- l. The following are not a benefit of supported employment and shall not be reimbursed:
  - i) Incentive payments, subsidies or unrelated vocational training expenses, such as incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment,
  - ii) Payments that are distributed to users of supported employment, and
  - iii) Payments for training that are not directly related to a client's supported employment.

15. Vehicle modifications are adaptations or alterations to an automobile or van that is the client's primary means of transportation; to accommodate the special needs of the client; are necessary to enable the client to integrate more fully into the community; and to ensure the health and safety of the client.
  - a. Upkeep and maintenance of the modifications are allowable services.
  - b. Items and services specifically excluded from reimbursement under the HCBS Waiver include:
    - i) Adaptations or improvements to the vehicle that are not of direct medical or remedial benefit to the client,
    - ii) Purchase or lease of a vehicle, and
    - iii) Typical and regularly scheduled upkeep and maintenance of a vehicle.
  - c. The total cost of home accessibility adaptations, vehicle modifications, and assistive technology shall not exceed \$10,000 over the five (5) year life of the HCBS Waiver except that on a case by case basis the Operating Agency may approve a higher amount. Such requests shall ensure the health and safety of the client, enable the client to function with greater independence in the home, or decrease the need for paid assistance in another HCBS-SLS Waiver service on a long-term basis. Approval for a higher amount will include a thorough review of the current request as well as past expenditures to ensure cost-efficiency, prudent purchases and no duplication.
16. Vision services include eye exams or diagnosis, glasses, contacts or other medically necessary methods used to improve specific dysfunctions of the vision system when delivered by a licensed optometrist or physician for a client who is at least 21 years of age
  - a. Lasik and other similar types of procedures are only allowable when:
  - b. The procedure is necessary due to the client's documented specific behavioral complexities that result in other more traditional remedies being impractical or not cost effective, and
  - c. Prior authorized in accordance with Operating Agency procedures.

**8.500.95 SERVICE PLAN:**

8.500.95.A The case management agency shall complete a service plan for each client enrolled in the HCBS Waiver in accordance with 10 CCR 2505-10, Section 8.400.

8.500.95.B The service plan shall:

1. Address client's assessed needs and personal goals, including health and safety risk factors, either by waiver services or through other means,
2. Be in accordance with the Department's rules, policies and procedures, and
3. Include updates and revisions at least annually or when warranted by changes in the client's needs.

8.500.95.C The service plan shall document that the client has been offered a choice:

1. Between waiver services and institutional care,
2. Among waiver services, and
3. Among qualified providers.

**8.500.96 WAITING LIST PROTOCOL**

8.500.96.A When the federally approved waiver capacity has been met, persons determined eligible to receive services under the HCBS-SLS, shall be eligible for placement on a waiting list for services.

8.500.96.B Waiting lists for persons eligible for the HCBS-SLS waiver program shall be administered by the Community Centered Boards, uniformly administered throughout the State and in accordance with these rules and the Operating Agency's procedures .

8.500.96.C Persons determined eligible shall be placed on the waiting list for services in the Community Centered Board service area of residency.

8.500.96.D Persons who indicate a serious intent to move to another service area should services become available shall be placed on the waiting list in that service area. Placement on a waiting list in a service area other than the area of residency shall be in accordance with criteria established in the Operating Agency's procedures for placement on a waiting list in a service area other than the area of residency.

8.500.96.E The date used to establish a person's placement on a waiting list shall be:

1. The date on which eligibility for developmental disabilities services in Colorado was originally determined; or
2. The fourteenth (14th) birth date if a child is determined eligible prior to the age of fourteen and is waiting for adult services.

8.500.96.F As openings become available in the HCBS-SLS waiver program in a designated service area, persons shall be considered for services in order of placement on the local Community Centered Board's waiting list and with regard to an appropriate match to services and supports. Exceptions to this requirement shall be limited to:

1. Emergency situations where the health, safety, and welfare of the person or others is greatly endangered and the emergency cannot be resolved in another way. Emergencies are defined as follows:
  - a. Homeless: the person does not have a place to live or is in imminent danger of losing his/her place of abode.
  - b. Abusive or Neglectful Situation: the person is experiencing ongoing physical, sexual, or emotional abuse or neglect in his/her present living situation and his/her health, safety or well-being are in serious jeopardy.
  - c. Danger to Others: the person's behavior or psychiatric condition is such that others in the home are at risk of being hurt by him/her. Sufficient supervision cannot be provided by the current caretaker to ensure the safety of persons in the community.

- d. Danger to Self: a person's medical, psychiatric or behavioral challenges are such that s/he is seriously injuring/harming himself/herself or is in imminent danger of doing so.
- e. The Legislature has appropriated funds specific to individuals or to a specific class of persons.
- f.. If an eligible individual is placed on a waiting list for SLS waiver services, a written notice, including information regarding the client appeals process, shall be sent to the individual and/or his/her legal guardian in accordance with the provisions of Section 8.057, *et seq.*

**8.500.97 CLIENT RESPONSIBILITIES**

8.500.97.A A client or the client's family or guardian is responsible for:

- 1. Providing accurate information regarding the client's ability to complete activities of daily living,
- 2. Assisting in promoting the client's independence,
- 3.
- 4. Cooperating in the determination of financial eligibility,
- 5. Notifying the case manager within thirty (30) days after:
  - a. Changes in the client's support system, medical condition and living situation including any hospitalizations, emergency room admissions,
  - b. Placement to a nursing home or intermediate care facility for the mentally retarded (ICF-MR),
  - c. The client has not received an HCBS waiver service during one (1) month
  - d. Changes in the client's care needs,
  - e. Problems with receiving HCBS-SLS waiver services, and
  - f. Changes that may affect Medicaid financial eligibility including prompt report of changes in income or assets.

**8.500.98 PROVIDER REQUIREMENTS**

8.500.98.A A private for profit or not for profit agency or government agency shall meet minimum provider qualifications as set forth in the HCBS-SLS waiver and shall:

- 1. Conform to all state established standards for the specific services they provide under HCBS-SLS,
- 2. Maintain program approval and certification from the Operating Agency,
- 3. Maintain and abide by all the terms of their Medicaid provider agreement with the Department and with all applicable rules and regulations set forth in 10 CCR 2505-10, Section 8.130,

4. Discontinue HCBS-SLS services to a client only after documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services.
5. Have written policies governing access to duplication and dissemination of information from the client's records in accordance with state statutes on confidentiality of information at Section 25.5-1-116, C.R.S., as amended,
6. When applicable, maintain the required licenses from the Colorado Department of Public Health And Environment, and
7. Maintain client records to substantiate claims for reimbursement according to Medicaid standards.

**8.500.98.B** HCBS-SLS providers shall comply with:

1. All applicable provisions of 27, 10.5, C.R.S. *et seq*, and the rules and regulations as set forth in 2 CCR 503-1, 16.100 *et seq*,:
2. All federal program reviews and financial audits of the HCBS-SLS waiver services,
3. The Operating Agency's on-site certification reviews for the purpose of program approval, on-going program approval, monitoring or financial and program audits,
- 4.
5. Requests from the county Departments of Social/Human Services to access records of clients receiving services held by case management agencies as required to determine and re-determine Medicaid eligibility,;
6. Requests by the Department or the Operating Agency to collect, review and maintain individual or agency information on the HCBS-SLS waiver, and
7. Requests by the case management agency to monitor service delivery through targeted case management activities.

**8.500.99** **TERMINATION OR DENIAL OF HCBS-SLS MEDICAID PROVIDER AGREEMENTS**

**8.500.99.A** The Department may deny or terminate an HCBS-SLS Medicaid provider agreement when:

1. The provider is in violation of any applicable certification standard or provision of the provider agreement and does not adequately respond to a corrective action plan within the prescribed period of time. The termination shall follow procedures at 10 CCR 2505-10, Section 8.130 *et seq*,
2. A change of ownership occurs. A change in ownership shall constitute a voluntary and immediate termination of the existing provider agreement by the previous owner of the agency and the new owner must enter into a new provider agreement prior to being reimbursed for HCBS-SLS services,
3. The provider or its owner has previously been involuntarily terminated from Medicaid participation as any type of Medicaid service provider,

4. The provider or its owner has abruptly closed, as any type of Medicaid provider, without proper client notification,
  5. Emergency termination of any provider agreement shall be in accordance with procedures at 10 CCR 2505-10, section 8.050, and
- 8.500.99.B The provider fails to comply with requirements for submission of claims pursuant to 10 CCR 2505-10, Section 8.040.2 or after actions have been taken by the Department, the Medicaid Fraud Control Unit or their authorized agents to terminate any provider agreement or recover funds.

**8.500.100 ORGANIZED HEALTH CARE DELIVERY SYSTEM**

- 8.500.100.A The Organized Health Care Delivery System (OHCDS) for the HCBS-SLS waiver is the Community Centered Board as designated by the Operating Agency in accordance with § 27-1010.5-103,.
- 8.500.100.B The OHCDS is the Medicaid provider of record for a client whose services are delivered through the OHCDS,
- 8.500.100.C The OHCDS shall maintain a Medicaid provider agreement with the Department to deliver HCBS according to the current federally approved waiver.
- 8.500.100.D The OHCDS may contract or employ for delivery of HCBS Waiver services.
- 8.500.100.E The OCHDS shall:
1. Ensure that the contractor or employee meets minimum provider qualifications as set forth in the HCBS Waiver,
  2. Ensure that services are delivered according to the waiver definitions and as identified in the client's service plan,
  3. Ensure the contractor maintains sufficient documentation to support the claims submitted, and
  4. Monitor the health and safety for HCBS clients receiving services from a subcontractor.
- 8.500.100.F The OHCDS is authorized to subcontract and negotiate reimbursement rates with providers in compliance with all federal and state regulations regarding administrative, claim payment and rate setting requirements. The OCHDS shall:
1. Establish reimbursement rates that are consistent with efficiency, economy and quality of care,
  2. Establish written policies and procedures regarding the process that will be used to set rates for each service type and for all providers,
  3. Ensure that the negotiated rates are sufficient to promote quality of care and to enlist enough providers to provide choice to clients,

4. Negotiate rates that are in accordance with the Operating Agency's established fee for service rate schedule and Operating Agency procedures,
  - a. Manually priced items that have no maximum allowable reimbursement rate assigned, nor a manufacturer's suggested retail price (MSRP), shall be reimbursed at the lesser of the submitted charges or the sum of the manufacturer's invoice cost, plus 13.56 percent.
5. Collect and maintain the data used to develop provider rates and ensure data includes costs for services to address the client's needs, that are allowable activities within the HCBS service definition and that supports the established rate,
6. Maintain documentation of provider reimbursement rates and make it available to the Department, its Operating Agency or Centers for Medicare and Medicaid Services (CMS), and
7. Report by August 31 of each year, the names, rates and total payment made to the contractor.

**8.500.101 PRIOR AUTHORIZATION REQUESTS**

- 8.500.101.A Prior authorization requests (PAR) shall be in accordance with 10 C.C.R. 2505-10, Section 8.058.
- 8.500.101.B A prior authorization request shall be submitted to the Operating Agency through the Department's designated information management system.
- 8.500.101.C The case management agency shall comply with the policies and procedures for the PAR review process as set forth by the Department or the Operating Agency.
- 8.500.101.D The case management agency shall submit the PAR in compliance with all applicable regulations and ensure requested services are:
1. Consistent with the client's documented medical condition and functional capacity as indicated in the functional needs assessment,
  2. Adequate in amount, frequency and duration in order to meet the client's needs and within the limitations set forth in the current federally approved waiver, and
  3. Not duplicative of another authorized service, including services provided through:
    - a. Medicaid State plan benefits,
    - b. Third party resources,
    - c. Natural supports,
    - d. Charitable organizations, or
    - e. Other public assistance programs.
  4. Services delivered without prior authorization shall not be reimbursed except for provision of services during an emergency pursuant to 10 CCR 2505-10 § 8.058.4.

**8.500.102 SERVICE PLAN AUTHORIZATION LIMITS (SPAL)**

8.500.102.A The service plan authorization limit (SPAL) sets an upper payment limit of total funds available to purchase services to meet a client's ongoing service needs within one (1) service plan year.

8.500.102.B The following services are not subject to the service plan authorization limit: non-medical transportation, dental services, vision services, assistive technology, home accessibility adaptations and vehicle modifications.

8.500.102.C The total of all HCBS-SLS services in one service plan shall not exceed the overall authorization limitation as set forth in the federally approved HCBS-SLS waiver.

8.500.102.D Each SPAL is assigned a specific dollar amount determined through an analysis of historical utilization of authorized waiver services, total reimbursement for services, and the spending authority for the HCBS-SLS waiver. Adjustments to the SPAL amount may be determined by the Department and Operating Agency as necessary to manage waiver costs.

8.500.102.E Each SPAL is associated with six support levels determined by an algorithm which analyzes a client's level of service need as determined by the SIS assessment and additional factors including exceptional medical and behavioral support needs and identification as a community safety risk.

8.500.102.F The SPAL determination shall be implemented in a uniform manner statewide and the SPAL amount is not subject to appeal.

**8.500.103 RETROSPECTIVE REVIEW PROCESS**

8.500.103.A Services provided to a client are subject to a retrospective review by the Department and the Operating Agency. This retrospective review shall ensure that services:

1. Identified in the service plan are based on the client's identified needs as stated in the functional needs assessment,
2. Have been requested and approved prior to the delivery of services,
3. Provided to a client are in accordance with the service plan, and
4. Provided are within the specified HCBS service definition in the federally approved HCBS-SLS waiver,

8.500.103.B When the retrospective review identifies areas of non compliance, the case management agency or provider shall be required to submit a plan of correction that is monitored for completion by the Department and the Operating Agency.

8.500.103.C The inability of the provider to implement a plan of correction within the timeframes identified in the plan of correction may result in temporary suspension of claims payment or termination of the provider agreement.

8.500.103.D When the provider has received reimbursement for services and the review by the Department or Operating Agency identifies that it is not in compliance with requirements, the amount reimbursed will be subject to the reversal of claims, recovery of amount reimbursed, suspension of payments, or termination of provider status

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**8.500.104 PROVIDER REIMBURSEMENT**

8.500.104.A Providers shall submit claims directly to the Department's fiscal agent through the Medicaid management information system (MMIS); or through a qualified billing agent enrolled with the Department's fiscal agent.

8.500.104.B Provider claims for reimbursement shall be made only when the following conditions are met:

1. Services are provided by a qualified provider as specified in the federally approved HCBS-SLS waiver,
2. Services have been prior authorized,
3. Services are delivered in accordance with the frequency, amount, scope and duration of the service as identified in the client's service plan, and
4. Required documentation of the specific service is maintained and sufficient to support that the service is delivered as identified in the service plan and in accordance with the service definition.

8.500.104.C Provider claims for reimbursement shall be subject to review by the Department and the Operating Agency. This review may be completed after payment has been made to the provider.

8.500.104.D When the review identifies areas of non compliance, the provider shall be required to submit a plan of correction that is monitored for completion by the Department and the Operating Agency.

8.500.104.E When the provider has received reimbursement for services and the review by the Department or Operating Agency identifies that the service delivered or the claim submitted is not in compliance with requirements, the amount reimbursed will be subject to the reversal of claims, recovery of amount reimbursed, suspension of payments, or termination of provider status.

8.500.104.F Except where otherwise noted, payment is based on a statewide fee schedule. State developed fee schedule rates are the same for both public and private providers and the fee schedule and any annual/periodic adjustments to the fee schedule are published in the provider bulletin accessed through the Department's fiscal agent's web site.

**8.500.105 INDIVIDUAL RIGHTS**

8.500.105.A The rights of a client in the HCBS-SLS Waiver shall be in accordance with Sections 27-10.5-112 through 131, C.R.S.

**8.500.106 APPEAL RIGHTS**

8.500.106.A The CCB shall provide the long term care notice of action form to applicants and clients within ten (10) business days regarding their appeal rights in accordance with 10 CCR 2505-10, Section 8.057 *et seq.* When:

1. The applicant is determined to not have a developmental disability,
2. The applicant is found eligible or ineligible for LTC services,
3. The applicant is determined eligible or ineligible for placement on a waitlist for Medicaid LTC services,

4. An adverse action occurs that affects the client's waiver enrollment status,
  5. An adverse action occurs that affects the provision of the client's waiver services, or
  6. The applicant or client requests such information.
- 8.500.106.B The CCB shall represent their decision at the office of administrative courts as described in 10 CCR 2505-10, Section 8.057 *et seq* when CCB has made a denial or adverse action against a client.
- 8.500.106.C The CCB shall notify all providers in the client's service plan within ten (10) business day of the adverse action.
- 8.500.106.D The CCB shall notify the County Department of Human/Social Services income maintenance technician within ten (10) business day of an adverse action that affects Medicaid financial eligibility.
- 8.500.106.E The applicant or client shall be informed of an adverse action if the client is determined ineligible as set forth in client eligibility and the following:
1. The client cannot be served safely within the cost containment as identified in the HCBS-SLS Waiver,
  2. The client is placed in an institution for treatment with a duration that continues for more than thirty (30) days,
  3. The client is detained or resides in a correctional facility, or
  4. The client enters an institute for mental health with a duration that continues for more than thirty (30) days.
- 8.500.106.F The client shall be notified, pursuant to 10 CCR 2505-10, Section 8.057.2.A, when the following results in an adverse action that does not relate to HCBS-SLS waiver client eligibility requirements:
1. A waiver service is reduced, terminated or denied because it is not a demonstrated need in the functional needs assessment,
  2. A waiver service is terminated or denied because is not available through the current federally approved waiver,
  3. A service plan or waiver service exceeds the limits as set forth in the in the federally approved waiver,
  4. The client or client representative has failed to schedule an appointment for the functional needs assessment, service plan, or six (6) month visit with the case manager two (2) times in a thirty (30) day consecutive period,
  5. The client or client representative has failed to keep three (3) scheduled assessment appointments within a thirty (30) consecutive day period,
  6. The client enrolls in a different long term care program, or

7. The client moves out of state. The client shall be discontinued effective upon the day after the date of the move.
    - a. A client who leaves the state on a temporary basis, with intent to return to Colorado, according to income maintenance staff manual 9 CCR 2503-1, Section 3.140.2,, shall not be terminated unless one or more of the other client eligibility criteria are no longer met.
  8. The client voluntarily withdraws from the waiver. The client shall be terminated from the waiver effective upon the day after the date on which the client's request is documented.
- 8.500.106.G The CCB shall not send the LTC notice of action form when the basis for termination is death of the client, but shall document the event in the client record. The date of action shall be the day after the date of death.

**8.500.107 QUALITY ASSURANCE**

- 8.500.107.A. The monitoring of services provided under the HCBS-SLS waiver and the health and well-being of clients shall be the responsibility of the Operating Agency, under the oversight of the Department.
- 8.500.107.B. The Operating Agency shall conduct on-site surveys or cause to have on-site surveys to be done in accordance with guidelines established by the Department or the Operating Agency. The survey shall include a review of applicable Operating Agency rules and regulations and standards for HCBS-SLS.
- 8.500.107.C The Operating Agency, shall ensure that the case management agency fulfills its responsibilities in the following areas: development of the Individualized Plan, case management, monitoring of programs and services, and provider compliance with assurances required of these programs.
- 8.500.107.D The Operating Agency, shall maintain or cause to be maintained, for three years, complete files of all records, documents, communications, survey results, and other materials which pertain to the operation and service delivery of the SLS waiver program.
- 8.500.107.E The Operating Agency shall recommend to the Department the suspension of payment denial or termination of the Medicaid Provider Agreement for any agency which it finds to be in violation of applicable standards and which does not adequately respond with a corrective action plan to the Operating Agency within the prescribed period of time or does not fulfill a corrective action plan within the prescribed period of time.
- 8.500.107.F After receiving the denial or termination recommendation and reviewing the supporting documentation, the Department shall take the appropriate action.

**8.500.108 CLIENT PAYMENT-POST ELIGIBILITY TREATMENT OF INCOME**

- 8.500.108.A A client who is determined to be Medicaid eligible through the application of the three hundred percent (300%) income standard at 10 CCR 2505-10 §8.1100.7, is required to pay a portion of the client's income toward the cost of the client's HCBS-SLS services after allowable income deductions.
- 8.500.108.B This post eligibility treatment of income (PETI) assessment shall:
1. Be calculated by the case management agency during the client's initial assessment and continued stay review for HCBS-SLS services.

2. Be recomputed, as often as needed, by the case management agency in order to ensure the client's continued eligibility for the HCBS-SLS waiver

8.500.108.C In calculating PETI assessment, the case management agency must deduct the following amounts, in the following order, from the client's total income including amounts disregarded in determining Medicaid eligibility:

1. A maintenance allowance equal to three hundred percent (300%) of the current SSI-CS standard plus an earned income allowance based on the SSI treatment of earned income up to a maximum of two hundred forty five dollars (\$245) per month; and
2. For a client with only a spouse at home, an additional amount based on a reasonable assessment of need but not to exceed the SSI standard; and
3. For a client with a spouse plus other dependents at home, or with other dependents only at home, an amount based on a reasonable assessment of need but not to exceed the appropriate AFDC grant level; and
4. Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including:
  - a. Health insurance premiums (other than Medicare), deductibles, or coinsurance charges, (including Medicaid copayments)
  - b. Necessary medical or remedial care recognized under state law but not covered under the Medicaid State Plan.

8.500.108.D Case management agencies are responsible for informing clients of their PETI obligation on a form prescribed by the Operating Agency.

8.500.108.E PETI payments and the corresponding assessment forms are due to the Operation Agency during the month following the month for which they are assessed.

### **8.503 CHILDREN'S EXTENSIVE SUPPORT WAIVER PROGRAM (CES)**

#### **8.503 DEFINITIONS**

ACTIVITIES OF DAILY LIVING (ADL) means basic self care activities including bathing, bowel and bladder control, dressing, eating, independent ambulation, transferring, and needing supervision to support behavior, medical needs and memory cognition.

ADVERSE ACTION means a denial, reduction, termination or suspension from the HCBS-CES waiver or a HCBS waiver service.

APPLICANT means an individual who is seeking a Long Term Care eligibility determination and who has not affirmatively declined to apply for Medicaid or participate in an assessment.

AUTHORIZED REPRESENTATIVE (AR) means an individual designated by the client, parent or legal guardian of a minor, if appropriate, who has the judgment and ability to direct CDASS on the client's behalf and meets the qualifications as defined at 10 CCR 2505-10 Sections 8.510.6 and 8.510.7.

CLIENT means an individual who has met Long Term client representative may be (A) a legal representative including but not limited to a court appointed guardian, a parent of a minor child, or a spouse, or (B) an individual, family member or friend selected by the parent or guardian of the client to speak for or act on the clients' behalf.

COMMUNITY CENTERED BOARD (CCB) means a private corporation, for profit or not for profit, which, when designated pursuant to Section 27-10.5-101, C.R.S., provides case management services to clients with developmental disabilities, is authorized to determine eligibility of such clients within a specified geographical area, serves as the single point of entry for clients to receive services and supports under Section 27-10.5-101, C.R.S. et seq., and provides authorized services and supports to such clients either directly or by purchasing such services and supports from service agencies.

COST CONTAINMENT means limiting the cost of providing care in the community to less than or equal to the cost of providing care in an institutional setting based on the average aggregate amount. The cost of providing care in the community shall include the cost of providing Home and Community Based Services, and Medicaid State Plan benefits including long term home health services and targeted case management services.

COST EFFECTIVENESS means the most economical and reliable means to meet an identified need of the client.

CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES (CDASS) means the service delivery option for services that assist an individual in accomplishing activities of daily living when included as a waiver benefit that may include health maintenance, personal care and homemaker activities.

DEPARTMENT means the Colorado Department of Health Care Policy and Financing, the single state Medicaid agency.

DEVELOPMENTAL DELAY means a child who is:

Birth up to age five (5) and has a developmental delay defined as the existence of at least one of the following measurements:

Equivalence of twenty-five percent (25%) or greater delay in one (1) or more of the five domains of development when compared with chronological age,

Equivalence of 1.5 standard deviations or more below the mean in one (1) or more of the five domains of development,

Has an established condition defined as a diagnosed physical or mental condition that, as determined by a qualified health professional utilizing appropriate diagnostic methods and procedures, has a high probability of resulting in significant delays in development, or

Birth up to age three (3) who lives with a parent who has been determined to have a developmental disability by a Community Centered Board.

DEVELOPMENTAL DISABILITY means a disability that is manifested before the person reaches twenty-two (22) years of age, which constitutes a substantial disability to the affected individual, and is attributable to mental retardation or related conditions which include Cerebral palsy, Epilepsy, Autism or other neurological conditions when such condition result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, unless otherwise specifically stated, the federal definition "Developmental Disability" found in 42 U.S.C. Section 6000 *et seq.*

"Impairment of general intellectual functioning" means that the person has been determined to have an intellectual quotient equivalent which is two or more standard deviations below the mean (70 or less assuming a scale with a mean of 100 and a standard deviation of 15), as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. the standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent. when an individual's general intellectual functioning cannot be measured by a standardized instrument, then the assessment of a qualified professional shall be used.

"Adaptive behavior similar to that of a person with mental retardation" means that the person has overall adaptive behavior which is two or more standard deviations below the mean in two or more skill areas (communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work), as measured by an instrument which is standardized, appropriate to the person's living environment, and administered and clinically determined by a qualified professional. these adaptive behavior limitations are a direct result of, or are significantly influenced by, the person's substantial intellectual deficits and may not be attributable to only a physical or sensory impairment or mental illness.

"Substantial intellectual deficits" means an intellectual quotient that is between 71 and 75 assuming a scale with a mean of 100 and a standard deviation of 15, as measured by an instrument which is standardized, appropriate to the nature of the person's disability, and administered by a qualified professional. the standard error of measurement of the instrument should be considered when determining the intellectual quotient equivalent.

DIVISION FOR DEVELOPMENTAL DISABILITIES (DDD) means the Operating Agency for Home and Community Based Services- Children's Extensive Support (HCBS-CES) to persons with developmental delays or disabilities within the Colorado Department of Human Services.

EARLY AND PERIODIC SCREENING DIAGNOSIS AND TREATMENT (EPSDT) means the child health component of the Medicaid State Plan for a Medicaid eligible client up to 21 years of age.

FAMILY means a relationship as it pertains to the client and is defined as:

A mother, father, brother, sister or any combination,

Extended blood relatives such as grandparent, aunt, uncle, cousin,

An adoptive parent,

One or more individuals to whom legal custody of a person with a developmental disability has been given by a court,

A spouse or,

The client's child.

**FISCAL MANAGEMENT SERVICE ORGANIZATION** means the entity contracted with the Department as the employer of record for attendants, to provide personnel management services, fiscal management services and skills training to a parent or guardian or authorized representative of a client receiving CDASS.

**FUNCTIONAL ELIGIBILITY** means that the applicant meets the criteria for Long Term Care services as determined by the Department

**FUNCTIONAL NEEDS ASSESSMENT** means a comprehensive face-to-face evaluation using the Uniform Long Term Care instrument and medical verification on the Professional Medical Information Page to determine if the applicant or client meets the institutional Level Of Care (LOC).

**GUARDIAN** means an individual at least twenty-one years of age, resident or non-resident, who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a court. Guardianship may include a limited, emergency, and temporary substitute court appointed guardian but not a guardian ad litem.

**HOME AND COMMUNITY BASED SERVICES (HCBS) WAIVERS** means services and supports authorized through a 1915 (c) waiver of the Social Security Act and provided in community settings to a client who requires a level of institutional care that would otherwise be provided in a hospital, nursing facility or Intermediate Care Facility for the Mentally Retarded (ICF/MR).

**INSTITUTION** means a hospital, nursing facility, facility or ICF/MR for which the Department makes Medicaid payments under the state plan.

**INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED (ICF/MR)** means a publicly or privately operated facility that provides health and habilitation services to a client with developmental disabilities or related conditions.

**LEGALLY RESPONSIBLE PERSON** means the parent of a minor child, or the client's legal representative.

**LEVEL OF CARE (LOC)** means the specified minimum amount of assistance a client must require in order to receive services in an institutional setting under the Medicaid State Plan.

**LICENSED MEDICAL PROFESSIONAL** means a person who has completed a 2-year or longer program leading to an academic degree or certificate in a medically related profession. This is limited to those who possess the following medical licenses; physician, physician assistant and nurse governed by the Colorado Medical License Act.

**LONG TERM CARE (LTC) SERVICES** means services provided in nursing facilities or, Intermediate Care Facilities for the Mentally Retarded (ICF/MR), or Home and Community Based Services (HCBS), Long Term Home Health Services, the program of All-Inclusive Care for the Elderly, Swing Bed and Hospital Back Up program (HBU).

**MEDICAID ELIGIBLE** means the applicant or client meets the criteria for Medicaid benefits based on the applicant's financial determination and disability determination.

**MEDICAID STATE PLAN** means the federally approved document that specifies the eligibility groups that a state serves through its Medicaid program, the benefits that the state covers, and how the state addresses additional federal Medicaid statutory requirements concerning the operation of its Medicaid program.

**MEDICATION ADMINISTRATION** means assisting a client in the ingestion, application or inhalation of medication, including prescription and non-prescription drugs, according to the directions of the attending physician or other licensed health practitioner and making a written record thereof.

**NATURAL SUPPORTS** means informal relationships that provide assistance and occur in the client's everyday life such as, but not limited to, community supports and relationships with family members, friends, co-workers, neighbors and acquaintances.

**OPERATING AGENCY** means the Department of Human Services, Division for Developmental Disabilities, which manages the operations of the Home and Community Based Services-for Persons with Developmental Disabilities (HCBS-DD), HCBS-Supported Living Services (HCBS-SLS) and HCBS-Children's Extensive Supports (HCBS-CES) waivers under the oversight of the Department of Health Care Policy and Financing.

**ORGANIZED HEALTH CARE DELIVERY SYSTEM (OHCD)** means a public or privately managed service organization that provides, at minimum, targeted case management and contracts with other qualified providers to furnish services authorized in the HCBS-DD, HCBS-SLS and HCBS-CES waivers.

**PRIOR AUTHORIZATION** means approval for an item or service that is obtained in advance either from the Department, the Operating Agency, a state fiscal agent or the Case Management Agency.

**PROFESSIONAL MEDICAL INFORMATION PAGE (PMIP)** means the medical information form signed by a licensed medical professional used to verify the client needs institutional Level Of Care.

**PROGRAM APPROVED SERVICE AGENCY** means a developmental disabilities service agency or typical community service agency as defined in 2 CCR 503-1, Section 16.200 *et seq.*, that has received program approval to provide HCBS-CES waiver services.

**RELATIVE** means a person related to the client by virtue of blood, marriage, adoption or common law marriage.

**RETROSPECTIVE REVIEW** means the Department or the Operating Agency's review after services and supports are provided to ensure the client received services according to the service plan and standards of economy, efficiency and quality of service.

**SERVICE PLAN** means the written document that specifies identified and needed services, regardless of funding source, to assist a client to remain safely in the community and developed in accordance with the Department and the Operating Agency's rules set forth in 10 CCR 2505-10, Section 8.400.

**SUPPORT** is any task performed for the client where learning is secondary or incidental to the task itself or an adaptation is provided.

**TARGETED CASE MANAGEMENT SERVICES (TCM)** means a Medicaid State Plan benefit for a target population which includes: facilitating enrollment, locating, coordinating and monitoring needed HCBS waiver services and coordinating with other non-waiver resources including but not limited to medical, social, educational and other resources to ensure non-duplication of HCBS waiver services and the monitoring of the effective and efficient provision of HCBS waiver services across multiple funding sources.

**THIRD PARTY RESOURCES** means services and supports that a client may receive from a variety of programs and funding sources beyond natural supports or Medicaid. They may include, but are not limited to community resources, services provided through private insurance, non-profit services and other government programs.

**UTILIZATION REVIEW CONTRACTOR (URC)** means the agency contracted with the Department of Health Care Policy and Financing to review the HCBS-CES waiver applications for determination of eligibility based on the additional targeting criteria.

WAIVER SERVICE means optional services defined in the current federally approved waiver documents and do not include Medicaid State Plan benefits.

**8.503.10 HCBS-CES WAIVER ADMINISTRATION**

8.503.10.A This section hereby incorporates the terms and provisions of the federally-approved Home and Community Based Services-Children's Extensive Support (HCBS-CES) waiver CO.4180.R03.00. To the extent that the terms of that federally-approved waiver are inconsistent with the provisions of this section, the waiver will control

8.503.10.B HCBS-CES waiver for clients ages birth through seventeen years of age with developmental delays or disabilities is administered through the designated Operating Agency.

8.503.10.C. HCBS-CES waiver services shall be provided in accordance with the federally approved HCBS-CES waiver document and these rules and regulations, and the rules and regulations of the Colorado Department of Human Services, Division for Developmental Disabilities, 2 CCR 503-1 and promulgated in accordance with the provisions of Section 25.5-6-404(4), C.R.S.

8.503.10.D. In the event a direct conflict arises between the rules and regulations of the Department and the Operating Agency, the rules and regulations of the Department shall control.

8.503.10.E. HCBS-CES waiver services are available only to address needs identified in the Functional Needs Assessment and authorized in the service plan and when the service or support is not available through the Medicaid State Plan, EPSDT, natural supports, or third party payment sources.

8.503.10.F. HCBS-CES waiver:

1. Shall not constitute an entitlement to services from either the Department or the Operating Agency,
2. Shall be subject to annual appropriations by the Colorado general assembly,
3. Shall limit the utilization of the HCBS-CES waiver based on the federally approved capacity, cost containment, the maximum costs and the total appropriations, and,
4. May limit the enrollment when utilization of the HCBS-CES waiver program is projected to exceed the spending authority.

**8.503.20 GENERAL PROVISIONS**

8.503.20.A THE FOLLOWING PROVISIONS SHALL APPLY TO THE HCBS-CES WAIVER.

1. HCBS-CES waiver services are provided as an alternative to ICF/MR services for an eligible client to assist the family to support the client in the home and community.
2. HCBS-CES waiver is waived from the requirements of Section 1902(a) (10) (b) of the Social Security Act concerning comparability of services. The availability and comparability of services may not be consistent throughout the state of Colorado.
3. A client enrolled in the HCBS-CES waiver shall be eligible for all other Medicaid services for which the client qualifies and shall first access all benefits available under the Medicaid State Plan or Medicaid EPSDT prior to accessing services under the HCBS-CES waiver. Services received through the HCBS-CES waiver may not duplicate services available through the Medicaid State Plan.

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**8.503.30 CLIENT ELIGIBILITY**

8.503.30.A To be eligible for the HCBS-CES waiver, an individual shall meet the target population criteria as follows:

1. Is unmarried and less than eighteen years of age,
2. Be determined to have a developmental disability which includes developmental delay if under five (5) years of age,
3. Can be safely served in the community with the type and amount of HCBS-CES waiver services available and within the federally approved capacity and cost containment limits of the HCBS-CES waiver,
4. Meet ICF/MR level of care as determined by the Functional Needs Assessment,
5. Meet the Medicaid financial determination for LTC eligibility as specified at 10 CCR 2505-10, Section 8.100 *et seq.* and,
6. Reside in an eligible HCBS-CES waiver setting as defined as the following:
  - a.) With biological, adoptive parent(s), or legal guardian,
  - b.) In an out-of-home placement and can return home with the provision of HCBS-CES waiver services with the following requirement that must be approved by the HCBS-CES waiver administrator:
    - i.) The case manger will work in conjunction with the residential caregiver to develop a transition plan that includes timelines and identified services or supports requested during the time the client is not residing in the family home.
7. Be determined to meet the Federal Social Security Administration's definition of disability,
8. Be determined by the Utilization Review Contractor (URC) to meet the additional targeting criteria eligibility for HCBS-CES waiver. The additional targeting criterion includes the following:
  - a.) The individual demonstrates a behavior or has a medical condition that requires direct human intervention, more intense than a verbal reminder, redirection or brief observation of status, at least once every two hours during the day and on a weekly average of once every three hours during the night. The behavior or medical condition must be considered beyond what is typically age appropriate and due to one or more of the following conditions:
    - i. A significant pattern of self-endangering behavior or medical condition which, without intervention will result in a life threatening condition or situation. Significant pattern is defined as the behavior or medical condition that is harmful to self or others as evidenced by actual events occurring within the past six months,
    - ii.) A significant pattern of serious aggressive behavior toward self, others or property. Significant pattern is defined as the behavior is harmful to self or others, is evidenced by actual events occurring within the past six months, or

- iii. Constant vocalizations such as screaming, crying, laughing or verbal threats which cause emotional distress to caregivers. The term constant is defined as on the average of fifteen (15) minutes each waking hour.
  - b). The above conditions shall be evidenced by third party statement or data that is corroborated by written evidence that:
    - i) The individual's behavior or medical needs have been demonstrated, or
    - ii.) In the instance of an annual reassessment, that in the absence of the existing interventions or preventions provided through the HCBS-CES waiver that the intensity and frequency of the behavior or medical condition would resume to a level that would meet the criteria listed above.
  - c. Examples of acceptable evidence shall not be older than six months and shall include but not be limited to any of the following:
    - i.) Medical records,
    - ii) Professional evaluations and assessments,
    - iii.) Insurance claims,
    - iv) Behavior pharmacology clinic reports,
    - v.) Police reports,
    - vi) Social Services reports, or
    - vii.) Observation by a third party on a regular basis.
- 8.503.30.B The client shall maintain eligibility by meeting the HCBS-CES waiver eligibility as set forth in 10 CCR 2505-10, Section 8.503 and the following:
- 1. Receives at least one (1) HCBS-CES waiver service each calendar month,
  - 2. Is not simultaneously enrolled in any other HCBS waiver, and
  - 3. Is not residing in a hospital, nursing facility, ICF/MR, other institution or correctional facility.

**8.503.40 HCBS-CES WAIVER SERVICES**

- 8.503.40.A The following services are available through the HCBS-CES waiver within the specific limitations as set forth in the federally approved HCBS-CES waiver:
- 1. Adaptive Therapeutic Recreational Equipment and Fees are services which assist a client to recreate within the client's community. These services include recreational equipment that is adapted specific to the client's disability and not those items that a typical age peer would commonly need as a recreation item.
    - a. The cost of item shall be above and beyond what is typically expected for recreation and recommended by a doctor or therapist.

- b. Adaptive recreational equipment may include adaptive bicycle, adaptive stroller, adaptive toys, floatation collar for swimming, various types of balls with internal auditory devices and other types of equipment appropriate for the recreational needs of a client with a developmental disability.
  - c. A pass for admission to recreation centers for the client only when the pass is needed to access a professional service or to achieve or maintain a specific therapy goal as recommended and supervised by a doctor or therapist. Recreation passes shall be purchased as day passes or monthly passes, whichever is the most cost effective.
  - d. Adaptive therapeutic recreation fees include those for water safety training.
  - e. The following items are specifically excluded under HCBS-CES waiver and not eligible for reimbursement:
    - i. Entrance fees for zoos,
    - i.) Museums,
    - ii.) Butterfly pavilion,
    - iii.) Movie, theater, concerts,
    - iv.) Professional and minor league sporting events,
    - v.) Outdoors play structures,
    - vi. Batteries for recreational items; and,
    - vii. Passes for family admission to recreation centers.
  - f. The maximum annual allowance for adaptive therapeutic recreational equipment and fees is one thousand (1,000.00) dollars per service plan year.
- 2. Assistive Technology includes services, supports or devices that assist a client to increase maintain or improve functional capabilities. This may include assisting the client in the selection, acquisition, or use of an assistive technology device and includes:
  - a. The evaluation of the assistive technology needs of a client, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the client in the customary environment of the client,
  - b. Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices,
  - c. Training or technical assistance for the client, or where appropriate, the family members, guardians, care-givers, advocates, or authorized representatives of the client,
  - d. Warranties, repairs or maintenance on assistive technology devices purchased through the HCBS-CES waiver, and

- e. Adaptations to computers, or computer software related to the client's disability. This specifically excludes cell phones, pagers, and internet access unless prior authorized in accordance with the Operating Agency's procedures.
- f. Assistive Technology devices and services are only available when the cost is higher than typical expenses, and are limited to the most cost effective and efficient means to meet the need and are not available through the Medicaid State Plan or third party resource.
- g. Assistive Technology recommendations shall be based on an assessment provided by a qualified provider within the provider's scope of practice.
- h. When the expected cost is to exceed two thousand five hundred (2,500) dollars per device three estimates shall be obtained and maintained in the case record.
- i. Training and technical assistance shall be time limited, goal specific and outcome focused.
- j. The following items and services are specifically excluded under HCBS-CES waiver and not eligible for reimbursement:
  - i. Purchase, training or maintenance of service animals,
  - ii. Computers,
  - iii. In home installed video monitoring equipment,
  - iv. Medication reminders,
  - v. Hearing aids,
  - vi. Items or devices that are generally considered to be entertainment in nature including but not limited to CDs, DVDs, iTunes®, any type of games,
  - vii. training, or adaptation directly related to a school or home educational goal or curriculum; or
  - viii. items considered as typical toys for children.
- k. The total cost of Home Accessibility Adaptations, Vehicle Modifications, and Assistive Technology shall not exceed ten thousand (10,000) dollars over the five (5) year life of the HCBS-CES waiver without an exception granted by the Operating Agency. Costs that exceed this limitation may be approved for services, items or devices to ensure the health and safety of the client or that enable the client to function with greater independence in the home, or decrease the need for paid assistance in another HCBS-CES waiver service on a long-term basis. Requests for an exception shall be prior authorized in accordance with the Operating Agency's procedures.:
  - i. The Operating Agency shall respond to exception requests within thirty (30) days of receipt.

3. Behavioral Services are services related to a client's developmental disability which assist a client to acquire or maintain appropriate interactions with others.
  - a. Behavioral Services shall address specific challenging behaviors of the client and identify specific criteria for remediation of the behaviors.
  - b. A client with a co-occurring diagnosis of developmental disabilities and mental health diagnosis covered in the Medicaid state plan shall have identified needs met by each of the applicable systems without duplication but with coordination by the behavioral services professional to obtain the best outcome for the client.
  - c. Services covered under Medicaid EPSDT or a covered mental health diagnosis in the Medicaid State Plan, covered by a third party source or available from a natural support are excluded and shall not be reimbursed.
  - d. Behavioral Services include:
    - i. Behavioral Consultation Services include consultations and recommendations for behavioral interventions and development of behavioral support plans that are related to the client's developmental disability and are necessary for the client to acquire or maintain appropriate adaptive behaviors, interactions with others and behavioral self management.
      - a) Intervention modalities shall relate to an identified challenging behavioral need of the client. Specific goals and procedures for the behavioral service must be established.
    - ii. Behavioral Plan Assessment Services include observations, interviews of direct staff, functional behavioral analysis and assessment, evaluations and completion of a written assessment document.
      - 1) Behavioral plan assessment services are limited to forty (40) units and one assessment per service plan year. One unit is equal to fifteen (15) minutes of service.
    - iii. Individual and group counseling services include psychotherapeutic or psychoeducational intervention that:
      - 1.) Is related to the developmental disability in order for the client to acquire or maintain appropriate adaptive behaviors, interactions with others and behavioral self-management, and
      - 2.) Positively impacts the client's behavior or functioning and may include cognitive behavior therapy, systematic desensitization, anger management, biofeedback and relaxation therapy.
    - iv. Behavioral Line Services include direct implementation of the behavioral plan under the supervision and oversight of a behavioral consultant, for intervention to address social or emotional issues or with an identified challenging behavior that puts the individual's health and safety or the safety of others at risk.

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4. Community Connector Services are intended to provide assistance to the client to enable the client to integrate into the client's residential community and access naturally occurring resources. Community connector services shall:
    - a. Support the abilities and skills necessary to enable the client to access typical activities and functions of community life such as those chosen by the general population.
    - b. Utilize the community as a learning environment to assist the client to build relationships and natural supports in the client's residential community.
    - c. Be provided to a single client in a variety of settings in which clients interact with individuals without disabilities, and
    - d. The cost of admission to professional or minor league sporting events, movies, theater, concert tickets or any activity that is entertainment in nature or any food or drink items are specifically excluded under the HCBS-CES waiver and shall not be reimbursed.
  5. Home Accessibility Adaptations are physical adaptations to the primary residence of the client, that are necessary to ensure the health and safety of the client or that enable the client to function with greater independence in the home. All adaptations shall be the most cost effective means to meet the identified need. Such adaptations include:
    - a. The installation of ramps,
    - b. Widening or modification of doorways,
    - c. Modification of bathroom facilities to allow accessibility, and assist with needs in activities of daily living.
    - d. The installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment or supplies that are necessary for the health and safety of the client, and
    - e. Safety enhancing supports such as basic fences or basic door and window alarms;
    - f. The following items are specifically excluded from Home Accessibility Adaptations and shall not be reimbursed:
      - i. Adaptations or improvements to the home that are considered to be on-going homeowner maintenance and are not related to the client's disability,
      - ii.) Carpeting,
      - iii.) Roof repair,
      - iv.) Central air conditioning,
      - v.) Air duct cleaning,
      - vi.) Whole house humidifiers,

- vii.) Whole house air purifiers,
    - viii.) Installation and repair of driveways and sidewalks,
    - viii.) Monthly or ongoing home security monitoring fees,
    - ix.) Home furnishings of any type,
    - x.) Adaptations to rental units when the adaptation is not portable and cannot move with the renter, and
    - xi.) Luxury upgrades.
  - g. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation to:
    - i. Improve entrance or egress to a residence; or,
    - ii. Configure a bathroom to accommodate a wheelchair.
  - h. Any request to add square footage to the home shall be prior authorized in accordance with Operating Agency procedures.
  - i. All devices and adaptations shall be provided in accordance with applicable state or local building codes and applicable standards of manufacturing, design and installation. Medicaid State Plan, EPSDT or third party resources shall be utilized prior to authorization of HCBS-CES waiver services.
  - j. The total cost of Home Accessibility Adaptations, Vehicle Modifications, and Assistive Technology shall not exceed ten thousand (10,000) dollars over the five (5) year life of the HCBS-CES waiver without an exception granted by the Operating Agency. Costs that exceed this limitation may be approved for services, items or devices to ensure the health and safety of the client, enable the client to function with greater independence in the home, or decrease the need for paid assistance in another HCBS-CES waiver service on a long-term basis. Requests to exceed the limit shall be prior authorized in accordance with Operating Agency procedure.
- 6. Homemaker Services are provided in the client's home and are allowed when the client's disability creates a higher volume of household tasks or requires that household tasks are performed with greater frequency. There are two types of Homemaker Services:
  - a. Basic Homemaker Services includes cleaning, completing laundry, completing basic household care or maintenance within the client's primary residence only in the areas where the client frequents.
    - i. This assistance may take the form of hands-on assistance by actually performing a task for the client or cueing to prompt the client to perform a task.
    - ii. Lawn care, snow removal, air duct cleaning and animal care are specifically excluded under HCBS-CES waiver and shall not be reimbursed.

- b. Enhanced Homemaker Services include Basic Homemaker Services with the addition of either procedures for habilitation or procedures to perform extraordinary cleaning.
    - i. Habilitation services shall include direct training and instruction to the client in performing basic household tasks including cleaning, laundry, and household care which may include some hands-on assistance by actually performing a task for the client or enhanced prompting and cueing.
    - ii. The provider shall be physically present to provide step by step verbal or physical instructions throughout the entire task:
      - 1) When such support is incidental to the habilitative services being provided,
      - 2) To increase independence of the client,
  - c. Incidental Basic Homemaker Service may be provided in combination with Enhanced Homemaker Services; however, the primary intent must be to provide habilitative services to increase independence of the client.
  - d. Extraordinary cleaning are those tasks that are beyond routine sweeping, mopping, laundry or cleaning and require additional cleaning or sanitizing due to the client's disability.
7. Parent Education provides unique opportunities for parents or other care givers to learn how to support the child's strengths within the context of the child's disability and enhances the parent's ability to meet the special needs of the child. Parent Education includes:
- a. Consultation and direct service costs for training parents and other care givers in techniques to assist in caring for the client's needs, including sign language training,
  - b. Special resource materials,
  - c. Cost of registration for parents or caregivers to attend conferences or educational workshops that are specific to the client's disability,
  - d. Cost of membership to parent support or information organizations and publications designed for parents of children with disabilities.
  - e. The maximum service limit for parent education is one thousand (1,000) units per service plan year.
  - f. The following items are specifically excluded under the HCBS-CES waiver and not eligible for reimbursement:
    - i) Transportation,
    - ii) Lodging,
    - iii). Food, or

- iv). Membership to any political organizations or any organization involved in lobby activities.
- 8. Personal Care is assistance to enable a client to accomplish tasks that the client may complete without assistance if the client did not have a disability. This assistance may take the form of hands-on assistance by actually performing a task for the client or cueing to prompt the client to perform a task.
  - a. Personal care services include assistance with basic self care tasks that include performing hygiene activities, bathing, eating, dressing, grooming, bowel, bladder and menstrual care.
  - b. Personal care services may be provided on an episodic, emergency or on a continuing basis. When personal care service is required it shall be provided by the HCBS-CES waiver only to the extent the Medicaid State Plan or third party resource does not cover the service.
  - c. If the annual Functional Needs Assessment identifies a possible need for skilled care then the client shall obtain a home health assessment.
- 9. Professional Services are provided by a licensed, certified, registered or accredited professional and the intervention is related to an identified medical or behavioral need. Professional services include:
  - a. Hippotherapy: includes a therapeutic treatment strategy that uses the movement of the horse to assist in the development or enhancement of skills including gross motor, sensory integration, attention, cognitive, social, behavior and communication.
  - b. Movement therapy includes the use of music or dance as a therapeutic tool for the habilitation, rehabilitation and maintenance of behavioral, developmental, physical, social, communication, or gross motor skills and assists in pain management and cognition.
  - c. Massage includes the physical manipulation of muscles to ease muscle contractures or spasms, increase extension and muscle relaxation and decrease muscle tension and includes WATSU.
  - d. Professional services can be reimbursed only when:
    - i). The provider is licensed, certified, registered or accredited by an appropriate national accreditation association in the profession,
    - ii). The intervention is related to an identified medical or behavioral need; and
    - iii). The Medicaid state plan therapist or physician identifies the need for the service, establishes the goal for the treatment and monitors the progress of that goal at least quarterly.
    - iv). The following items are excluded under the HCBS-CES waiver and are not eligible for reimbursement:
      - 1) Acupuncture,

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- 2) Chiropractic care,
    - 3) Fitness training (personal trainer),
    - 4) Equine therapy,
    - 5) Art therapy,
    - 6) Warm water therapy,
    - 7) Therapeutic riding,
    - 8) Experimental treatments or therapies, and
    - 9) Yoga.
  10. Respite is provided to clients on a short-term basis, because of the absence or need for relief of the primary caregivers of the client.
    - a. Respite may be provided:
      - i.) In the client's home, private residence,
      - ii.) The private residence of a respite care provider, or
      - iii.) In the community.
    - b. Respite is to be provided in an age appropriate manner.
      - i.) The eligible client age twelve (12) or older may receive respite during the time the care-giver works because same age typical peers do not need ongoing supervision at that age and the need for the respite is based on the client's disability.
      - ii.) A client eleven (11) years of age and younger, will not receive respite during the time the parent works, pursues continuing education or volunteers, because this is a typical expense for all parents of young children.
    - c. When the cost of care during the time the parents works is more for an eligible client, eleven (11) years of age or younger, than it is for same age peers, then respite may be used to pay the additional cost. Parents shall be responsible for the basic and typical cost of child care.
    - d. Respite may be provided for siblings, age eleven (11) and younger, who reside in the same home of an eligible client when supervision is needed so the primary caretaker can take the client to receive a state plan benefit or a HCBS-CES waiver service.
    - e. Respite shall be provided according to an individual or group rates as defined below:
      - i) Individual: the client receives respite in a one-on-one situation. There are no other clients in the setting also receiving respite services. Individual respite occurs for ten (10) hours or less in a twenty four (24)-hour period.
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- ii) Individual day: the client receives respite in a one-on-one situation for cumulatively more than ten (10) hours in a twenty four (24)-hour period. A full day is ten (10) hours or greater within a twenty four (24)- hour period.
    - iii) Overnight group: the client receives respite in a setting which is defined as a facility that offers twenty four (24)-hour supervision through supervised overnight group accommodations. The total cost of overnight group within a twenty four (24)-hour period shall not exceed the respite daily rate.
    - iv) Group: the client receives care along with other individuals, who may or may not have a disability. The total cost of group within a twenty four (24)-hour period shall not exceed the respite daily rate. The following limitations to respite service shall apply:
      - 1) Sibling care is not allowed for care needed due to parent's work, volunteer, or education schedule or for parental relief from care of the sibling.
  - f. Federal financial participation shall not to be claimed for the cost of room and board except when provided, as part of respite care furnished in a facility approved pursuant to 2 CCR 503-1 Section 16.221 by the state that is not a private residence.
  - g. The total amount of respite provided in one service plan year may not exceed an amount equal to thirty (30) day units and one thousand eight hundred eighty (1,880) individual units. The Operating Agency may approve a higher amount based on a need due to the client's age, disability or unique family circumstances.
  - h. Overnight group respite may not substitute for other services provided by the provider such as Personal Care, Behavioral Services or services not covered by the HCBS-CES waiver.
  - i. Respite shall be reimbursed according to a unit rate or daily rate whichever is less. The daily overnight or group respite rate shall not exceed the respite daily rate.
  - j. The purpose of respite is to provide the primary caregiver a break from the ongoing daily care of a client. Therefore, additional respite units beyond the service limit will not be approved for clients who receive skilled nursing, certified nurse aid services, or home care allowance from the primary caregiver.
11. Specialized Medical Equipment and Supplies include: devices, controls, or appliances that are required due to the client's disability and that enable the client to increase the client's ability to perform activities of daily living or to safely remain in the home and community. Specialized Medical Equipment and Supplies include:
- a. Kitchen equipment required for the preparation of special diets if this results in a cost savings over prepared foods;
  - b. Specially designed clothing for a client if the cost is over and above the costs generally incurred for a client's clothing;

- c. Maintenance and upkeep of specialized medical equipment purchased through the HCBS-CES waiver.
  - d. The following items are specifically excluded under the HCBS-CES waiver and not eligible for reimbursement:
    - i) Items that are not of direct medical or remedial benefit to the client vitamins, food supplements, any food items, prescription or over the counter medications, topical ointments, exercise equipment, hot tubs, water walkers, resistance water therapy pools, experimental items or wipes for any purpose other incontinence.
- 12. Vehicle Modifications are adaptations or alterations to an automobile or van that is the client's primary means of transportation, to accommodate the special needs of the client, are necessary to enable the client to integrate more fully into the community and to ensure the health, and safety of the client.
  - a. Upkeep and maintenance of the modifications are allowable services.
  - b. Items and services specifically excluded from reimbursement under the HCBS-CES waiver include:
    - i) Adaptations or improvements to the vehicle that are not of direct medical or remedial benefit to the client,
    - ii) Purchase or lease of a vehicle, and
    - iii) Typical and regularly scheduled upkeep and maintenance of a vehicle
  - c. The total cost of Home Accessibility Adaptations, Vehicle Modifications, and Assistive Technology shall not exceed ten thousand (10,000) dollars over the five (5) year life of the HCBS-CES waiver without an exception granted by the Operating Agency. Costs that exceed this limitation may be approved for services, items or devices to ensure the health and safety of the client, enable the client to function with greater independence in the home, or decrease the need for paid assistance in another HCBS-CES waiver service on a long-term basis. Approval for a higher amount will include a thorough review of the current request as well as past expenditures to ensure cost-efficiency, prudent purchases and no unnecessary duplication.
- 13. Vision service
  - a. Vision therapy is a sequence of activities individually prescribed and monitored by a Doctor of Optometry or Ophthalmology to develop efficient visual skills and processing. It is based on the results of standardized tests, the needs of the client and the client's signs and symptoms. It is used to treat eye movement disorders, inefficient eye teaming, misalignment of the eyes, poorly developed vision, focusing problems and visual information processing disorders to enhance visual skills and performing visual tasks.
  - b. The following items are specifically excluded under the HCBS-CES waiver and not eligible for reimbursement:
    - i) Eye glasses as a benefit under Medicaid State Plan,

- ii) Contacts, or
- iii) General vision checks
- c. Vision therapy is provided only when the services are not available through the Medicaid State Plan or EPSDT and due to not meeting the need for medical necessity as defined in Health Care Policy and Financing rules at 10 CCR 2505-10, Section 8.208.1 or available through a third party resource.

**8.503.50 SERVICE PLAN**

8.503.50.A The case management agency shall complete a service plan for each client enrolled in the HCBS-CES waiver in accordance with 10 CCR 2505-10 Section 8.400.

1. The service plan shall:
  - a. Address the client's assessed needs and personal goals, including health and safety risk factors either by HCBS-CES waiver services or any other means,
  - b. Be in accordance with the Department's and the Operating Agency's rules, policies and procedures,
  - c. Be entered and verified in the Department prescribed system within ten (10) business days,
  - d. Describe the types of services to be provided, the amount, frequency and duration of each service and the type of provider for each service,
  - e. Include a statement of agreement, and.
  - f. Be updated or revised at least annually or when warranted by changes in the HCBS-CES waiver client's needs,
2. The Service Plan shall document that the client has been offered a choice:
  - a. Between HCBS-CES waiver services and institutional care,
  - b. Among HCBS-CES waiver services, and
  - c. Among qualified providers.

**8.503.60 WAITLIST PROTOCOL**

8.503.60.A When the HCBS-CES waiver reaches capacity for enrollment, a client determined eligible for HCBS-CES waiver benefits shall be placed on a statewide wait list in accordance with these rules and the Operating Agency's procedures.

1. The Community Centered Board shall determine if an applicant has developmental delay if under age five (5), or developmental disability if over age five (5) prior to submitting the HCBS-CES waiver application to the utilization review contractor. Only a client who is determined to have a developmental delay or developmental disability may apply for HCBS-CES waiver.

2. In the event a client who has been determined to have a developmental delay is placed on the wait list prior to age five (5), and that client turns five (5) while on the HCBS-CES waiver wait list, a determination of developmental disability must be completed in order for the client to remain on the wait list.
3. The case management agency shall complete the Functional Needs Assessment, as defined in Department rules, to determine the client's Level Of Care.
4. The case management agency shall complete the HCBS-CES waiver application with the participation of the family. The completed application and a copy of the Functional Needs Assessment that determines the client meets the ICF/MR level of care shall be submitted to the Utilization Review Contractor within fourteen (14) calendar days of parent signature.
5. Supporting documentation provided with the HCBS-CES waiver application shall not be older than six (6) months at the time of submission to the utilization review contractor.
6. The utilization review contractor shall review the HCBS-CES waiver application. In the event the utilization review contractor needs additional information, the case management agency shall respond within two (2) business days of request.
7. Any client determined eligible for services under the HCBS-CES waiver when services are not immediately available within the federally approved capacity limits of the HCBS-CES waiver, shall be eligible for placement on a single statewide wait list in the order in which the utilization review contractor received the eligible HCBS-CES waiver application. Applicants denied program enrollment shall be informed of the client's appeal rights in accordance with 10 CCR 2505-10, Section 8.057.
8. The case management agency will create or update the consumer record to reflect the client is waiting for the HCBS-CES waiver with the wait list date as determined by the utilization review contractor.

**8.503.70 ENROLLMENT**

8.503.70.A When an opening becomes available for an initial enrollment to the HCBS-CES waiver it shall be authorized in the order of placement on the waiting list. Authorization shall include an initial enrollment date and the end date for the initial enrollment period.

1. The case management agency shall complete the HCBS-CES waiver application and the Functional Needs Assessment in the family home with the participation of the family. The completed application and a copy of the Functional Needs Assessment shall be submitted to the Utilization Review Contractor within thirty (30) days of the authorized initial enrollment date.
  - a. If it has been less than six (6) months since the review to determine wait list eligibility by the Utilization Review Contractor and there has been no change in the client's condition, the case management agency shall complete the Functional Needs Assessment and the parent may submit a letter to the case management agency in lieu of the HCBS-CES waiver application stating there has been no change.
  - b. If there has been any change in the client's condition the case management agency shall complete a Functional Needs Assessment and the HCBS-CES waiver application which shall be submitted to the Utilization Review Contractor.

3. Services and supports shall be implemented pursuant to the service plan within 90 days of the parent or guardian signature.
4. All continued stay review enrollments shall be completed and submitted to the utilization review contractor at least thirty (30) days and not more than ninety (90) days prior to the end of the current enrollment period.

**8.503.80 CLIENT RESPONSIBILITIES**

8.503.80.A The parent or legal guardian of a client is responsible to assist in the enrollment of the client and cooperate in the provision of services. Failure to do so shall result in the client's termination from the HCBS-CES waiver. The parent or legal guardian shall:

1. Provide accurate information regarding the client's ability to complete activities of daily living, daily and nightly routines and medical and behavioral conditions.
2. Cooperate with providers and case management agency requirements for the HCBS-CES waiver enrollment process, continued stay review process and provision of services;
3. Cooperate with the local Department of Human Services in the determination of financial eligibility;
4. Complete the HCBS-CES waiver application with fifteen calendar days of the authorized initial enrollment date as determined by the HCBS-CES waiver coordinator or in the event of a continued stay review, at least thirty (30) days prior to the end of the current certification period;
5. Complete the Service Plan within thirty calendar days of determination of HCBS-CES waiver additional targeting criteria eligibility as determined by the Utilization Review Contractor;
6. Notify the case manager within thirty (30) days after changes:
  - a. In the client's support system, medical condition and living situation including any hospitalizations, emergency room admissions, nursing home placements or ICF/MR placements;
  - b. That may affect Medicaid financial eligibility such as prompt report of changes in income or resources;
  - c. When the client has not received an HCBS-CES waiver service for one calendar month;
  - d. In the client's care needs; and,
  - e. In the receipt of any HCBS-CES waiver services.

**8.503.90 PROVIDER REQUIREMENTS**

8.503.90.A A private for profit or not for profit agency or government agency shall ensure that the contractor or employee meets minimum provider qualifications as set forth in the HCBS-CES waiver and shall:

1. Conform to all state established standards for the specific services they provide under HCBS-CES waiver,

2. Maintain program approval and certification from the Operating Agency,
3. Maintain and abide by all the terms of their Medicaid provider agreement with the Department and with all applicable rules and regulations set forth in 10 CCR 2505-10, Section 8.130,
4. Discontinue HCBS-CES waiver services to a client only after documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide HCBS-CES waiver services,
5. Have written policies governing access to duplication and dissemination of information from the client's records in accordance with state statutes on confidentiality of information at Section 25.5-1-116, C.R.S., as amended,
6. When applicable, maintain the required licenses and certifications from the Colorado Department of Public Health and Environment, and
7. Maintain client records to substantiate claims for reimbursement according to Medicaid standards.

**8.503.90.B HCBS-CES waiver service providers shall comply with:**

1. All applicable provisions of 27, Article 10.5, C.R.S., et seq. and all rules and regulations as set forth in 2 CCR 503-1, Section 16.100 *et seq.*,
2. All federal or state program reviews or financial audit of HCBS-CES waiver services,
3. The Operating Agency's on-site certification reviews for the purpose of program approval, on-going program monitoring or financial and program audits,
4. Requests from the County Departments of Human Services to access records of clients and to provide necessary client information to determine and re-determine Medicaid financial eligibility,
5. Requests by the Department of the Operating Agency to collect, review and maintain individual or agency information on the HCBS-CES waiver, and
6. Requests by the case management agency to monitor service delivery through targeted case management activities.

**8.503.100 TERMINATION OR DENIAL OF HCBS-CES MEDICAID PROVIDER AGREEMENTS**

**8.503.100.A The Department may deny or terminate an HCBS-CES waiver Medicaid provider agreement when:**

1. The provider is in violation of any applicable certification standard or provision of the provider agreement and does not adequately respond to a corrective action plan within the prescribed period of time. The termination shall follow procedures at 10 CCR 2505-10, Section 8.130 *et seq.*
2. A change of ownership occurs. A change in ownership shall constitute a voluntary and immediate termination of the existing provider agreement by the previous owner of the agency and the new owner must enter into a new provider agreement prior to being reimbursed for HCBS-CES waiver services.

3. The provider or its owner has previously been involuntarily terminated from Medicaid participation as any type of Medicaid service provider.
4. The provider or its owner has abruptly closed, as any type of Medicaid provider, without proper prior client notification.
5. The provider fails to comply with requirements for submission of claims pursuant to 10 CCR 2505-10, Section 8.040.2 or after actions have been taken by the Department, the Medicaid Fraud Control Unit or their authorized agents to terminate any provider agreement or recover funds.
6. Emergency termination of any provider agreement shall be in accordance with procedures at 10 CCR 2505-10, Section 8.050.

**8.503.110 ORGANIZED HEALTH CARE DELIVERY SYSTEM**

8.503.110.A The Organized Health Care Delivery System (OHCDS) for HCBS-CES waiver is the Community Centered board as designated by the Operating Agency in accordance with Section 27-10.5-103, C.R.S.

1. The OHCDS is the Medicaid provider of record for a client whose services are delivered through the OHCDS.
2. The OHCDS shall maintain a Medicaid provider agreement with the Department to deliver HCBS-CES waiver services according to the current federally approved waiver.
3. The OHCDS may contract or employ for delivery of HCBS-CES waiver services.
4. The OCHDS shall:
  - a. Ensure that the contractor or employee meets minimum provider qualifications as set forth in the HCBS-CES waiver,
  - b. Ensure that services are delivered according to the HCBS-CES waiver definitions and as identified in the client's service plan,
  - c. Ensure the contractor maintains sufficient documentation to support the claims submitted, and
  - d. Monitor the health and safety of HCBS-CES waiver clients receiving services from a subcontractor.
5. The OHCDS is authorized to subcontract and negotiate reimbursement rates with providers in compliance with all federal and state regulations regarding administrative, claim payment and rate setting requirements. The OCHDS shall:
  - a. Establish reimbursement rates that are consistent with efficiency, economy and quality of care,
  - b. Establish written policies and procedures regarding the process that will be used to set rates for each service type and for all providers,
  - c. Ensure that the negotiated rates are sufficient to promote quality of care and to enlist enough providers to provide choice to clients

- d. Negotiate rates that are in accordance with the Department's established fee for service rate schedule and Operating Agency procedures,
  - i.) Manually priced items that have no maximum allowable reimbursement rate assigned, nor a Manufacturer's Suggested Retail Price (MSRP), shall be reimbursed at the lesser of the submitted charges or the sum of the manufacturer's invoice cost, plus 13.56 percent.
- e. Collect and maintain the data used to develop provider rates and ensure data includes costs for the services to address the client's needs, that are allowable activities within the HCBS-CES waiver service definition and that supports the established rate, and
- f. Maintain documentation of provider reimbursement rates and make it available to the Department, its Operating Agency and Centers for Medicare and Medicaid Services (CMS).
- g. Report by August 31 of each year, the names, rates and total payment made to the contractor.

**8.503.120 PRIOR AUTHORIZATION REQUESTS**

8.503.120.A Prior Authorization Requests (PAR) shall be in accordance with 10 CCR 2505-10, Section 8.058.

- 1. A Prior Authorization Request shall be submitted to the Operating Agency through the Department's designated information management system.
- 2. The case management agency shall comply with the policies and procedures for the PAR review process as set forth by the Department and the Operating Agency.
- 3. The case management agency shall submit the PAR in compliance with all applicable regulations and ensure requested services are:
  - a. Consistent with the client's documented medical condition and functional capacity as indicated in the Functional Needs Assessment,
  - b. Adequate in amount, frequency and duration in order to meet the client's needs and within the limitations set forth in the current federally approved HCBS-CES waiver, and
  - c. Not duplicative of another authorized service, including services provided through:
    - i.) Medicaid State Plan benefits,
    - ii.) Third party resources,
    - iii.) Natural supports,
    - iv.) Charitable organizations, or
    - v.) Other public assistance programs.

4. Services delivered without prior authorization shall not be reimbursed except for provision of services during an emergency pursuant to 10 CCR 2505-10, Section 8.058.4.

**8.503.130 RETROSPECTIVE REVIEW PROCESS**

8.503.130.A Services provided to a client are subject to a retrospective review by the Department and the Operating Agency. This retrospective review shall ensure that services:

1. Identified in the service plan is based on the client's identified needs as stated in the Functional Needs Assessment,
2. Have been requested and approved prior to the delivery of services,
3. Provided to a client are in accordance with the service plan, and
4. Provided are within the specified HCBS service definition in the federally approved HCBS-CES waiver.

8.503.130.B The case management agency or provider shall be required to submit a plan of correction that is monitored for completion by the Department and the Operating Agency when areas of non-compliance are identified in the retrospective review.

8.503.130.C The inability of the provider to implement a plan of correction within the timeframes identified in the plan of correction may result in temporary suspension of claims payment or termination of the provider agreement.

8.503.130.D When the provider has received reimbursement for services and the review by the Department or Operating Agency identifies that it is not in compliance with requirements, the amount reimbursed will be subject to the reversal of claims, recovery of amount reimbursed, suspension of payments, or termination of provider status.

**8.503.140 PROVIDER REIMBURSEMENT**

8.503.140.A Providers shall submit claims directly to the Department's fiscal agent through the Medicaid Management Information System (MMIS) or through a qualified billing agent enrolled with the Department's fiscal agent.

1. Provider claims for reimbursement shall be made only when the following conditions are met:
  - a. Services are provided by a qualified provider as specified in the federally approved HCBS-CES waiver,
  - b. Services have been prior authorized,
  - c. Services are delivered in accordance to the frequency, amount, scope and duration of the service as identified in the client's service plan, and
  - d. Required documentation of the specific service is maintained and sufficient to support that the service is delivered as identified in the service plan and in accordance with the service definition.
2. Provider claims for reimbursement shall be subject to review by the Department and the Operating Agency. This review may be completed after payment has been made to the provider.

3. When the review identifies areas of non compliance, the provider shall be required to submit a plan of correction that is monitored for completion by the Department and the Operating Agency.
4. When the provider has received reimbursement for services and the review by the Department or Operating Agency identifies that the service delivered or the claims submitted is not in compliance with requirements, the amount reimbursed will be subject to the reversal of claims, recovery of amount reimbursed, suspension of payments, or termination of provider status.

**8.503.150 CLIENT RIGHTS**

8.503.150.A Client rights should be in accordance with Sections 27-10.5-112- through 131 C.R.S.

**8.503.160 APPEAL RIGHTS**

8.503.160.A The CCB shall provide the Long Term Care notice of action form (LTC 803) to the applicant and client's parent or legal guardian within ten (10) business day regarding the client's appeal rights in accordance with 10 CCR 2505-10, Section 8.057 *et seq.* when:

1. The Applicant is determined not to have a developmental delay or developmental disability,
2. The Applicant is determined eligible or ineligible for Medicaid LTC services,
3. The Applicant is determined eligible or ineligible for placement on a waitlist for Medicaid LTC services,
4. An Adverse Action occurs that affects the client's HCBS-CES waiver enrollment status through termination or suspension,
5. An Adverse Action occurs that affects the provision of HCBS-CES waiver services or,
6. The Applicant or client requests such information.

8.503.160.B The CCB shall represent their decision at the Office of Administrative Courts as described in 10 CCR 2505-10, Section 8.057 *et seq.* when the CCB has made a denial or adverse action against a client.

8.503.160.C The CCB shall notify all providers in the client's service plan within one (1) working day of the adverse action.

8.503.160.D The CCB shall notify the County Department of Human Services income maintenance technician within one (1) business day of an Adverse Action that affects Medicaid financial eligibility.

8.503.160.E The applicant's parent or legal guardian shall be informed of an adverse action if the applicant or client is determined ineligible as set forth in client eligibility and the following:

1. The applicant, parent or legal guardian fails to submit the Medicaid financial application for LTC to the financial eligibility site within thirty (30) days of LTC referral,
2. A client, parent or legal guardian fails to submit financial information for re-determination for LTC to the financial eligibility site within the required re-determination timeframe,

3. The County Income Maintenance Technician has determined the client no longer meets financial eligibility criteria as set forth in 10 CCR 2505-10, Section 8.100,
  4. The client cannot be served safely within the cost containment as identified in the HCBS-CES waiver,
  5. The client requires twenty four (24) hour supports provided through Medicaid state plan,
  6. The resulting total cost of services provided to the client, including Targeted Case Management, home health and HCBS-CES waiver services, exceeds the cost containment as identified in the HCBS-CES waiver,
  7. The client enters an institution for treatment with duration that continues for more than thirty (30) days,
  8. The client is detained or resides in a correctional facility, and
  9. The client enters an institute for mental illness with a duration that continues for more than thirty (30) days.
- 8.503.160.F The client and parent or legal guardian shall be notified, pursuant to 10 CCR 2505-10, Section 8.057, when the following results in an adverse action that does not relate to HCBS-CES waiver client eligibility requirements:
1. A HCBS-CES waiver service is reduced, terminated or denied because it is not a demonstrated need in the Functional Needs Assessment or because it is not available through the current federally approved HCBS-CES waiver,
  2. A service plan for HCBS-CES waiver services exceed the limits as set forth in the in the federally approved HCBS-CES waiver,
  3. The parent or legal guardian has failed to schedule an appointment for the Functional Needs Assessment of the client, service plan, or 6 month visit two (2) times in a thirty (30) day consecutive period,
  4. The parent or legal guardian has failed to keep three (3) scheduled assessment appointments within a thirty (30) consecutive day period,
  5. The parent or legal guardian failed to complete the HCBS-CES waiver application within fifteen (15) calendar days of the authorized enrollment date as determined by the Operating Agency,
  6. The parent or legal guardian fails to complete the service plan within thirty (30) calendar days of the authorized enrollment date as determined by the Operating Agency,
  7. The parent or legal guardian refuses to use the home care allowance to pay for services, or uses the home care allowance payment for services not identified in the service agreement,
  8. The parent or legal guardian refuses to sign the statement of agreement or other forms as required to receive services,
  9. The client enrolls in a different long term care program,

10. The client moves out of state. The client shall be discontinued effective upon the day after the date of the move.
  - a. A client who leaves the state on a temporary basis, with intent to return to Colorado, according to income maintenance staff manual 9 CCR 2503-1, Section 3.140.2, residence, shall not be discontinued unless one or more of the other client eligibility criteria are no longer met.
11. The parent or legal guardian voluntarily withdraws the client from HCBS-CES waiver. The client shall be discontinued from the program effective upon the day after the date on which the parent or legal guardian request is documented.
12. The CCB shall not send the LTC notice of action form when the basis for discontinuation is death of the client, but shall document the event in the client record and the date of action shall be the day after the date of death.

**8.503.170 QUALITY ASSURANCE**

8.503.170.A The monitoring of HCBS-CES waiver services and the health and well being of service recipients shall be the responsibility of the Operating Agency, under the oversight of the Department.

1. The Operating Agency shall conduct reviews of each agency providing HCBS-CES waiver services or cause to have reviews to be performed in accordance with guidelines established by the Department or Operating Agency and Department. The review shall apply rules and standards developed for programs serving clients with developmental disabilities.
2. The Operating Agency shall maintain or cause to be maintained for three (3) years a complete file of all records, documents, communications, and other materials which pertain to the operation of the HCBS-CES waiver or the delivery of services under the HCBS-CES waiver. The Department shall have access to these records at any reasonable time.
3. The Operating Agency shall recommend to the Department the suspension of payment, the denial or termination of the Medicaid provider agreement for any agency which it finds to be in violation of applicable standards and which does not adequately respond with a corrective action plan to the Operating Agency within the prescribed period of time or does not fulfill a corrective action plan within the prescribed period of time.
4. After having received the denial or termination recommendation and reviewing the supporting documentation, the Department shall take the appropriate action within a reasonable timeframe agreed upon by the Department and the Operating Agency..

**8.503.210 POST ELIGIBILITY TREATMENT OF INCOME (PETI)**

For individuals who are determined to be Medicaid eligible for the CES waiver through the application of the 300% income standard at 8.110.8, the case manager shall allow an amount equal to the 300% standard as the personal maintenance allowance (no other deductions are necessary). The PETI assessment form shall be completed monthly by the case management agency to ensure that the individual's income does not exceed the maximum allowed for continued eligibility.

**8.504 HOME AND COMMUNITY BASED SERVICES for CHILDREN WITH LIFE LIMITING ILLNESS/WAIVER**

**8.504.1 DEFINITIONS**

Assessment means a comprehensive and uniform process using the Uniform Long Term Care (ULTC) Instrument to obtain information about a client including his/her condition, personal goals and preferences, functional abilities, including Activities of Daily Living (ADL) and Instrumental Activities of Daily Living, health status and other factors relevant to determine the client's level of functioning.

Assessment process includes collecting information from the client and appropriate collaterals pertaining to service needs, available resources, potential funding sources and includes supporting diagnostic information from a licensed medical professional.

Bereavement Counseling means counseling provided to the client and/or family members in order to guide and help them cope with the client's illness and the related stress that accompanies the continuous, daily care required by a child with a life-threatening condition. Enabling the client and family members to manage this stress improves the likelihood that the child with a life-threatening condition will continue to be cared for at home, thereby preventing premature and otherwise unnecessary institutionalization. Bereavement activities offer the family a mechanism for expressing emotion and asking questions about death and grieving in a safe environment thereby potentially decreasing complications for the family after the child dies

Case Management means the assessment of the client's needs, the development and implementation of the Service Plan, coordination and monitoring of service delivery, the evaluation of service effectiveness and periodic reassessment of the client's needs.

Continued Stay Review (CSR) means a reassessment by the Single Entry Point case manager to determine the client's continued eligibility and functional level of care.

Cost Containment means the determination that, on an average aggregate basis, the cost of providing care in the community is less than or the same as the cost of providing care in a hospital.

Curative Care means medical care or active treatment of a medical condition seeking to affect a cure.

Expressive Therapy means creative art, music or play therapy which provides children the ability to creatively and kinesthetically express their medical situation for the purpose of allowing the client to express feelings of isolation, to improve communication skills, to decrease emotional suffering due to health status, and to develop coping skills.

Intake/Screening/Referral means the SEP's initial contact with the applicant and shall include, but not be limited to, a determination of the need for a comprehensive client Assessment, referral to other waivers or services and long term care services.

Life Limiting Illness means a medical condition that, in the opinion of the medical specialist involved, has a prognosis of death that is highly probable before the child reaches adulthood at age 19.

Massage Therapy is the physical manipulation of muscles to ease muscle contractures, spasms, extension, muscle relaxation and muscle tension.

- a. Palliative/Supportive Care is a specific program offered by a licensed health care facility or provider that is specifically focused on the provision of organized palliative care services. For the purposes of this waiver this includes a Hospice or Home Care Agency. Palliative care is specialized medical care for people with life limiting illnesses. This type of care is focused on providing clients with relief from the symptoms, pain, and stress of serious illness, whatever the diagnosis. The goal is to improve the quality of life for both the client and the family. Palliative care is appropriate at any age (18 and under for this waiver) and at any stage in a life limiting illness and can be provided together with curative treatment. The services are provided by a Hospice or Home Care Agency who have received additional training in palliative care concepts such as adjustment to illness, advance care planning, symptom management, and grief/loss. For the purpose of this waiver, Palliative Care includes Care Coordination and Pain and Symptom Management. Care Coordination includes development and implementation of a care plan, home visits for regular monitoring of the health and safety of the client and central coordination of medical and psychological services. The Care Coordinator will organize the multifaceted array of services. This approach will enable the client to receive all medically necessary care in the community with the goal of avoiding institutionalization in an acute care hospital. Additionally, a key function of the Care Coordinator will be to assume the majority of responsibility, otherwise placed on the parents, for condensing, organizing, and making accessible to providers, critical information that is related to care and necessary for effective medical management. The activities of the Care Coordinator will allow for a seamless system of care. Care Coordination shall not duplicate the administrative activities (specifically utilization management; i.e. review and authorization of service requests, level of care determinations, and waiver enrollment) provided by the case manager at the Single Entry Point.
- b. Pain and Symptom Management means nursing care in the home by a registered nurse to manage the client's symptoms and pain. Management includes regular, ongoing pain and symptom assessments to determine efficacy of the current regimen and available options for optimal relief of symptoms. Management also includes as needed visits to provide relief of suffering, during which, nurses assess the efficacy of current pain management and modify the regimen if needed to alleviate distressing symptoms and side effects using pharmacological, non-pharmacological and complementary/supportive therapies.

Prior Authorization Request (PAR) means the Department prescribed form to authorize the reimbursement for services.

Respite Care means services provided to an eligible client who is unable to care for himself/herself on a short term basis because of the absence or the need for relief of those persons normally providing care. Respite Care is provided in the client's residence and may be provided by different levels of providers depending upon the needs of the client.

Service Plan means the document used to identify the client's needs and sets forth the services to be provided to the client including the funding source, amount, scope, duration, frequency, provider of each service, and the expected outcome or purpose of such services.

Therapeutic Life Limiting Illness Support means grief/loss or anticipatory grief counseling that assist the client and family to decrease emotional suffering due to the client's health status, to decrease feelings of isolation or to cope with the client's life-limiting diagnosis. Support is intended to help the child and family in the disease process. Support is provided to the client to decrease emotional suffering due to health status and develop coping skills. Support is provided to the family to alleviate the feelings of devastation and loss related to a diagnosis and prognosis for limited lifespan, surrounding the failing health status of the client, and impending death of a child. Support is provided to the client and/or family members in order to guide and help them cope with the client's illness and the related stress that accompanies the continuous, daily care required by a terminally ill child. Support will include but is not limited to counseling, attending physician visits, providing emotional support to the family/caregiver if the child is admitted to the hospital or having stressful procedures, and connecting the family with community resources such as funding or transportation.

Uniform Long Term Care (ULTC) Instrument means the Department prescribed form used to determine Functional Eligibility and medical verification for long term care services

Utilization Review means approving or denying admission or continued stay in the waiver based on level of care needs, clinical necessity, amount and scope, appropriateness, efficacy or efficiency of health care services, procedures or settings.

## **8.504.2 BENEFITS**

8.504.2.A. Home and Community Based Services under the Children with Life Limiting Illness Waiver (HCBS-CLLI) benefits shall be provided within Cost Containment.

8.504.2.B. Therapeutic Life Limiting Illness Support shall be provided in individual or group setting.

1. Therapeutic Life Limiting Illness Support shall only be a benefit if it is not available under Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) coverage, Medicaid State Plan benefits, third party liability coverage or by other means.
2. Therapeutic Life Limiting Illness Support shall be limited to the client's assessed need up to a maximum of 98 hours per annual certification period.

8.504.2.C. Bereavement Counseling shall only be a benefit if it is not available under Medicaid EPSDT coverage, Medicaid State Plan benefits, third party liability coverage or by other means.

1. Bereavement Counseling shall be limited to the client's assessed need and is only billable one time.
2. Bereavement counseling is initiated and billed while the child is on the waiver but may continue after the death of the child for a period of up to one year.

8.504.2.D. Expressive therapy shall be provided in an individual or group setting.

1. Expressive therapy shall be limited to the client's assessed need up to a maximum of 39 hours per annual certification period.

8.504.2.E. Massage Therapy shall be provided in an individual setting.

1. Massage Therapy shall only be used for the treatment of conditions or symptoms related to the client's illness.
2. Massage Therapy shall be limited to the client's assessed need up to a maximum of 24 hours per annual certification period.

8.504.2.F. Respite Care shall be provided in the home of an eligible client on a short term basis, not to exceed 30 days per annual certification as determined by the ULTC Assessment. Respite Care shall not be provided at the same time as state plan Home Health or Palliative/Supportive Care services.

1. Respite Care services include any of the following in any combination necessary according to the Service Plan.
  - a. Skilled nursing.
  - b. Home health aide
  - c. Personal Care

8.504.2.G. Palliative/Supportive Care shall not require a nine month terminal prognosis for the client and includes:

1. Pain and Symptom Management; and
2. Care Coordination

8.504.2.H. HCBS-CLLI clients are eligible for all other Medicaid state plan benefits, including Hospice and Home Health.

#### **8.504.3 NON-BENEFIT**

8.504.3.A. Case Management shall not be a benefit of the HCBS-CLLI but shall be provided as an administrative activity through the SEP.

#### **8.504.4 CLIENT ELIGIBILITY**

8.504.4.A. An eligible client shall:

1. Be determined financially eligible.
2. Be at risk of institutionalization into a hospital as determined by the SEP case manager using the ULTC Instrument and physician's statement.
3. Meet the target population criteria as follows:
  - a. Have a life-limiting diagnosis, as certified in writing by a physician,.
  - b. Have not yet reached 19 years of age.
4. A client shall receive at least one HCBS-CLLI waiver benefit per month to maintain enrollment in the waiver.
5. A client who has not received at least one HCBS-CLLI waiver benefit during a month shall be discontinued from the waiver.
6. Case Management shall not satisfy the requirement to receive at least one benefit per month on the HCBS-CLLI waiver.

**8.504.5 WAIT LIST**

- 8.504.5.A. The number of clients who may be served through the waiver at any one time during a year shall be limited by the federally approved CLLI waiver document.
- 8.504.5.B. Applicants who are determined eligible for benefits under the HCBS-CLLI waiver, who cannot be served within the capacity limits of the federally approved waiver, shall be eligible for placement on a wait list maintained by the Department.
- 8.504.5.C. The SEP case manager shall ensure the applicant meets all criteria as set forth in Section 8.504.4.A.1-3 prior to notifying the Department to place the applicant on the wait list.
- 8.504.5.D. The SEP case manager shall enter the client's Assessment and Professional Medical Information Page data in the Benefits Utilization System (BUS) and notify the Department by sending the client's enrollment information utilizing the Department's approved form, to the program administrator.
- 8.504.5.E. The date and time of notification from the SEP case manager shall be used to establish the order of an applicant's place on the wait list.
- 8.504.5.F. Within five working days of notification from the Department that an opening for the HCBS-CLLI waiver is available the SEP case manager shall:
1. Reassess the applicant for functional level of care using the ULTC Instrument Form if the date of the last Assessment is more than six months old.
  2. Update the existing ULTC Instrument Form data if the date is less than six months old.
  3. Reassess for the target population criteria.
  4. Notify the Department of the applicant's eligibility status.

**8.504.6 PROVIDER ELIGIBILITY**

- 8.504.6.A. Providers shall conform to all federal and state established standards for the specific service they provide under the HCBS-CLLI waiver and enter into an agreement with the Department and must comply with the requirements of 10 CCR 2505-10, Section 8.130.
- 8.504.6.B. Licensure and required certification for providers shall be in good standing with their specific specialty practice act and with current state licensure status and regulations.
- 8.504.6.C. Individuals providing Therapeutic Life Limiting Illness Support and Bereavement Counseling shall enroll individually with the fiscal agent or be employed by a qualified Medicaid home health or hospice agency.
- 8.504.6.D. Individuals providing Therapeutic Life Limiting Illness Support and Bereavement Counseling shall be one of the following:
1. Licensed Clinical Social Worker (LCSW)
  2. Licensed Professional Counselor (LPC)
  3. Licensed Social Worker (LSW)
  4. Licensed Independent Social Worker (LISW)

5. Licensed Psychologist; or
  6. Non-denominational Spiritual Counselor, if employed by a qualified Medicaid home health or hospice agency.
- 8.504.6.E. Expressive therapy providers shall enroll individually with the fiscal agent or be employed by a qualified Medicaid home health or hospice agency.
1. Expressive Therapy services utilizing art or play therapy services shall be provided by individuals who meet the requirements for Therapeutic Life Limiting Illness Support providers and shall have at least one year of experience in the provision of art or play therapy to pediatric/adolescent clients.
  2. Expressive Therapy services utilizing music therapy shall be provided by individuals who hold a Bachelor's, Master's or Doctorate in Music Therapy, maintain certification from the Certification Board for Music Therapists, and have at least one year of experience in the provision of music therapy to pediatric/adolescent clients.
- 8.504.6.F. Massage Therapy providers shall have an approved registration and be in good standing with the Colorado Office of Massage Therapy Registration.
- 8.504.6.G. Palliative/Supportive Care services shall be provided by individuals whom are employed by or working under a formal contract with a qualified Medicaid hospice or home health agency.
- 8.504.6.H. Respite services shall be provided by individuals whom are employed by a qualified Medicaid home health, hospice or personal care agency.

#### **8.504.7 PROVIDER RESPONSIBILITIES**

- 8.504.7.A. HCBS-CLLI Providers shall have written policies and procedures regarding:
1. Recruiting, selecting, retaining and terminating employees.
  2. Responding to critical incidents, including accidents, suspicion of abuse, neglect or exploitation and criminal activity appropriately, including reporting such incidents pursuant to section 19-3-304 C.R.S. (2005).
- 8.504.7.B. CLLI Providers shall:
1. Ensure a client is not discontinued or refused services unless documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services.
  2. Ensure client records and documentation of services are made available at the request of the case manager.
  3. Ensure that adequate records are maintained.
    - a. Client records shall contain:
      - i. Name, address, phone number and other identifying information for the client and the client's parent(s) and/or legal guardian(s).
      - ii. Name, address and phone number of the SEP and the Case Manager.

- iii. Name, address and phone number of the client's primary physician.
- iv. Special health needs or conditions of the client.
- v. Documentation of the specific services provided which includes:
  - 1. Name of individual provider.
  - 2. The location for the delivery of services.
  - 3. Units of service.
  - 4. The date, month and year of services and, if applicable, the beginning and ending time of day.
  - 5. Documentation of any changes in the client's condition or needs, as well as documentation of action taken as a result of the changes.
  - 6. Financial records for all claims, including documentation of services as set forth at 10 C.C.R. 2505-10, Section 8.040.02.
- b. Personnel records for each employee shall contain:
  - i. Documentation of qualifications to provide rendered service including screening of employees in accordance with Section 8.130.35.
  - ii. Documentation of training.
  - iii. Documentation of supervision and performance evaluation.
  - iv. Documentation that an employee was informed of all policies and procedures as set forth in Section 8.504.7.B.
  - v. A copy of the employee's job description.
- 4. Ensure all care provided is coordinated with any other services the client is receiving.
  - a. Documentation of communication with the client's SEP case manager.
  - b. Documentation of communication/coordination with additional providers.

#### **8.504.8 PRIOR AUTHORIZATION REQUESTS**

- 8.504.8.A. The SEP case manager shall complete and submit a PAR form within one calendar month of determination of eligibility for the HCBS-CLLI waiver.
- 8.504.8.B. All units of service requested shall be listed on the Service Plan form.
- 8.504.8.C. The first date for which services can be authorized is the latest date of the following:
  - 1. The financial eligibility start date, as determined by the financial eligibility site.
  - 2. The assigned start date on the certification page of the ULTC Instrument.

3. The date, on which the client's parent(s) and/or legal guardian signs the Service Plan form or Intake form, as prescribed by the Department, agreeing to receive services.
- 8.504.8.D. The PAR shall not cover a period of time longer than the certification period assigned on the certification page of the UTLC Instrument.
- 8.504.8.E. The SEP case manager shall submit a revised PAR if a change in the Service Plan results in a change in services.
- 8.504.8.F. The revised Service Plan shall list the service being changed and state the reason for the change. Services on the Revised Service Plan, plus all services on the original Service Plan, shall be entered on the revised PAR.
- 8.504.8.G. Revisions to the Service Plan requested by providers after the end date on a PAR shall be disapproved.
- 8.504.8.H. A revised PAR shall not be submitted if services on the Service Plan are decreased, unless the services are being eliminated or reduced in order to add other services while maintaining cost-effectiveness.
- 8.504.8.I. If services are decreased without the client's parent(s) and/or legal guardian agreement, the SEP case manager shall notify the client's parent(s) and/or legal guardian of the adverse action and appeal rights using the LTC 803 form in accordance with the 10 day advance notice period.

#### **8.504.9 REIMBURSEMENT**

- 8.504.9.A. Providers shall be reimbursed at the lower of:
  1. Submitted charges; or
  2. A fee schedule as determined by the Department.

#### **8.506 CHILDREN'S HOME AND COMMUNITY BASED SERVICES WAIVER PROGRAM**

The Children's HCBS Waiver Program (formerly known as the Katie Beckett Waiver Program), is a waiver program for disabled children who are at risk of institutionalization in a hospital or nursing facility and who would not otherwise be eligible for Medicaid due to parental income and/or resources.

The services provided under this program serve as alternatives to Medicaid hospital or nursing facility services for children, birth through seventeen (17) years of age, and who meet the established minimum criteria for hospital or nursing facility level of care as determined by the Utilization Review Contractor. The services provided through this Children's HCBS Waiver Program shall include all state plan Medicaid benefits and case management services. These services, when deemed to be appropriate and adequate by the child's physician, shall be provided in the home or community. The Children's HCBS Waiver Program shall be administered by the Colorado Department of Health Care Policy and Financing (the State).

**8.506.10 Eligibility**

**8.506.11 Program Eligibility**

A. Services shall be provided to children who meet all the following program eligibility requirements:

1. The child has not reached his/her eighteenth (18th) birthday; and
2. The child is living at home with parent(s) or guardian and is at risk of institutional placement, as determined by the Utilization Review Contractor; or is in an acute care hospital or nursing facility and can be returned home and safely cared for in the home, and the child's parent(s) or guardian choose to receive services in the home or community instead of an institution, with the provision of Children's HCBS Waiver Program services; and
3. The child's physician certifies that the quality and quantity of services and supports identified in the Care Plan are sufficient to meet the needs of the child in the home setting; and
4. The Utilization Review Contractor certifies, through the ULTC-100 (Long Term Care Client Assessment Certification and Transfer) form, in conjunction with the Pediatric Functional Assessment Instrument, that the child meets the established minimum criteria for hospital or nursing facility level of care; and
5. The child, due to parental income and/or resources, is not otherwise eligible for Medicaid benefits or enrolled in other Medicaid waiver programs; and
6. Enrollment of a child is cost effective to the Medicaid Program, as determined by the State; and,
7. The child receives a waiver service on a monthly basis.

**8.506.12 Financial Eligibility**

Services shall be provided to children who meet all the following financial eligibility requirements:

- A. Parental income and/or resources will result in the child being ineligible for SSI; and
- B. The income of the child does not exceed 300% of the current maximum SSI standard maintenance allowance; and
- C. The resources of the child do not exceed the maximum SSI allowance; and
- D. Trusts shall meet criteria in accordance with procedures found in the Medical Assistance Eligibility, SSI Financial Eligibility Requirements, Consideration of Trusts In Determining Medicaid Eligibility, Section 8.110.52 of this manual.

**8.506.13            Repealed, effective August 1, 2005**

**8.506.2 Waiting List Guidelines**

- A.        When an opening becomes available:
1.        Children who are determined by the Utilization Review Contractor to have an exceptional or immediate medical need shall be given priority based on medical need and shall be placed at the top of the waiting list; The Utilization Review Contractor shall be responsible for reviewing the initial request, and should an immediate medical need be identified, conduct the final review to determine if the client is appropriate for placement on the waiting list.
  2.        Exceptional or immediate medical need means a life-threatening disease/illness or medical condition which requires acute medical intervention, as determined by the Utilization Review Contractor and such medical treatment is not considered to be experimental, and the child meets all other relevant eligibility criteria.
  3.        Children who are not determined to have an exceptional or immediate medical need shall be placed on a waiting list in the order in which the application is received by the Utilization Review Contractor.
- The first child on the waiting list shall be reassessed for medical and financial eligibility and, if determined to still be eligible, assigned the next available opening.
- B.        The Utilization Review Contractor is responsible for maintaining and monitoring the waiting list
- C.        The Utilization Review Contractor is responsible for noticing the case management agency that the child has been placed on the waiting list.
- D.        The Utilization Review Contractor shall assure that no more than 630 clients are served on the Program at any one time state-wide.

**8.506.3 Roles and Responsibilities of the County Department**

The County Department shall:

- A.        Assist in completing an Application for Assistance;
- B.        Obtain from the child's parent(s) or guardian an SSI Denial Letter which they have obtained from the Social Security Administration, District Office Responsible for making the determination which documents that the parent's income and/or resources would render the child ineligible for Medicaid if it were deemed available to him/her;
- C.        Certify that the child's income and/or resources does not exceed 300% of SSI;
- D.        Assist in completing an MS-10 (Recipient Insurance Information To Be Used By The Colorado Medicaid Program Form);
- E.        Ensure the parent(s) or guardian are informed of all state plan Medicaid benefits available to the child;
- F.        Provide a list of certified case management agencies; and

- G. Determine and notify the parent(s) or guardian and case management agency of changes in the child's income and/or relevant family income, which might affect continued program eligibility.

#### **8.506.4 Documentation**

- A. In the event the County Department is able to provide the above documentation to recommend assessment, the following will occur:
  - 1. Upon recommendation of assessment, the child's parent(s) or guardian must inform the County Department of the name of the certified Children's HCBS Waiver Program case management agency of their choice so the County Department can forward the assessment.
  - 2. The County Department shall forward the assessment within fifteen (15) working days to the certified Children's HCBS Waiver Program case management agency of choice.
  - 3. The County Department shall notify the case manager within five (5) working days of any changes in the child's income, which might affect the eligibility status.
- B. In the event the County Department is unable to obtain the above documentation to recommend assessment, the following will occur:
  - 1. The County Department shall deny the child's request; and
  - 2. The County Department shall notify the child's parent(s) or guardian, in writing, of the denial and right to appeal in accordance with procedures found in the Colorado Department of Human Services Income Maintenance Staff Manual (9 CCR 2503-1), Administrative Procedures Section 3.830.

#### **8.506.5 Case Management**

Case management is assistance provided by a case management agency on behalf of an eligible child, which includes referral of needed Medicaid services and supports, including In-Home Support Services, to enable the child to remain in his/her community-based setting.

Case management agency is a public, private, or private for non-profit agency which is certified by the State in accordance with procedures found in the General Certification Standards for Case Management Agencies, Section 8.506.97, of the Children's HCBS Waiver Program rules, to provide services throughout the State.

##### **8.506.51 Roles and Responsibilities of the Case Management Agency**

Case management agencies must follow requirements and regulations in accordance with state statutes on Confidentiality of Information at 26-1-114, C.R.S., as amended.

The case management agency shall:

- A. Inform the parent(s) or guardian of the purpose of the Children's HCBS Waiver Program, the eligibility process, documentation required, and the necessary agencies to contact;
- B. Ensure the parent(s) or guardian are informed of In-Home Support Services and all state plan Medicaid benefits available to the child;

- C. Inform the parent(s) or guardian of the freedom of choice between institutional and home and community based services (Individual Choice Statement). A signature is required on this State designated form
- D. Assist in completing the identification information on the ULTC-100.2 form; Submit the ULTC-100.2 to the Utilization Review Contractor to determine whether the level of care criteria is met;
- E. Begin assessment activities within ten (10) calendar days upon receipt of the referral

Assess child's health and social needs to determine whether or not program services are both appropriate and cost effective;

- E. Verify that the child meets the appropriate level of care (hospital or nursing facility) criteria as determined by the Utilization Review Contractor;
- F. Arrange for and complete at least one (1) face-to-face contact with the child, or document reason(s) why such contact was not possible within thirty (30) calendar days of receipt of the referral;
- G. Initiate a new level of care review by telephoning the Utilization Review Contractor should the face-to-face contact indicate that the child is more independent/functional than is indicated by the information on the certified ULTC-100.2, or that the child's medical condition has improved;
- H. Notify the child's parent(s) or guardian and arrange for the development of the Care Plan and Prior Approval Cost Containment Record within thirty (30) calendar days;
- I. Develop a Prior Approval Cost Containment Record form of services and projected costs. The case manager must identify costs as part of the Care Plan and the Cost Containment Record to be submitted to the State for review. The State shall be responsible for ensuring that, on average, each Care Plan is within the level of care State cost containment requirements. Approval of the Cost Containment Record form does not constitute automatic Medicaid reimbursement for Authorized Services identified. State An approval only makes sure that the cost of services does not exceed the equivalent cost of appropriate institutional care;
- J. Develop and submit the In-Home Support Services Authorization as described in §8.552.3, In-Home Support Services, Program Eligibility;
- K. Submit a copy of the approved Enrollment Form to the County Department for activation of a Medicaid State Identification Number;
- L. Notify the child's parent(s) or guardian within ten (10) calendar days that the child has been placed on the waiting list;
- M. Document whether and how the services provided are meeting the child's needs, as defined in the Care Plan, and ensure that the child continues to meet cost containment criteria;
- N. Evaluate effectiveness by monitoring services provided to the child in meeting the needs stated in the Care Plan. This monitoring shall include conducting child, parent(s) or guardian, and provider interviews and reviewing cost data and any written reports received. Such evaluations shall be performed at the discretion of the case manager, but no less frequently than quarterly;
- O. Complete a reassessment of each child, at a minimum, every twelve (12) months before the end of the length of stay assigned by the Utilization Review Contractor. A ULTC-100.2 may be valid for no more than a 12 month period.

- P. Submit a care Plan and Prior Approval Cost Containment Record to the State demonstrating continued cost-effectiveness whenever a change in the Care Plan results in an increase or change in the services to be provided.

#### **8.506.6 Roles and Responsibilities of the Utilization Review Contractor**

The Utilization Review Contractor shall:

- A. Determine, at admission, that the level of care criteria is met in accordance with 8.506.11,A,4.;
- B. For continued stay review, renew or deny child assessment based on a twelve (12) month reassessment process;
- C. Maintain and monitor the waiting list (Utilization Review Contractor only);
- D. Notify case management agency when there is a Program opening;
- E. Notify the child's parents) or guardian, the County Department, case management agency, and the State, in writing, if the child does not require the level of care provided in an institution, and of the child's right to an appeal.

#### **8.506.7 Care Plan**

##### **8.506.71 Definition**

The Care Plan is a document that identifies how services and supplies provided will meet the child's needs.

The supplies that are identified are described in quantifiable terms. All service required to meet these needs in the home or community shall be listed. The purpose and the expected outcome of the services shall be included in the Care Plan.

##### **8.506.72 Requirements of Care Plan**

- A. The Care Plan shall consist of a Needs Section, Plan Section, and Purpose Section.
  - 1. Needs Section shall identify and list specific (medical) conditions and needs for which services, supplies, and providers are required to maintain the child in the home or community. The areas of need shall include, but not be limited to, the following:
    - a. medical needs;
    - b. functional needs; and
    - c. home/environmental needs.
  - 2. Plan Section shall identify and quantify all services and suppliers required to meet the needs of the child, including case management and In-Home Support Services. The plan shall include a process, developed in coordination with the child's family and the child's physician, by which the child may receive necessary care if the client's family or care provider is unavailable due to an emergency situation or to unforeseen circumstances. The service listing shall identify payment sources (i.e., family or informal supports, parental out-of pocket expenditures, private insurance, case management costs).

3. Purpose Section shall be a statement of a measurable goal that the case manager, child's parent(s) or guardian and service providers expect to obtain during the period covered by the Care Plan.
- B. The case manager shall send a copy of the Care Plan and Signature Page to the parent(s) or guardian. The parent(s) or guardian must review and approve the Care Plan. The parent(s) or guardian must sign and date the Signature Page and return it to the case manager.
- C. The case manager shall send a copy of the Care Plan and Signature Page to the child's physician. The physician must review the Care Plan and attest that, in his/her opinion, the quantity and quality of care planned for the child in the home or community is sufficient for the child's needs, and that such care/services can be safely and adequately provided by the caregiver. The physician must sign and date the Signature Page and return it to the case manager.
- D. If a child is enrolled in more than one children's program and case management services are an authorized benefit, the case management agencies shall collaborate and specify in the Care Plan their unduplicated roles, responsibilities, and the services to be provided by each case management agency.

**5.506.73 Revisions to Care Plan and Prior Approval Cost Containment Record**

- A. When a change results in an increase in the cost of services/supplies being provided, the case manager may seek telephone approval from the State. Approval is contingent upon submission of a revised Care Plan, and Prior Approval Cost Containment Record and Authorization for In-Home Support Services within ten (10) working days of telephone approval.
- B. When a change results in a decrease in the cost of services/supplies being provided, no revision to the Care Plan or Prior Approval Cost Containment Record is necessary.

**8.506.80 Cost Containment**

**8.506.81 Definition**

The Prior Approval Cost Containment Record is a document that identifies the cost effective alternative compared to the equivalent cost of appropriate institutional (hospital or nursing facility) level of care.

**8.506.82 State Calculation of Cost Containment Amount**

For each level of care, the cost to Medicaid, on a per capita basis, is equal to or less than institutional (hospital or nursing facility) costs.

The State shall annually compute the equivalent monthly cost of nursing facility care in accordance with Section 8.485.100, HCBS-EBD, State Calculation of Cost Containment Amount.

The average daily per capita expenditures for acute care services to institutional (hospitalized) children shall be the per diem amount as reported on the most recent approved HCFA 372 report. This figure shall be computed annually to be effective January 1 for the current calendar year.

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**8.506.83 Requirements of Cost Containment Record**

- A. The Cost Containment Record shall include date and signature of the case manager.
- B. The case manager shall determine that the total costs for services are less man or equivalent to the cost of appropriate institutional care, as calculated by the State, utilizing the Prior Approval Cost Containment Record. Such costs to implement the Care Plan shall include case management services.

**8.506.84 Revisions to Cost Containment Record**

The State shall approve or disapprove the revised maximum authorization for services within thirty (30) calendar days of receipt of the revised Prior Approval Cost Containment Record.

**8.506.9 Program Enrollment Documentation**

- A. Completed enrollment forms shall be submitted to the State within thirty (30) calendar days of receipt of the certified ULTC-100.2 form by the case manager from the Utilization Review Contractor indicating that an opening has been designated for the child. A complete packet includes:
  - 1. Enrollment Form;
  - 2. Individual Choice Statement/Signature Page;
  - 3. Care Plan;
  - 3. Prior Approval Cost Containment Record;
  - 4. SSI Denial Letter which documents that the child is ineligible for Medicaid due to parental income and/or resources; and
  - 6. Utilization Review Contractor's certified ULTC-100.2 form; and
  - 7. In-Home Support Services Authorization.
- B. After review by the State, if all requirements are met, copies of the Enrollment Form and Prior Approval Cost Containment Record will be returned to the case manager with the authorization signatures from the State.
- C. The effective date/enrollment date shall be no earlier than the start date on the Utilization Review Contractor certified ULTC-100.2 form. A certified ULTC-100 form does not constitute program enrollment. No services, including case management, may be authorized prior to the date of Program enrollment.
- D. An Enrollment Form, Care Plan, Individual Choice Statement/Signature Page, ULTC-100.2 and Prior Approval Cost Containment Record, and In-Home Support Services Authorization may be valid for no more than a twelve (12) month period.

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**8.506.91 Maintenance of Case Records**

- A. The case manager must create and maintain a case record for each child referred to the Children's HCBS Waiver Program. The case record must include:
1. Name, address, date of birth, phone number and any other identifying information about the child;
  2. Documentation that eligibility for Medicaid has been determined by the County Department;
  3. Documentation of the Utilization Review Contractor's level of care determination (ULTC-100); Enrollment Form, initial assessment materials, including the Individual Choice Statement/Signature Page, documentation of the referral, Care Plan, Prior Approval Cost Containment Record, and SSI Denial Letter;
  4. Documentation of case management;
  5. Case activity, including documentation of monitoring. All services, including case management, shall be evaluated as to effectiveness in reaching the goal of the Care Plan; and
  6. Whenever the case manager fails to comply with any regulation for case management services for the Children's HCBS Waiver Program, due to circumstances outside the case manager's control, the circumstances must be documented in the case record.

**8.506.92 Monitoring and Coordinating**

- A. Case managers shall document whether and how the services provided are meeting the child's needs, as defined in the Care plan, and ensure that the child continues to meet the cost containment criteria. Monitoring shall include conducting child, parent(s) or guardian and provider interviews and reviewing cost data and any written reports received from service providers. Case manager shall have, at a minimum, telephone contact with the child's parent(s) or guardian on a monthly basis. These contacts must be documented in the case file.
- B. Case managers shall be responsible for coordinating information with the parent(s) or guardian, child's physician, service providers, County Department, Community Centered Board, and others, as necessary, to ensure the effective delivery of services and support for the child.

**8.506.93 Reassessment**

- A. Reassessments are initiated by the case management agency, at a minimum, every twelve (12) months before the end of the length of stay on the ULTC 1002 form following Program Guidelines except for the Waiting List Guidelines outlined in Section 8.506.2. The following documents shall be renewed/revised and sent to the State no later than fifteen (15) working days prior to the expiration of the current ULTC 100.2 form:
1. Enrollment form;
  2. ULTC 100.2 form;
  3. Care Plan;
  4. Prior Approval Cost Containment Record; and

5. Individual Choice Statement/Signature Page.
- B. The case manager may initiate a level of care review more frequently, when warranted by significant changes in the child's situation.
- C. The case manager must document verification of the child's Medicaid eligibility with the County Department. If the child is Medicaid eligible and meets the level of care criteria, the case manager shall conduct a reassessment in accordance with this section.
- D. If the child is not Medicaid eligible and/or does not meet the level of care criteria, the case manager shall refer the child to the County Department or other community agencies for possible services, as appropriate, within ten (10) working days of notification of Children's HCBS Waiver Program denial.

**8.506.94 Case Management Agency/Intercounty Transfer Procedures**

- A. The sending case management agency shall:
  1. Contact the receiving case management agency by telephone and provide notification that, the child is planning to transfer (per parent(s) or guardian choice); negotiate an appropriate transfer date, and forward case file to the receiving case Rev eff management agency;
  2. Forward copies of pertinent records and forms to the receiving case management agency within five (5) working days of the child's transfer;
  3. Notify the State and the Utilization Review Contractor of the transfer within thirty (30) calendar days, using a State designated form, indicating effective date, name of new case management agency, and type of transfer,
  4. If an intercounty transfer, notify the income maintenance technician to follow intercounty transfer procedures in accordance with the Colorado Department of Human Services, Income Maintenance Staff Manual (9 CCR 2503-1), Intercounty Transfer Section 3.140.3.
- B. The receiving case management agency shall:
  1. Conduct a face-to-face visit with the child within ten (10) working days of the child's transfer;
  2. Review and revise the Care Plan and the Prior Approval Cost Containment Record and change or coordinate services and providers as necessary.

**8.506.95 Termination**

- A. The child shall be terminated from the Program when one of the following occurs:
  1. The child no longer meets the level of care criteria for hospital or nursing facility placement as determined by the Utilization Review Contractor;
  2. The physician can no longer certify that the quality and quantity of services and supports provided are able to meet the needs of the child in the home or community;
  3. The child's own income and/or resources put him/her in excess of the allowable 300% of the SSI standard maintenance allowance or SSI personal assets limit;

4. The parent's income and/or resources decrease, and the child becomes Medicaid eligible without the use of the Children's HCBS Waiver Program;
  5. The cost of services and supports provided in the home or community exceed the cost effectiveness guidelines of the Program;
  6. Eighteen (18) years of age;
  7. The parent(s) or guardian choose hospital or nursing facility services rather than the Children's HCBS Waiver Program services;
  8. The family chooses to discontinue the Children's HCBS Waiver Program (e.g., moves out of state, no longer needs the Medicaid coverage); or,
  9. The child expires.
- B. The case manager shall notify all providers listed on the Care Plan within ten (10) working days of termination;
- C. The case manager shall notify the State, Utilization Review Contractor, and the County Department, within ten (10) calendar days of termination, on a State designated form;
- D. The case manager shall provide appropriate referrals to other community agencies, including the County Department, if the child needs continued assistance to remain in the home or community, within five (5) working days of written notice of termination;
- E. The reason for termination and all agency referrals shall be documented in the child's case record;
- F. The case manager shall inform the child's parent(s) or guardian in writing on a State designated form of the termination from the Children's HCBS Waiver Program, ten (10) calendar days before the effective date of the termination.

**8.506.96 Client Rights**

- A. The case manager shall inform the child's parent(s) or guardian of the client's rights in accordance with procedures found in the HCBS-EBD, Client Rights Section, 8.485.300.
- B. Children denied Program enrollment shall be informed of their appeal rights in accordance with procedures found in the Recipient Appeals Protocols/Process, Section 8.057 of this manual.

**8.506.97 General Certification Standards for Case Management Agencies**

- A. Certification standards for the Children's HCBS Waiver Program case management agencies shall be the same as those prescribed for provider agencies in accordance with procedures found in the HCBS-EBD, General Certification Process Section 8.487.20.
- B. Case management agencies operated by Community Centered Boards shall also meet the General Provisions set forth in the Community Centered Boards Section of the Department of Human Services, Developmental Disabilities Services, Rules and Regulations, Chapter 2 (2 CCR 503-1).

- C. Case management agencies operated by Community Centered Boards shall also meet all standards in the Case Management Services Section of the Department of Human Services, Developmental Disabilities Services, Rules and Regulations, Chapter 5 (2 CCR 503-1).D. Case management agencies are required to apply specifically for certification as a Children's HCBS Waiver Program provider and have a Provider Agreement with the State.
- E. Case management agencies shall not discontinue or refuse services to a client unless documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services.

**8.506.98 Monitoring Process For Case Management Agencies**

Case management agencies are subject to inspection, review and audit by the State Department.

**8.506.99 Termination or Non-Renewal of Provider Agreements**

Termination or non-renewal of Provider Agreements shall be in accordant: with procedures found in the HCBS-EBD, Termination or Non-Renewal of Provider Agreements Section 8.487.70.

**8.506.100 Reimbursement For Case Management Services**

Case management agencies shall bill the fiscal agent and shall be reimbursed for case management activity in fifteen minute increments.

**8.508 CHILDREN'S HABILITATION RESIDENTIAL PROGRAM**

The Children's Habilitation Residential Program is a residential services and support program for children and youth who are developmentally disabled as defined in Section 27-10.5-102 (11), C.R.S. (See 8.508.170, E.) Children under the age of five who are developmentally delayed are included only when their developmental delay is accompanied by significant medical and/or behavioral needs. The children are placed through Colorado County Departments of Social/Human Services. The children are at risk of institutionalization and the program serves as an alternative to placement to Intermediate Care Facilities for the Mentally Retarded (ICF/MR).

The services provided through this program serve as an alternative to ICF/MR placement for children birth to twenty-one years of age who meet the eligibility criteria and the Level of Need Screening Guidelines. The services provided through the Children's Habilitation Residential Program (CHRP) shall be limited to:

Self-Advocacy Training

Independent Living Training

Cognitive Services

Communication Services

Counseling and Therapeutic Services

Personal Care Services

Emergency Assistance Training

Community Connection Services

Travel Services

Supervision Services

Respite Services

when deemed to be appropriate and adequate by the child's physician, and these services shall be provided in the community, as available.

CHRP services for children with developmental disabilities shall be provided in accordance with these rules and regulations.

#### **8.508.10 PROGRAM ADMINISTRATION**

- A. The Children's Habilitation Residential Service Program for children with developmental disabilities is administered by the Colorado Department of Human Services (CDHS), Division of Child Welfare under the oversight of the Department of Health Care Policy and Financing.
- B. CHRP services do not constitute an entitlement to services, from either the Department of Health Care Policy and Financing or the Department of Human Services.
- C. CHRP services are subject to approval of a waiver under Section 1915c of the Social Security Act by the Center for Medicare and Medicaid Services.
- D. CHRP services are subject to annual appropriations by the Colorado General Assembly.
- E. The Department of Human Services, Division of Child Welfare shall limit the utilization of the CHRP based on:
  - 1. The federally approved capacity of the waiver;
  - 2. Cost effectiveness (see Section 8.508.80); and
  - 3. Within the total appropriation limitations when enrollment is, projected to exceed spending authority.

#### **8.508.20 PROGRAM PROVISIONS**

Colorado has authority to provide the following services under the CHRP:

- A. CHRP services are provided as an alternative to institutional placement for children with developmental disabilities and are limited to self-advocacy training, independent living training, cognitive services, communication services, counseling and therapeutic services, personal care services, emergency assistance training, community connection services, travel services, and supervision services.
- B. Children eligible for services under the CHRP waiver are eligible for all other Medicaid services for which they qualify and must first access all benefits available under the regular Medicaid State Plan and/or Medicaid EPSDT (Early and Periodic Screening, Diagnosis and Treatment) coverage prior to accessing funding for those same services under the CHRP.
- C. Case management services will be provided by the county department as an administrative activity and include:
  - 1. Assessment of the individual's needs to determine if CHRP services are appropriate;

2. Completion of the Individualized Plan (IP); and
  3. Submission of the Individualized Plan to the Colorado Department of Human Services, Division of Child Welfare Services, for review and approval for CHRP waiver services. These Individualized Plans are also subject to review by the Department of Health Care Policy and Financing.
- D. The individual receiving services and his/her family or guardian and placing County Department of Social/Human Services are responsible for participating with the services provider in:
1. Developing the Individualized Plan;
  2. Cooperating with implementation of the service plan;
  3. Choosing to receive services through the CHRP waiver.

**8.508.30 ELIGIBILITY**

- A. Services shall be provided to children with developmental disabilities who meet all of the following program eligibility requirements:
1. The child shall be determined eligible for developmental disabilities services by the appropriate Community Centered Board (CCB).
  2. The child is a Colorado child placed in foster care through a Colorado County Department of Social/Human Services by court order. This includes children placed through a voluntary agreement with the Colorado County Department of Social/Human Services while awaiting the court to take jurisdiction.
  3. Waiver services to individuals age eighteen to 21 will be provided if the individual is in a court-ordered foster care placement through the County Department of Social/Human Services and the court order is in effect when the child reaches his/her eighteenth birthday.
  4. The child is at risk of or has been reported/found to be abused and/or neglected or dependent, as defined in 19-3-102, C.R.S.
  5. The child shall meet the out-of-home placement criteria as defined in Section 7.304.3, Colorado Department of Human Services Social Services Staff Manual (12 CCR 2509-4).
  6. The child shall meet the Target Group for Program Areas 4, 5, or 6 as outlined in 7.201.2, 7.202.2 and 7.203.21, Colorado Department of Human Services Staff Manual (12 CCR 2509-3).
  7. The Level of Need checklist documents that the child/youth is in need of the services available through the waiver.
  8. The CDHS CHRP waiver administrator verifies through the CHRP waiver eligibility process, including the ULTC 100 and LTC 102 - CHRP that the child meets the established minimum eligibility criteria for ICF/MR placement.
  9. The child's eligibility for Supplementary Security Income (SSI) benefits is established.

10. The income of the child does not exceed 300% of the current maximum SSI standard maintenance allowance.
  11. The resources of the child do not exceed the maximum SSI allowance.
  12. The child's eligibility for Colorado Medicaid is established and reported in the Child Welfare automated system.
  13. Enrollment of a child in the CHRP will result in an overall savings when compared to the ICF/MR cost as determined by the State.
  14. The child receives at least one waiver service each month.
- B. Pursuant to the terms of the Children's Residential Habilitation Program (CHRP), the number of individuals who may be served each year in the CHRP is based on criteria found in Section 8.508.10(E).

**8.508.40 WAITING LIST PROTOCOL**

Children determined eligible for services under the CHRP which are not immediately available within the federally approved capacity limits of the waiver shall be eligible for placement on a waiting list in the order in which the eligible application was received by the CDHS CHRP waiver administrator. Guardians of applicant children denied program enrollment shall be informed of their appeal rights in accordance with Section 8.057 of this Staff Manual.

When an opening becomes available, the first child on the waiting list shall be reassessed for eligibility by the CDHS CHRP waiver administrator and, if determined to still be eligible, assigned that opening.

**8.508.50 RESPONSIBILITIES OF THE COUNTY DEPARTMENTS OF SOCIAL SERVICES**

The County Department of Social/Human Services shall:

- A. Ensure that the eligibility requirements as defined in 8.503.30, A, 1 through 8 are met;
- B. Submit eligibility applications to the CDHS CHRP waiver administrator with a request for enrollment or placement on the waiting list.
- C. Provide services to children in out-of-home placement and their families as required in CDHS Social Services Staff Manual (12 CCR 2509-4, 7.300 Child Welfare Services).
- D. Determine whether a familial relationship as defined in 27-10.5-102, C.R.S. exists, between the licensed or certified provider and the child.
- E. Determine prior to referring to CHRP, that the extraordinary service, needs of the child exceed the maximum reimbursement the County Department of Social/Human Services is able to negotiate based on the child's individualized needs as authorized in 26-5-104(6), C.R.S. The County Department of Social/Human Services must negotiate based on the child's need and the service provider's ability to meet the needs.
- F. Exhaust appropriate community services available to the children before requesting similar services from the waiver.

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**8.508.60 RESPONSIBILITIES OF THE COMMUNITY CENTERED BOARD**

The Community Centered Board (CCB) shall make a determination of eligibility for developmental disabilities services for any child being considered for enrollment in the Children's Habilitation Residential Program who is referred by a County Department of Social/Human Services.

**8.508.70 INDIVIDUALIZED PLAN (IP)**

A written IP describes the medical and other services to be furnished, their frequency, and the type of provider who will furnish each.

**8.508.71 CONTENT OF THE INDIVIDUALIZED PLAN**

- A. The Individualized Plan (IP) shall consist of a Child's Needs Section, a Plan Section, and an Expected Outcomes Section.
  - 1. Child's Needs Section shall identify and list specific conditions (needs) for which services and supports are needed to maintain the child in the community setting. The areas of needs shall contain and not be limited to:
    - a. medical needs;
    - b. functional needs; and
    - c. safety needs.
  - 2. Plan Section shall:
    - a. Identify and quantify all services and supports to be provided to meet the child's needs; and
    - b. Identify the name or type of provider of services;
    - c. Identify payment responsibilities for the services, e. g., Parent, County Department of Social/Human Services, CHRP.
  - 3. Expected Outcomes Section shall be a statement of measurable objectives expected to be obtained during the period covered by the Individualized Plan.
- B. The Individualized Plan shall include the date and signatures of the provider, the guardian, the County Department of Social/Human Services, and the child when appropriate.
- C. The provider shall calculate the total costs to the Children's Habilitation Residential Program, utilizing Individualized Plan document The costs to implement the Individualized Plan shall not include room, board, and personal needs allowance.

**8.508.72 REVISIONS TO INDIVIDUALIZED PLAN**

- A. When a change in the Individualized Plan results in an increase in the costs of services/supports being provided, the County Department of Social Services may seek telephone approval from the Department of Human Services, Division of Child Welfare Services. Final authorization is contingent upon submission and approval of a revised Individualized Plan to the Division of Child Welfare Services within ten working days. Continued cost effectiveness must be demonstrated when there is an increase in costs.

- B. When a change results in a decrease in the costs of CHRP services, a revised Individualized Plan must be submitted to the CDHS, Division of Child Welfare Services within ten working days of the change.
- C. CDHS shall approve or disapprove the revised maximum authorization of services within thirty (30) calendar days of receipt of the revised IP. If there is an emergency need, the provider shall telephone the CDHS, Division of Child Welfare Services and request an expedited review.

**8.508.73 REIMBURSEMENT**

Only services identified on the Individualized Plan are available for reimbursement under CHRP. Reimbursement will be made only to licensed or certified providers, as defined in Section 8.508.160 and services will be reimbursed on a daily rate basis through the Medical Management Information System (MMIS) for the habilitative services. Medicaid shall not pay for room and board. The equivalent of the full federal SSI benefit will provide for the room, board and personal needs allowance. Education costs will be reimbursed through the Department of Education and not by the Colorado Department of Human Services or Medicaid.

**8.508.80 COST CONTAINMENT**

Cost containment is to ensure, on an individual child basis, that the provision of CHRP services is a cost effective alternative compared to the equivalent cost of appropriate ICF/MR institutional level of care. The provider must identify costs as part of each Individualized Plan to be submitted to the CDHS for review. The State shall be responsible for ensuring that, on average, each plan is within the federally approved cost containment requirements of the waiver. Children enrolled in the CHRP shall continue to meet the cost containment criteria during subsequent periods of eligibility.

- A. The completed enrollment forms shall be submitted to the County Department of Social/Human Services CHRP waiver administrator. A complete packet includes a copy of the:
  - 1. Individual Choice Statement.
  - 2. Individualized Plan; within 30 calendar days.
  - 3. Level of Need document.
  - 4. ULTC 100.2 form.
  - 5. Request for Enrollment.
- B. The county department CHRP waiver administrator will immediately submit enrollment documentation to the CDHS CHRP waiver administrator for verification of eligibility. A complete packet includes a copy of the:
  - 1. ULTC 100.2; and
  - 2. Request for Enrollment; and
  - 3. Individual Choice Statement
  - 4. Individualized Plan within 45 calendar days.
- C. The effective date/enrollment date shall be no earlier than the start date on the CDHS CHRP waiver administrator's ULTC 100.2 verification form. No services may be authorized prior to the date of enrollment

- D. An Individualized Plan and ULTC 100.2 verification may be valid for no more than a twelve (12) month period.

**8.508.100 SERVICE DESCRIPTIONS**

- A. Self-advocacy training may include training in expressing personal preferences, self-representation, individual rights and making increasingly responsible choices. It may also include team building with volunteers, professionals, and/or family members to examine changing roles as service models shift from the traditional supervision/control model to a self-actualization model.
- B. Independent living training may include training in personal care, household services, child and infant care (for parents themselves who are developmentally disabled), and communication skills such as using the telephone, using sign language, facilitated communication, reading, and letter writing.
- C. Cognitive services may include training with money management and personal finances, planning and decision-making.
- D. Communication services may include professional training and assistance to maintain or improve communication skills. It may include a professional or individual who provides interpretation and facilitated communication services.
- E. Counseling and therapeutic services may include individual and/or group counseling, behavioral or other therapeutic interventions directed at increasing the overall effective functioning of an individual.
- F. Personal care services may include any personal care functions requiring training/assistance by an RN, LPN, or Certified Nurse Aide. It may also include operating, maintaining, and training in the use of medical equipment.
- G. Emergency assistance training includes developing responses in case of emergencies, prevention planning and training in the use of equipment or technologies used to access emergency response systems.
- H. Community connection services may explore community services available to the individual, and develop methods to access additional services/supports/activities desired by the individual. Community connection services can provide the individual with the resources to participate in the activities and functions of the community desired and chosen by the individual receiving the services. Typically, these will be the same type of activities available and desired by the general population.
- I. Travel services may include providing, arranging, transporting, or accompanying a person with developmental disabilities to services and supports identified in the IP.
- J. Supervision services may include a person safeguarding an individual with developmental disabilities and/or utilizing technology for the same purpose.
- K. Respite Services: Services that are provided to an eligible client on a short term basis because of the absence or need for relief of those persons normally providing the care. Respite services may be approved for up to 30 days a calendar year for each eligible client.

- L. Payments for residential habilitation are not made for room and board, the cost of facility maintenance, upkeep, and improvement, other than such costs for modifications or adaptations to a facility required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code.
- M. Only those services not available under Medicaid EPSDT, Medicaid State plan benefits, third party liability coverage, or other state funded programs, services or supports are available through the Children's Habilitation Residential Program (CHRP) Waiver. Appropriate community services must be exhausted before requesting similar services from the waiver. The CHRP Waiver does not reimburse services that are the responsibility of the Colorado Department of Education.

**8.508.110 MAINTENANCE OF CASE RECORDS**

- A. Copies of the ULTC 100.2 shall be maintained by the County Department of Social/Human Services and the CDHS Division of Child Welfare Services. In addition, the County Department of Social/Human Services shall maintain a copy of the Individualized Plan and Level of Need Checklist for the Children's Habilitation Residential Program. A copy of the ULTC 100.2 verification form shall be maintained by the provider.
- B. Copies of evaluations and re-evaluations shall be maintained for a minimum period of three years by those cited in 8.508.110, A, with the exception of providers who are required to maintain records for a period of six years from the date services are rendered.
- C. Confidentiality of records shall be maintained in accordance with Section 8.100.8 of this manual, as well as with CDHS Social Services Staff Manual, Section 7.000.72 (12 CCR 2509-1).
- D. Documentation of case activity shall also meet requirements of CDHS, Division of Child Welfare Services as outlined in the CDHS Social Services Staff Manual, Section 7.000.72 (12 CCR 2509-1).

**8.508.120 REDETERMINATION OF ELIGIBILITY**

Redetermination of eligibility for CHRP services shall be made as follows:

- A. At least annually and one (1) month prior to the expiration of the ULTC 100.2 form, the County Department of Social/Human Services CHRP waiver administrator shall ensure that a new ULTC 100.2 form is submitted to the CDHS CHRP waiver administrator for verification if there is no significant change in the child's condition.
- B. At least annually, the County Department of Social/Human Services shall verify the child's continued Medicaid eligibility.

**8.508.121 REASSESSMENT**

A reassessment to redetermine or confirm a child's eligibility for the CHRP Program must be conducted, at a minimum, every twelve (12) months and the following shall be renewed/revised and submitted to the county department CHRP waiver administrator no later than one (1) month prior to the expiration of the previous/current ULTC 100.2 verification form:

- A. Individualized Plan
- B. Copy of the Level of Need worksheet
- C. Copy of the ULTC 100.2

- D. The county department CHRP waiver administrator shall submit a copy of the Individualized Plan to the CDHS CHRP waiver administrator.

**8.508.130 TRANSFER PROCEDURES BETWEEN COUNTY DEPARTMENTS OF SOCIAL SERVICES**

Transfer of cases shall occur in accordance with CDHS Social Services Staff Manual, Section 7.000.6, D (12 CCR 2509-1).

**8.508.140 DISCONTINUATION FROM CHRP**

- A. A child shall be discontinued from the CHRP Program when one of the following occurs:
  - 1. The child no longer meets one of the criteria as outlined in Section 8.508.30 of these rules;
  - 2. The costs of services and supports provided in the community exceed the cost effectiveness criteria of the program;
  - 3. The child enrolls in another HCBS waiver program or is admitted for a long-term stay in an institution (e.g., hospital); or
  - 4. The child reaches his/her 21st birthday or transitions into DDS Adult Residential Services.
- B. The County Department of Social/Human Services shall inform the child's parent(s) or guardian in writing on a form provided by the State of discontinuation from the CHRP Program, at least ten (10) calendar days before the effective date of discontinuation. The child's parent or guardian shall also be informed of his/her appeal rights as contained in the Home and Community Based Services - Client's Rights section of this Staff Manual. The reason and regulation supporting the discontinuation shall be clearly identified on this notice.
- C. Whenever a child is discontinued from the CHRP, the County Department of Social/Human Services shall notify all providers listed on the IP within ten (10) calendar days prior to the effective date of discontinuation; and shall notify the CDHS Division of Child Welfare Services within ten (10) calendar days, on a State designed form.
- D. The reason for discontinuation shall be documented in the child's case record.

**8.508.150 MONITORING AND COORDINATION**

- A. County Departments of Social/Human Services shall document whether and how the services provided are meeting the child's needs, as defined in the IP. Documentation requirements shall be the same as those outlined in CDHS Social Services Staff Manual, Section 7.002.1 (12 CCR 2509-1), related to case planning.
- B. County Departments of Social/Human Services shall be responsible to coordinate information with the parent(s) or guardian, primary physician, service providers, community centered boards, Social Security Administration and others as necessary to ensure the effective delivery of services to the child.

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**8.508.160 SERVICE PROVIDERS**

- A. Children's Habilitation Residential Program services shall be provided by the following residential provider types which shall meet all of the certification, licensing and Quality Assurance regulations related to the provider type as outlined in CDHS Social Services Staff Manual, Section 7.701 (12 CCR 2509-8):
1. Family Foster Care Homes, as defined by the waiver, and certified and supervised by County Departments of Social Services or Child Placement Agencies (CPAs).
  2. Residential Child Care Facilities licensed through the CDHS Division of Child Care.
  3. Specialized group facilities licensed by the Division of Child Care and supervised by County Departments of Social/Human Services or Child Placement Agencies.
- B. Children's Habilitation Residential Program Service Providers may also include Providers as defined in Section 8.500.5 of this Staff Manual. Home and Community Based Services for the Developmentally Disabled (HCBS- DD) programs will be provided by agencies that meet the following criteria:
1. Have received and/or maintained program approval from the Colorado Department of Human Services, Division for Developmental Disabilities Services for the provision of HCBS-DD waiver services; and
  2. Have a Medicaid Provider Agreement; and
  3. Have agreed to comply with all the provisions of Title 27, Article 10.5, C.R.S. and all the rules and regulations promulgated thereunder; and
  4. Have, if applicable, the current required license from the Colorado Department of Public Health and Environment.
- C. Service providers shall cooperate in all of the areas identified in Section 8.500.52.
- D. All eligible providers shall have a Medicaid Provider Agreement.
- E. Provider agencies shall maintain liability insurance in at least such minimum amounts as set annually by the Department of Health Care Policy and Financing, and shall have written policies and procedures regarding emergency procedures.
- F. Service providers shall not be family members as defined in §27-10.5-102(15), C.R.S. for the children they serve in the waiver.
- G. When a qualified provider contracts with or utilizes the services of a professional, individual, or vendor to augment a child's services under the waiver the definitions and qualifications contained in Section 8.508.170 apply.
- H. Provider agencies shall not discontinue or refuse services to a client unless documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services.

**8.508.170 DEFINITIONS**

Habilitative services are defined as those services which are recommended by a licensed practitioner, as defined in §26-4-527(3), C.R.S. to assist clients with developmental disabilities eligible under the State Plan to achieve their best possible functional level. All clients of Residential habilitation services and supports will receive some type of habilitation services in order to acquire, retain, or improve self- help, socialization, or other skills needed to reside in the community. Some clients may receive a combination of habilitative services (skill building) and support services (a task performed for the client, where learning is secondary or incidental to the task itself).

- A. Assessment: The process of collecting and evaluating information for the purpose of developing an individual child plan on which to base services and referral. The assessment process is both initial and ongoing.
- B. Case Management: Activities that are intended to ensure that clients receive the services they need, that services are coordinated, and that services are appropriate to the changing needs and stated desires of the clients and families over time. The goals of case management are: 1) to bring about positive changes in client's status; 2) to assist clients in reaching their highest potential; and 3) to achieve the best possible quality of life for clients and their families in the community. Goals are developed to the extent possible among case managers, referral sources, families and clients.
- C. Client: A child or youth who is receiving habilitative services in the Children's Habilitation Residential Program.
- D. County Caseworker: A designated representative from the local County Department of Social/Human Services.
- E. Developmental Disability: A disability that is manifested before the child reaches twenty-two years of age, which constitutes a substantial disability to the affected individual, and is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism, or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation. It includes children less than five years of age with slow or impaired development at risk of having a developmental disability.
- F. Family: Defined in 27-10.5-102, C.R.S.
- G. Family Foster Care Home: A family care home providing 24-hour care for a child or children. It is a facility certified by either a County Department of Social/Human Services or a child placement agency. A family foster care home, for the purposes of this waiver, shall not be a family member as defined in 27-10.5-102(15), C.R.S.

Qualifications: A qualified family foster home shall adhere to the service provision requirements of this waiver, as well as those specified and contained in CDHS Social Services Staff Manual (12 CCR 2509-6, 7.500 Resource Development).

- H. Individual: Any person, such as a co-worker, neighbor, etc., who does not meet definition of a family member as described in 27-10.5-102(15). C.R.S.

Qualifications: Any individual providing a service or support must receive training commensurate with the service or support to be provided and must meet any applicable state licensing and/or certification requirements.

- I. Level of Need Worksheet: A format to assess the child's level of need for services.

- J. Professional: Any person, except a family member as described in 27-10.5-102(15), C.R.S. performing an occupation that is regulated by the State of Colorado and requires state licensure and/or certification.

Qualifications: Any person performing a professional service must possess any and all license(s) and/or certifications(s) required by the State of Colorado for the performance of that profession or professional service.

- K. Programming: A plan that provides intensive, comprehensive, longitudinal instruction to help the child achieve his or her best possible functioning level.

- L. Vendor: The supplier of a product or services to be purchased for a recipient of services under this waiver.

Qualifications: In order to be approved as a vendor, the product or service to be delivered must meet all applicable manufacturer specifications, state and local building codes, and Uniform Federal Accessibility Standards. In addition, such expenses over \$1,000 should be chosen through a bid process. When a bid process is used and the lowest bid is not chosen, proper justification for selection of a vendor with a higher bid must be documented.

#### **8.508.180 CHILDREN'S RIGHTS**

Clients rights are defined in this section to provide the fullest possible measure of privacy, dignity and other rights to persons undergoing care and treatment in the least restrictive environment.

- A. Advisement of Children's Rights: Each authorized facility shall have written policy and procedures which address and ensure the availability of each of the following rights for clients in residence.
- B. All children and their guardians receiving services through the CHRP shall be advised in writing of the following rights on admission.
1. A written copy of his or her rights shall be furnished;
  2. A list of such rights shall be posted prominently in the facility and translated into Spanish or any other appropriate language as needed.
  3. A child may be photographed upon admission for identification and administrative purposes of the facility. No other non-medical photographs shall be taken or used without the written consent of the client's parent or legal guardian.
  4. Every client has the right to the same consideration and treatment as anyone else regardless of race, color, national origin, religion, age, sex, political affiliation, sexual orientation, financial status or disability.
  5. Every child's guardian has the right to request to see the child's medical records, to see the records at reasonable times, and to be given written reasons if the request is denied.
- C. Children's Rights as defined in CDHS Social Services Staff Manual, Section 7.714.50, "CHILDREN'S RIGHTS" (12 CCR 2509-8) shall also apply.

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**8.508.190 APPEALS**

An individual who has applied for or is receiving CHRP services has a right to the appeal process established in Section 8.058 of this Manual. When an individual disagrees with a Community Centered Board (CCB) determination of developmental disability services, the dispute resolution process in the Colorado Department of Human Services, Developmental Disabilities Services rules and regulations shall apply. Section 16.320 (2 CCR 503-1).

**8.509 HOME AND COMMUNITY BASED SERVICES FOR COMMUNITY MENTAL HEALTH SUPPORTS (HCBS-CMHS)**

**8.509.10 GENERAL PROVISIONS**

**8.509.11 LEGAL BASIS**

- A. The Home and Community Based Services for COMMUNITY MENTAL HEALTH SUPPORTS (HCBS-CMHS) program in Colorado is authorized by a waiver of the amount, duration, and scope of services requirements contained in Section 1902(a)(10)(B) of the Social Security Act. The waiver was granted by the United States Department of Health and Human Services, under Section 1915(c) of the Social Security Act. The HCBS-CMHS program is also authorized under state law at 25.5-6-601 through 25.5-6-607, C.R.S. (2012). The number of recipients served in the HCBS-CMHS program is limited to the number of recipients authorized in the waiver.
- B. All congregate facilities where any HCBS client resides must be in compliance with the "Keys Amendment" as required under Section 1616(e) of the Social Security Act of 1935 and 45 CFR Part 1397 (October 1, 1991), by possession of a valid Assisted Living Residence license issued under 25-27-105, C.R.S. (1999), and regulations of the Colorado Department of Public Health and Environment at 6 CCR 1011-1, Chapters 2 and 7. Pursuant to 24-4-103(12.5), C.R.S., the Department of Health Care Policy and Financing maintains with electronic or written copies of the incorporated texts for public inspection. Copies may be obtained at a reasonable cost or examined during regular business hours at 1570 Grant Street, Denver, CO, 80203. Additionally, any incorporated material in these rules may be examined at any State depository library.

**8.509.12 SERVICES PROVIDED [Eff. 7/1/2012]**

- A. HCBS-CMHS services provided as an alternative to nursing facility placement include:
  - 1. Adult Day Services
  - 2. Alternative Care Facility Services (which includes Homemaker and Personal Care services)
  - 3. Consumer Directed Attendant Support Services (CDASS)
  - 4. Electronic Monitoring
  - 5. Home Modification
  - 6. Homemaker Services
  - 7. Non-Medical Transportation
  - 8. Personal Care
  - 9. Respite Care

- B. Case management is not a service of the HCBS-CMHS program, but shall be provided as an administrative activity through case management agencies.
- C. HCBS-CMHS clients are eligible for all other Medicaid State plan benefits.

**8.509.13 DEFINITIONS OF SERVICES [Eff. 12/30/2007]**

- A. Adult Day Services is defined at Section 8.491, ADULT DAY SERVICES.
- B. Alternative Care Facility Services is defined at Section 8.495, ALTERNATIVE CARE FACILITY.
- C. Consumer Directed Attendant Support Services (CDASS) is defined at Section 8.510, CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES
- C. Electronic Monitoring services is defined at Section 8.488, ELECTRONIC MONITORING.
- D. Home Modification is defined at Section 8.493, HOME MODIFICATION.
- E. Homemaker Services is defined at Section 8.490, HOMEMAKER SERVICES.
- F. Non-Medical Transportation is defined at Section 8.494, NON-MEDICAL TRANSPORTATION.
- G. Personal Care is defined at Section 8.489, PERSONAL CARE.
- H. Respite is defined at Section 8.492, RESPITE.

**8.509.14 GENERAL DEFINITIONS**

- A. Assessment shall be defined as a client evaluation according to requirements at Section 8.509.31, (B).
- B. Case Management shall be defined as administrative functions performed by a case management agency according to requirements at Section 8.509.30.
- C. Case Management Agency shall be defined as an agency that is certified and has a valid contract with the state to provide HCBS-CMHS case management.
- D. Case Plan shall be defined as a systematized arrangement of information which includes the client's needs; the HCBS-CMHS services and all other services which will be provided, including the funding source, frequency, amount and provider of each service; and the expected outcome or purpose of such services. This case plan shall be written on a state-prescribed case plan form.
- E. Categorically Eligible, shall be defined in the HCBS-CMHS Program, as any person who is eligible for Medical Assistance (Medicaid), or for a combination of financial and Medical Assistance; and who retains eligibility for Medical Assistance even when the client is not a resident of a nursing facility or hospital, or a recipient of an HCBS program. Categorically eligible shall not include persons who are eligible for financial assistance, or persons who are eligible for HCBS-CMHS as three hundred percent eligible persons, as defined at 8.509.14(S).
- F. Congregate Facility shall be defined as a residential facility that provides room and board to three or more adults who are not related to the owner and who, because of impaired capacity for independent living, elect protective oversight, personal services and social care but do not require regular twenty-four hour medical or nursing care.

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- G. Uncertified Congregate Facility is a facility as defined in Section 8.509.14(F) that is not certified as an Alternative Care Facility, which is defined at Section 8.495.11.
- H. Continued Stay Review shall be defined as a re-assessment as defined at Section 8.402.60.
- I. Cost Containment shall be defined at Section 8.485.50(J)
- J. Department shall be defined as the State Agency designated as the Single State Medicaid Agency for Colorado, or any division or sub-units within that agency, or another state agency operating under the authority of a memorandum of understanding with the Single State Medicaid Agency.
- K. Deinstitutionalized shall be defined as waiver clients who were receiving nursing facility services reimbursed by Medicaid, within forty-five (45) calendar days of admission to HCBS-CMHS waiver. These include hospitalized clients who were in a nursing facility immediately prior to inpatient hospitalization and who would have returned to the nursing facility if they had not elected the HCBS-CMHS waiver.
- L. Diverted shall be define as HCBS-CMHS waiver recipients who were not deinstitutionalized, as defined at Section 8.485.50(K).
- M. Home and Community Based Services for Community Mental Health Supports (HCBS-CMHS) shall be defined as services provided in a home or community based setting to clients who are eligible for Medicaid reimbursement for long term care, who would require nursing facility care without the provision of HCBS-CMHS, and for whom HCBS-CMHS services can be provided at no more than the cost of nursing facility care.
- N. Intake/Screening/Referral shall be as defined at Section 8.390.1(J) and as the initial contact with clients by the case management agency. This shall include, but not be limited to, a preliminary screening in the following areas: an individual's need for long term care services; an individual's need for referral to other programs or services; an individual's eligibility for financial and program assistance; and the need for a comprehensive long term care client assessment.
- O. Level Of Care Screen shall be described as an assessment in Section 8.401.
- P. Non-Diversion shall be defined as a client who was certified by the Utilization Review Contractor (URC) as meeting the level of care screen and target group for the HCBS-CMHS program, but who did not receive HCBS-CMHS services for some other reason.
- Q. Provider Agency shall be defined as an agency certified by the Department and which has a contract with the Department, in accordance with Section 8.487, HCBS-EBD PROVIDER AGENCIES, to provide one of the services listed at Section 8.509.13. A case management agency may also become a provider if the criteria at Sections 8393.6 and 8.487 are met.
- R. Reassessment shall be defined as a periodic revaluation according to the requirements at Section 8.509.32. C.
- S. Three Hundred Percent (300%) Eligible persons shall be defined as persons:
- 1) Whose income does not exceed 300% of the SSI benefit level, and
  - 2) Who, except for the level of their income, would be eligible for an SSI payment; and
  - 3) Who are not eligible for medical assistance (Medicaid) unless they are recipients in an HCBS program, or are in a nursing facility or hospitalized for thirty (30) consecutive days.
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**8.509.15 ELIGIBLE PERSONS**

A. HCBS-CMHS services shall be offered to persons who meet all of the eligibility requirements below:

1. Financial Eligibility

Clients shall meet the eligibility criteria as specified in the Income Maintenance Staff Manual of the Colorado Department of Human Services at 9 CCR 2503-1, and the Colorado Department of Health Care Policy and Financing regulations at 10 CCR 2505-10, Section 8.100, MEDICAL ASSISTANCE ELIGIBILITY.

2. Level of Care AND Target Group.

Clients who have been determined to meet the level of care AND target group criteria shall be certified by the Utilization Review Committee (URC) as functionally eligible for HCBS-CMHS. The URC shall only certify HCBS-CMHS eligibility for those clients:

- a. Determined to meet the target group definition for the mentally ill as defined at Section 8.400.16; and
- b. Determined by a formal level of care assessment to require the level of care available in a nursing facility, according to Section 8.401.11-15; and
- c. Who are determined to be persons with mental illness as defined by State Mental Health Services and documented by the case management agency;
- d. A length of stay shall be assigned by the URC for approved admissions, according to guidelines at Section 8.402.50.

3. Receiving Services

- a. Only clients who receive HCBS-CMHS services, or who have agreed to accept HCBS-CMHS services as soon as all other eligibility criteria have been met, are eligible for the HCBS-CMHS program.
- b. Case management is not a service and shall not be used to satisfy this requirement.
- c. Desire or need for home health services or other Medicaid services that are not HCBS-CMHS services, as listed at Section 8.509.12, shall not satisfy this eligibility requirement.
- d. HCBS-CMHS clients who have not received HCBS-CMHS services for thirty (30) days shall be discontinued from the program.

4. Institutional Status

- a. Clients who are residents of nursing facilities or hospitals are not eligible for HCBS-CMHS services while residing in such institutions.
- b. A client who is already an HCBS-CMHS recipient and who enters a hospital may not receive HCBS-CMHS services while in the hospital. If the hospitalization continues for 30 days or longer, the case manager must terminate the client from the HCBS-CMHS program.

- c. A client who is already an HCBS-CMHS recipient and who enters a nursing facility may not receive HCBS-CMHS services while in the nursing facility;
  - 1) The case manager must terminate the client from the HCBS-CMHS program if Medicaid pays for all or part of the nursing facility care, or if there is a URC-certified ULTC-100.2 for the nursing facility placement, as verified by telephoning the URC.
  - 2) A client receiving HCBS-CMHS services who enters a nursing facility for Respite Care as a service under the HCBS-CMHS program shall not be required to obtain a nursing facility ULTC-100.2, and shall be continued as an HCBS-CMHS client in order to receive the HCBS-CMHS service of Respite Care in a nursing facility.

**5. Cost-effectiveness**

Only clients who can be safely served within cost containment, as defined at Section 8.509.14 (I), are eligible for the HCBS-CMHS program. The equivalent cost of nursing facility care is calculated by the State, according to Section 8.509.19.

**8.509.16 START DATE**

The start date of eligibility for HCBS-CMHS services shall not precede the date that all of the requirements at Section 8.509.15, have been met. The first date for which HCBS-CMHS services can be reimbursed shall be the LATER of any of the following:

- A. Financial The financial eligibility start date shall be the effective date of eligibility, as determined by the income maintenance technician, according to Section 8.100. This may be verified by consulting the income maintenance technician, or by looking it up on the eligibility system.
- B. Level of Care This date is determined by the official URC stamp and the URC-assigned start date on the ULTC 100.2 form.
- C. Receiving Services This date shall be determined by the date on which the client signs either a case plan form, or a preliminary case plan (Intake) form, as prescribed by the state, agreeing to accept HCBS-CMHS services.
- D. Institutional Status HCBS-CMHS eligibility cannot precede the date of discharge from the hospital or nursing facility.

**8.509.17 CLIENT PAYMENT OBLIGATION - POST ELIGIBILITY TREATMENT OF INCOME (PETI)**

When a client has been determined eligible for Home and Community Based Services (HCBS) under the 300% income standard, according to Section 8.100, of Staff Manual Volume 8, the State may reduce Medicaid payment for Alternative Care Facility services according to the procedures at Section 8.509.31, E, of Staff Manual Volume 8.

**8.509.18 STATE PRIOR AUTHORIZATION OF SERVICES**

- A. Upon receipt of the Prior Authorization Request (PAR), as described at Section 8.509.31(G), the state or its agent shall review the PAR to determine whether it is in compliance with all applicable regulations, and whether services requested are consistent with the client's documented medical condition and functional capacity, and are reasonable in amount, frequency, and duration. Within ten (10) working days the State or its agent shall:
1. Approve the PAR and forward signed copies of the prior authorization form to the case management agency, when all requirements are met;
  2. Return the PAR to the case management agency, whenever the PAR is incomplete, illegible, unclear, or incorrect; or if services requested are not adequately justified;
  3. Disapprove the PAR when all requirements are not met Services shall be disapproved that are duplicative of other services that the client is receiving or services for which the client is receiving funds to purchase Services shall also be disapproved if all services, regardless of funding source, total more than twenty-four hours per day care.
- B. When services are disapproved, in whole or in part the Department or its agent shall notify the case management agency. The case management agency shall notify the client of the adverse action and the appeal rights on a state-prescribed form, according to Section 8.057, et seq.
- C. Revisions received by the Department or its agent six (6) months or more after the end date shall always be disapproved.
- D. Approval of the PAR by the Department or its agent shall authorize providers of services under the case plan to submit claims to the fiscal agent and to receive payment for authorized services provided during the period of time covered by the PAR. Payment is also conditional upon the client's financial eligibility for long term care medical assistance (Medicaid) on the dates of service; and upon providers' use of correct billing procedures.

**8.509.19 STATE CALCULATION OF COST-CONTAINMENT AMOUNT**

- A. The State shall annually compute the equivalent monthly cost of nursing facility care according to Section 8.485.100.
- B. LIMITATIONS ON PAYMENT TO FAMILY
1. In no case shall any person be reimbursed to provide HCBS-CMHS services to his or her spouse.
  2. Family members other than spouses may be employed by certified personal care agencies to provide personal care services to relatives under the HCBS-CMHS program subject to the conditions below. For purposes of this section, family shall be defined as all persons related to the client by virtue of blood, marriage, adoption or common law.
  3. The family member shall meet all requirements for employment by a certified personal care agency, and shall be employed and supervised by the personal care agency.

4. The family member providing personal care shall be reimbursed, using an hourly rate, by the personal care agency which employs the family member, with the following restrictions:
  - a. The total number of Medicaid personal care units for a member of the client's family shall not exceed the equivalent of 444 personal care units per annual certification for HCBS-CMHS.
  - b. The maximum shall include any portions of the Medicaid reimbursement which are kept by the personal care agency for unemployment insurance, worker's compensation, FICA, cost of training and supervision and all other administrative costs.
  - c. The maximum number of personal care units per annual certification for HCBS-CMHS shall be 444 units. Family members must average at least 1.2164 hours of care per day (as indicated on the client's care plan) in order to receive the maximum reimbursement.
  - d. If the certification period for HCBS-CMHS is less than one year, the maximum reimbursement for relative personal care shall be calculated by multiplying the number of days the client is receiving care by the average units per day for a full year ( $444/365=1.2164$ ).
5. If two or more HCBS-CMHS clients reside in the same household, family members may be reimbursed up to the maximum for each client if the services are not duplicative and are appropriate to meet the client's needs.
6. When HCBS-CMHS funds are utilized for reimbursement of personal care services provided by the client's family, the home care allowance cannot be used to reimburse the family.
7. Services other than personal care shall not be reimbursed with the HCBS-CMHS funds when provided by the client's family.
8. Services other than personal care shall not be reimbursed with the HCBS-CMHS funds when provided by the client's family.

**C. CLIENT RIGHTS**

1. The case manager shall inform clients eligible for HCBS-CMHS in writing, of their right to choose between HCBS-CMHS services and nursing facility care; and
2. The case manager shall offer clients eligible for HCBS-CMHS, the free choice of any and all available and qualified providers of appropriate services.

**8.509.20 CASE MANAGEMENT AGENCIES**

- A. The requirement at Section 8.390 et. seq. shall apply to the case management agencies performing the case management functions of the HCBS-CMHS program.

**8.509.21 CERTIFICATION**

- A. Case management agencies shall be certified, monitored and periodically recertified as required in Section 8.394 et. seq.

- B. Case management agencies must have provider agreements with the Department that are specific to the HCBS-CMHS program.

**8.509.22 REIMBURSEMENT**

Case management agencies shall be reimbursed for case management activities according to Section 8.392 et. seq.

**8.509.30 CASE MANAGEMENT FUNCTIONS**

**8.509.31 NEW HCBS-CMHS CLIENTS**

**A. INTAKE/SCREENING/REFERRAL**

1. Case management agency staff shall complete a State-prescribed Intake form in accordance with the Single Entry Point Intake Procedures at Section 8.393.21 for each potential HCBS-CMHS applicant. The Intake form must be completed before an assessment is initiated. The Intake form may also be used as a preliminary case plan form when signed by the applicant for purposes of establishing a start date. Additionally, at intake, clients shall be offered an opportunity to identify a third party to receive client notices. This information shall be included on the intake form. This designee shall be sent copies of all notices sent to clients.
2. Case management agency staff shall verify the individual's current financial eligibility status, or refer the client to the county department of social services of the client's county of residence for application. This verification shall include whether the applicant is in a category of assistance that includes financial eligibility for long term care.
3. Based upon information gathered on the Intake form, the case manager shall determine the appropriateness of a referral for a comprehensive uniform long term care client assessment (ULTC-100.2), and shall explain the reasons for the decision on the Intake form. The client shall be informed of the right to request an assessment if the client disagrees with the case manager's decision.
4. If the case management agency staff has determined that a comprehensive uniform long term care client assessment (ULTC-100.2) is needed, or if the client requests an assessment, a case manager shall be assigned to schedule the assessment

**B. ASSESSMENT**

1. The URC/SEP case manager shall complete the Uniform Long Term Care Client Assessment Instrument (ULTC 100.2) in accordance with Section 8.393.22, ASSESSMENT.
2. The URC/SEP case manager shall begin and complete the assessment within ten (10) days of notification of client's need for assessment.
3. The URC/SEP case manager shall complete the following activities for a comprehensive client assessment:
  - a. Obtain all required information from the client's medical provider including information required for target group determination;

- b. Determine the client's functional capacity during a face-to-face interview, preferably with the observation of the client in his or her residential setting;
- c. Determine the ability and appropriateness of the client's caregiver, family, and other collateral, to provide the client assistance in activities of daily living;
- d. Determine the client's service needs, including the client's need for services not provided under HCBS-CMHS
- e. If the client is a resident of a nursing facility, determine the feasibility of deinstitutionalization;
- f. Review service options based on the client's needs, the potential funding sources, and the availability of resources;
- g. Explore the client's eligibility for publicly funded programs, based on the eligibility criteria for each program, in accordance with state rules;
- h. View and document the current Assisted Living Residence license, if the client lives, or plans to live, in a congregate facility as defined at Section 8.509.14 in order to assure compliance with the regulation at Section 5.509.11(B).
- i. Determine and document client preferences in program selection;
- j. Complete documentation on the ULTC 100.2 form.
- k. To de-institutionalize a client who is in a nursing facility under payment by Medicaid, and with a current ULTC 100.2 already certified by the URC/SEP agency for the nursing facility level of ULTC 100.2 completion date is older than six (6) months, the URC/SEP case manager shall complete a new ULTC 100.2 and determine if the client continues to meet the nursing facility level of care. The nursing facility staff shall notify the URC/SEP agency of the planned date of discharge and shall assign a new length of stay for HCBS if eligibility criteria are met. If a client leaves a nursing facility, and no one has notified the URC/SEP agency of the client's intent to apply for HCBS-CMHS, the case manager must obtain a new ULTC 100.2 and the client shall be treated as an applicant from the community rather than as a de-institutionalized client.
- l. It is the URC/SEP case manager's responsibility to assess the behaviors of the client and assure that community placement is appropriate.

**C. HCBS-CMHS DENIALS AND/OR DISCONTINUATIONS**

1. If a client is determined, at any point in the assessment process, to be ineligible for HCBS-CMHS according to any of the requirements at Section 8.509.15, the case manager shall refer the client or the client's designated representative to other appropriate services. Clients who are denied HCBS-CMHS services shall be notified of denials and appeal rights as follows:

- a. **Financial Eligibility**

The income maintenance technician at the county department of social services shall notify the applicant of denial for reasons of financial eligibility, and shall inform the applicant of appeal rights in accordance with Sections 3.840 and 3.850 of the Colorado Department of Human Services' Staff Manual Volume III at 9 CCR 2503-1. The case manager shall not attend the appeal bearing for a denial based on financial eligibility, unless subpoenaed, or unless requested by the state.

- b. **Level of Care AND Target Group**

The URC shall notify the applicant of denial for reasons related to determination of level of care AND target group eligibility and shall inform the applicant of appeal rights in accordance with Section 8.057. The case manager shall not make judgments as to eligibility regarding level of care or target group, and shall refer all applicants who request a URC review to the URC, independently of any action that may be taken by the case manager in regard to other eligibility requirements, in accordance with the rest of this section. The case manager shall not attend the appeal hearing for a denial based on level of care or target group determination, unless subpoenaed, or unless requested by the state.

- c. **Receiving Services**

The case manager shall notify the applicant of denial, on state-prescribed form, when the case manager determines that the applicant does not meet the HCBS-CMHS eligibility requirements at Section 8.509.15 and shall inform the applicant of appeal rights in accordance with Section 8.057, et. seq. The case manager shall also attend the appeal hearing to defend this denial action. A denial and appeal for this reason is independent of any action that may be taken by the URC in regard to level of care and target group determination.

- d. **Institutional Status**

The case manager shall notify the applicant of denial, on state-prescribed form, when the case manager determines that the applicant does not meet the eligibility requirement at Section 8.509.15, and shall inform the applicant of appeal rights in accordance with Section 8.057, et. seq. The case manager shall also attend the appeal hearing to defend this denial action. A denial and appeal for this reason is independent of any action that may be taken by the URC in regard to level of care and target group determination.

e. Cost-effectiveness

The case manager shall notify the applicant of denial, on State-prescribed form, when the case manager determines that the applicant does not meet the eligibility requirement 8.509.15 and shall inform the applicant of appeal rights in accordance with Section 8.057, et.seq. The case manager shall also attend the appeal hearing to defend this denial action. If the applicant requests to receive less than the needed amount of services in order to become cost-effective, the case manager must assess the safety of the applicant, and the competency of the applicant to choose to live in an unsafe situation. If the case manager determines that the applicant will be unsafe with the amount of services available, and is not competent to choose to live in an unsafe situation, the case manager may deny HCBS-CMHS eligibility. To support a denial for safety reasons related to cost-effectiveness, the case manager must document the results of an Adult Protective Services assessment, a statement from the client's physician attesting to the client's mental competency status, and all other available information which will support the determination that the client is unsafe and incompetent to make a decision to live in an unsafe situation; and, which will satisfy the burden of proof required of file case manager making the denial. Denials and appeals for reasons of cost-effectiveness, or safety related to cost-effectiveness, are independent of any action that may be taken by the URC in regard to level of care and target group determination.

f. Waiver Cap

The case manager shall notify the applicant of denial, on a State-prescribed form, when the waiver cap limiting the number of clients who may be served under the terms of the approved waiver has been reached.

D. SERVICE PLANNING

1. Service Planning shall be defined in accordance with case planning at Section 8.393.23 and shall include, but not be limited to, the following tasks:
  - a. The identification and documentation of service plan goals and client choices;
  - b. The identification and documentation of all services needed, including type of service, specific functions to be performed, frequency and amount of service, type of provider, finding source, and services needed but not available;
  - c. Documentation of the client's choice of HCBS-CMHS services, nursing home placement, or other services, including a signed statement of choice from the client;
  - d. Documentation that the client was informed of the right to free choice of providers from among all the available and qualified providers for each needed service, and that the client understands his/her right to change providers;
  - e. The formalization of the service plan agreement on a State-prescribed service plan form, including appropriate signatures;

- f. The arrangement for services by contacting service providers, coordinating service delivery, negotiating with the provider and the client regarding service provision;
    - g. Referral to community resources as needed and development of resources for individual clients if a resource is not available within the client's community;
    - h. The explanation of complaint procedures to the client.
  - 2. The case manager shall meet the client's needs, with consideration of the client's choices, using the most cost effective methods available.
- E. CALCULATION OF CLIENT PAYMENT (PETI)
  - 1. The case manager shall calculate the client payment (PETI) for 300% eligible HCBS-CMHS clients according to the following procedures:
    - a. For 300% eligible HCBS-CMHS clients who are not Alternative Care Facility clients, the case manager shall allow an amount equal to the 300% standard as the client maintenance allowance. No other deductions are necessary and no form is required to be completed.
    - b. For 300% eligible clients who are Alternative Care Facility clients, the case manager shall complete a State-prescribed form which calculates the client payment according to the following procedures:
      - 1) An amount equal to the current Old Age Pension standard, including any applicable income disregards, shall be deducted from the client's gross income to be used as the client maintenance allowance, from which the state-prescribed Alternative Care Facility room and board amount shall be paid: and
      - 2) For an individual with financial responsibility for only a spouse, an amount equal to the state Aid to the Needy Disabled (AND) standard, less the amount of any spouse's income, shall be deducted from the client's gross income: or
      - 3) For an individual with financial responsibility for a spouse plus other dependents, or with financial responsibility for other dependents only, an amount equal to the appropriate Temporary Assistance to Needy Families (TANF) grant level less any income of the spouse and/or dependents (excluding income from part-time employment earnings of a dependent child who is either a full-time student of a part-time student as defined at Section 8.100.3.L.2.d.) shall be deducted from the client's gross income; and

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- 4) Amounts for incurred expenses for medical or remedial care for the individual that are not subject to payment by Medicare, Medicaid, or other third party shall be deducted from the client's gross income as follows:
- a) Health insurance premiums if health insurance coverage is documented in the eligibility system and the MMIS: deductible or co-insurance charges: and
  - b) Necessary dental care not to exceed amounts equal to actual expenses incurred: and
  - c) Vision and auditory care expenses not to exceed amounts equal to actual expenses incurred: and
  - d) Medications, with the following limitations:
    - (1) The need for such medications shall be documented in writing by the attending physician. For this purpose, documentation on the URC certification form shall be considered adequate. The documentation shall list the medication; state why it is medically necessary; be signed by the physician; and shall be renewed at least annually or whenever there is a change.
    - (2) Medications which may be purchased with the client's Medical Identification Card shall not be allowed as deductions.
    - (3) Medications which may be purchased through regular Medicaid prior authorization procedures shall not be allowed.
    - (4) The full cost of brand-name medications shall not be allowed if a generic form is available at a lower price.
    - (5) Only the amount spent for medications which exceeds the current Old Age Pension Standard allowance for medicine chest expense shall be allowed as a deduction.

- e) Other necessary medical or remedial care shall be deducted from the client's gross income, with the following limitations:
    - (1) The need for such care shall be documented in writing by the attending physician. For this purpose, documentation on the URC certification form shall be considered adequate. The documentation shall list the service, supply, or equipment; state why it is medically necessary; be signed by the physician; and, shall be renewed at least annually or whenever there is a change.
    - (2) Any service, supply or equipment that is available under regular Medicaid, with or without prior authorization, shall not be allowed as a deduction.
  - f) Deductions for medical and remedial care may be allowed up to the end of the next full month while the physician's prescription is being obtained. If the physician's prescription cannot be obtained by the end of the next full month, the deduction shall be discontinued.
  - g) When the case manager cannot immediately determine whether a particular medical or remedial service, supply, equipment or medication is a benefit of Medicaid, the deduction may be allowed up to the end of the next full month while the case manager determines whether such deduction is a benefit of the Medicaid program. If it is determined that the service, supply, equipment or medication is a benefit of Medicaid, the deduction shall be discontinued.
  - 5) Any remaining income shall be applied to the cost of the Alternative Care Facility services, as defined at Section 8.495, and shall be paid by the client directly to the facility; and
  - 6) If there is still income remaining after the entire cost of Alternative Care Facility services is paid from the client's income, the remaining income shall be kept by the client and may be used as additional personal needs or for any other use that the client desires, except that the Alternative Care Facility shall not charge more than the Medicaid rate for Alternative Care Facility services.
2. Case managers shall inform HCBS-CMHS Alternative Care Facility clients of their client payment obligation on a form prescribed by the state at the time of the first assessment visit by the end of each plan period; or within ten (10) working days whenever there is a significant change in the client payment amount. Significant change is defined as fifty dollars (\$50) or more. Copies of client payment forms shall be kept in the client files at the case management agency, and shall not be mailed to the State or its agent, except as required for a prior authorization request, according to Section 8.509.31.G, or if requested by the state for monitoring purposes.

**F. COST CONTAINMENT**

The case manager shall determine whether the person can be served at or under the cost containment criteria of Section 8.509.14(l) for long term care services for an individual recipient by using a state-prescribed Prior Authorization Request (PAR) form to:

1. Determine the maximum authorized costs for all HCBS-CMHS services for the period of time covered by the case plan and compute the average cost per day by dividing by the number of days in the case plan period; and
2. Determine that this average cost per day is less than or equivalent to the individual cost containment amount, which is calculated as follows:
  - a. Enter (in the designated space on the PAR form) the average monthly cost of nursing facility care; and
  - b. Subtract from that amount the client's gross monthly income; and
  - c. Subtract from that amount the client's Home Care Allowance grant amount, if any; and
  - d. Convert the remaining amount into a daily amount by dividing by 30.42 days. This amount is the daily individual cost containment amount which cannot be exceeded for the cost of HCBS services.
3. An individual client whose service needs exceed the amount allowed under the client's individual cost containment amount may choose to purchase additional services with personal income, but no client shall be required to do so.

**G. PRIOR AUTHORIZATION REQUESTS**

1. The case manager shall submit prior authorization requests (PARs) for all HCBS-CMHS services to the state or its agent in a timely manner in accordance with the STATE PRIOR AUTHORIZATION OF SERVICES in Section 8.485.90.
2. Every PAR shall include the Long Term Service Plan form; the Prior Approval Request form; the Uniform Long Term Care Client Assessment (ULTC-100.2) form; and written documentation, from the income maintenance technician or the eligibility system, of the client's current monthly income. All units of service requested on the Prior Approval Request form must be listed on the Long Term Service Plan form. If a range of units is estimated on the Long Term Service plan, the number of units at the higher end of the range may be requested on the Prior Approval Request form. "PRN" services must be given a numerical estimate on the Long Term Care plan.
3. If a PAR is for a new admission, or a re-admission, the Intake form shall be included with the PAR.
4. If a PAR includes a request for home modification services, the PAR shall also include all documentation listed at Section 8.493, HOME MODIFICATION.

5. If a PAR is for an Alternative Care Facility client who is 300% eligible, the most recent state-prescribed Client Payment form shall be included in the PAR. All medical and remedial care requested as deductions on the Client Payment form must be listed on the LONG TERM Service Plan form.
6. The start date on the prior authorization request form shall never precede the start date of eligibility for HCBS-CMHS services, according to Section 8.509.16, START DATE.
7. The PAR shall not cover a period of time longer than the length of stay assigned by the URC.
8. A PAR does not have to be submitted for a non-diversion, as defined at 8.509.14(O).
9. If a PAR is returned to the case management agency for corrections, the corrected PAR must be returned to the State or its agent within thirty (30) calendar days after the case management agency receives the "Return to Provider" letter.

**H. CASE MANAGEMENT AGENCY RESPONSIBILITY**

1. The case management agency shall be financially responsible for any services which it authorized to be provided to the client, or which continue to be rendered by a provider due to the case management agency's failure to timely notify the provider that the client was no longer eligible for services, which did not receive approval by the state or its agent.

**8.509.32 ONGOING HCBS-CMHS CLIENTS**

**A. COORDINATION, MONITORING AND EVALUATION OF SERVICES**

1. The coordination, monitoring, and evaluation of services for HCBS-CMHS clients shall be in accordance with ON-GOING CASE MANAGEMENT in Section 8.393.24. In addition, the case manager shall:
  - a. Contact each client quarterly, or more frequently, as determined by the client's assessed needs. Contact may be at the client's place of residence, by telephone, or other appropriate setting as determined by the client's needs.
  - b. Review the ULTC.100.2 and the Service Plan with the client every six (6) months on a face-to-face basis.
2. The case manager shall refer the client for mental health services taking into account client choice. The case manager shall coordinate case management activities for those clients who are receiving mental health services from the Behavioral Health Organizations (BHO).
3. On-going case management shall include, but not be limited to the following tasks:
  - a. Review of the client's case plan and service agreements;
  - b. Contact with the client concerning whether services are being delivered according to the plan; and the client's satisfaction with services provided;

- c. Contact with service providers concerning service delivery, coordination, effectiveness, and appropriateness;
  - d. Contact with appropriate parties in the event any issues or complaints have been presented by the client or others;
  - e. Conflict resolution and/or crisis intervention, as needed;
  - f. Informal assessment of changes in client functioning, service effectiveness, service appropriateness, and service cost-effectiveness;
  - g. Notification of appropriate enforcement agencies, as needed; and
  - h. Referral to community resources, and arrangement for non-HCBS-CMHS services, as needed.
4. In the event, at any time throughout the case management process, the case manager suspects an individual to be a victim of abuse, neglect/self-neglect or exploitation, the case manager shall immediately refer the individual to the protective services section of the county department of social services of the individual's county of residence or the local law enforcement agency.
5. The case manager shall immediately report, to the appropriate agency, any information which indicates an overpayment, incorrect payment, or mis-utilization of any public assistance or Medicaid benefit. The case manager shall cooperate with the appropriate agency in any subsequent recovery process, in accordance with the Colorado Department of Human Services' Staff Manual Volume 3, Section 3.810.

**B. REVISIONS**

**1. SERVICES ADDED TO THE SERVICE PLAN**

- a. Whenever a change in the service plan results in an increase or change in the services to be provided, the case manager shall submit a revised prior authorization request (PAR) to the state or its agent.
  - 1) The revision PAR shall include the revised Long Term Care plan form and the revised Prior Authorization Request form.
  - 2) The revised service plan form shall list the services being revised and shall state the reason for the revision. Services on the revised service plan form, plus all services on the original service plan form, must be entered on the revised Prior Authorization Request form, for purposes of reimbursement.
  - 3) The dates on the revision must be identical to the dates of the original PAR, unless the purpose of the revision is to revise the PAR dates.
- b. If a revised PAR includes a new request for home modification services, the revised PAR shall also include all documentation listed at Section 8.493.

2. SERVICES DECREASED ON THE SERVICE PLAN

- a. A revised PAR does not need to be submitted if services on the service plan are decreased or not used, unless the services are being eliminated or reduced in order to add other services while maintaining cost-effectiveness
- b. If services are decreased without the client's agreement according to Section 8.057.5, the case manager shall notify the client of the adverse action and of appeal rights, according to Section 8.057, et. seq.

C. REASSESSMENT

- 1. The case manager shall complete a reassessment of each HCBS-CMHS client before the end of the length of stay assigned by the URC at the last level of care determination. The case manager shall initiate a reassessment more frequently when warranted by significant changes that may affect HCBS-CMHS eligibility.
- 2. The case manager shall complete the reassessment, utilizing the Uniform Long Term Care Client Assessment Instrument (ULTC 100.2).
- 3. Reassessment shall include, but not be limited to, the following activities:
  - a. Verify continuing Medicaid eligibility, including verification of an aid category that includes eligibility for long term care benefits;
  - b. Evaluate service effectiveness, quality of care, appropriateness of services, and cost effectiveness;
  - c. Evaluate continuing need for the HCBS-CMHS program, and clearly document reasons for continuing HCBS; or terminate the client's eligibility according to Section 8.509.32(E);
  - d. Ensure that all information needed from the medical provider for the URC level of care review is included on the ULTC 100.2 form;
  - e. Reassess the client's functional status, according to the procedures in Section 8.509.31(B);
  - f. Review the case plan, including verification of whether services have been delivered according to the case plan, and write a new case plan, according to procedures at Section 8.509.31(D);
  - g. Refer the client to community resources as needed;

- h. Submit a continued stay review PAR, in accordance with requirements at Section 8.509.31(G). For clients who have been denied by the URC at continued stay review, and are eligible for services during the appeal, written documentation that an appeal is in progress may be used as a substitute for the approved ULTC 100.2. Acceptable documentation of an appeal include: (a) a copy of the request for reconsideration, or the request for appeal, signed by the client and sent to the URC or to the Office of Administrative Courts; (b) a copy of the notice of a scheduled hearing, sent by the URC or the Office of Administrative Courts to the client; or (c) a copy of the notice of a scheduled court date.

Copies of denial letters, and written statements from case managers, are not acceptable documentation that an appeal was actually filed, and shall not be accepted as a substitute for the approved ULTC 100.2. The length of the PAR on appeal cases may be up to one year, with the PAR being revised to the correct dates of eligibility at the time the appeal is resolved.

**D. TRANSFER PROCEDURES**

- 1. When clients move, cases shall be transferred according to the current statewide Mental Health Services Continuity of Care Policy.
- 2. INTERCOUNTY TRANSFERS shall be in accordance with Section 8.393.31.
- 3. INTERDISTRICT TRANSFERS shall be in accordance with Section 8.393.32.

**E. TERMINATION**

- 1. Clients shall be terminated from the HCBS-CMHS program whenever they no longer meet one or more of the eligibility requirements at Section 8.509.15. Clients shall also be terminated from the program if they die, move out of state or voluntarily withdraw from the program.
- 2. Clients who are terminated from HCBS-CMHS because they no longer meet one or more of the eligibility requirements at Section 8.509.15 shall be notified of the termination and their appeal rights as follows:
  - a. Financial Eligibility

Procedures at Section 8.509.31, (C), shall be followed for terminations for this reason.
  - b. Level of Care AND Target Group

Procedures at Section 8.509.31, (C), shall be followed for terminations for this reason.
  - c. Receiving Services

Procedures at Section 8.509.31, (C), shall be followed for terminations for this reason

- d. Institutional Status

Procedures at Section 8.509.31(C), shall be followed for terminations for this reason. In the case of termination for extended hospitalization, the case manager shall send the termination notice on the thirtieth (30) day of hospitalization. The termination shall be effective at the end of the advance notice period. If the client returns home before the end of the advance notice period, the termination shall be rescinded.
- e. Cost-effectiveness

Procedures at Section 8.509.31(C), shall be followed for terminations for this reason.
- 3. When clients are terminated from HCBS-CMHS for reasons not related to the eligibility requirements at Section 8.509.31(C), the case manager shall follow the procedures below:
  - a. Death

Clients who die shall be terminated from the HCBS-CMHS program, effective upon the day after the date of death.
  - b. Moved out of State

Clients who move out of Colorado shall be terminated from the HCBS-CMHS program, effective upon the day after the date of the move. The case manager shall send the client a state-prescribed Advisement Letter advising the client that the case has been closed. Clients who leave the state on a temporary basis, with intent to return to Colorado, according to the Income Maintenance Staff Manual Section 1140.2, shall not be terminated from the HCBS-CMHS program unless one or more of the other eligibility criteria, as specified at Section 8.509.15 is no longer met.
  - c. Voluntary Withdrawal from the Program

Clients who voluntarily withdraw from the HCBS-CMHS program shall be terminated from the program, effective upon the day after the date on which the client either requests in writing to withdraw from the program, or the date on which the client enters a nursing facility. The case manager shall send the client a state-prescribed Advisement Letter advising the client that the case has been closed.
- 4. The case manager shall provide appropriate referrals to other community resources, as needed, upon termination.
- 5. The case manager shall immediately notify all providers on the case plan of any terminations.
- 6. If a case is terminated before an approved PAR has expired, the case manager shall submit, to the state or its agent, a copy of the current prior authorization request form, on which the end date is adjusted (and highlighted in some manner on the form); and the reason for termination shall be written on the form.

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**8.509.33 OTHER CASE MANAGEMENT REQUIREMENTS**

**A. COMMUNICATION**

In addition to any communication requirements specified elsewhere in these rules, the case manager shall be responsible for the following communications:

1. The case manager shall inform the income maintenance technician of any and all changes in the client's participation in HCBS-CMHS, and shall provide the technician with copies of the first page of all URC-approved ULTC-100.2 forms.
2. The case manager shall inform all Alternative Care Facility clients of their obligation to pay the full and current state-prescribed room and board amount, from their own income, to the Alternative Care Facility provider.
3. If the client has an open service case file at the county department of social services, the case manager shall keep the client's caseworker informed of the client's status and shall participate in mutual staffing of the client's case.
4. The case manager shall inform the client's physician of any significant changes in the client's condition or needs.
5. Within five (5) working days of receipt, from the State or its agent, of the approved Prior Authorization Request form, the case manager shall provide copies to all the HCBS-CMHS providers in the case plan.
6. The case manager shall notify the URC, on a form prescribed by the state of the outcome of all non-diversions, as defined at Section 8.509.14.
7. The case manager shall report to the Colorado Department of Public Health and Environment any congregate facility which is not licensed.
8. The case management agency shall notify the state of any client appeals which are initiated as a result of denials or terminations made by the case management agency.

**B. CASE RECORDING/DOCUMENTATION**

1. The case management agency shall maintain records on every individual for whom intake was conducted, including a copy of the intake form. The records must indicate the dates on which the referral was first received, and the dates of all actions taken by the case management agency. Reasons for all assessment decisions and program targeting decisions must be clearly stated in the records.
2. The case record shall include:
  - a. Identifying information, including the state identification (Medicaid) number, and
  - b. All state-required forms; and
  - c. Documentation of all case management activity required by these regulations.

3. Case management documentation shall meet all the following standards:
  - a. A separate case record shall be maintained for each client receiving services in the Home and Community Based Services for Community Mental Health Supports Program.
  - b. Documentation shall be legible;
  - c. Entries shall be written at the time of the activity or shortly thereafter,
  - d. Entries shall be dated according to the date of the activity, including the year;
  - e. Entries shall be made in permanent ink;
  - f. The client shall be identified on every page;
  - g. The person making each entry shall be identified;
  - h. Entries shall be concise, but shall include all pertinent information;
  - i. All information regarding a client shall be kept together for easy access and review by case managers, supervisors, program monitors and auditors;
  - j. The source of all information shall be recorded, and the record shall clarify whether information is observable and objective fact, or is a judgment or conclusion on the part of anyone;
  - k. All persons and agencies referenced in the documentation shall be identified by name and by relationship to the client;
  - l. All forms prescribed by the State shall be filled out by the case manager to be complete, correct and accurate.
4. All records shall be kept for the period of time specified in the case management agency contract, and shall be made available to the state as specified in the contract.

**8.509.40 HCBS-CMHS PROVIDERS**

- A. Any provider agency with a valid contract to provide HCBS-EBD services, according to Section 8.487, shall be deemed certified to provide the same services to HCBS-CMHS clients.

**8.510 CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES**

**8.510.1 DEFINITIONS**

Adaptive Equipment means a device(s) that is used to assist with completing activities of daily living.

Agency with Choice (AwC) means a Financial Management Services (FMS) model where the FMS and the client/authorized representative are co-employers of CDASS Attendants. Under the AwC model, the FMS is the employer.

Allocation means the funds determined by the case manager and made available by the Department to clients receiving Consumer Directed Attendant Support Services (CDASS) and administered by the Financial Management Services (FMS) authorized for attendant support services and administrative fees paid to the FMS.

Attendant means the individual who meets qualifications in § 8.510.8 who provides CDASS as determined by § 8.510.3 and is hired by the client or by a contracted FMS vendor.

Attendant Support Management Plan (ASMP) means the documented plan for clients to manage their care as determined by § 8.510.4 which is reviewed and approved by the Case Manager.

Authorized Representative (AR) means an individual designated by the client or the legal guardian, if appropriate, who has the judgment and ability to direct CDASS on a client's behalf and meets the qualifications as defined at § 8.510.6 and § 8.510.7.

Benefits Utilization System (BUS) means the web based data system maintained by the Department for recording case management activities associated with Long Term Services and Supports (LTSS).

Case Management Agency (CMA) means a Department approved agency within a designated service area where an applicant or client can obtain Long Term Services and Supports case management services.

Case Manager means an individual who meets the qualifications to perform case management activities by contract with the Department.

Consumer Directed Attendant Support Services (CDASS) means the service delivery option for services that assist an individual in accomplishing activities of daily living when included as a waiver benefit that may include health maintenance, personal care, and homemaker activities.

CDASS Training means the required training, including a final, comprehensive assessment, provided by the Department or its designee to a client/AR who is interested in CDASS.

Continued Stay Review (CSR) means a periodic face to face review of a client's condition and service needs by a Case Manager to determine a client's continued eligibility for Long Term Services and Supports in the client's residence.

Cost Containment means the cost of providing care in the community is less than or equal to the cost of providing care in an institutional setting based on the average aggregate amount. The cost of providing care in the community shall include the cost of providing Home and Community Based Services.

Department means the Department of Health Care Policy and Financing.

Eligibility means a client qualifies for Medicaid based on the applicable eligibility category and the client's individual financial circumstances, including, but not limited to, income and resources.

Financial Management Services (FMS) means an entity contracted with the Department to complete employment related functions for CDASS attendants and track and report on individual client allocations for CDASS.

Fiscal/Employer Agent (F/EA) is an FMS model where the FMS is an agent of the client as the employer.

Functional Eligibility means an applicant or client meets the criteria for Long Term Services and Supports as determined by the Department's prescribed instrument as outlined defined in § 8.401.

Functional Needs Assessment means a component of the Assessment process which includes a comprehensive evaluation using the ULTC Instrument to determine if the client meets the appropriate Level of Care (LOC).

Home and Community Based Services (HCBS) means a variety of supportive services delivered in conjunction with Colorado Medicaid Waivers to clients in community settings. These services are designed to help older persons and persons with disabilities remain living at home.

Inappropriate Behavior means offensive behavior which includes: documented verbal, sexual and/or physical abuse. Verbal abuse may include threats, insults or offensive language over a period of time.

Licensed Medical Professional means a person who has completed a 2-year or longer program leading to an academic degree or certificate in a medically related profession. This is limited to those who possess the following medical licenses: physician, physician assistant and nurse governed by the Colorado Medical Practice Act and the Colorado Nurse Practice Act.

Long Term Services and Supports (LTSS) means Nursing Facilities, Intermediate Care Facilities for the Intellectually/Developmentally Disabled (ICF/IDD), Home and Community Based Services (HCBS), Long Term Home Health or the Program of All-inclusive Care for the Elderly (PACE), Swing Bed and Hospital Back Up Program (HBU).

Long Term Services and Supports Certification Period means the designated period of time in which a client is functionally eligible to receive Long Term Services and Supports not to exceed one year.

Prior Authorization Request (PAR) means the Department prescribed form that assures the provider that the service is medically necessary and a Colorado Medical Assistance Program benefit.

Notification means the routine methods in which the Department or its designee conveys information about CDASS. Including but not limited to the CDASS web site, client statements, Case Manager contact, or FMS contact.

Reassessment means a review of the Assessment, to determine and document a change in the client's condition and/or client's service needs.

Stable Health means a medically predictable progression or variation of disability or illness.

Training and Operations Vendor means the organization contracted by the Department to provide training to CDASS Clients/authorized representatives, provide training to case managers on participant direction, and provide customer service related to participant direction.

## **8.510.2 ELIGIBILITY**

8.510.2.A. To be eligible for CDASS, an individual shall meet all of the following:

1. Choose the CDASS service delivery option
2. Meet medical assistance Financial Eligibility requirements
3. Meet Long Term Services and Supports Functional Eligibility requirements
4. Be eligible for an HCBS Waiver with the CDASS option
5. Demonstrate a current need for Attendant support
6. Document a pattern of stable health that necessitates a predictable pattern of Attendant support and appropriateness of CDASS services

7. Provide a statement from the primary care physician attesting to the client's ability to direct his or her care with sound judgment or a required AR with the ability to direct the care on the client's behalf
8. Complete all aspects of the ASMP and training and demonstrate the ability to direct care or have care directed by an AR

### **8.510.3 CDASS SERVICES**

8.510.3.A Covered services shall be for the benefit of only the client and not for the benefit of other persons living in the home.

8.510.3.B Services include:

1. Homemaker. General household activities provided by an Attendant in a client's home to maintain a healthy and safe environment for the client. Homemaker activities shall be applied only to the permanent living space of the client and multiple attendants may not be reimbursed for duplicating household tasks. Tasks may include the following activities or teaching the following activities:
  - a. Routine light housekeeping such as: dusting, vacuuming, mopping, and cleaning bathroom and kitchen areas
  - b. Meal preparation
  - c. Dishwashing
  - d. Bed making
  - e. Laundry
  - f. Shopping for necessary items to meet basic household needs
2. Personal care. Services furnished to an eligible client in the community or in the client's home to meet the client's physical, maintenance, and supportive needs. Including:
  - a. Eating/feeding which includes assistance with eating by mouth using common eating utensils such as forks, knives, and straws
  - b. Respiratory assistance with cleaning or changing oxygen equipment tubes, filling the distilled water reservoir, and moving the cannula or mask from the client's face
  - c. Skin care preventative in nature when skin is unbroken; including the application of non-medicated/non-prescription lotions and/or sprays and solutions, rubbing of reddened areas, and routine foot checks for people with diabetes
  - d. Bladder/Bowel Care:
    - i) Assisting client to and from the bathroom
    - ii) Assistance with bed pans, urinals, and commodes
    - iii) Changing of incontinence clothing or pads

- iv) Emptying Foley or suprapubic catheter bags only if there is no disruption of the closed system
  - v) Emptying ostomy bags
- e. Personal hygiene:
  - i) Bathing including washing, shampooing, and shaving
  - ii) Grooming
  - iii) Combing and styling of hair
  - iv) Trimming, cutting, and soaking of nails
  - v) Basic oral hygiene and denture care
- f. Dressing assistance with ordinary clothing and the application of non-prescription support stockings and application of orthopedic devices such as splints and braces or artificial limbs
- g. Transferring a client when the client has sufficient balance and strength to assist with and can direct the transfer
- h. Assistance with mobility
- i. Positioning when the client is able to verbally or non-verbally identify when the position needs to be changed including simple alignment in a bed, wheelchair or other furniture
- j. Assistance with self administered medications when the medications have been preselected by the client, a family member, a nurse or a pharmacist and are stored in containers other than the prescription bottles, such as medication minders and medication reminding:
  - i) Medication minders must be clearly marked as to the day and time of dosage and must be kept in a way as to prevent tampering
  - ii) Medication reminding includes only inquiries as to whether medications were taken, verbal prompting to take medications, handing the appropriately marked medication minder container to the client and opening the appropriately marked medication minder if the client is unable
- k. Cleaning and basic maintenance of durable medical equipment
- l. Protective oversight when the client requires supervision to prevent or mitigate disability related behaviors that may result in imminent harm to people or property
- m. Accompanying includes going with the client, as necessary on the care plan, to medical appointments, and errands such as banking and household shopping. Accompanying the client to provide one or more personal care services as needed during the trip. Companionship is not a benefit of CDASS

3. Health Maintenance Activities. Routine and repetitive health related tasks furnished to an eligible client in the community or in the client's home, which are necessary for health and normal bodily functioning that a person with a disability is unable to physically carry out. Services may include:
  - a. Skin care provided when the skin is broken or a chronic skin condition is active and could potentially cause infection Skin care may include: wound care, dressing changes, application of prescription medicine, and foot care for people with diabetes when prescribed by a licensed medical professional
  - b. Nail care in the presence of medical conditions that may involve peripheral circulatory problems or loss of sensation
  - c. Mouth care performed when:
    - i) there is injury or disease of the face, mouth, head or neck
    - ii) in the presence of communicable disease
    - iii) the client is unconscious
    - iv) oral suctioning is required
  - d. Dressing including the application of anti-embolic or other prescription pressure stockings and orthopedic devices such as splints, braces, or artificial limbs if considerable manipulation is necessary
  - e. Feeding:
    - i) When oral suctioning is needed on a stand-by or other basis
    - ii) When there is high risk of choking that could result in the need for emergency measures such as CPR or the Heimlich maneuver as demonstrated by a swallow study
    - iii) Syringe feeding
    - iv) Feeding using apparatus
  - f. Exercise prescribed by a licensed medical professional including passive range of motion
  - g. Transferring a client when he/she is unable to assist or the use of a lift such as a Hoyer is needed
  - h. Bowel care provided to a client including digital stimulation, enemas, care of ostomies, and insertion of a suppository if the client is unable to assist
  - i. Bladder care when it involves disruption of the closed system for a Foley or suprapubic catheter, such as changing from a leg bag to a night bag and care of external catheters
  - j. Medical management required by a medical professional to monitor: blood pressures, pulses, respiratory assessment, blood sugars, oxygen saturations, pain management, intravenous, or intramuscular injections

- k. Respiratory care:
  - i) Postural drainage
  - ii) Cupping
  - iii) Adjusting oxygen flow within established parameters
  - iv) Suctioning of mouth and nose
  - v) Nebulizers
  - vi) Ventilator and tracheostomy care
  - vii) Prescribed respiratory equipment

#### **8.510.4 ATTENDANT SUPPORT MANAGEMENT PLAN**

8.510.4.A The client/AR shall develop a written ASMP which shall be reviewed by the Training and Operations Vendor and approved by the Case Manager. CDASS shall not begin until the Case Manager approves the plan and provides a start date to the FMS. The ASMP is required by the FMS following initial training and shall be modified when there is a change in the client's needs. The plan shall describe the individual's:

1. Current health status
2. Needs and requirements for CDASS
3. Plans for securing CDASS
4. Plans for handling emergencies
5. Assurances and plans regarding direction of CDASS Services, as described at 10 CCR 2505 -10, § 8.510.3 and § 8.510.6 if applicable
6. Plans for management of the budget within the client's Individual Allocation
7. Designation of an Authorized Representative
8. Designation of regular and back-up employees approved for hire

8.510.4.B. If ASMP is disapproved by the Case Manager, the client has the right to review that disapproval. The client shall submit a written request to the CMA stating the reason for the review and justification of the proposed ASMP. The client's most recently approved ASMP shall remain in effect while the review is in process.

#### **8.510.5 TRAINING ACTIVITIES**

8.510.5.A. When necessary to obtain the goals of the ASMP, the client/AR shall verify that each attendant has been or will be trained in all necessary health maintenance activities prior to performance by the attendant.

8.510.5.B The verification requirement of 8.510.5.A above will be on a form provided by the FMS and returned to the FMS with the client/AR completed employment packet.

**8.510.6 CLIENT/AR RESPONSIBILITIES**

**8.510.6.A. Client/AR responsibilities for CDASS Management:**

1. Attend training provided by the Training and Operations Vendor; clients who cannot attend training shall designate an AR
2. Develop an ASMP
3. Determine wages for each Attendant not to exceed the rate established by the Department. Wages shall be established in accordance with Colorado Department of Labor and Employment standards including, but not limited to, minimum wage and overtime requirements.
4. Determine the required credentials for Attendants
5. Complete previous employment reference checks on Attendants
6. Follow all relevant laws and regulations applicable to client's supervision of Attendants
7. Explain the role of the FMS to the Attendant
8. Budget for Attendant care within the established monthly and CDASS Certification Period Allocation
9. Review all Attendant timesheets and statements for accuracy of time worked, completeness, and client/AR and Attendant signatures. Timesheets shall reflect actual time spent providing CDASS services
10. Review and submit approved Attendant timesheets to the FMS by the established timelines for Attendant reimbursement
11. Authorize the FMS to make any changes in the Attendant wages
12. Understand that misrepresentation or false statements may result in administrative penalties, criminal prosecution, and/or termination from CDASS. Client/AR is responsible for assuring timesheets submitted are not altered in any way and that any misrepresentations are immediately reported to the FMS
13. Completing and managing all paperwork and maintaining employment records
14. Select an FMS vendor upon enrollment into CDASS.

**8.510.6.B. Client/AR responsibilities for CDASS when using the F/EA FMS model:**

1. Recruit, hire, fire and manage Attendants
2. Train Attendants to meet client needs
3. Terminate Attendants who are not meeting client needs
4. Operate as the sole employer of the attendant

5. Complete necessary employment related functions through the FMS agent, including hiring and termination of Attendants and employer related paperwork necessary to obtain an employer tax ID
- 8.510.6.C Client/AR responsibilities for CDASS when using the AwC FMS model
1. Select and discharge Attendants
  2. Serve as the manager for CDASS Attendants
  3. Establish hiring agreements, as required by the FMS with each Attendant, outlining wages, services to be provided (limited to Personal Care, Homemaker or Health Maintenance Activities), schedules and working conditions
  4. Ensure FMS receives hiring agreements prior to Attendants providing services
- 8.510.6.D. Client/AR responsibilities for Verification:
1. Sign and return a responsibilities acknowledgement form for activities listed in 8.510.6 to the Case Manager.
- 8.510.6.E. Clients receiving CDASS services have the following Rights:
1. Right to receive instruction on managing CDASS.
  2. Right to receive program materials in accessible format.
  3. Right to receive notification of changes to CDASS.
  4. Right to participate in Department sponsored opportunities for input.
  5. CDASS clients have the right to transition back to Personal Care, Homemaker, and Home Health Aide and Nursing services provided by an agency at any time. A client who wishes to transition back to an agency-provided services shall contact the Case Manager. The Case Manager shall coordinate arrangements for the services.
  6. A client/AR may request a re-assessment, as described at § 8.390.1 (N), if his or her level of service needs have changed.
  7. A client/AR may revise the ASMP at any time with CM approval. CM shall notify FMS of changes.

#### **8.510.7 AUTHORIZED REPRESENTATIVES**

- 8.510.7.A. CDASS clients who require an AR may not serve as an AR for another CDASS client.
- 8.510.7.B. Authorized Representatives shall not receive reimbursement for AR services and shall not be reimbursed for CDASS services as an Attendant for the client they represent.

#### **8.510.8 ATTENDANTS**

- 8.510.8.A. Attendants shall be at least 18 years of age and demonstrate competency in caring for the client to the satisfaction of the client/AR.

- 8.510.8.B. Attendants may not be reimbursed for more than 24 hours of CDASS service in one day for one or more clients collectively.
- 8.510.8.C. Authorized Representatives shall not be employed as an Attendant for the client.
- 8.510.8.D. Attendants must be able to perform the tasks on the Service Plan they are being reimbursed for and the client must have adequate Attendants to assure compliance with all tasks on the service plan.
- 8.510.8.E. Attendants shall not represent themselves to the public as a licensed nurse, a certified nurse's aide, a licensed practical or professional nurse, a registered nurse or a registered professional nurse.
- 8.510.8.F. Attendants shall not have had his or her license as a nurse or certification as a nurse aide suspended or revoked or his application for such license or certification denied.
- 8.510.8.G. Attendants shall receive an hourly wage based on the rate negotiated between the Attendant and the client/AR not to exceed the amount established by the Department. The FMS shall make all payments from the client's Individual Allocation under the direction of the client/AR within the limits established by the Department.
- 8.510.8.H. Attendants may not attend training provided by the Training and Operations Vendor during instruction.

**8.510.85 FINANCIAL MANAGEMENT SERVICES**

- 8.510.85.A The FMS vendor shall be responsible for the following tasks without regard to the FMS model selected by the client/AR
1. Collect and process timesheets submitted by attendants.
  2. Conduct payroll functions including withholding employment related taxes such as worker's compensation insurance, unemployment compensation insurance, withholding of all federal and state taxes, compliance with federal and state laws regarding overtime pay and minimum wage requirements.
  3. Distribute paychecks in accordance with timelines established by the Colorado Department of Labor and Employment.
  4. Submit authorized claims for CDASS provided to eligible client.
  5. Verify Attendants' citizenship status and maintain copies of the I-9 documents.
  6. Track and report utilization of client allocations.
  7. Comply with Department regulations at 10 CCR 2505 and the contract with the Department.
- 8.510.85.B The FMS vendor operating under the AwC model shall be responsible for the following in addition to the requirements set forth at 8.510.9.A:
1. Operate as the primary employer of Attendants
  2. Ensuring execution of the hiring agreement between the FMS, the client, and the attendant

3. Comply with all requirements set forth by the Affordable Care Act, including, but not limited to the provision of health insurance.

8.510.85.C. The FMS vendor operating under the F/EA model shall be responsible for obtaining designation as a Fiscal/Employer Agent per Section 3504 of the IRS Code in addition to the requirements set forth at 8.510.9.A.

#### **8.510.86 SELECTION OF FMS VENDORS**

8.510.86.A The client/AR shall select an FMS vendor at the time of enrollment into CDASS from the vendors contracted with the Department.

8.510.86.B The client/AR shall remain with the selected FMS vendor until the selection of FMS is changed during the yearly designated open enrollment period.

8.510.86.C The client/AR shall select either the AwC or F/EA FMS model at the time of enrollment into CDASS. The client shall provide the FMS and attendants at least thirty days' notice of changing FMS models.

#### **8.510.9 START OF SERVICES**

8.510.9.A. The start date shall not occur until all of the requirements defined at 10 C.C.R. 2505-10, § 8.510.2, 8.510.4, 8.510.5, 8.510.6 and 8.510.8 have been met.

8.510.9.B. The Case Manager shall approve the ASMP, establish a certification period, submit a PAR and receive a PAR approval before a client is given the start date and can begin CDASS.

8.510.9.C. The FMS shall process the Attendant's employment packet within the Department's prescribed timeframe and ensure the client has a minimum of two approved Attendants prior to starting CDASS.

8.510.9.D. The FMS will not reimburse Attendants for services provided prior to the CDASS start date. Attendants are not approved until the FMS provides the client/AR with an employee number and confirms employment status.

8.510.9.E. If a client is transitioning from a Hospital, Nursing Facility, or HCBS agency services the CM shall coordinate with the Discharge Coordinator to ensure the discharge date and CDASS start date correspond.

#### **8.510.10 SERVICE SUBSTITUTION**

8.510.10.A. Once a start date has been established for CDASS, the Case Manager shall establish an end date and disenroll the individual from any other Medicaid-funded Attendant support including home health effective as of the start date of CDASS.

8.510.10.B. Case Managers shall not authorize, on the PAR, concurrent payments for CDASS and other waiver service delivery options for Personal Care services, Homemaker services, and Health Maintenance Activities for the same individual.

8.510.10.C. Clients may receive up to sixty days of Medicaid acute home health agency based services directly following acute episodes as defined by 8.523.11. Client allocations shall not be changed for sixty days in response to an acute episode unless acute home health services are unavailable. If acute home health is unavailable, a client's allocation may be temporarily adjusted to meet a client's need.

8.510.10.D. Clients may receive Hospice services in conjunction with CDASS services. CDASS service plans shall be modified to ensure no duplication of services.

**8.510.11 ENDING CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES**

8.510.11.A. If an individual chooses to use an alternate care option, an institutional setting, or is terminated involuntarily, a client will be terminated from CDASS when the Case Manager has secured an adequate alternative to CDASS in the community.

8.510.11.B. Prior to a client being terminated for reasons other than those listed in section 8.510.13, the following steps may be taken:

1. Mandatory re-training conducted by the contracted Training and Operations Vendor
2. Required designation of an AR if one is not in place, or mandatory re-designation of an AR if one has already been assigned
3. Discontinuation according to the following:
  - i) The notice shall provide the client/AR with the reasons for termination and with information about the client's rights to fair hearing and appeal procedures, in accordance with 10 C.C.R. 2505-10, § 8.057. Once notice has been given for termination, the client/AR shall contact the Case Manager for assistance in obtaining other home care services. The Case Manager has thirty (30) calendar days prior to the date of termination to discontinue CDASS services and begin alternate care services. Exceptions may be made to the thirty (30) day advance notice requirement when the Department has documented that there is danger to the client or to the Attendant(s). The Case Manager shall notify the FMS of the date on which the client is being terminated from CDASS.

**8.510.12 TERMINATION**

8.510.12.A. Clients may be terminated for the following reasons:

1. The client/AR fails to comply with CDASS program requirements
2. The client/AR demonstrates an inability to manage Attendant support
3. A client/AR no longer meets program criteria due to deterioration in physical or cognitive health
4. The client/AR spends the monthly Allocation in a manner indicating premature depletion of funds
5. The client's medical condition causes an unsafe situation for the client, as determined by the treating physician
6. The client provides false information or false records as determined by the Department

8.510.12.B. Clients who are terminated according to § 8.510.12 may be re-enrolled for future CDASS service delivery

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**8.510.13 INVOLUNTARY TERMINATION**

8.510.13.A. Clients may be involuntarily terminated for the following reasons:

1. A client/AR no longer meets program criteria due to deterioration in physical or cognitive health AND refuses to designate an AR to direct services
2. The client/AR demonstrates a consistent pattern of overspending their monthly Allocation leading to the premature depletion of funds AND the Department has determined that adequate attempts to assist the client/AR to resolve the overspending have failed
3. The client/AR exhibits Inappropriate Behavior toward Attendants, Case Managers, the Training and Operations Vendor or the FMS, and the Department has determined that the Training and Operations Vendor has made adequate attempts to assist the client/AR to resolve the Inappropriate Behavior, and those attempts have failed
4. Documented misuse of the monthly Allocation by client/AR has occurred
5. Intentional submission of fraudulent CDASS documents to Case Managers, the Training and Operations Vendor, the Department or the FMS
6. Instances of convicted fraud and/or abuse

8.510.13.B. Termination may be initiated immediately for clients being involuntarily terminated

8.510.13.C. Clients who are involuntarily terminated according to § 8.510.13 may not be re-enrolled in CDASS as a service delivery option.

**8.510.14 CASE MANAGEMENT FUNCTIONS**

8.510.14.A. The Case Manager shall review and approve the ASMP completed by the client/AR. The Case Manager shall notify the client/AR of the approval and establish a certification period and Allocation.

8.510.14.B. If the Case Manager determines that the ASMP is inadequate to meet the client's CDASS needs, the Case Manager shall assist the client/AR with further development of the ASMP.

8.510.14.C. The Case Manager shall calculate the Individual Allocation for each client who chooses CDASS as follows:

1. Calculate the number of Personal Care, Homemaker, and Health Maintenance Activities hours needed on a monthly basis using the Department prescribed method. The needs determined for the Allocation should reflect the needs in the ULTC assessment tool and the service plan. The Case Manager shall use the Departments established rate for Personal Care, Homemaker, and Health Maintenance Activities to determine the client's Allocation.
2. The Allocation should be determined using the Department prescribed method at the initial enrollment and at CSR, and should always match the client's need for services.

8.510.14.D. Prior to training or when an allocation changes, the Case Manager shall provide written notification of the Individual Allocation to each client.

- 8.510.14.E. A client/AR who believes he or she needs a change in Attendant support, may request the Case Manager to perform a reassessment. If the reassessment indicates that a change in Attendant support is justified, the client/AR shall amend ASMP and the Case Manager shall complete a PAR revision indicating the increase and submit it to the Department's fiscal agent. The Case Manager shall provide notice of the change to client/AR and make changes in the BUS.
- 8.510.14.F. In approving an increase in the individual Allocation, the Case Manager shall consider all of the following:
1. Any deterioration in the client's functioning or change in the natural support condition
  2. The appropriateness of Attendant wages as determined by Department's established rate for equivalent services
  3. The appropriate use and application of funds to CDASS services
- 8.510.14.G. In reducing an Individual Allocation, the Case Manager shall consider:
1. Improvement of functional condition or changes in the available natural supports
  2. Inaccuracies or misrepresentation in previously reported condition or need for service
  3. The appropriate use and application of funds to CDASS services
- 8.510.14.H. Case Managers shall notify the state fiscal agent to cease payments for all existing Medicaid-funded Personal Care, Homemaker, Health Maintenance Activities and/or Long Term Home Health as defined under the Home Health Program at 10 C.C.R. 2505-10, § 8.520 et seq. as of the client's CDASS start date.
- 8.510.14.I. For effective coordination, monitoring and evaluation of clients receiving CDASS, the Case Manager shall:
1. Contact the CDASS client/AR once a month during the first three months to assess their CDASS management, their satisfaction with care providers and the quality of services received. Case Managers may refer clients to the FMS for assistance with payroll and budgeting and to the Training and Operations Vendor for training needs and supports
  2. Contact the client quarterly, after the first three months to assess their implementation of service plans, CDASS management issues, and quality of care, CDASS expenditures and general satisfaction
  3. Contact the client/AR when a change in AR occurs and contact the client/AR once a month for three months after the change takes place
  4. Review monthly FMS reports to monitor client spending patterns and service utilization to ensure appropriate budgeting and follow up with the client/AR when discrepancies occur
  5. Utilize Department overspending protocol when needed to assist clients
- 8.510.14.J. Reassessment: For clients receiving CDASS, the Case Manager shall conduct an interview with each client/AR every six months and at least every 12 months, the Interview shall be conducted face to face. The interview shall include review of the ASMP and documentation from the physician stating the client/AR's ability to direct care.

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**8.510.15 ATTENDANT REIMBURSEMENT**

- 8.510.15.A. Attendants shall receive an hourly wage not to exceed the rate established by the Department and negotiated between the Attendant and the client/AR hiring the Attendant. The FMS shall make all payments from the client's Individual Allocation under the direction of the client/AR. Attendant wages shall be commensurate with the level of skill required for the task and wages shall be justified on the ASMP.
- 8.510.15.B. Once the client's yearly Allocation is used, further payment will not be made by the FMS, even if timesheets are submitted. Reimbursement to Attendants for services provided when a client is no longer eligible for CDASS or when the client's Allocation has been depleted are the responsibility of the client.
- 8.510.15.C. Allocations shall not exceed the monthly cost containment cap. The Department may approve an over cost containment Allocation if it meets prescribed Department criteria.

**8.510.16 REIMBURSEMENT TO FAMILY MEMBERS**

- 8.510.16.A. Family members/legal guardians may be employed by the client or FMS to provide CDASS, subject to the conditions below. For the purposes of this section, family shall be defined as all persons related to the client by virtue of blood, marriage, adoption, or common law.
- 8.510.16.B. The family member or legal guardian shall be employed by the client or FMS and be supervised by the client/AR if providing CDASS.
- 8.510.16.C. The family member and/ or legal guardian being reimbursed as a Personal Care, Homemaker, and/or Health Maintenance Activities Attendant shall be reimbursed at an hourly rate with the following restrictions:
1. A family member and/or legal guardian shall not be reimbursed for more than forty (40) hours of CDASS in a seven day period from 12:00am on Sunday to 11:59pm on Saturday.
  2. Family member wages shall be commensurate with the level of skill required for the task and should not deviate greatly from that of a non-family member Attendant unless there is evidence of a higher level of skill.
  3. A member of the client's household may only be paid to furnish extraordinary care as determined by the Case Manager. Extraordinary care is determined by assessing whether the care to be provided exceeds the range of care that a family member would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the client and avoid institutionalization. Extraordinary care shall be documented on the service plan.
- 8.510.16.D. A client/AR who choose a family member as a care provider, shall document the choice on the Attendant Support Services management plan.

**8.515 HOME AND COMMUNITY BASED SERVICES FOR PERSONS WITH BRAIN INJURY (HCBS-BI)**

**8.515.1 LEGAL BASIS**

The Home and Community-Based Services for Persons with Brain Injury (HCBS-BI) program is authorized by waiver of the amount, duration, and scope of services requirements contained in Section 1902(a)(10)(B) of the Social Security Act, 42 U.S.C. § 1396a (2011). This waiver is granted by the United States Department of Health and Human Services under Section 1915(c) of the Social Security Act, 42 U.S.C. § 1396n (2011). 42 U.S.C. §§ 1396a and 1396n are incorporated by reference. Such incorporation, however, excludes later amendments to or editions of the referenced material.

This regulation is adopted pursuant to the authority in Section 25.5-1-303, C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, Sections 24-4-101 et seq., C.R.S. and the Home and Community-Based Services for Persons with Brain Injury Act, Sections 25.5-6-701 et seq., C.R.S.

Pursuant to 24-4-103(12.5), C.R.S., the Department of Health Care Policy and Financing maintains either electronic or written copies of the incorporated texts for public inspection. Copies may be obtained at a reasonable cost or examined during regular business hours at 1570 Grant Street, Denver, CO 80203. Additionally, any incorporated material in these rules may be examined at any State depository library.

**8.515.2 DEFINITIONS OF SERVICES PROVIDED**

Adult Day Services means services as defined at Section 8.515.70

Behavioral Programming and Education means services as defined at Section 8.516.40.

Consumer Directed Attendant Support Services (CDASS) means services as defined at Section 8.510

Counseling Services means services as defined at Section 8.516.50.

Day Treatment means services as defined at Section 8.515.80.

Electronic Monitoring Services means services as defined at Section 8.488.

Home Modification means services as defined at Section 8.493.

Independent Living Skills Training (ILST) means services as defined at Section 8.516.10.

Non-Medical Transportation Services means services as defined at Section 8.494.

Personal Care means services as defined at Section 8.489.

Respite Care means services as defined at Section 8.516.70.

Specialized Medical Equipment and Supplies means services as defined at Section 8.515.50.

Substance Abuse Counseling means services as defined at Section 8.516.60.

Supported Living means services delivered by a community-based residential program that has been certified by the Department to provide the services defined at Section 25.5-6-703(8), C.R.S.

Transitional Living Program means services as defined at Section 8.516.30.

### **8.515.3 GENERAL DEFINITIONS**

Brain Injury means an injury to the brain of traumatic or acquired origin which results in residual physical, cognitive, emotional and behavioral difficulties of a non-progressive nature and is limited to the following International Classification of Diseases, 9th Edition, Clinical Modification (ICD-9-CM) codes:

- 310 – 310.9      Specific nonpsychotic mental disorders due to brain damage
- 348.1      Anoxic brain damage
- 348.4      Compression of the brain
- 349.82      Toxic encephalopathy
- 430      Subarachnoid hemorrhage
- 431      Intracerebral hemorrhage
- 433      Occlusion and stenosis of precerebral arteries
- 436      Acute, but ill-defined cerebrovascular disease
- 437 – 437.9      Other and ill-defined cerebrovascular disease
- 438 – 438.9      Late effects of cerebrovascular disease
- 800 – 800.9      Fracture of vault of skull
- 801 – 801.9      Fracture of base of skull
- 803 – 803.9      Other and unqualified skull fractures
- 804 – 804.9      Multiple fractures involving skull or face with other bones
- 850 – 850.9      Concussion
- 851 – 851.9      Cerebral laceration and contusion
- 852 – 852.5      Subarachnoid, subdural, and extradural hemorrhage, following injury
- 853 – 853.1      Other unspecified intracranial hemorrhage following injury
- 854 – 854.1      Intracranial injury of other and unspecified nature
- 905      Late effects of musculoskeletal and connective tissue injuries
- 907      Late effects of injuries to the nervous system
- 959.01      Head injury, unspecified

Case Management Agency means the agency designated by the Department to provide the Single Entry Point Functions detailed at Section 8.393.

Individual Cost Containment Amount means the average cost of services for a comparable population institutionalized at the appropriate level of care, as determined annually by the Department.

Service Plan means the plan developed by the case manager in coordination with the HCBS-BI client and/or the legal guardian to identify and document the HCBS-BI services, other Medicaid services, and any other non-Medicaid services or supports that the HCBS-BI client requires in order to live successfully in the community.

#### **8.515.4 SCOPE AND PURPOSE**

The HCBS-BI program provides those services listed at Section 8.515.2 to eligible individuals with brain injury that require long term supports and services in order to remain in a community-based setting.

#### **8.515.5 ELIGIBLE PERSONS**

HCBS-BI program enrollment and services shall be offered only to individuals determined by the Department or its agent to have met all eligibility requirements in this Section 8.515.5.

##### **8.515.5.A LEVEL OF CARE**

Eligible individuals shall be determined by the Department or its agent to require one of the following levels of care:

1. Hospital Level of Care as evidenced by:
  - a. The individual shall have been:
    - i. Referred to the Case Management Agency while receiving inpatient care in an acute care or rehabilitation hospital for the treatment of the individual's brain injury; or
    - ii. Determined by the Department or its agent to have a significant functional impairment as evidenced by a comprehensive functional assessment using the Uniform Long Term Care 100.2 (ULTC 100.2) assessment tool that results in at least the minimum scores required by Section 8.401.1.15; and
  - c. The individual shall require goal oriented therapy with medical management by a physician; and
  - d. The individual cannot be therapeutically managed in a community-based setting without significant supervision and structure, specialized therapy, and support services.
2. Nursing Facility Level of Care as evidenced by all of the following:
  - a. The individual shall have been determined by the Department or its agent to have a significant functional impairment as evidenced by a comprehensive functional assessment using the Uniform Long Term Care 100.2 (ULTC 100.2) assessment tool that results in at least the minimum scores required by Section 8.401.1.15;
  - b. The individual shall require long term support services at a level comparable to those services typically provided in a nursing facility.

**8.515.5.B TARGET GROUP**

Eligible individuals shall be determined by the Department or its agent to meet all of the following target group criteria:

1. The individual shall have a diagnosis of Brain Injury. This diagnosis must be documented on the individual's Professional Medical Information Page (PMIP) of the ULTC 100.2 assessment tool.
2. Age Limit
  - a. Individuals enrolled in the Brain Injury waiver shall be aged 16 years and older and shall have sustained the brain injury prior to the age of 65.

**8.515.5.C FINANCIAL ELIGIBILITY**

Individuals must meet the financial requirements for long term care medical assistance eligibility specified at Section 8.100.7.

**8.515.5.D NEED FOR HCBS-BI SERVICES**

1. Only clients that currently receive HCBS-BI services, or that have agreed to accept HCBS-BI services as soon as all other eligibility criteria have been met, are eligible for the HCBS-BI program.
  - a. Case management is provided as an administrative function, not an HCBS-BI service, and shall not be used to satisfy this requirement.
  - b. The desire or need for any Medicaid services other than HCBS-BI services, as listed at Section 8.515.1, shall not satisfy this eligibility requirement.
2. Clients that have not received an HCBS-BI service for a period greater than 30 consecutive days shall be discontinued from the program.

**8.515.5.E EXCLUSIONS FROM ELIGIBILITY**

1. Individuals who are residents of nursing facilities, hospitals, or other institutional settings are not eligible to receive HCBS-BI services.
2. HCBS-BI clients that enter a nursing facility or hospital may not receive HCBS-BI services while admitted to the nursing facility or hospital.
  - a. HCBS-BI clients admitted to a nursing facility or hospital for 30 consecutive days or longer shall be discontinued from the HCBS-BI program.
  - b. HCBS-BI clients entering a nursing facility for Respite Care as an HCBS-BI service shall not be discontinued from the HCBS-BI program.

**8.515.5.F COST CONTAINMENT AND SERVICE ADEQUACY OF SERVICES**

1. The client shall not be eligible for the HCBS-BI program if the case manager determines any of the following during the initial assessment and service planning process:
  - a. The client's needs cannot be met within the Individual Cost Containment Amount.

- b. The client's needs are more extensive than HCBS-BI program services are able to support and/or that the client's health and safety cannot be assured in a community setting.
- 2. The client shall not be eligible for the HCBS-BI program at reassessment if the case manager determines the client's needs are more extensive than HCBS-BI program services are able to support and/or that the client's health and safety cannot be assured in a community setting.
- 3. If the case manager determines that the client's needs are more extensive than the HCBS-BI services are able to support and/or that the client's health and safety cannot be assured in a community setting, the case manager must document:
  - a. The results of an Adult Protective Services assessment;
  - b. A statement from the client's physician attesting to the client's mental competency status; and
  - c. Any other documentation necessary to support the determination
- 4. The client may be eligible for the HCBS-BI program at reassessment if the case manager determines that HCBS-BI program services are able to support the client's needs and the client's health and safety can be assured in a community setting.
  - a. If the case manager expects that the services required to support the client's needs will exceed the Individual Cost Containment Amount, the Department or its agent will review the service plan to determine if the client's request for services is appropriate and justifiable based on the client's condition.
    - i. The client may request of the case manager that existing services remain intact during this review process.
    - ii. In the event that the request for services is denied by the Department or its agent, the case manager shall provide the client with:
      - 1) The client's appeal rights pursuant to Section 8.057; and
      - 2) Alternative options to meet the client's needs that may include, but are not limited to, nursing facility placement.

#### **8.515.6 START DATE FOR SERVICES**

- 8.515.6.A. The start date of eligibility for HCBS-BI services shall not precede the date that all of the requirements in Section 8.515.5, have been met. The first date for which HCBS-BI services may be reimbursed shall be the later the following:
- 1. The date at which financial eligibility is effective.
  - 2. The date at which the Department or its agent has determined that the client has met all eligibility requirements at Section 8.515.5.
  - 3. The date at which the client agrees to accept services and signs all necessary intake and service planning forms.
  - 4. The date of discharge from an institutional setting.

### **8.515.7 PRIOR AUTHORIZATION OF SERVICES**

- 8.515.7.A. All HCBS-BI services must be prior authorized by the Department or its agent.
- 8.515.7.B. The Department shall develop the Prior Authorization Request (PAR) form to be used by case managers in compliance with all applicable regulations.
- 8.515.7.C. The Department or its agent shall determine if the services requested are:
1. Consistent with the client's documented medical condition and functional capacity;
  2. Reasonable in amount, scope, frequency, and duration;
  3. Not duplicative of the other services or supports included in the client's Service Plan;
  4. Not for services for which the client is receiving funds to purchase; and
  5. Do not total more than 24 hours per day of care.
- 8.515.7.D. Revisions to the PAR that are requested six months or more after the end date shall be disapproved.
- 8.515.7.E. Approval of the PAR by the Department or its agent shall authorize providers of HCBS-BI services to submit claims to the fiscal agent and to receive payment for authorized services provided during the period of time covered by the PAR.
1. Payment for HCBS-BI services is also conditional upon:
    - a. The client's eligibility for HCBS-BI services;
    - b. The provider's certification status; and
    - c. The submission of claims in accordance with proper billing procedures.
- 8.515.7.F. The prior authorization of services does not constitute an entitlement to those services. All services provided and reimbursed must be delivered in accordance with regulation and be necessary to meet the client's needs.
- 8.515.7.G. Services requested on the PAR shall be supported by information on the Service Plan and the ULTC-100.2 assessment.
- 8.515.7.H. The PAR start date shall not precede the start date of HCBS-BI eligibility in accordance with Section 8.515.6.
- 8.515.7.I. The PAR end date shall not exceed the end date of the HCBS-BI eligibility certification period.

### **8.515.8 WAITING LIST**

- 8.515.7.A. Persons determined eligible for HCBS-BI services that cannot be served within the capacity limits of the HCBS-BI waiver shall be eligible for placement on a waiting list.
1. The waiting list shall be maintained by the Department.

2. The date used to establish the person's placement on the waiting list shall be the date on which all other eligibility requirements at Section 8.515.5 were determined to have been met and the HCBS-BI Program Administrator was notified.
3. As openings become available within the capacity limits of the federal waiver, persons shall be considered for services based on the date of their waiting list placement.

### **8.515.9 CASE MANAGEMENT FUNCTIONS**

The requirements at Section 8.393 shall apply to the Case Management Agencies performing the case management functions of the HCBS-BI program.

#### **8.515.10 PROVIDER AGENCIES**

HCBS-BI providers shall abide by all general certification standards, conditions, and processes established at Section 8.487.

#### **8.515.50 ASSISTIVE AND SPECIAL MEDICAL EQUIPMENT**

##### **A. DEFINITIONS**

Specialized medical equipment and supplies includes devices controls, or appliances specified in the plan of care, which enable recipients to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live.

Assistive Devices include equipment which meets one of the following criteria:

1. Is useful in augmenting an individual's ability to function at a higher level of independence and lessen the number of direct human service hours required to maintain independence;
2. Is necessary to ensure the health, welfare and safety of the individual;
3. Enables the individual to secure help in the event of an emergency;
4. Is used to provide reminders to the individual of medical appointments, treatments, or medication schedules; or
5. Is required because of the individual's illness impairment or disability, as documented on the screening assessment form and the plan of care.

##### **B. INCLUSIONS**

1. Items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State Plan.
2. Items which are not of direct medical or remedial benefit to the recipient are excluded.
3. Assistive devices to augment cognitive processes, "cognitive-orthotics" or memory prostheses are included in this service area. Examples of cognitive orthotic devices include informational data bases, spell checkers, text outlining programs, timing devices, security systems, car finders, sounding devices, cuing watches, telememo watches, paging systems, electronic monitoring, tape recorders, electronic checkbooks, electronic medication monitors, and memory telephone.

**C. CERTIFICATION REQUIREMENTS**

Certification standards refer to both the supplier of equipment as well as the actual product or equipment itself.

1. All items shall meet applicable standards of manufacture, design and installation.
2. All equipment materials or appliances used as pan of monitoring systems shall carry a UL (Underwriter's Laboratory) number or an equivalent standard.
3. All telecommunications equipment shall be FCC registered.
4. All equipment materials, or appliances shall be installed by properly trained individuals, and the installer shall train the client in the use of the device.
5. All equipment, materials or appliances shall be tested fir proper functioning at the time of installation and at periodic intervals thereafter by a properly trained individual.
6. Any malfunction shall be promptly repaired by a properly trained technician supplied at the provider agency's expense. Equipment shall be replaced when necessary, including buttons and batteries.
7. Assistive equipment providers shall send written information to each clients case manager about the item, how it works, and how it should be maintained.

**D. REIMBURSEMENT METHOD FOR ASSISTTVE DEVICES**

Reimbursement for assistive devices will be on a per unit basis. If assistive devices are to be used primarily in a vocational application, devices should be funded through the Division of Vocational Rehabilitation with secondary funding from Medicaid.

**8.515.70 ADULT DAY SERVICES**

**A. DEFINITIONS**

1. Adult Day Services means both health and social services furnished on a regularly scheduled basis in an adult day services center two or more hours per day, one or more days per week to ensure the optimal functioning of the client Services are directed towards recreation and socialization as well as maintaining a safe and supportive environment.
2. Adult Day Services Center means a non-institutional entity that conforms to requirements for maintenance
3. Maintenance Model means services in health monitoring and individual and group therapeutic and psychological activities which serve as an alternative to long-term nursing home care.
4. Adult day services include:
  - a. Daily monitoring to assure that clients are maintaining personal hygiene and participating in age appropriate social activities as prescribed; and assisting with activities prescribed; and assisting with activities of daily living (e.g., eating, dressing).

- b. Emergency services including written procedures to meet medical crises.
- c. Assistance in the development of self-care capabilities personal hygiene, and social support services.
- d. Provision of nutritional needs appropriate to the hours in which the client is served.
- e. Nursing services as necessary to supervise medication regimen of trained medication aides and carry out any of the services listed as SKILLED CARE in SECTION 8.489.30.
- f. Social and recreational services as prescribed to meet the client's needs.
- g. Any additional services if such services are included in the budget submitted to the Department in accordance with the section on REIMBURSEMENT METHOD FOR ADULT DAY CARE below, and determined by the Department to be necessary for adult day care.

**B. CERTIFICATION STANDARDS**

All adult day service centers shall conform to all of the following Departmental standards

- 1. All providers must conform to all established departmental standards in the general certification standards section.
- 2. All providers of adult service care shall operate in full compliance with all applicable federal, state and local fire, health, safety, sanitation and other standards prescribed in law or regulation.
- 3. The agency shall provide a clean environment, free of obstacle; that could pose a hazard to client health and safety.
- 4. Agencies shall provide lockers or a safe place for clients' personal items.
- 5. Adult day service centers shall provide recreational areas and activities appropriate to the number and needs of the recipients.
- 6. Drinking facilities shall be located within easy access to residents.
- 7. Adult day service centers shall provide eating and resting areas consistent with the number and needs of the clients being served.
- 8. Adult day service centers shall provide easily accessible toilet facilities, hand washing facilities and paper towel dispensers.
- 9. The center shall be accessible to clients with supportive devices for ambulation or who are in wheelchairs.

**C. RECORDS AND INFORMATION**

Adult day service providers shall keep such records and information necessary to document the services provided to clients receiving adult day services. Medical Information Records shall include but not be limited to:

1. Medications the client is taking and whether they are being self-administered.
2. Special dietary needs, if any.
3. Restrictions on activities identified by physician in the case plan.

**D. STAFFING**

All adult day service centers shall have staff who have been trained in current cardiopulmonary resuscitation, seizure prophylaxis and control and brain injury. Adequate staff shall be on the premises at all times to ensure:

1. Supervision of clients at all times during the operating hours of the program.
2. Immediate response to emergency situations to assure the welfare of clients.
3. Provision of prescribed recreational and social activities.
4. Provision of administrative, recreational, social and supportive functions of the adult day services center.

**E. POLICIES**

The center shall have a written policy relevant to the operation of the adult day services center. Such policy shall include but not be limited to statements describing:

1. Admission criteria that qualify clients to be appropriately served in the center.
2. Interview procedures conducted for qualified clients and/or family members prior to admission to the center.
3. The meals and nourishments that will be provided, including special diets.
4. The hours that the clients will be served in the center and days of the week services will be available.
5. The personal items participants may bring with them to the center.
6. A written signed contract to be drawn up between the client or responsible party and the center outlining rules and responsibilities of the center and of the client. Each party of the contract will have a copy.
7. A statement of the center's policy for providing drop in care or day respite.

**F. REIMBURSEMENT METHOD FOR ADULT DAY SERVICES**

1. Reimbursement for adult day services shall be based upon a single a single all-inclusive payment rate per unit of service for each participating provider.

2. Each provider will be paid on a per diem statewide uniform rate. The rate of payment shall be subject to available appropriations and may be the lower of the billed amount or the Medicaid allowable rate which is determined by multiplying the number of units times a rate established by the Department

**8.515.80 DAY TREATMENT**

**A. DEFINITION**

Day Treatment means intensive therapeutic services scheduled on a regular basis for two or more hours per day, one or more days per week directed at the ongoing development of community living skills. Services take place in a non-residential setting separate from the home in which the recipient lives.

**B. PROGRAM COMPONENTS, POLICIES AND PROCEDURES**

1. Treatment plans are coordinated by a comprehensive interdisciplinary team which includes the recipient and his/her family and provides for consolidation of services in one location.
2. Professional services including occupational therapy, physical therapy, speech therapy, vocational counseling, nursing, social work, recreational therapy, case management, and neuropsychology should be directly available from the provider or available as contracted services when deemed medically necessary by the treatment plan.
3. Certified occupational therapy aides, physical therapy aides, and communication aides may be used in lieu of direct therapy with fully licensed therapists to the extent allowed in existing state statute.
4. The provider shall network with all allied medical professionals and other community based resource providers.
5. Services include social skills training, sensory motor development, reduction/elimination of maladaptive behavior and services aimed at preparing the individual for community reintegration (reaching concepts such as compliance, attending, task completion, problem solving, safety, money management).
6. Crisis situations with family, client or staff shall be addressed through counseling and referral to appropriate professionals.
7. Behavioral programs shall contain specific guidelines on treatment parameters and methods.
8. There shall be regular contact and meetings with the clients and their families to discuss treatment plan progress and revision.
9. Discharge planning will include the development of a plan which considers safety, environmental modification to support individual function, education of the family and caregiver, recommendations for the future, and referral to additional community resources.
10. Each entity must have a process, verified in writing, by which a client is made aware of the process for filing a grievance.

11. Complaints by the client or family are handled within a 24 hour period from the time of complaint by at least telephone contact.
12. Transportation between therapeutic tasks in the community shall be included in the per diem cost of day treatment.
13. There shall be an inform and consent mechanism by which the client, family medical proxy or substitute decision maker is made aware of the inherent risks associated with community based rehabilitation programs. Examples of such risks might include a greater likelihood of falling accidents, traffic hazards and access to drugs or alcohol.

**C. HUMAN RIGHTS**

Every person receiving HCBS-BI services has the following rights:

1. Every person shall mutually develop and sign their treatment plan.
2. Every person has the right to enjoy freedom of thought, conscience, and religion.
3. Every person has the right to live in a clean, safe environment.
4. Every person has the right to have his or her opinions heard and be included, to the greatest extent possible when any decisions are being made affecting his her life.
5. Every person has the right to be free from physical abuse and inhumane treatment.
6. Every person has the right to be protected from all forms of sexual exploitation.
7. Every person has the right to access necessary medical care which is adequate and appropriate to their condition.
8. Every person has the right to communicate with significant others.
9. Every person has the right to reasonable enjoyment of privacy in personal conversations.
10. Every person has the right to have access to telephones, both to make and receive calls in privacy.
11. Every person has the right to have frequent and convenient opportunities to meet with visitors.
12. Every person has the right to the same consideration and treatment as anyone else regardless of face, color, national origin, religion, age, sex, political affiliation, sexual orientation, financial status, or disability.
13. Every person who acts as his own legal guardian has the right to accept treatment of his/her own free will.
14. Nothing in this pan shall be construed to prohibit necessary assistance as appropriate, to those individuals who may require such assistance to exercise their rights.
15. Every person has the right to be free of physical restraint unless physical intervention is necessary to prevent such body movement that is likely to result in imminent injury to self or others, and only if alternative techniques have failed. Mechanical restraints are not allowed.

**D. DOCUMENTATION**

1. Intake information shall include a complete neuropsychological assessment and all pertinent medical documentation from inpatient and outpatient therapy and social history to identify key treatment components and communicate the functional implications of treatment goals.
2. Initial treatment plan development and evaluations will occur within a two week period following admission.
3. Treatment plan goals and objectives shall reference specific outcomes in the degree of personal and living independence, work productivity, and psychological and social adjustment, quality of life and degree of community participation.
4. Specific treatment modalities outlined in the treatment plan shall be systematically implemented with techniques that are consistent, functionally based, and active throughout the day. Treatment methods will be appropriate to the goals and treatment plans will be reviewed and modified as appropriate.
5. Progress notes will be kept to support specific treatment modalities rendered by date and signed by the therapist providing the service.

**E. CERTIFICATION STANDARDS**

1. Directors of day treatment programs shall have professional licensure in a health related program in combination with at least 2 years of experience in head trauma rehabilitation programming.
2. All providers shall operate in full compliance with all applicable federal, state and local fire, health, safety, sanitation and other standards prescribed in law or regulation.
3. The agency shall provide a clean environment, free of obstacles that could pose a hazard to client health and safety.
4. Agencies shall provide lockers or a safe place for clients' personal items.
5. Day treatment centers shall provide age appropriate activities and provide eating and resting areas consistent with the number and needs of the clients being served.
6. The center shall be accessible according to guidelines established by the Americans with Disabilities Act.
7. Personnel shall have training appropriate to the medical needs of the clients served including seizure management training, CPR certification, non-violent crisis intervention, and personal care standards according to SECTION-PERSONAL CARE 8.489.40.

**F. REIMBURSEMENT**

Day treatment services will be paid on a per diem basis at a rate to be determined by the Department. In order for a provider to be paid for a day of treatment, a client must have attended and received therapeutic intervention which is substantiated by case file notes signed by the rendering therapist.

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**8.515.85 SUPPORTIVE LIVING PROGRAM**

**8.515.85.A DEFINITIONS**

Activities of Daily Living (ADLs) mean basic self-care activities, including mobility, bathing, toileting, dressing, eating, transferring, support for memory and cognition, and behavioral supervision.

Assistance means the use of manual methods to guide, assist, with the initiation or completion of voluntary movement or functioning of an individual's body through the use of physical contact by others, except for the purpose of providing physical restraint.

Assistive Technology Devices means any item, piece of equipment, or product system that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Authorized Representative means an individual designated by the client or the legal guardian, if appropriate, who has the judgment and ability to assist the client in acquiring and utilizing supports and services.

Behavioral Management and Education means services as defined in 10 CCR 2505-10 § 8.516.40.A and inclusions as defined at § 8.516.40.B, as an individually developed intervention designed to decrease/control the client's severe maladaptive behaviors which, if not modified, will interfere with the client's ability to remain integrated in the community.

Case Management Agency (CMA) means an agency within a designated service area where an applicant or client can obtain Case Management services. CMAs include Single Entry Points (SEP), Community Centered Boards (CCB), and private case management agencies.

Case Manager means an individual employed by a CMA who is qualified to perform the following case management activities: determination of an individual client's functional eligibility for the Home and Community Based Services – Brain Injury (HCBS-BI) waiver, development and implementation of an individualized and person-centered Service Plan for the client, coordination and monitoring of HCBS-BI waiver services delivery, evaluation of service effectiveness, and the periodic reassessment of such client's needs.

Certification means documentation from the Colorado Department of Public Health and Environment (CDPHE) certifying that the Supportive Living Program (SLP) provider has met all licensing requirements as a Home Care Agency Class A (HCA) or Assisted Living Residence (ALR), in addition to all requirements in these regulations at 10 CCR 2505-10, § 8.515.85.

Critical Incident means an actual or alleged event or situation that creates a significant risk of substantial or serious harm to the health or welfare of a client that could have, or has had, a negative impact on the mental and/or physical well-being of a client in the short or long term. A critical incident includes accidents, suspicion of abuse, neglect, or exploitation, and criminal activity.

Department means the Department of Health Care Policy and Financing.

Health Maintenance Activities means those routine and repetitive health related tasks, which are necessary for health and normal bodily functioning, that an individual with a disability would carry out if he/she were physically able, or that would be carried out by family members or friends if they were available. These activities include, but are not limited to, catheter irrigation, administration of medication, enemas, suppositories, and wound care.

Independent Living Skills Training means services designed and directed at the development and maintenance of the client's ability to independently sustain himself/herself physically, emotionally, and economically in the community.

Instrumental Activities of Daily Living (IADLs) means activities related to independent living, including preparing meals, managing money, shopping for groceries or personal items, performing light or heavy housework and communication.

Interdisciplinary Team means a group of people responsible for the implementation of a client's individualized care plan, including the client receiving services, the parent or guardian of a minor, a guardian or an authorized representative, as appropriate, the person who coordinates the provision of services and supports, and others as determined by the client's needs and preferences, who are assembled in a cooperative manner to develop or review the person-centered care plan.

Personal Care Services includes providing assistance with eating, bathing, dressing, personal hygiene or other activities of daily living. When specified in the service plan, Personal Care Services may also include housekeeping chores such as bed making, dusting, and vacuuming. Housekeeping assistance must be incidental to the care furnished or essential to the health and welfare of the individual rather than for the benefit of the individual's family.

Person-Centered Care Plan is a service plan created by a process that is driven by the individual and can also include people chosen by the individual. It provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible. It documents client choice, establishes goals, identifies potential risks, assures health and safety, and identifies the services and supports the client needs to function safely in the community.

Protective Oversight is defined as monitoring and guidance of a client to assure his/her health, safety, and well-being. Protective oversight includes, but is not limited to: monitoring the client while on the premises, monitoring ingestion and reactions to prescribed medications, if appropriate, reminding the client to carry out activities of daily living, and facilitating medical and other health appointments. Protective oversight includes the client's choice and ability to travel and engage independently in the wider community, and providing guidance on safe behavior while outside the Supportive Living Program.

Room and Board is defined as a comprehensive set of services that include lodging, routine or basic supplies for comfortable living, and nutritional and healthy meals and food for the client, all of which are provided by the Supportive Living Program provider, and are not included in the per diem.

**8.515.85.B CLIENT ELIGIBILITY**

1. Supportive Living Program services are available to individuals who meet all of the following requirements:
  - a. Clients are determined functionally eligible for Home and Community Based Services Brain Injury waiver by a certified case management agency;
  - b. Clients are enrolled in the Home and Community Based Services Brain Injury waiver; and
  - c. Clients require the specialized services provided under the Supportive Living Program as determined by assessed need.

**8.515.85.C SUPPORTIVE LIVING PROGRAM INCLUSIONS**

1. Supportive Living Program services consist of structured services designed to provide:
  - a. Assessment;
  - b. Protective Oversight and supervision;

- c. Behavioral Management and Education;
- d. Independent Living Skills Training in a group or individualized setting to support:
  - i. Interpersonal and social skill development;
  - ii. Improved household management skills; and
  - iii. Other skills necessary to support maximum independence, such as financial management, household maintenance, recreational activities and outings, and other skills related to fostering independence;
- e. Community Participation;
- f. Transportation between therapeutic activities in the community;
- g. Activities of Daily Living (ADLs);
- h. Personal Care and Homemaker services; and
- i. Health Maintenance Activities.

**2. Person-Centered Care Planning**

Supportive Living Program providers must abide by the Person-Centered Care Planning process. Providers will work with Case Management Agencies to ensure coordination of a client's Person-Centered Care Plan. Additionally, Supportive Living Program providers must provide the following actionable plans for all HCBS-BI waiver clients updated every six (6) months:

- a. Transition Planning; and
- b. Goal Planning.

These elements of a Person-Centered Care Plan are intended to ensure the client actively engages in his or her care and activities as well as ensure he or she is able to transition to any other type of setting or service at any given time.

**3. Exclusions**

The following are not included as components of the Supportive Living Program:

- a. Room and board; and
- b. Additional services which are available as a State Plan benefit or other HCBS-BI waiver service. Examples include, but are not limited to: physician visits, mental health counseling, substance abuse counseling, specialized medical equipment and supplies, physical therapy, occupational therapy, long term home health, and private duty nursing.

**8.515.85.D PROVIDER LICENSING AND CERTIFICATION REQUIREMENTS**

1. Supportive Living Program providers shall be licensed by CDPHE as an Assisted Living Residence (ALR) pursuant to 6 CCR 1011-1, Ch. 7, or as a Home Care Agency Class A (HCA) pursuant to 6 CCR 1011-1, Ch. 26. Providers participating in the Supportive Living Program as of December 1, 2014, must fully comply with these regulations at 10 CCR 2505-10, § 8.515.85, no later than January 1, 2016.
2. In addition to the requirements of § 8.515.85.D.1, Supportive Living Program providers must also receive annual Certification by CDPHE. CDPHE issues or renews a Certification when the provider is in full compliance with the requirements set out in these regulations. Certification is valid for one year from the date of issuance unless voluntarily relinquished by the provider, revoked, suspended, or otherwise sanctioned pursuant to these regulations.
3. No Certification shall be issued or renewed by CDPHE if the owner, applicant, or administrator of the Supportive Living Program has been convicted of a felony or of a misdemeanor involving moral turpitude as defined by law or involving conduct that CDPHE determines could pose a risk to the health, safety, and welfare of clients.
4. In addition to meeting the requirements of this section, Supportive Living Program providers shall be licensed in accordance with C.R.S. §§ 25-1.5-103 (2013) and 25-3-101, et seq. (2013). Supportive Living Program providers who are Home Care Agencies shall be licensed in accordance with C.R.S. § 25-27.5-101, et seq. (Aug. 5, 2013) Supportive Living Program providers who are Assisted Living Residences shall be licensed in accordance with C.R.S. § 25-27-101, et seq. (Jul. 1, 2013). These statutes are hereby incorporated by reference. The incorporation of these statutes excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
5. CDPHE may deny, suspend, revoke, or not renew the Certification of any Supportive Living Program provider who is out of compliance with the requirements of these regulations. Providers may appeal this process pursuant to the State Administrative Procedure Act, C.R.S. § 24-4-101, et seq. (2013).

**8.515.85.E PROVIDER RESPONSIBILITIES**

Supportive Living Program providers must follow all person-centered planning initiatives undertaken by the State to ensure client choice.

8.515.85.F HCBS PROGRAM CRITERIA

1. All HCBS Program Criteria must be fully implemented in accordance with the final Department transition plan for compliance with federal Home and Community-Based Settings requirements. The federal regulations can be found at 42 C.F.R., Chapter IV, Parts 430, 431, 435, 436, 440, 441, and 447 (Mar. 17, 2014), which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

The following will be used to establish program criteria for Supportive Living Program providers in establishing a home-like environment pursuant to 42 C.F.R. § 440.180. In accordance with 42 C.F.R. § 441.301, the setting must:

- a. Be integrated in and support full access to the greater community;
- b. Be selected by the client from among setting options;
- c. Ensure client rights of privacy, dignity, and respect, and freedom from coercion and restraint;
- d. Optimize individual initiative, autonomy, and independence in making life choices;
- e. Facilitate client choice regarding services and supports, and who provides them;
- f. Put in place a lease or other written agreement providing similar protections for the client that addresses eviction processes and appeals;
- g. Ensure privacy in the client's unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit;
- h. Ensure that clients have the freedom and support to control their own schedules and activities, and have access to food at any time;
- i. Each client shall have the right to receive and send packages. No client's outgoing packages shall be opened, delayed, held, or censored by any person;
- j. Each client has the right to receive and send sealed, unopened correspondence. No client's incoming or outgoing correspondence shall be opened, delayed, held, or censored by any person;
- k. Enable clients to have visitors of their choosing at any time; and
- l. Be physically accessible.

2. The provider must ensure adherence to all state assurances set forth at 42 C.F.R. § 441.302 (Jan. 16, 2014), which is hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

3. Exceptions

Exceptions exist to the aforementioned HCBS Program Criteria listed in Section 8.515.85.F.1 of this rule when clear rationale and reasoning exist and is supported by appropriate documentation. These exceptions are for the corresponding sections in Section 8.515.85.F.1 of this rule, and are as follows:

- a. HCBS Program Criteria under 8.515.85.F.1, a through k:

Requirements of program criteria may be modified if supported by a specific assessed need and justified and agreed to in the person-centered care plan pursuant to 42 C.F.R. § 441.302 (Jan. 16, 2014). The following requirements must be documented in the person-centered care plan:

- i. Identify a specific and individualized assessed need.
    - ii. Document the positive interventions and supports used prior to any modifications to the person-centered care plan.
    - iii. Document less intrusive methods of meeting the need that have been tried but did not work.
    - iv. Include a clear description of the modification that is directly proportionate to the specific assessed need.
    - v. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
    - vi. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
    - vii. Include the informed consent of the individual.
    - viii. Include an assurance that interventions and supports will cause no harm to the individual.

- b. HCBS Program Criteria under 8.515.85.F.1.b and e:

- i. When a client chooses to receive Home and Community-Based Services in a provider-owned or controlled setting where the provider is paid a single rate to provide a bundle of services, the client cannot choose an alternative provider to deliver services that are included in the bundled rate.

- ii. For any services that are not included in the bundled rate, the client may choose any qualified provider, including the provider who controls or owns the setting if the provider offers the service separate from the bundle.
- iii. To illustrate these HCBS Program Criteria b and e requirements by way of example, if a program provides habilitation connected with daily living and on-site supervision under a bundled rate, an individual is choosing the residential provider for those two services when he or she chooses the residence. The individual has free choice of providers for any other services in his or her service plan, such as therapies, home health or counseling.

c. HCBS Program Criteria under 8.515.85.F.1.c:

When a client needs assistance with challenging behavior, including a client whose behavior is dangerous to himself, herself, or others, or when the client engages in behavior that results in significant property destruction, the Supportive Living Program must properly create service and support plans detailing plans to appropriately address these behaviors.

d. HCBS Program Criteria under 8.515.85.F.1.g:

Requirements for a lockable entrance door may be modified if supported by a specific assessed need and justified and agreed to in the person-centered service plan pursuant to 42 C.F.R. § 441.302 (Jan. 16, 2014), which is hereby incorporated by reference. The incorporation of this regulation excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

**8.515.85.G STAFFING**

- 1. The Supportive Living Program provider shall ensure sufficient staffing levels to meet the needs of clients, and shall meet all other staffing requirements pursuant to 6 CCR 1011-1, Ch. 7, § 1.104(4)(a), which states the following:
  - a. The owner shall employ sufficient staff to ensure the provision of services necessary to meet the needs of the residents; and
  - b. In determining staffing, the facility shall give consideration to factors including but not limited to:
    - i. Services to meet the residents' needs,
    - ii. Services to be provided under the care plan, and
    - iii. Services to be provided under the resident agreement.

- c. Each facility shall ensure that at least one staff member who has the qualifications and training listed under Sections 1.104(3)(e) and (f), and who shall be at least 18 years of age, is present in the facility when one or more residents is present. These regulations are hereby incorporated by reference. The incorporation of these regulations exclude later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

In addition to these regulations, staff should be trained in how to work with an individual or individuals in difficult situations that may arise in the course of their work.

- 2. The operator, staff, and volunteers who provide direct client care or protective oversight must be trained in relevant precautions and emergency procedures, including first aid, to ensure the safety of the clientele. The SLP provider shall adhere to all other regulations pursuant to 6 CCR 1011-1, Ch. 7, §§ 1.103(8) and § 1.104(1)-(2), which are hereby incorporated by reference. The incorporation of this regulation excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
- 3. Within one month of the date of hire, the Supportive Living Program provider shall provide adequate training for staff on each of the following topics:
  - a. Crisis prevention;
  - b. Identifying and dealing with difficult situations;
  - c. Cultural competency;
  - d. Infection control; and
  - e. Grievance and complaint procedures.
- 4. Prior to providing direct care, the Supportive Living Program provider shall provide to the operator, staff, and volunteers an orientation of the location in which the program operates and adequate training on person-centered care planning.
- 5. All staff training shall be documented. Copies of person-centered care plan training and related documentation must be submitted to the Department. Copies must also be submitted for inspection and approval upon changing the training curriculum.
- 6. In addition to the relevant requirements imposed by CDPHE in 6 CCR 1011-1 Ch. 7 on Assisted Living Residence and 6 CCR 1011-1 Ch. 26 on Home Care Agencies, the Department requires that the program director shall have an advanced degree in a health or human service related profession plus two years of experience providing direct services to persons with a brain injury. A bachelor's or nursing degree with three years of similar experience or a combination of education and experience shall be an acceptable substitute.

7. The provider shall employ or contract for behavioral services and skill training services according to client needs.
8. The Supportive Living Program provider shall employ staff qualified by education, training, and experience according to orientation and training requirements indicated within 10 CCR 2505-10, § 8.525.85.G. The Supportive Living Program shall have staff on duty as necessary to meet the needs of clients at all times, so that provision of services is not dependent upon the use of clients to perform staff functions. Volunteers may be utilized in the home but shall not be included in the provider's staffing plan in lieu of employees.
9. The Supportive Living Program provider shall have written personnel policies. Each staff member shall be provided a copy upon employment and the administrator or designee shall explain such policies during the initial staff orientation period.
10. All Supportive Living Program provider staff, prospective staff, and volunteers shall undergo a criminal background check through the Colorado Bureau of Investigation. Any person convicted of an offense that could pose a risk to the health, safety, and welfare of clients shall not be employed by the provider. If the provider or prospective staff disagree with assessment of risk they are allowed to appeal the decision to the Department. All costs related to obtaining a criminal background check shall be borne by the provider.

**8.515.85.H CLIENT RIGHTS AND PROPERTY**

1. Clients shall have all rights stated in 10 CCR 2505-10 § 8.515.85.F.1, (HCBS Program Criteria) and in accordance with 42 C.F.R. § 441.301 (Jan. 16, 2014), which is hereby incorporated by reference. The incorporation of this regulation excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
2. The provider shall have policies on management of client funds and property consistent with those at 6 CCR 1011-1 Ch. 7, §1.105(3), which states the following:
  - a. A facility may enter into a written agreement with the resident or resident's legal representative for the management of a resident's funds or property. However, there shall be no requirement for the facility to handle resident funds or property.
    - i. Written Agreement. A resident or the resident's legal representative may authorize the owner to handle the resident's personal funds or property. Such authorization shall be in writing and witnessed and shall specify the financial management services to be performed.
    - ii. Fiduciary Responsibility. In the event that a written agreement for financial management services is entered into, the facility shall exercise fiduciary responsibility for these funds and property, including, but not limited to, maintaining any funds over the amount of five hundred dollars (\$500) in an interest bearing account, separate from the general operating fund of the facility, which interest shall accrue to the resident.
    - iii. Surety Bond. Facilities which accept responsibility for residents' personal funds shall post a surety bond in an amount sufficient to protect the residents' personal funds.

- iv. Accounting.
  - 1) A running account, dated and in ink, shall be maintained of all financial transactions. There shall be at least a quarterly accounting provided to the resident or legal representative itemizing in writing all transactions including at least the following: the date on which any money was received from or disbursed to the resident; any and all deductions for room and board and other expenses; any advancements to the resident; and the balance.
  - 2) An account shall begin with the date of the first handling of the personal funds of the resident and shall be kept on file for at least three years following termination of the resident's stay in the facility. Such record shall be available for inspection by the Department.
- v. Receipts. Residents shall receive a receipt for and sign to acknowledge disbursed funds.
- 3. Upon client request, a client shall be entitled to receive available money or funds held in trust.

**8.515.85.I FIRE SAFETY AND EMERGENCY PROCEDURES**

- 1. Applicants for initial provider Certification shall meet the applicable standards of the Life Safety Code, in accordance with 8 CCR 1507-31 (Aug. 26, 2013), which is hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
- 2. Existing Supportive Living Program providers with a Certification in effect prior to December 31st, 2014, may continue to utilize existing approved fire safety systems provided they remain in compliance, and there is no change in evacuation status of a client, nor a client admission or discharge that alters the residence overall fire safety rating, and provided no renovation of 25 percent or greater to the total interior of the physical plant is performed. If such a change, admission, discharge or renovation occurs, the home shall be required to meet the applicable standards referenced in 10 CCR 2505-10 § 8.515.85.I.
- 3. Providers shall develop written emergency plans and procedures for fire, serious illness, severe weather, disruption of essential utility services, and missing persons for each client. Emergency and evacuation procedures shall be consistent with any relevant local fire codes and the provisions set forth in 6 CCR 1011-1 Ch. 7, §1.104(5)(b) and (c), which state the following:
  - a. Emergency plan. The emergency plan shall include planned responses to fire, gas explosion, bomb threat, power outages, and tornadoes. Such plan shall include provisions for alternate housing in the event evacuation is necessary.
  - b. Disclosure to residents. Within three (3) days of admission, the plan shall be explained to each resident or legal representative, as appropriate.

- c. The policy shall describe the procedures to be followed by the facility in the event of serious illness, serious injury, or death of a resident.
  - d. The policy shall include a requirement that the facility notify an emergency contact when the resident's injury or illness warrants medical treatment or face-to-face medical evaluation. In the case of an emergency room visit or unscheduled hospitalization, a facility must notify an emergency contact immediately, or as soon as practicable.
- 4. Within three (3) days of scheduled work or commencement of volunteer service, the program shall provide adequate training for staff in emergency and fire escape plan procedures.
- 5. Staff and clients shall have training on, and practices of, emergency plans and procedures, in addition to fire drills, at intervals throughout the year. There shall be at least two fire drills conducted annually during the evening and overnight hours while clients are sleeping. All such practices and training shall be documented and reviewed every six (6) months. Such documentation shall include any difficulties encountered and any needed adaptations to the plan. Such adaptations shall be implemented immediately upon identification.

**8.515.85.J ENVIRONMENTAL AND MAINTENANCE REQUIREMENTS**

- 1. A Supportive Living Program residence shall be designed, constructed, equipped, and maintained to ensure the physical safety of clients, personnel, and visitors as required by 6 CCR 1011-1, Ch. 7, § 1.111, regarding the interior and exterior environment:
  - a. Interior Environment: All interior areas including attics, basements, and garages shall be safely maintained. The facility shall provide a clean, sanitary environment, free of hazards to health and safety.
    - i. Potential Safety Hazards include:
      - 1) Cooking shall not be allowed in bedrooms. Residents may have access to an alternative area where minimal food preparation such as heating or reheating food or making hot beverages is allowed. In those facilities which make housing available to residents through apartments rather than resident bedrooms, cooking may be allowed in accordance with house rules. Only residents who are capable of cooking safely shall be allowed to do so. The facility shall document such assessment.
      - 2) Extension cords and multiple use electrical sockets in resident rooms shall be limited to one per resident.
      - 3) Power strips are permitted throughout the facility with the following limitations:
        - a) The power strip must be provided with overcurrent protection in the form of a circuit breaker or fuse.
        - b) The power strip must have a UL (underwriters laboratories) label.
        - C) The power strips cannot be linked together when used.

- d) Extension cords cannot be plugged into the power strip.
    - e) Power strips can have no more than six receptacles.
    - f) The use will be restricted to one power strip per resident per bedroom.
  - 4) Personal Appliances shall be allowed in resident bedrooms only under the following circumstances:
    - a) Such appliances are not used for cooking;
    - b) Such appliances do not require use of an extension cord or multiple use electrical sockets;
    - c) Such appliance is in good repair as evaluated by the administrator;
    - d) Such appliance is used by a resident who the administrator believes to be capable of appropriate and safe use. The facility shall document such assessment.
  - 5) Electric blanket/Heating pad. In no event shall a heating pad or electric blanket be used in a resident room without either staff supervision or documentation that the administrator believes the resident to be capable of appropriate and safe use.
  - 6) All interior areas including attics, basements, and garages shall be free from accumulations of extraneous materials such as refuse, discarded furniture, and old newspapers.
  - 7) Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.
  - 8) Kerosene (fuel fired) heaters shall not be permitted within the facility. Electric or space heaters shall not be permitted within resident bedrooms and may only be used in common areas of the facility if owned, provided, and maintained by the facility.
  - 9) Fire resistant wastebaskets. Enclosed areas on the premises where smoking is allowed shall be equipped with fire resistant wastebaskets. In addition, resident rooms occupied by smokers, even when house rules prohibit smoking in resident rooms, shall have fire resistant wastebaskets.
- ii. Potential Infection/Injury Hazards
- 1) Insect/rodent infestations. The facility shall be maintained free of infestations of insects and rodents and all openings to the outside shall be screened.
  - 2) Storage of hazardous substances. Solutions, cleaning compounds and hazardous substances shall be labeled and stored in a safe manner.

- iii. Heating, Lighting, and Ventilation
  - 1) Each room in the facility shall be installed with heat, lighting and ventilation sufficient to accommodate its use and the needs of the residents.
  - 2) All interior and exterior steps and interior hallways and corridors shall be adequately illuminated.
- iv. Water
  - 1) There shall be an adequate supply of safe, potable water available for domestic purposes.
  - 2) There shall be a sufficient supply of hot water during peak usage demands.
  - 3) Hot water shall not measure more than 120 degrees Fahrenheit at taps which are accessible by resident.
- v. There shall be a telephone available for regular telephone usage by residents and staff.
- b. Exterior Environment
  - i. Potential Safety Hazards
    - 1) Exterior premises shall be kept free of high weeds and grass, garbage and rubbish. Grounds shall be maintained to prevent hazardous slopes, holes, or other potential hazards.
    - 2) Exterior staircases of three (3) or more steps and porches shall have handrails. Staircases and porches shall be kept in good repair.
- 2. The Supportive Living Program provider shall comply with all State and Local Laws/Codes regarding furnishings, equipment and supplies pursuant to 6 CCR 1011-1, Ch. 7, § 1.112 (Aug. 14, 2013), which is hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
- 3. Clients shall be allowed free use of all common living areas within the residence, with due regard for privacy, personal possessions, and safety of clients.
- 4. Supportive Living Program providers shall develop and implement procedures for the following:
  - a. Handling of soiled linen and clothing;
  - b. Storing personal care items;
  - c. General cleaning to minimize the spread of pathogenic organisms; and

- d. Keeping the home free from offensive odors and accumulations of dirt and garbage.
- 5. The Supportive Living Program provider shall ensure that each client is furnished with his or her own personal hygiene and care items. These items are to be considered basic in meeting an individual's needs for hygiene and remaining healthy. Any additional items may be selected and purchased by the client at his or her discretion.
- 6. There shall be adequate bathroom facilities for individuals to access without undue waiting or burden.
- 7. The Supportive Living Program provider shall comply with all bathroom requirements regarding handrails, handholds, and other needs of clients pursuant to 6 CCR 1101-1 Ch. 7, § 1.112(4)
  - a. A full bathroom shall consist of at least the following fixtures: toilet, hand washing sink, toilet paper dispenser, mirror, tub or shower, and towel rack. However, any facility licensed to provide services specifically for the mentally ill prior to January 1, 1992 may have one bathroom for every eight (8) residents until either a substantial remodeling or a change of ownership occurs.
  - b. There shall be a bathroom on each floor having resident bedrooms which is accessible without requiring access through an adjacent bedroom.
  - c. In any facility which is occupied by one or more residents utilizing an auxiliary aid, the facility shall provide at least one full bathroom as defined herein with fixtures positioned so as to be fully accessible to any resident utilizing an auxiliary aid.
  - d. Bathtubs and shower floors shall have non-skid surfaces.
  - e. Grab bars shall be properly installed at each tub and shower, and adjacent to each toilet in any facility which is occupied by one or more residents utilizing an auxiliary aid or as otherwise indicated by the needs of the resident population.
  - f. Toilet seats shall be constructed of non-absorbent material and free of cracks.
  - g. The use of common personal care articles, including soap and towels, is prohibited.
  - h. Toilet paper in a dispenser shall be available at all times in each bathroom of the facility.
  - i. Liquid soap and paper towels shall be available at all times in the common bathrooms of the facility.
- 8. Each client shall have access to telephones, both to make and to receive calls in privacy.
- 9. The Supportive Living Staff shall maintain a clean, safe, and healthy environment, including appropriate cleaning techniques and sanitary meal preparation and delivery according to 6 CCR 1011-1, Ch. 7, § 1.109, which requires the following:
  - a. For facilities with less than twenty (20) beds, food shall be prepared, handled and stored in a sanitary manner, so that it is free from spoilage, filth, or other contamination, and shall be safe for human consumption.

- b. Hazardous materials shall not be stored with food supplies.
- c. Facilities with twenty (20) beds or more shall comply with CDPHE's March 1, 2013 regulations on Colorado Retail Food Establishments at 6 CCR 1010-2, which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

**8.515.85.K COMPLAINTS AND GRIEVANCES**

Each client will have the right to voice grievances and recommend changes in policies and services to both the Department and/or the Supportive Living Program provider. Complaints and grievances made to the Department shall be made in accordance with the grievance and appeal process in 10 CCR 2505-10 § 8.209.

**8.515.85.M RECORDS**

- 1. Supportive Living Providers shall develop policies and procedures to secure client information against potential identity theft. Confidentiality of medical records shall be maintained in compliance with 45 C.F.R. §§ 160.101, et seq. and 164.102, et seq. (2014), which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.
- 2. All medical records for adults (persons eighteen (18) years of age or older) shall be retained for no less than six (6) years after the last date of service or discharge from the Supportive Living Program. All medical records for minors shall be retained after the last date of service or discharge from the Supportive Living Program for the period of minority plus six (6) years.

**8.515.85.N REIMBURSEMENT**

- 1. Supportive Living Program services shall be reimbursed according to a per diem rate, using a methodology determined by the Department. Authority for the Department to define and limit covered services is found at C.R.S. § 25.5-1-202 (2013).
- 2. The methodology for calculating the per diem rate shall be based on a weighted average of client acuity scores.
- 3. The Department shall establish a maximum allowable room and board charge for clients in the Supportive Living Program. Increases in payment shall be permitted in a dollar-for-dollar relationship to any increase in the Supplemental Security Income grant standard inasmuch as the Colorado Department of Human Services also raises its grant amounts.

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**8.516.10 INDEPENDENT LIVING SKILLS TRAINING**

**A. DEFINITIONS**

1. Independent Living Skills Training and Development means services designed and directed at the development and maintenance of the program participant's ability to independently sustain himself/herself physically, emotionally, and economically in the community.
2. Skills training may be provided in the client's residence, in the community or in a group living situation.

**B. INCLUSIONS**

1. Services may include assessment, training, and supervision or assistance to an individual with self care, medication supervision, task completion, communication skill building, interpersonal skill development, socialization, therapeutic recreation, sensory motor skills, mobility or community transportation training, reduction or elimination of maladaptive behaviors, problem solving skill development, benefits coordination, resource coordination, financial management, and household management.
2. All independent living skills training and development shall be documented in the plan of care.
3. Independent Living Skills trainers must be supervised on a monthly basis by a fully licensed or certified occupational therapist, registered nurse, physical therapist, or speech therapist who has experience in the field of brain injury rehabilitation.

**C. PROVIDER CERTIFICATION STANDARDS**

1. Providers shall be a health care professional with one year of experience in providing functionally based assessment and skills training of individuals with disabilities, or an individual with a bachelors degree and two years of similar experiences, or an individual with an AA degree in a social service or human relations area with 3 years of experience.
2. All skills trainers must receive monthly supervision from a licensed or certified health care provider as listed above. Supervision of independent living skills trainers shall not be billable as an additional expense to Medicaid but shall be absorbed by the provider as an overhead expense of business.
3. Providers shall develop and administer a training program to all skills trainers which focuses on the specific needs of individuals with brain injury and demonstrates the completion of a 24 hour training program prior to the delivering of services.

**D. REIMBURSEMENT**

1. All independent living skills training must be documented in the plan of care. Monthly treatment plans shall include the goals of the treatment plan, goals met or accomplished, and progress made toward accomplishment of ongoing goals. All plans are subject to review of the Brain Injury Program Coordinator.

2. Reimbursement shall be on an hourly basis. Payment may include travel time to and from the client's residence, to be billed under the same procedure code and rate as independent living services. The time billed for travel shall be listed separately from the time for service provision on each visit but must be documented on the same form. Travel time must be summed for the week and then rounded to the nearest hour for billing purposes. If the travel time to and from a client's residence is 15 minutes one-way, 30 minutes round trip, then the travel time for one week shall be 210 minute (rounded up to 4 hours) for the week. Travel time to one client's residence may not also be billed as travel time from another client's residence, as this would represent duplicate billing for the same time period.

**8.516.30 TRANSITIONAL LIVING**

**A. DEFINITIONS**

1. Transitional living means programs, which occur outside of the client's residence, designed to improve the client's ability to live in the community by provision of 24 hour services, support and supervision.
2. Program services include but are not limited to assessment, therapeutic rehabilitation and habilitation, training and supervision of self-care, medication management, communication skills, interpersonal skills, socialization, sensory/motor skills, money management, and ability to maintain a household.
3. Extraordinary therapy needs mean, for purposes of this program, a client who requires more than three hours per day of any combination of therapeutic disciplines. This includes, but is not limited to, physical therapy, occupational therapy, and speech therapy.

**B. INCLUSIONS**

1. All services must be documented in an approved plan of care and be prior authorized by the Department of Health Care Policy and Financing (the Department).
2. Clients must need available assistance in a milieu setting for safety and supervision and require support in meeting psychosocial needs.
3. Clients must require available paraprofessional nursing assistance on a 24 hour basis due to dependence in activities of daily living, locomotion, or cognition.
4. The per diem rate paid to transitional living programs shall be inclusive of standard therapy and nursing charges necessary at this level of care. If a client requires extraordinary therapy, additional services may be sought through outpatient services as a benefit of regular Medicaid services. The need for the Transitional Living Program service for a client must be documented and authorized individually by the Department.

**C. EXCLUSIONS**

1. Transportation between therapeutic tasks in the community, recreational outings, and activities of daily living is included in the per diem reimbursement rate and shall not be billed as separate charges.
2. Transportation to outpatient medical appointments is exempted from transportation restrictions noted above.

3. Room and board charges are not a billable component of transitional living services.
4. Items of personal need or comfort shall be paid out of money set aside from client's, income, and accounted for in the determination of financial eligibility for the HCBS-BI program.
5. The duration of transitional living services shall not exceed 6 months without additional approval, treatment plan review and reauthorization by the Department.

**D. CERTIFICATION STANDARDS**

Transitional living programs shall meet all standards established to operate as an Assisted Living Residence according to C.R.S. 25-1-107, et, seq.,

1. The Department of Public Health and Environment shall survey and license the physical facility of Transitional Living Programs.
2. Transitional living programs shall adhere to all additional programmatic, and policy requirements listed in SECTIONS following titled POLICIES, TRAINING, DOCUMENTATION, and HUMAN RIGHTS.
3. The Department of Health Care Policy and Financing shall review and provide certification of programmatic, standards.
4. If the program holds a current Commission of the Accreditation of Rehabilitation Facilities (CARF) accreditation for the specific program for which they are seeking state certification, on-site review for initial certification may be waived. However, on-site reviews of all programs shall occur on at least a yearly basis.
5. The building shall meet all local and state fire and safety codes.

**E. POLICIES**

1. Clients must have sustained recent neurological damage (within 18 months) or have realized a significant, measurable, and documented change in neurological function within the past three months. This change in neurological function must have resulted in hospitalization.
2. Clients, families, medical proxies, or other substitute decision makers shall be made aware of accepting the inherent risk associated with participation in a community-based transitional living program. Examples might include a greater likelihood of falls in community outings where curbs are present.
3. Understanding that clients of transitional living programs frequently experience behavior which may be a danger to themselves or others, the program will be suitably equipped to handle such behaviors without posing a significant threat to other residents or staff. The transitional living program must have written agreements with other providers, in the community who may provide short term crisis intervention to provide a safe and secure environment for a client who is experiencing severe, behavioral difficulties, or who is actively homicidal or suicidal.
4. The history of behavior problems shall not be sufficient grounds for denying access to transitional living services: however, programs shall retain clinical discretion in refusing to serve clients for whom they lack adequate resources to ensure safety of program participants and staff.

5. Upon entry into the program, discharge planning shall begin with the client and family. Transitional living programs shall work with the client and case manager to develop a program of services and support which leads to the location of a permanent residence at the completion of transitional living services.
6. Transitional living programs shall provide assurances that the services will occur in the community or in natural settings and be non-institutional in nature.
7. During daytime hours, the ratio of staff to clients shall be at least 1:3 and overnight, shall be at least 2:8. The use of contract employees, except in the case of an unexpected staff shortage during documented emergencies, is not acceptable.
8. The duration of transitional living services shall not exceed six months without additional approval, treatment plan review and re-authorization by the Department.

**F. TRAINING**

1. At a minimum, the program director shall have an advanced degree in a health or human service related profession plus three years experience providing direct services to individuals with brain injury. A bachelor's degree with five years experience or similar combination of education and experience shall be an acceptable substitute for a master's level education.
2. Transitional living programs must demonstrate and document that employees providing direct care and support have the educational background, relevant experience, and/or training to meet the needs of the client. These staff members will have successfully completed a training program of at least 40 hours duration.
3. Facility operators must satisfactorily complete an introductory training course on brain injury and rules and regulations pertaining to transitional living centers prior to certification of the facility.
4. The operator, staff, and volunteers who provide direct client care or protective oversight must be trained in first aid universal precautions, emergency procedures, and at least one staff per shift shall be certified as a medication aide prior to assuming responsibilities. Facilities certified prior to the effective date of these rules shall have sixty days to satisfy this training requirement.
5. Training in the use of universal precautions for the control of infectious or communicable disease shall be required of all operators, staff, and volunteers. Facilities certified prior to the effective date of these rules shall have sixty days to satisfy this training requirement.
6. Staffing of the program must include at least one individual per shift who has certification as a medication aide prior to assuming responsibilities.

**G. DOCUMENTATION**

1. Intake information shall include a completed neuropsychological assessment, all pertinent medical documentation from inpatient and outpatient therapy and a detailed social history to identify key treatment components and the functional implication of treatment goals.
2. Initial treatment plan development and evaluations will occur within a two week period following admission.

3. Goals and objectives reference specific outcomes in the degree of personal and living independence, work productivity, and psychological and social adjustment, quality of life and degree of community participation.
4. Specific treatment modalities outlined in the treatment plan are systematically implemented with techniques that are consistent functionally based, and active throughout the day. Treatment methods will be appropriate to the goals and will be reviewed and modified as appropriate.
5. Behavioral programs shall contain specific guidelines on treatment parameters and methods.
6. All transitional services must utilize licensed psychologists with two years experience in brain injury services for the oversight of treatment plan development, implementation and revision. There shall be regular contact and meetings with the client and family. Meetings shall include written recommendations and referral suggestions, as well as information on how the family will transition and incorporate treatment modalities into the home environment.
7. Programs shall have a process verified in writing by which a client is made aware of the process for filing a grievance. Complaints by the client or family shall be handled via telephone or direct contact with the client or family.
8. Customer satisfaction surveys will be regularly performed and reviewed.
9. Records must be signed and dated by individuals providing the intervention. Daily progress notes shall be kept for each treatment modality rendered.
10. Client safety in the community will be assessed: safety status and recommendations will be documented.
11. Progress towards the accomplishment of goals is monitored and reported in objective measurable terms on a weekly basis, with formal progress notes submitted to the case manager on a monthly basis.

**H. HUMAN RIGHTS**

All people receiving HCBS-BI transitional living services have the following rights:

1. All Human Rights listed in 8.515.80 C. apply.
2. Every person has the right to receive and send sealed correspondence. No incoming or outgoing correspondence will be opened, delayed, or censored by the personnel of the facility.

**I. REIMBURSEMENT**

Providers of Transitional Living shall agree to accept the acuity-based per diem reimbursement rate established by the Department of Health Care Policy and Financing and will not bill the client in excess of his/her SSI payment or \$400 per month, whichever is less for room and board charges.

All transitional living services shall be prior authorized through submission to the Department. A Medicaid Prior Authorization Request must be submitted with tentative goals and rationale of the need for intensive transitional living services.

Transitional living services which extend beyond six months duration must be reauthorized with treatment plan justification and shall be submitted through the reconsideration process established by the.

**8.516.40 BEHAVIORAL PROGRAMMING**

**A. DEFINITION**

Behavioral programming and education is an individually developed intervention designed to decrease/control the client's severe maladaptive behaviors which, if not modified, will interfere with the individuals ability to remain integrated in the community.

**B. INCLUSIONS**

1. Programs should consist of a comprehensive assessment of behaviors, development of a structured behavioral intervention plan, and ongoing training of family and caregivers for feedback about plan effectiveness and revision. Consultation with other providers may be necessary to ensure comprehensive application of the program in all facets of the person's environment.
2. Behavioral programs may be provided in the community or in the client's residence unless the residence is a transitional living center which provides behavioral intervention as a treatment component
3. All behavioral programming must be documented in the plan of care and reauthorized after 30 units of service with the Brain Injury Program Coordinator.

**C. CERTIFICATION STANDARDS**

1. The program should have as its director a Licensed Psychologist who has one year of experience in providing neurobehavioral services or services to persons with brain injury or a health care professional such as a Licensed Clinical Social Worker, Registered Occupational Therapist, Registered Physical Therapist, Speech Language Pathologist, Registered Nurse or Masters level Psychologist with three years of experience in caring for persons with neurobehavioral difficulties. Behavioral specialists who directly implement the program shall have two years of related experience in the implementation of behavioral management concepts.
2. Behavioral specialists will complete a 24-hour training program dealing with unique aspects of caring for and working with individuals with brain injury if their work experience does not include at least one year of same.

**D. REIMBURSEMENT**

Behavioral programming must be documented on the client's care plan and prior authorized through the State Brain Injury Program Coordinator. Behavioral programming services will be paid on an hourly basis as established by the Department

**8.516.50 COUNSELING**

**A. DEFINITIONS**

Counseling services mean individualized services designed to assist the participants and their support systems to more effectively manage and overcome the difficulties and stresses confronted by people with brain injuries.

**B. INCLUSIONS**

1. Counseling is available to the program participant's family in conjunction with the client if they: a) have a significant role in supporting the client or b) live with or provide care to the client. "Family" includes a parent, spouse, child, relative, foster family, in-laws or other person who may have significant ongoing interaction with the waiver participant.
2. Services may be provided in the waiver participant's residence, in community settings, or in the provider's office.
3. Intervention may be provided in either a group or individual setting: however, charges for group and individual therapy shall reflect differences.
4. All counseling services must be documented in the plan of care and must be provided by individuals or agencies approved as providers of waiver services by the Department of Health Care Policy and Financing as directed by certification standards listed below.
5. Family training/counseling must be carried out for the direct benefit of the client of the HCBS-BI program.
6. Family training is considered an integral part of the continuity of care in transition to home and community environments. Services are directed towards instruction about treatment regimens and use of equipment specified in the plan of care, and shall include updates as may be necessary to safely maintain the individual at home.
7. Prior authorization is required after thirty visits of individual, group, family or combination of modalities have been provided. Re-authorization is submitted to the State Brain Injury Program Coordinator.

**C. EXCLUSIONS**

1. Family training is not available to individuals who are employed to care for the recipient.

**D. CERTIFICATION STANDARDS**

1. Professionals providing counseling services must hold the appropriate license or certification for their discipline according to state law or federal regulations and represent one of the following professional categories: Licensed Clinical Social Worker. Certified Rehabilitation Counselor. Licensed Professional Counselor, or Licensed Clinical Psychologist.
2. All professionals applying as providers of counseling services must demonstrate or document a minimum of two years experience in providing counseling to individuals with brain injury and their families.
3. Master's or doctoral level counselors who meet experiential and educational requirements but lack certification or credentialing as stated above, may submit their professional qualifications via curriculum vitae or resume for consideration.

**E. REIMBURSEMENT**

Reimbursement will be on an hourly basis per modality as established by the Department. There are three separate modalities allowable under HCBS-BI counseling services including Family Counseling, Individual Counseling, and Group Counseling.

**8.516.60 SUBSTANCE ABUSE COUNSELING**

**A. DEFINITION**

Substance abuse programs are individually designed interventions to reduce or eliminate the use of alcohol and/or drugs by the water participant which, if not effectively dealt with, may interfere with the individual's ability to remain integrated in the community.

**B. INCLUSIONS**

1. Only outpatient individual, group, and family counseling services are available through the brain injury waiver program
2. Substance abuse services are provided in a non-residential setting and must include assessment, development of an intervention plan, implementation of the plan, ongoing education and training of the waiver participant, family or caregivers when appropriate, periodic reassessment, education regarding appropriate use of prescription medication, culturally responsive individual and group counseling, family counseling for persons if directly involved in the support system of the client, interdisciplinary care coordination meetings, and an aftercare plan staffed with the case manager.
3. Prior authorization is required after thirty visits have been provided of individual, group, or family counseling or a combination of modalities. Re-authorization requests shall be submitted to the State Brain Injury Program Coordinator.

**C. EXCLUSIONS**

Inpatient treatment is not a covered benefit.

**D. CERTIFICATION STANDARDS**

1. Substance abuse services may be provided by any agency or individual licensed or certified by the Alcohol and Drug Abuse Division (ADAD) of the Department of Human Services and jointly certified by ADAD and the Department of Health Care Policy and Financing.
2. Programs must demonstrate a fully developed plan entailing the method by which coordination will occur with existing community agencies and support programs to provide ongoing support to individuals with substance abuse problems. The program should promote training to improve the ability of the community resources to provide ongoing supports to individuals with brain injury.
3. Counselors should be certified at the Certified Addiction Counselor II level or a doctoral level psychologist with the same level of experience in substance abuse counseling. All counseling professionals within the substance abuse area shall receive specialized training prior to providing services to any individual with a brain injury or their family members. A recommended training curriculum will include a three day session combining didactic and experiential components. A test will be administered by the ADAD and the resulting certification shall be valid for a period of two years.

**E. REIMBURSEMENT**

Reimbursement will be on an hourly basis per modality as established by the Department. There are three separate modalities allowable under HCBS-BI counseling services including Family Counseling (if the individual is present), Individual Counseling, and Group Counseling.

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**8.516.70        RESPITE CARE**

**A.        DEFINITIONS**

1.        Respite care means services provided to an eligible client on a short-term basis because of the absence or need for relief of those persons normally providing the care.
2.        Respite care provider means a Class I nursing facility, an alternative care facility or an employee of a certified personal care agency which meets the certification standards for respite care specified below.

**B.        INCLUSIONS**

1.        A nursing facility shall provide all the skilled and maintenance services ordinarily provided by a nursing facility which are required by the individual respite client, as ordered by the physician.

**C.        RESTRICTIONS**

1.        An individual client shall be authorized for no more than a cumulative total of thirty (30) days of respite care in each certification period unless otherwise authorized by the Department. This total shall include respite care provided in both the home or in a nursing facility.
  - A.        A mix of delivery options is allowable as long as the aggregate amount of services is below thirty (30) days, or 720 hours, of respite care.
    1.        In home respite is limited to no more than eight (8) hours a day.
    2.        Nursing facility respite billed on a per diem.
2.        Only those portions of the facility that are Medicaid certified for nursing facility services may be utilized for respite clients.

**D.        CERTIFICATION STANDARDS AND PROCEDURES**

1.        Respite care standards and procedures for nursing facilities are as follows:
  - A.        The nursing facility must have a valid contract with the State as a Medicaid certified nursing facility. Such contract shall constitute automatic certification for respite care. A respite care provider billing number shall automatically be issued to all certified nursing facilities.
  - B.        The nursing facility does not have to maintain or hold open separately designated beds for respite clients, but may accept respite clients on a bed available basis.
  - C.        For each HCBS-BI respite client, the nursing facility must provide an initial nursing assessment, which will serve as the plan of care, must obtain physician treatment orders and diet orders; and must have a chart for the client. The chart must identify the client as a respite client. If the respite stay is for fourteen (14) days or longer, the MDS must be completed.

- D. An admission to a nursing facility under HCBS-BI respite does not require a new ULTC-100.2, a PASARR review, an AP-5615 form, a physical, a dietitian assessment, a therapy assessment, or labwork as required on an ordinary nursing facility admission. The MDS does not have to be completed if the respite stay is shorter than fourteen (14) days.
  - E. The nursing facility shall have written policies and procedures available to staff regarding respite care clients. Such policies could include copies of these respite rules, the facility's policy regarding self-administration of medication, and any other policies and procedures which may be useful to the staff in handling respite care clients.
  - F. The nursing facility should obtain a copy of the ULTC-100.2 and the approved Prior Authorization Request (PAR) form from the case manager prior to the respite client's entry into the facility.
3. Individual respite care providers shall be employees of certified personal care agencies. Family members providing respite services shall meet the same competency standards as all other providers and be employed by the certified provider agency.

**E. REIMBURSEMENT**

1. Respite care reimbursement to nursing facilities shall be as follows:
- A. The nursing facility shall bill using the facility's assigned respite provider number, and on the HCBS-BI claim form according to fiscal agent instructions.
  - B. The unit of reimbursement shall be a unit of one day. The day of admission and the day of discharge may both be reimbursed as full days, provided that there was at least one full twenty-four hour day of respite provided by the nursing facility between the date of admission and the date of discharge. There shall be no other payment for partial days.
  - C. Reimbursement shall be the lower of billed charges or the average weighted rate for administrative and health care for Class I nursing facilities in effect on July 1 of each year.
2. Respite care reimbursement to alternative care facilities shall be as follows:
- A. The alternative care facility shall bill using the alternative care facility provider number, on the HCBS-BI claim form according to fiscal agent instructions.
  - B. The unit of reimbursement shall be a unit of one day. The day of admission and the day of discharge may both be reimbursed as full days, provided that there was at least one full twenty-four hour day of respite provided by the alternative care facility between the date of admission and the date of discharge. There shall be no other payment for partial days.
  - C. Reimbursement shall be the lower of billed charges; or the maximum Medicaid rate for alternative care services, plus the standard alternative care facility room and board amount prorated for the number of days of respite.
3. Individual respite providers shall bill according to an hourly rate or daily institutional rate, whichever is less.

4. The respite care provider shall provide all the respite care that is needed, and other HCBS-BI services shall not be reimbursed during the respite stay.
5. There shall be no reimbursement provided under this section for respite care in uncertified congregate facilities.

## **8.517 HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH SPINAL CORD INJURY**

### **8.517.1 DEFINITIONS OF SERVICES PROVIDED**

Adult Day Services means services as defined at Section 8.491.

Alternative Therapies means services as defined at Section 8.517.11.

Consumer Directed Attendant Support Services (CDASS) means services as defined at Section 8.510.

Electronic Monitoring means services as defined at Section 8.488.

Home Modification means services as defined at Section 8.493.

Homemaker Services means services as defined at Section 8.490.

In-Home Support Services means services as defined at Section 8.552.

Non-Medical Transportation means services as defined at Section 8.494.

Personal Care Services means services as defined at Section 8.489.

Respite Care means services as defined at Section 8.492.

### **8.517.2 GENERAL DEFINITIONS**

Acupuncture means the stimulation of anatomical points on the body by penetrating the skin with thin, solid, metallic, single-use needles that are manipulated by the hands or by electrical stimulation for the purpose of bringing about beneficial physiologic and /or psychological changes.

Alternative Therapies Care Plan means the plan developed prior to the delivery of Alternative Therapies in accordance with Section 8.517.11.D.

Alternative Therapies Center means a location certified annually by the Department of Health Care Policy and Financing to have met the certification standards listed at Section 8.517.11.C.

Chiropractic Care means the use of manual adjustments (manipulation or mobilization) of the spine or other parts of the body with the goal of correcting alignment and other musculoskeletal problems.

Denver Metro Area means the counties of Adams, Arapahoe, Denver, Douglas, and Jefferson.

Emergency Systems means procedures and materials used in emergent situations and may include, but are not limited to, an agreement with the nearest hospital to accept patients; an Automated External Defibrillator; a first aid kit; and/or suction, AED, and first aid supplies.

Individual Cost Containment Amount means the average costs of institutional services for the nursing facility level of care as determined annually by the Department.

Massage Therapy means the systematic manipulation of the soft tissues of the body, (including manual techniques of gliding, percussion, compression, vibration, and gentle stretching) for the purpose of bringing about beneficial physiologic, mechanical, and/or psychological changes.

Spinal Cord Injury means an injury to the spinal cord and includes the International Classification of Diseases, 9th Edition, Clinical Modification (ICD-9-CM) codes 952 through 954.9.

Supervising Physician means an individual that is employed or contracted by a certified Alternative Therapies Center to supervise the provision of Alternative Therapies and meets the qualifications required by Section 8.517.11.C.1.f.

### **8.517.3 LEGAL BASIS**

The Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) program is created upon authorization of a waiver of the state-wideness requirement contained in Section 1902(a)(1) of the Social Security Act (42 U.S.C. § 1396a); and the amount, duration, and scope of services requirements contained in Section 1902(a)(10)(B) of the Social Security Act (42 U.S.C. § 1396a). Upon approval by the United States Department of Health and Human Services, this waiver is granted under Section 1915(c) of the Social Security Act (42 U.S.C. § 1396n). 42 U.S.C. § § 1396a and 1396n are incorporated by reference. Such incorporation, however, excludes later amendments to or editions of the referenced material. Pursuant to 24-4-103(12.5), C.R.S., the Department of Health Care Policy and Financing maintains either electronic or written copies of the incorporated texts for public inspection. Copies may be obtained at a reasonable cost or examined during regular business hours at 1570 Grant Street, Denver, CO 80203. Additionally, any incorporated material in these rules may be examined at any State depository library. This regulation is adopted pursuant to the authority in Section 25.5-1-301, C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, Section 24-4-101 et seq., C.R.S. and the Colorado Medical Assistance Act, Sections 25.5-6-1301 et seq., C.R.S.

### **8.517.4 SCOPE AND PURPOSE**

8.517.4.A. The Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) program provides assistance to individuals with spinal cord injuries in the Denver Metro Area that require long term supports and services in order to remain in a community setting.

8.517.4.B. The HCBS-SCI program provides an opportunity to study the effectiveness of Alternative Therapies and the impact the provision of this service may have on the utilization of other HCBS-SCI program and/or acute care services.

8.517.4.C. An independent evaluation shall be conducted in the third year of program operation to determine the effectiveness of the Alternative Therapies.

### **8.517.5 CLIENT ELIGIBILITY**

#### **8.517.5.A. ELIGIBLE PERSONS**

Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) services shall be offered only to persons who meet all of the following eligibility requirements:

1. Individuals shall be aged 18 years or older.
2. Individuals shall have a diagnosis of Spinal Cord Injury. This diagnosis must be documented on the individual's Professional Medical Information Page (PMIP) and in the Uniform Long Term Care 100.2 (ULTC 100.2) assessment tool.

3. Individuals shall have been determined to have a significant functional impairment as evidenced by a comprehensive functional assessment using the ULTC 100.2 assessment tool that results in at least the minimum scores required per Section 8.401.1.15.
4. Individuals shall reside in the Denver Metro Area as evidenced by residence in one of the following counties:
  - a. Adams;
  - b. Arapahoe;
  - c. Denver;
  - d. Douglas; or
  - e. Jefferson

**8.517.5.B FINANCIAL ELIGIBILITY**

Individuals must meet the financial eligibility requirements specified at Section 8.100.7 LONG TERM CARE MEDICAL ASSISTANCE ELIGIBILITY.

**8.517.5.C LEVEL OF CARE CRITERIA**

Individuals shall require long term support services at a level comparable to services typically provided in a nursing facility.

**8.517.5.D NEED FOR HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH SPINAL CORD INJURY (HCBS-SCI) SERVICES**

1. Only clients that currently receive Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) services, or that have agreed to accept HCBS-SCI services as soon as all other eligibility criteria have been met, are eligible for the HCBS-SCI program.
  - a. Case management is not an HCBS-SCI service and shall not be used to satisfy this requirement.
  - b. The desire or need for any Medicaid services other than HCBS-SCI services, as listed at Section 8.517.1, shall not satisfy this eligibility requirement.
2. Clients that have not received HCBS-SCI services for a period greater than 30 consecutive days shall be discontinued from the waiver.

**8.517.5.E EXCLUSIONS**

1. Clients who are residents of nursing facilities or hospitals are not eligible to receive Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) services.
2. HCBS-SCI clients that enter a nursing facility or hospital may not receive HCBS-SCI services while admitted to the nursing facility or hospital.
  - a. HCBS-SCI clients admitted to a nursing facility or hospital for 30 consecutive days or longer shall be discontinued from the HCBS-SCI program.

- b. HCBS-SCI clients entering a nursing facility for Respite Care as an HCBS-SCI service shall not be discontinued from the HCBS-SCI program.

**8.517.5.F COST CONTAINMENT AND SERVICE ADEQUACY**

1. The client shall not be eligible for the Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) program if the case manager determines any of the following during the initial assessment and service planning process:
  - a. The client's needs cannot be met within the Individual Cost Containment Amount.
  - b. The client's needs are more extensive than HCBS-SCI program services are able to support and/or that the client's health and safety cannot be assured in a community setting.
2. The client shall not be eligible for the HCBS-SCI waiver at reassessment if the case manager determines the client's needs are more extensive than HCBS-SCI program services are able to support and/or that the client's health and safety cannot be assured in a community setting.
3. The client may be eligible for the HCBS-SCI program at reassessment if the case manager determines that HCBS-SCI program services are able to support the client's needs and the client's health and safety can be assured in a community setting.
  - a. If the case manager expects that the services required to support the client's needs will exceed the Individual Cost Containment Amount, the Department or its agent will review the service plan to determine if the client's request for services is appropriate and justifiable based on the client's condition.
    - i) The client may request of the case manager that existing services remain intact during this review process.
    - ii) In the event that the request for services is denied by the Department or its agent, the case manager shall provide the client with:
      - 1) The client's appeal rights pursuant to Section 8.057; and
      - 2) Alternative options to meet the client's needs that may include, but are not limited to, nursing facility placement.

**8.517.6 WAITING LIST**

1. The number of clients who may be served through the Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) waiver during a fiscal year shall be limited by the federally approved waiver.
2. Individuals determined eligible for the HCBS-SCI waiver who cannot be served within the federally approved waiver capacity limits shall be eligible for placement on a waiting list.
3. The waiting list shall be maintained by the Department.
4. The Case Manager shall ensure the individual meets all eligibility criteria as set forth at Section 8.517.5 prior to notifying the Department to place the individual on the waiting list.

5. The date the Case Manager determines an individual has met all eligibility requirements as set forth at Section 8.517.5 is the date the Department will use for the individual's placement on the waiting list.
6. When an eligible individual is placed on the waiting list for the HCBS- SCI Waiver, the Case Manager shall provide a written notice of the action in accordance with section 8.057 et seq.
7. As openings become available within the capacity limits of the federally approved waiver, individuals shall be considered for HCBS-SCI services in the order of the individual's placement on the waiting list
8. When an opening for the HCBS-SCI Waiver becomes available the Department will provide written notice to the Case Management Agency.
9. Within ten business days of notification from the Department that an opening for the HCBS-SCI waiver is available the Case Management Agency shall:
  - a. Reassess the individual for functional level of care using the Department's prescribed instrument if more than six months has elapsed since the previous assessment.
  - b. Update the existing functional level of care assessment in the official client record if less than six months has elapsed since the date of the previous assessment.
  - c. Reassess for eligibility criteria as set forth at 8.517.5.
  - d. Notify the Department of the individual's eligibility status.

#### **8.517.7 START DATE FOR SERVICES**

- 8.517.7.A. The start date of eligibility for Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) services shall not precede the date that all of the requirements at Section 8.517.5, have been met. The first date for which HCBS-SCI services may be reimbursed shall be the later the following:
1. The date at which financial eligibility is effective.
  2. The date at which the level of care and targeting criteria are certified.
  3. The date at which the client agrees to accept services and signs all necessary intake and service planning forms.
  4. The date of discharge from the hospital or nursing facility.

#### **8.517.8 CASE MANAGEMENT FUNCTIONS**

- 8.517.8.A. The requirements at Section 8.486 shall apply to the Case Management Agencies performing the case management functions of the Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) program.

#### **8.517.9 PRIOR AUTHORIZATION OF SERVICES**

- 8.517.9.A. All Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) services must be prior authorized by the Department or its agent.

- 8.517.9.B. The Department shall develop the Prior Authorization Request (PAR) form to be used by case managers in compliance with all applicable regulations.
- 8.517.9.C. The Department or its agent shall determine if the services requested are:
1. Consistent with the client's documented medical condition and functional capacity;
  2. Reasonable in amount, scope, frequency, and duration;
  3. Not duplicative of the other services included in the client's Service Plan;
  4. Not for services for which the client is receiving funds to purchase; and
  5. Do not total more than 24 hours per day of care.
- 8.517.9.D. Revisions to the PAR that are requested six months or more after the end date shall be disapproved.
- 8.517.9.E. Approval of the PAR by the Department or its agent shall authorize providers of HCBS-SCI services to submit claims to the fiscal agent and to receive payment for authorized services provided during the period of time covered by the PAR.
1. Payment for HCBS-SCI services is also conditional upon:
    - a. The client's eligibility for HCBS-SCI services;
    - b. The provider's certification status; and
    - c. The submission of claims in accordance with proper billing procedures.
- 8.517.9.F. The prior authorization of services does not constitute an entitlement to those services. All services provided and reimbursed must be delivered in accordance with regulation and necessary to meet the client's needs.
- 8.517.9.G. Services requested on the PAR shall be supported by information on the Long Term Care Service Plan, the ULTC-100.2, and written documentation from the income maintenance technician of the client's current monthly income.
- 8.517.9.H. The PAR start date shall not precede the start date of HCBS-SCI eligibility in accordance with Section 8.517.7.
- 8.517.9.I. The PAR end date shall exceed the end date of the HCBS-SCI eligibility certification period.

**8.517.10 PROVIDER AGENCIES**

- 8.517.10.A. HCBS-SCI providers shall abide by all general certification standards, conditions, and processes established at Section 8.487.

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**8.517.11        ALTERNATIVE THERAPIES**

Alternative Therapies are limited to Acupuncture, Chiropractic Care, and Massage Therapy as defined at Section 8.517.2.

**8.517.11.A.        Inclusions**

1.        Acupuncture used for the treatment of conditions or symptoms related to the client's spinal cord injury.
2.        Chiropractic Care used for the treatment of conditions or symptoms related to the client's spinal cord injury.
3.        Massage Therapy used for the treatment of conditions or symptoms related to the client's spinal cord injury.

**8.517.11.B.        Exclusions / Limitations**

1.        Alternative Therapies shall be provided only for the treatment of conditions or symptoms related to the client's spinal cord injury.
2.        Alternative therapies shall be limited to the client's assessed need for services as determined by the Supervising Physician and documented in the Alternative Therapies Care Plan.
3.        Alternative Therapies shall be provided in an outpatient setting.
4.        Alternative Therapies shall be provided only by agencies certified by the Department of Health Care Policy and Financing to have met the certification standards listed at Section 8.517.11.C.
5.        Clients receiving Alternative Therapies shall participate in an independent evaluation to determine the effectiveness of this service.
6.        The utilization of Alternative Therapies may typically begin at a higher frequency and is expected to decrease as the client progresses. Authorization and payment for the Alternative Therapies service is limited as follows:
  - a.        During the first 90 days of the initial Alternative Therapies Care Plan, the schedule of services recommended by the Supervising Physician shall not exceed 15 visits for any one modality or 30 visits for any combination of modalities.
  - b.        After the first 90 days of the initial Alternative Therapies Care Plan and in all subsequent Alternative Therapies Care Plans, the schedule of services recommended by the Supervising Physician shall not exceed 12 visits for any one modality or 24 visits for any combination of modalities per 90 day period.

**8.517.11.C.        Certification Standards**

1.        Organization and Staffing
  - a.        Alternative Therapy Centers shall employ or contract with an adequate number of qualified professionals necessary for the provision of Alternative Therapies in accordance with this regulation.

- b. Alternative Therapies must be provided by licensed, certified, and/or registered individuals operating within the applicable scope of practice and under the direction of a Supervising Physician.
  - c. Acupuncturists shall be licensed by the Department of Regulatory Agencies, Division of Registrations as required by the Acupuncturists Practice Act (12-29.5-101, C.R.S.) and have at least five years experience practicing Acupuncture at a rate of at least 750 hours per year.
  - d. Chiropractors shall be licensed by the State Board of Chiropractic Examiners as required by the Chiropractors Practice Act (12-33-101, C.R.S.) and have at least five years experience practicing Chiropractic Care at a rate of at least 750 hours per year.
  - e. Massage Therapists shall be registered by the Department of Regulatory Agencies, Division of Registrations as required by the Massage Therapy Practice Act (12-35.3-101, C.R.S.) and have at least five years experience practicing Massage Therapy at a rate of at least 750 hours per year.
  - f. Supervising Physicians shall be licensed to practice medicine in the State of Colorado as required by 12-36-107 et seq., C.R.S. Supervising Physicians must also be board certified in Physical Medicine and Rehabilitation, Internal Medicine, Neurology, and/or Family Practice and have at least five years experience incorporating Alternative Therapies as part of an overall care plan.
2. Environmental Standards
- a. Alternative Therapy Centers shall develop a plan for infection control that is adequate to avoid the sources of and prevent the transmission of infections and communicable diseases. The facility shall also develop a system for identifying, reporting, investigating and controlling infections and communicable diseases of patients and personnel. Sterilization procedures shall be developed and implemented in necessary service areas.
  - b. Policies shall be developed and procedures implemented for the effective control of insects, rodents, and other pests.
  - c. All wastes shall be disposed in compliance with local, state and federal laws.
  - d. A preventive maintenance program to ensure that all essential mechanical, electrical and patient care equipment is maintained in safe and sanitary operating condition shall be provided. Emergency Systems, and all essential equipment and supplies shall be inspected and maintained on a frequent or as needed basis.
  - e. Housekeeping services to ensure that the premises are clean and orderly at all times shall be provided and maintained. Appropriate janitorial storage shall be maintained.
  - f. Alternative Therapy Centers shall be constructed and maintained to ensure access and safety.
  - g. Alternative Therapy Centers shall demonstrate compliance with the building and fire safety requirements of local governments and other state agencies.

3. Failure to comply with the requirements of this regulation may result in the suspension or recovery of payment for services provided and/or the revocation of the Alternative Therapy Center provider certification.

**8.517.11.D ALTERNATIVE THERAPIES CARE PLAN**

1. The Supervising Physician shall:
  - a. Guide the development of the Alternative Therapies Care Plan in coordination with the client and/or client's representative and the Alternative Therapies practitioners as applicable;
  - b. Recommend the appropriate modality, amount, scope, and duration of the Alternative Therapies within the established limits;
  - c. Order only services and/or modalities that are necessary and appropriate; and
  - d. Supervise the Alternative Therapies practitioners and the services provided.
2. The Supervising Physician shall reassess the Alternative Therapies Care Plan at least every three months or more frequently as necessary. The reassessment may include a visit with the client.
3. When recommending the use of Alternative Therapies for the treatment of a condition or symptom related to the client's spinal cord injury, the Supervising Physician should use evidence from published medical literature that demonstrates the effectiveness of Alternative Therapies for the treatment of the condition or symptom.
  - a. Where no evidence exists, the medical judgment of the Supervising Physician and the input of the Alternative Therapies practitioners should guide recommendations.
4. The Supervising Physician may require consultation or referral to other specialists prior to finalization of the Alternative Therapies Care Plan.
5. The Alternative Therapies Care plan shall be developed using any Department prescribed forms or templates.
6. The Alternative Therapies Care Plan shall include at least the following:
  - a. A summary of the client's medical history;
  - b. An assessment of the client's current medical conditions/needs determined by a comprehensive history and physical exam.
  - c. The amount, scope, and duration of each recommended Alternative Therapies modality and the expected outcomes.
  - d. The recommended schedule of services.

## **8.518 CONSUMER DIRECTED CARE FOR THE ELDERLY**

### **8.518.1 DEFINITIONS**

Authorized Representative means an individual designated by the eligible person, or by the guardian of the eligible person, if appropriate, who has the judgment and ability to assist the eligible person in acquiring and utilizing services under the Home and Community Based Services-Consumer Directed Care for the Elderly program (HCBS-CDCE).

Care Plan shall be as defined at 10 C.C.R. 2505-10, Section 8.390.1(C), including the funding source, frequency, amount and provider of each service. This Care Plan shall be written on a Department-prescribed Long Term Care Plan form.

Case Management shall be as defined at 10 C.C.R. 2505-10, Section 8.390.1(D).

Case Manager means an individual employed by the Single Entry Point (SEP) agency who determines functional eligibility and provides Case Management services to clients eligible under HCBS-CDCE.

Financial Management Services organization (FMS) means the entity or entities under contract with the Department to provide personnel, fiscal management services and skills training to a client receiving Personal Support Services and/or his or her Authorized Representative.

Individual Allocation means the funds made available by the Department to clients receiving Personal Support Services and administered by the FMS. These funds shall be available each month that a client meets program eligibility, and they shall be calculated based on the client's utilization history of personal care and homemaker services or the personal care and homemaker services defined in the client's Care Plan.

Personal Support Attendant means the individual who provides Personal Support Services.

Personal Support Management Training means the required training, including a final, comprehensive test provided by the Department or its designee to a HCBS-CDCE client and/or his or her Authorized Representative who is interested in directing Personal Support Services.

Personal Support Services means supportive services which are essential to the health and welfare of the client and include personal care services as defined at 10 C.C.R. 2505-10, Section 8.489 and homemaker services as defined at 10 C.C.R. 2505-10, Section 8.490 and are directed by the client and/or his or her Authorized Representative.

### **8.518.2 PARTICIPATION/AVAILABILITY**

8.518.2.A. During the first year of implementation, HCBS-CDCE shall be available to clients residing in the counties that are served by the Longterm Care Options, Mesa County Department of Human Services and San Juan Basin Health Department Single Entry Point Agencies (SEPs).

8.518.2.B. In subsequent years, HCBS-CDCE shall be available to clients residing in the counties served by the remaining SEPs.

### **8.518.3 CLIENT ELIGIBILITY**

8.518.3.A. To be eligible for HCBS-CDCE, a client shall:

1. Be 55 years or older.
2. Be willing to participate in the program.

3. Be eligible for HCBS-EBD as defined at 10 C.C.R. 2505-10, 8.485.60 et seq.
- 8.518.3.B. A client who wants to direct Personal Support Services shall:
1. Provide a statement from his or her primary care physician that indicates the client has sound judgment and the ability to direct his or her care or has an Authorized Representative who has the ability to direct the care on the client's behalf.
  2. Demonstrate the ability to handle the financial aspects of self-directed care or has an Authorized Representative who is able to handle the financial aspects of the client's care.
  3. Complete the Personal Support Management Training and pass the post-training test.

#### **8.518.4 WAITING LIST PROTOCOL**

- 8.518.4.A. Clients shall be enrolled in HCBS-CDCE within the capacity limits of the federal waiver based in ranking order on the following priorities:
1. Clients who receive long term home health benefits who could be served at a lesser cost to Medicaid.
  2. Clients being deinstitutionalized from nursing facilities.
  3. Clients being discharged from a hospital who, absent HCBS-CDCE services, would be discharged to a nursing facility at greater cost to Medicaid.
  4. Clients with high Universal Long Term Care (ULTC) 100.2 assessment scores as defined at 10 C.C.R. 2505-10, Section 8.458.60, who are at risk of immediate nursing facility placement.

#### **8.518.5 BENEFITS/SERVICES**

- 8.518.5.A. The following benefits are available to HCBS-CDCE clients.
1. Adult day services as defined under HCBS-Elderly Blind and Disabled (EBD) at 10 C.C.R. 2505-10, Section 8.491.
  2. Alternative care facility services as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.495.
  3. Electronic monitoring as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.488.
  4. Home modification as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.493.
  5. Homemaker services as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.490.
  6. Personal care as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.489
  7. Personal Support Services.
  8. Respite as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.492.
  9. Non-medical transportation as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.494.

10. A client enrolled in HCBC-CDCE shall not receive Home Care Allowance.
11. Personal care and homemaker services are not benefits if a client is receiving Personal Support Services.

#### **8.518.6 PERSONAL SUPPORT MANAGEMENT PLAN**

8.518.6.A. The HCBS-CDCE client and/or his or her Authorized Representative shall develop a written personal support management plan which shall be reviewed and approved by the case manager. The plan shall describe the following:

1. Client's current status.
2. Client's Personal Support Attendant needs.
3. Client's plans for securing Personal Support Services.
4. Client's plans for budgeting the Individual Allocation.
5. Client's plans for handling emergencies.

#### **8.518.7 START DATE FOR SERVICES**

8.518.7.A. The start date of eligibility for HCBS-CDCE services shall not occur until all of the requirements defined at 10 C.C.R. 2505-10, Section 8.485.60 have been met.

8.518.7.B. The Department or its designee shall approve the personal support management plan and establish a start date before a client can begin receiving Personal Support Services.

#### **8.518.8 CLIENT AND AUTHORIZED REPRESENTATIVE RIGHTS AND RESPONSIBILITIES**

8.518.8.A. A client receiving or requesting Personal Support Services whose personal support management plan is disapproved by the Case Manager has the right to review that disapproval. The client shall submit a written request to the SEP stating the reasons for requesting the review and justifying the proposed management plan. The client's most recently approved personal support management plan shall remain in effect while the review is in process.

8.518.8.B. Clients receiving Personal Support Services have the right to transition back to personal care and homemaker services provided by an agency at any time. A client who wishes to transition back to agency-provided services shall contact the Case Manager, who shall coordinate arrangements for the services.

8.518.8.C. A client and/or his or her Authorized Representative is responsible for cooperating in the determination of financial eligibility, including prompt reporting of changes in income or resources and cooperating with the SEP and services providers as agreed to in the client's Care Plan.

8.518.8.D. To receive Personal Support Services, each client and/or Authorized Representative shall sign a Participant/Authorized Representative Responsibilities Form acknowledging full responsibility for:

1. Completing training.
2. Developing a personal support management plan.
3. Budgeting for Personal Support Services within the established monthly allocation.

4. Recruiting, hiring, firing and managing Personal Support Attendants.
5. Completing reference checks on Personal Support Attendants.
6. Reviewing background checks on Personal Support Attendants.
7. Determining wages for Personal Support Attendants, within the range established by the FMS.
8. Establishing work schedules.
9. Training and supervising Personal Support Attendants.
10. Following all applicable laws and rules on employing Personal Support Attendants, with the exception of those set out at 10 C.C.R. 2505-10, Section 8.518.12(B), which are the responsibility of the FMS.
11. Completing and managing all paperwork.

#### **8.518.9 CASE MANAGEMENT FUNCTIONS**

8.518.9.A. SEP agencies shall comply with SEP rules governing Case Management functions as set forth at 10 C.C.R. 2505-10, 8.390 et seq. and shall comply with the following HCBS-CDCE specific requirements.

1. The Case Manager shall provide new and current clients with information on HCBS-CDCE.
2. The Case Manager shall complete screening and intake functions as defined at 10 C.C.R. 2505-10, 8.393.21 et seq.
3. The Case Manager shall complete the ULTC 100.2 assessment to determine nursing facility level of care as defined at 10 C.C.R. 2505-10, 8.390.22 et seq.
4. If a client is determined to be ineligible for HCBS-CDCE, the SEP shall notify the client and/or his or her Authorized Representative of the denial and the client's appeal rights as defined at 10 C.C.R. 2505-10, Section 8.057.
5. The Case Manager shall develop the Care Plan after completing the client assessment and prior to the arrangement for services as defined at 10 C.C.R. 2505-10, Sections 8.390.1(C) and 8.486.51.
6. The Case Manager shall revise the Care Plan whenever a change in the client's needs results in an increase, decrease or other change in services. The Case Manager shall describe in detail reasons for the revision. When additional services include a service requiring a prior authorization request (PAR), the Case Manager shall submit the PAR to the Department's fiscal agent.
7. The Case Manager shall review and approve the personal support management plan completed by the client and/or his or her Authorized Representative. The Case Manager shall notify the client and/or his or her Authorized Representative of the approval and establish a start date.

8. If the Case Manager determines that the personal support management plan is inadequate to meet the client's personal support needs, the Case Manager shall assist the client and/or his or her Authorized Representative with further development of the personal support management plan.
9. The Case Manager shall calculate the initial Individual Allocation for each HCBS-CDCE client who chooses Personal Support Services as follows:
  - a. Calculate an average monthly payment using prior utilization expenditures for personal care and homemaker services provided by the Department, or
  - b. Calculate the number of personal care and homemaker hours needed on a monthly basis as defined on the Care Plan and multiply by the Department's established rate for personal care and homemaker services.
10. The Case Manager shall provide written notification of the Individual Allocation to each client.
11. A client and/or his or her Authorized Representative who believes that he or she needs more Personal Support Service than the existing Individual Allocation will cover, may request the Case Manager to perform a reassessment. If the reassessment indicates that more personal support is justified, the client and/or his Authorized Representative shall amend the personal support management plan and the Case Manager shall complete a Prior Authorization Request (PAR) revision indicating the increase and submit it to the Department's fiscal agent.
  - a. In approving an increase in the Individual Allocation, the Case Manager shall consider:
    - i) Any change in the client's condition.
    - ii) Discrepancies between the client's utilization history and current needs for personal support.
    - iii) The appropriateness of Personal Support Attendant wages.
    - iv) The quality and quantity of services provided by Personal Support Attendants for the wages they receive.
    - v) Revisions in the client's budgeting of the current Individual Allocation to more effectively pay for needed services.
  - b. In reducing the Individual Allocation, the Case Manager shall consider:
    - i) Improvement or change in the condition.
    - ii) Reasons for unspent allocated funds.
12. The Case Manager shall notify the state fiscal agent to cease payment for all existing personal care and homemaker services as of the client's Personal Support Services start date.
13. The Case Manager shall monitor the services provided, as defined at 10 C.C.R. 2505-10, 8.393.43 et seq., to ensure that they are appropriate and effective, timely, safe and meet with the client's satisfaction.

14. For effective coordination, monitoring and evaluation of clients receiving Personal Support Services, the Case Manager shall:
  - a. Contact the client receiving Personal Support Services and/or the Authorized Representative twice a month during the first three months to assess their personal support management, their satisfaction with care providers and the quality of services received.
  - b. Contact the client quarterly, after the first three months to assess their implementation of service plans, personal support management issues, quality of care, personal support expenditures and general satisfaction.
  - c. Conduct a face-to-face visit with the client and/or his or her Authorized Representative when a change in the Authorized Representative occurs and contact the client and/or his or Authorized Representative twice a month for three months after this change takes place.
  - d. Review monthly reports to monitor client spending patterns and service utilization to ensure appropriate budgeting and follow up with the client and/or his or her Authorized Representative when discrepancies occur.
  - e. Contact the FMS quarterly to determine the status of each client's financial management activities.
15. Reassessment
  - a. The case manager shall complete a Reassessment of each client using the UTLC 100.2 assessment form before the end of the length of stay assigned at the last level of care determination for a continued stay review.
  - b. For clients receiving Personal Support Services, the Case Manager shall conduct a comprehensive face-to-face interview with each client and/or his or her Authorized Representative every six months. The interview shall include review of the personal support management plan and documentation from the physician that the client and/or his Authorized Representative has the ability to direct the care.

**8.518.10 PRIOR AUTHORIZATION REQUEST**

- 8.518.10.A. The Case Manager shall submit PARs to the Department according to the instructions given in the Medicaid Provider Bulletin published by the Department's fiscal agent.
- 8.518.10.B. The start date for a PAR shall not precede the HCBS-CDCE start date and shall not cover a period of time longer than the length of stay assigned by the SEP.

**8.518.11 PROVIDER ENROLLMENT**

- 8.518.11.A. Provider agencies shall meet requirements as defined under the HCBS-EBD program at 10 C.C.R. 2505-10, Sections 8.487.10 through 8.487.100.

**8.518.12 PERSONAL SUPPORT ATTENDANTS**

- 8.518.12.A. Personal Support Attendants shall be at least 16 years of age and demonstrate competency in caring for the client to the satisfaction of the client and/or his or her Authorized Representative.

8.518.12.B. The FMS shall be the employer of record for all Personal Support Attendants. The FMS shall be responsible for worker's compensation insurance, unemployment compensation insurance, withholding of all federal and state taxes, compliance with federal and state laws regarding overtime pay and minimum wage requirements and compliance with any other relevant federal, state or local laws.

**8.518.13 REIMBURSEMENT**

8.518.13.A. Provider agencies shall be reimbursed for services provided to eligible clients when claims are submitted in accordance with the following procedures:

1. Provider agencies shall submit claims to the fiscal agent on Department prescribed forms provided by the fiscal agent according to 10 C.C.R. 2505-10, Sections 8.040 and 8.043.
2. Provider agencies shall fill out claim forms adequately and correctly.

8.518.13.B. Provider agencies shall maintain adequate financial records for all claims, including documentation of services as specified at 10 C.C.R. 2505-10, Sections 8.040.02, 8.130 and 8.487.10.

8.518.13.C. When a client has been determined eligible for HCBS services under the 300% income standard, according to 10 C.C.R. 2505-10, Section 8.100, the Department may reduce Medicaid payment for Alternative Care Facility services according to the procedures at 10 C.C.R. 2505-10, Section 8.486.60.

8.518.13.D. Personal Support Attendants shall receive an hourly wage based on the rate negotiated between the Personal Support Attendant and the client and/or his or her Authorized Representative. The FMS shall make all payments from the client's Individual Allocation under the direction of the client and/or his or her Authorized Representative.

**8.518.14 LIMITATIONS ON PAYMENT TO FAMILY [Perm Rule Change eff. 4/2/2007]**

8.518.14.A. In no case shall any person be reimbursed to provide HCBS-CDCE services to his or her spouse.

8.518.14.B. Family members other than spouses may be employed by certified personal care agencies to provide personal care services to relatives under HCBS-CDCE, and/or be employed by the FMS to provide Personal Support Services, subject to the conditions below. For purposes of this section, family shall be defined as all persons related to the client by virtue of blood, marriage, adoption or common law.

1. The family member shall meet all requirements for employment by the following:
  - a. A certified personal care agency and be employed and supervised by the personal care agency; and/or
  - b. The FMS and be supervised by the client and/or his or her Authorized Representative if providing Personal Support Services.

2. The family member providing personal care shall be reimbursed at an hourly rate by the personal care agency and/or FMS which employs the family member, with the following restrictions:
  - a. The maximum number of Medicaid personal care units per annual certification for HCBS-CDCE shall include any portions of the Medicaid reimbursement which are kept by the personal care agency and/or FMS for unemployment insurance, worker's compensation, FICA, cost of training and supervision and all other administrative costs.
3. If two or more HCBS-CDCE clients reside in the same household, family members may be reimbursed up to the maximum for each client if the services are not duplicative and are appropriate to meet the client's needs.

## **8.519 HOME AND COMMUNITY BASED SERVICES FOR CHILDREN WITH AUTISM WAIVER**

### **8.519.1 DEFINITIONS**

Assessment means a comprehensive and uniform process using the ULTC Instrument to obtain information about a client including his/her condition, personal goals and preferences, functional abilities, including ADLs and Instrumental Activities of Daily Living, health status and other factors relevant to determine the client's level of functioning. Assessment process includes collecting information from the client and appropriate collaterals pertaining to service needs, available resources, potential funding sources and includes supporting diagnostic information from a licensed medical professional.

Autism means the presence of markedly abnormal or impaired development in social interaction and communication and a markedly restricted repertoire of activity and interests as set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, Washington, DC, American Psychiatric Association, 2000. No amendments or later editions are incorporated. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library. A copy of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, Washington, DC, American Psychiatric Association, 2000 is available for inspection from: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado, 80203-1714.

Benefits Utilization System (BUS) means the web based data system maintained by the Department for recording case management activities associated with Long Term Care (LTC) services.

Care Plan means the document used to identify the client's needs and sets forth the services to be provided to the client including the funding source, amount, scope, duration, frequency, provider of each service and the expected outcome or purpose of such services.

Case Management means the evaluation of functional eligibility and other activities which may include assessment, service plan development, service plan implementation and service monitoring, the evaluation of service effectiveness, and the periodic reassessment of such client's needs. Case Management activities may also include assistance in accessing waiver, State Plan, and other non-Medicaid services and resources and ensuring the right to a Fair Hearing.

Case Management Agency (CMA) means an agency contracted by the Department to furnish case management services to applicants and clients within a designated service area. CMAs may include Single Entry Point (SEP) agencies, Community Centered Boards (CCB), and private case management agencies.

Continued Stay Review (CSR) means a periodic face to face review of a client's condition and service needs performed in the client's residence, by a case manager to determine a client's continued eligibility for LTC services.

Cost Containment means the cost of providing care in the community is less than or equal to the cost of providing care in an institutional setting based on the average aggregate amount. The cost of providing care in the community shall include the cost of providing Home and Community Based Services, Long Term Home Health services and Home Care Allowance.

Department means the Department of Health Care Policy and Financing.

Functional Eligibility means an applicant or client meets the criteria for LTC services as determined by the Department's ULTC instrument.

Functional Needs Assessment means a component of the Assessment process which includes a comprehensive face-to-face evaluation using the ULTC Instrument to determine if the client meets the appropriate Level of Care (LOC).

Intake/Screening/Referral means the initial contact with an individual by the CMA and shall include, but not be limited to, a preliminary screening in the following areas: an individual's need for long term care services, referral to other programs or services and the need for the Assessment.

Lead Therapist means a qualified Medicaid provider according to criteria at 10 C.C.R. 2505-10, § 8.519.6.

Line Staff means a qualified Medicaid provider according to criteria at 10 C.C.R. 2505-10, § 8.519.6.

Plan of Correction (POC) means a written plan submitted to and approved by the Department or the Department's designee includes the specific remediation and timeline that will correct identified deficiencies.

Prior Authorization Request (PAR) means the department prescribed form to authorize the reimbursement for services.

Senior Therapist means the qualified Medicaid provider according to criteria at 10 C.C.R. 2505-10, § 8.519.6.

Standardized, Norm-Referenced Assessment means the most current version of an assessment tool that measures a child's adaptive functioning, including but not limited to self-help skills, expressive and receptive communication, and adaptive and maladaptive behaviors. Examples of appropriate assessment tools include but are not limited to: the Vineland Adaptive Behavior Scales, Second Edition (Vineland-II), Scales of Independent Behavior, Revised (SIB-R), and Adaptive Behavior Assessment System, Second Edition (ABAS-II).

State Plan Benefit means the benefits the state covers in the operation of its Medicaid program. The State Plan is submitted to and approved by the Centers for Medicare and Medicaid acting on behalf of the Secretary for Health and Human Services.

Uniform Long Term Care (ULTC) Instrument means the Department prescribed form used to determine Functional Eligibility and medical verification for LTC services

Utilization Review (UR) means a system for prospective, concurrent, and retrospective review of the necessity and appropriateness of the allocation of supports and services to ensure the proper and efficient administration of Medicaid Long Term Care benefits. UR may use the ULTC Instrument and other assessment instruments as indicated by the Department and/or its designee.

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**8.519.2 BENEFITS**

8.519.2.A. Home and Community Based Services for Children with Autism (HCBS-CWA) benefits shall be provided within Cost Containment.

8.519.2.B. Behavioral therapies shall be provided in a group or individual setting.

8.519.2.C. Behavioral therapies shall only be a benefit if they are not available under Medicaid EPSDT coverage, Medicaid State Plan benefits, third party liability coverage or by other means. Behavioral therapies may include:

1. Intensive developmental behavioral therapies specifically created to meet the client's needs including conditioning, biofeedback or reinforcement techniques.
2. Treatment goals that are consistent with building elementary verbal skills, teaching imitation, establishing appropriate toy play or interactive play with other children, teaching appropriate expression of emotions and behaviors, and where necessary, reducing self stimulation and aggressive behaviors.
3. One-on-one behavior therapy between a client and a therapist following a specific protocol established by the Lead Therapist. Therapy may be implemented by a Lead Therapist, Senior Therapist, or Line Staff.
4. Training or modeling for parents or a guardian so that the behavioral therapies can continue in the home. Training or modeling shall be:
  - a. Directed toward instruction on therapies and use of equipment specified in the Care Plan.
  - b. Carried out in the presence of and for the direct benefit of the client.

8.519.2.D. Benefits shall be limited to three years, either contiguous or intermittent with a one-year extension based on medical necessity as stated by the client's physician and upon approval by the Department.

8.519.2.E. The annual cost of benefits per client shall not exceed \$25,000 or available funds whichever is less.

**8.519.3 NON-BENEFIT**

8.519.3.A. Case Management shall not be a benefit of the HCBS-CWA waiver but shall be provided as an administrative activity through the CMA.

8.519.3.B. Speech therapy shall not be a benefit under behavior therapies.

**8.519.4 CLIENT ELIGIBILITY**

8.519.4.A. An eligible client shall:

1. Be determined financially eligible by the financial eligibility site in the county where the applicant resides.
2. Be determined to meet the definition of disability as defined by the Federal Social Security Administration.

3. Be at risk of institutionalization into an ICF/MR as determined by the Case Manager using the ULTC Instrument.
  4. Be safely served in the community within Cost Containment as determined by the Case Manager.
  5. Meet the target population criteria as follows:
    - a. Has a diagnosis of Autism as certified by a physician.
    - b. Has not yet reached six years of age.
- 8.519.4.B. A client shall receive at least one HCBS-CWA waiver benefit per month to maintain enrollment in the waiver. Case Management itself is not a benefit for purposes of satisfying the requirement to receive at least one benefit per month on the HCBS-CWA waiver.
- 8.519.4.C. A client who has not received at least one benefit on the HCBS-CWA waiver for a period of one month shall be discontinued from the waiver.

**8.519.5 WAIT LIST**

- 8.519.5.A. The number of clients who may be served through the waiver at any one time during a year shall be limited by the Department.
- 8.519.5.B. Applicants who are determined eligible for benefits under the HCBS-CWA waiver, who cannot be served within the Department established limit, shall be eligible for placement on a wait list maintained by the Department.
- 8.519.5.C. The Case Manager shall ensure the applicant meets all criteria as set forth in Section 8.519.4 prior to notifying the Department to place the applicant on the wait list.
- 8.519.5.D. The Case Manager shall enter the client's Assessment and Professional Medical Information Page data in the BUS and notify the Department by sending the client's enrollment information, utilizing the Department's approved form, to the Program Administrator
- 8.519.5.E. The score received from a standardized, norm-referenced assessment, shall be used to establish the order of an applicant's place on the wait list after November 1, 2013.
1. The case manager will confirm that the assessment score submitted by a client is from a standardized norm-referenced assessment tool.
  2. If two clients have the same score, the date and time of the completed ULTC Instrument, as entered in the BUS, shall be used to establish the clients' order on the wait list.
- 8.519.5.F. Within five working days of notification from the Department that an opening for the HCBS-CWA waiver is available the CMA shall:
1. Reassess the applicant for functional level of care using the ULTC Instrument if more than 6 months has elapsed since the previous assessment.
  2. Update the existing ULTC Instrument in the BUS if more than six months has elapsed since the date of the previous.
  3. Reassess for the target population criteria.

4. Notify the Department of the applicant's eligibility status.

#### **8.519.6 PROVIDER ELIGIBILITY**

- 8.519.6.A. Providers shall conform to all federal and state established standards for the specific service they provide under the HCBS-CWA waiver, meet the responsibilities as set forth in Section 8.519.7 and enter into an agreement with the Department as set forth in 10 C.C.R. 2505-10, Section 8.130.
- 8.519.6.B. Providers shall enroll individually with the fiscal agent.
- 8.519.6.C. Providers shall be employed by a qualified Medicaid provider agency, clinic or hospital except for a Lead Therapist who may provide services independent from a Medicaid provider agency when the Lead Therapist employs the Senior Therapist and Line Staff.
- 8.519.6.D. Lead Therapists shall meet one of the following requirements:
  1. Have a doctoral degree with a specialty in psychiatry, medicine or clinical psychology and be actively licensed by the state board of examiners. Have completed 400 hours of training and/or have direct supervised experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.
  2. Have a doctoral degree in one of the behavioral or health sciences and have completed 800 hours of specific training and/or experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.
  3. Have a Master's degree, or higher, in behavioral sciences and be nationally certified as a "Board Certified Behavior Analyst" or certified Relationship Development Intervention (RDI) consultant or certified by a similar nationally recognized organization.
  4. Have a Master's degree or higher in one of the behavior or health sciences and certification as a School Psychologist; or licensed teacher with an endorsement of special education or early childhood special education; or licensed psychotherapy provider; or credentialed as a related services provider (Physical Therapist, Occupational Therapist, or Speech Therapist) and have completed 1,000 hours of direct supervised training or experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.
- 8.519.6.E. The Lead Therapist shall assess the child and develop the treatment plan based on the child's individual needs. The Lead Therapist shall prescribe the amount, scope and duration of the therapy, make treatment adjustments and be responsible for treatment outcomes. The Lead Therapist shall be required to provide a written progress report for the case manager and the family every six months.
- 8.519.6.F. Senior Therapists shall meet one of the following requirements:
  1. Have a Master's degree or higher in one of the behavior or health related sciences and have completed 1,000 hours of direct supervised training in the use of behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.

2. Have a bachelor's degree or higher in a human services field and have completed at least 2,000 hours of direct supervised training in the use of behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.
- 8.519.6.G. The senior therapist shall provide ongoing supervision and implementation of the treatment plan. This includes the supervision of line staff, training of the families and conducting team meetings with the family, line staff and other providers to review the child's progress. The senior therapist shall provide documentation of the location of the agency that is providing services, the time spent and the team members who participated in the delivery of services.
- 8.519.6.H. Line Staff shall meet all of the following requirements:
1. Be at least 18 years of age
  2. Have graduated from high school or earned a high school equivalency degree.
  3. Have or acquire 20 hours or more of direct supervised experience billable under the direction of a Lead or a Senior Therapist, in the use of behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities.
  4. Demonstrate understanding of the services and outcomes for children with Autism as attested to by the Lead Therapist or Senior Therapist.
  5. Have cleared the provider's background check at the time he/she is hired.
- 8.519.6.I. The line staff shall be trained directly by the lead and/or senior therapist. The senior therapist is responsible for the line staff supervision and shall work with the line staff to implement the treatment plan. All services provided by the line staff shall be under the direction of the senior therapist and shall be documented.

#### **8.519.7 PROVIDER RESPONSIBILITIES**

- 8.519.7.A. HCBS-CWA Providers shall have written policies and procedures regarding:
1. Recruiting, selecting, retaining and terminating employees.
  2. Responding to critical incidents, including accidents, suspicion of abuse, neglect or exploitation and criminal activity appropriately, including reporting such incidents pursuant to section 19-3-304 C.R.S. (2005). No amendments or later editions are incorporated. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library. A copy of the Colorado Revised Statutes, copyright 2005 by the committee on legal services for the State of Colorado, is available for inspection from: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado, 80203-1714.
    - a. The Lead Therapist shall maintain a log of all complaints and critical incidents which shall include documentation of the resolution of the complaint or incident.
    - b. The Lead Therapist shall communicate any critical incident via e-mail or fax to the Department within one business day.

8.519.7.B CWA Providers shall:

1. Ensure a client is not discontinued or refused services unless documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services.
2. Ensure client records and documentation of services are made available at the request of the Case Manager.
3. Ensure that adequate records are maintained.
  - a. Client records shall contain:
    - i. Name, address, phone number and other identifying information for the client and the client's parent(s) and/or legal guardian(s).
    - ii. Name, address and phone number of the CMA and the Case Manager.
    - iii. Name, address and phone number of the client's primary physician.
    - iv. Special health needs or conditions of the client.
    - v. Documentation of the specific services provided which includes:
      1. Name of the individual provider.
      2. The location for the delivery of services.
      3. Units of service.
      4. The date, month and year of services and, if applicable, the beginning and ending time of day.
      5. All Standardized norm-referenced assessments completed or obtained
      6. Documentation of any changes in the client's condition or needs, as well as documentation of action taken as a result of the changes.
      7. Documentation regarding supervision of benefits.
      8. Financial records for all claims, including documentation of services as set forth at 10 C.C. R. 2505-10, Section 8.040.02.
  - b. Personnel records for each employee shall contain:
    - i. Documentation of qualifications to provide behavioral therapies.
    - ii. Documentation of training.
    - iii. Documentation of supervision and performance evaluation.
    - iv. Documentation that an employee was informed of all policies and procedures as set forth in Section 8.519.7.B.

- v. A copy of the employee's job description.
- 4. Conduct or obtain a recent norm-referenced assessment (no more than 30 days old) of each client upon entering the program, every six months while on the program, and upon exit of the program.
  - a. The provider shall provide a copy of the assessment results of each completed assessment to the case manager and the parents or guardian of the child.
  - b. The provider shall review the results of each assessment completed for a child and make necessary adjustments to the child's intervention plan accordingly.

#### **8.519.8 CASE MANAGEMENT AGENCY ELIGIBILITY**

- 8.519.8.A. In accordance with C.R.S. 25.5-6-804(5), A CMA shall enter into a contract with the Department to provide client Assessment, Case Management and Utilization Review.
- 8.519.8.B. The CMA shall have computer hardware and software, compatible with the Department's BUS, with capacity and capabilities as prescribed by the Department.
- 8.519.8.C. The CMA shall be certified annually in accordance with quality assurance standards and requirements set forth in 10 C.C.R. 2505-10, Section 8.079.2.
  - 1. Certification of a CMA shall be based on a survey of each CMA's performance in the following areas:
    - a. Quality of the Case Management services provided by the CMA to the clients based on the client satisfaction survey.
    - b. Compliance with waiver requirements.
    - c. Performance of administrative functions, including Cost Containment, timely reporting, on-site visits to clients, community outreach and client monitoring.
    - d. Whether targeted populations are identified and served.
    - e. Financial accountability.
    - f. Retention of qualified personnel to perform the contracted duties.
  - 2. The CMA shall receive denial, provisional approval or approval of certification based on the outcome of the certification survey.
  - 3. In the event that the CMA does not meet the quality assurance standards, the CMA may receive provisional approval for certification for a period not to exceed 60 days provided the deficiencies do not constitute a threat to the health and safety of the clients.
    - a. The CMA shall submit a Corrective Action Plan to address any deficiencies. Upon receipt and review of the Corrective Action Plan, provisional certification may be approved at the Department's discretion for a single additional 60 day period.
    - b. If the Corrective Action Plan is not implemented successfully within the 60 day period, the service area will be assigned to another Department Approved CMA.

- c. The CMA may receive technical assistance from the Department to facilitate corrective action.

8.519.8.D. The Department or its designee shall conduct reviews of the CMA agency.

#### **8.519.9 CMA RESPONSIBILITIES**

8.519.9.A. The CMA shall, in a format and manner specified by the Department, be responsible for the collection and reporting of summary and client specific data including, but not limited, to information and referral services provided by the agency, waiver eligibility determination, financial eligibility determination, care planning, service authorization, fiscal accountability and utilization review.

8.519.9.B. The CMA shall maintain case records in accordance with Department requirements.

- 1. Case records shall be maintained for:
  - a. Individuals for whom the CMA completed an intake for HCBS-CWA.
  - b. Individuals who are HCBS-CWA clients.
- 2. Case records shall contain:
  - a. Identifying information, including the client's Medicaid identification number and social security number.
  - b. Identifying information referencing the client's parent(s) and/or legal guardian(s).
  - c. A copy of the ULTC Instrument and the Professional Medical Information Page (PMIP).
  - d. Documentation of the date on which the client referral was first received and dates of all actions taken thereafter by the CMA.
  - e. Documentation of all Assessment and target population criteria outcomes.
  - f. Documentation of all Case Management activities, the monitoring of service delivery, and service effectiveness.
  - g. Documentation that all Department required forms have the required signatures .
- 3. The CMA shall protect the confidentiality of all applicants and recipient records in accordance with section 26-1-114, C.R.S. (2005). No amendments or later editions are incorporated. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library. A copy of the Colorado Revised Statutes, copyright 2005 by the committee on legal services for the State of Colorado, is available for inspection from: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado, 80203-1714.

4. The CMA shall protect the confidentiality of all applicants and recipient records in accordance with and the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) at 45 C.F.R., Parts 160 and 164. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library. A copy of the federal privacy law, copyright 1996, is available for inspection from: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado, 80203-1714.
  5. The CMA shall obtain release of information forms from the client's parent(s) and/or legal guardian(s) which shall be signed, dated and renewed at least annually or when there is a change in benefit provider.
- 8.519.9.C. The CMA shall assure that each client's parent(s) and/or legal guardian(s):
1. Is fully informed of his/her rights and responsibilities.
  2. Participates in the development and approval of the Care Plan and is provided a completed copy.
  3. Is given a choice of service providers from qualified providers in the CMA district of his/her residence.
  4. Is fully informed of and given access to a uniform complaint system as defined by the Department.
- 8.519.9.D. At least annually, the CMA shall conduct a client satisfaction survey which consists of surveying a sample of clients selected by the Department to determine their level of satisfaction with services provided by the CMA.
1. The random sample of clients shall include ten clients or ten percent of the CMA's average monthly HCBS-CWA caseload, whichever is higher.
  2. If the CMA's average monthly HCBS-CWA caseload is less than ten clients, all clients shall be included in the survey.
  3. The client satisfaction survey shall be on a Department approved form.
  4. The results of the client satisfaction survey shall be made available to the Department.
- 8.519.9.E. The CMA shall not require clients to come to the agency's office to receive Assessments, Utilization Review services or Case Management services.
- 8.519.9.F. The CMA shall provide adequate staff to meet all service and administrative functions including:
1. The CMA shall have a system for recruiting, hiring, evaluating, and terminating employees that complies with all federal and state affirmative action and civil rights requirements.
  2. The CMA shall employ at least one full time case manager.
  3. The CMA shall have adequate support staff to maintain a computerized information system in accordance with the Department's requirements.

4. CMA staff shall attend training sessions as directed and/or provided by the Department at the Department's expense.
5. The CMA shall provide in-service and staff development training at the CMA's expense.
6. The supervisor and case manager shall meet minimum the following standards for education and/or experience:
  - a. The case manager shall have at least a bachelor's degree in one of the human behavioral science fields or nursing.
  - b. The supervisor shall meet all qualifications for a case manager and have a minimum of two years of experience in long term care.
  - c. The CMA may request a waiver of these requirements from the Department prior to employing an individual when the CMA has been unable to secure the services of a qualified individual. The waiver shall be granted approval at the discretion of the Department.

**8.519.10. CMA SERVICE FUNCTIONS**

8.519.10.A. The CMA shall complete the following activities as a part of its Intake/Screening/Referral function:

1. Evaluate inquiries and address accordingly.
2. Determine the appropriateness of a referral for an Assessment.
3. Provide information and referral to other agencies as needed.
4. Obtain the applicant's parent(s)' and/or legal guardian(s)' signature on the ULTC Intake Form.

8.519.10.B. If a referral for HCBS-CWA waiver services is determined to be appropriate, the CMA shall complete the following activities as a part of its Assessment:

1. Initiate the ULTC Instrument within two working days of receiving a referral.
2. Identify potential payment source(s), including the availability of private funding resources.
3. Verify the applicant's financial eligibility status for Medicaid, or refer the applicant to the financial eligibility site in the applicant's county of residence to determine financial eligibility for Medicaid.
4. Notify the applicant's parent(s) and/or legal guardian(s) of his/her right to appeal adverse actions of the CMA, the Department, or contractors acting on behalf of the Department as set forth in 10 C.C.R. 2505-10, Section 8.057.
5. Obtain diagnostic information supplied from the Professional Medical Information Page from the applicant's medical provider, physician or nurse.
6. Determine the applicant's functional capacity during an Assessment through observation of the applicant and family in his/her residential setting.

7. Determine the applicant's service needs, taking into consideration services available or already being received from all funding sources.
  8. Inform the applicant's parent(s) and/or legal guardian(s) of the right to choose enrollment in other HCBS waivers for which the applicant is qualified. Document on the Care Plan, the parent(s)' and/or legal guardian(s)' waiver selection preference.
  9. Maintain appropriate documentation for certification of waiver eligibility.
  10. Submit documentation, as determined by the Department, for authorization of services.
- 8.519.10.C. The CMA shall complete the following activities as a part of the Utilization Review function:
1. Log each ULTC form received and reviewed.
  2. Score the client using the ULTC Instrument within one business day from the date of the Case Manager's Assessment.
  3. Input an electronic copy of the Assessment on the BUS within 10 business days after completing the Assessment.
  4. Notify the applicant's parent(s) and/or legal guardian(s) of the outcome of the Assessment with the Notice of Services Status (LTC 803) Form including:
    - a. The Assessment outcome shall be based upon waiver requirements and the ULTC Instrument score and shall determine if a client is approved or denied for enrollment or continued stay in the waiver.
    - b. When the Assessment outcome is a denial for enrollment in the waiver, the CMA shall notify the applicant's parent(s) and/or legal guarding in accordance with 10 C.C. R. 2505-10, Section 8.057.
  5. The CMA shall develop the Care Plan upon completion of the Assessment and prior to authorizing services. The CMA shall complete the Care Plan and all required paperwork within 15 business days upon eligibility determination. Care planning shall include, but not be limited to:
    - a. Identifying and documenting Care Plan goals made with the participation of the client's parent(s) and/or legal guardian(s).
    - b. Identifying and documenting services needed including the type of service, specific functions to be performed, duration and frequency of service, type of provider and services needed but not available.
    - c. Documenting a client's parent(s)' and/or legal guardian(s)' selection of qualified providers.

8.519.10.D. The CMA shall complete a CSR of a client within 12 months of the initial Assessment or the previous CSR. The CSR shall be completed not more than three months before the end of the current certification period. A CSR shall be completed sooner if the client's condition changes.

1. A CSR shall include but not be limited to the following activities:
  - a. Obtain an update of the Professional Medical Information Page from the client's physician.
  - b. Assess a client's functional status face-to-face at the client's place of residence using the ULTC Instrument.
  - c. Update the Care Plan and provider contacts.
  - d. Evaluate service effectiveness, quality of care and appropriateness of services.
  - e. Verify continuing Medicaid financial and waiver eligibility.
  - f. Inform the client's Lead Therapist of any changes in the client's needs.
  - g. Refer the client to community resources as needed and develop resources for the client to the extent that the resource can be made available in the community.

8.519.10.E. The CMA shall authorize services

1. The CMA shall Submit the PAR to the Department or the Department's designees to approve the authorization of services and provider reimbursement.
2. The CMA shall be financially responsible for any services authorized which do not meet the requirements as set forth in Section 8.519 et. seq., or which are rendered by a provider due to the CMA's failure to timely notify the provider that the client is no longer eligible for services.

8.519.10.F The CMA shall provide on-going Case Management for a client as defined below:

1. On-going Case Management shall include, but not be limited to:
  - a. Review the Care Plan.
  - b. Contact the client's parent(s) and/or legal guardian(s) concerning the satisfaction with services provided.
  - c. Contact the service providers concerning their effectiveness and appropriateness regarding their service coordination.
  - d. Investigate complaints raised by the client's parent(s) and/or legal guardian(s) concerning the service providers.
  - e. Contact the appropriate individuals and/or agencies in the event any issues or complaints have been presented by the client's parent(s) and/or legal guardian(s).
  - f. Resolve conflict or crisis related to the waiver benefit or Medicaid state plan service delivery, as needed.

- g. Assess changes in the client's functioning, service effectiveness, service appropriateness and service cost-effectiveness.
    - h. Refer to community resources as needed.
  - 2. The CMA shall contact the client's parent(s) and/or legal guardian(s) at least monthly or more frequently as determined by the client's needs.
  - 3. The CMA shall review and update the ULTC Instrument and Care Plan, with the client's parent(s) and/or legal guardian(s) as required by a significant change in the client's condition. The review shall be conducted by telephone or at the client's place of residence, place of service or other appropriate setting as determined by the client's needs.
  - 4. The CMA shall contact the service providers to monitor service delivery at least every three months, as required by the client's needs or the specific service requirements.
  - 5. If the CMA suspects a client to be a victim of abuse, neglect or exploitation, the CMA shall immediately refer the client to the protective services section of the county department of social services in the client's county or residence and/or the local law enforcement agency.
  - 6. The CMA shall immediately report any information that indicates an overpayment, incorrect payment or misuse of any public assistance benefit to the Department. The CMA and case manager shall cooperate with the appropriate agency in any subsequent recovery process in accordance with the 10 C.C.R. 2505-10, Section 8.076.
- 8.519.10.G. The CMA shall complete Denials and discontinuations.
  - 1. The CMA shall notify the client's parent(s) and/or legal guardian(s) within one working day of determining the client no longer meets waiver requirements.
  - 2. A client shall be notified of the denial/discontinuation by the CMA on the Department prescribed LTC 803 form if he/she is determined ineligible due to any of the following reasons:
    - a. The client no longer meets all of the criteria set forth at Sections 8.519.4.
    - b. The client exceeds the limitations set forth at Sections 8.519.2.E and 8.519.2.F.
    - c. The client's parent(s) and/or legal guardian(s) has twice in a 30 day consecutive period, refused to schedule an appointment for an Assessment or Case Management visit.
    - d. The client's parent(s) and/or legal guardian(s) has failed to keep three scheduled provider appointments in a 30 day period.
    - e. The client's parent(s) and/or legal guardian(s) fails to sign the Intake, Care Plan, Release of Information, or other forms as required.

3. The CMA shall notify a client's parent(s) and/or legal guardian(s) of the denial or discontinuation of services using the Department prescribed advisement letter for reasons not related to enrollment criteria:
    - a. A client who moves out of Colorado shall be discontinued effective upon the day after the date of the move.
    - b. A client whose parent(s) and/or legal guardian(s) voluntarily withdraws the client from the waiver shall be discontinued effective upon the day after the date on which the request is documented, or the date on which the client enters a long term care institution or another HCBS waiver.
  4. The CMA shall not send notification when the denial or discontinuation is due to the death of the client. A client who dies shall be discontinued from the waiver, effective upon the day after the date of death.
  5. The case manager shall provide the client with appropriate referrals to other community resources, as needed, within one working day of discontinuation.
  6. The CMA shall notify all providers on the Care Plan within one working day of discontinuation.
  7. The CMA shall notify the financial eligibility site within one working day after the denial or discontinuation.
  8. If a case is discontinued before an approved HCBS prior authorization request (PAR) has expired, the case manager shall submit to the Department, within five working days of discontinuation, a copy of the current PAR form on which the end date is adjusted and highlighted. The reason for discontinuation shall be noted on the form.
- 8.519.10.H. et seq. The CMA shall participate in the appeals process per 10 C.C.R. 2505-10, Section 8.057 et seq.
1. The CMA shall provide information to an applicant's parent(s) and/or legal guardian(s) regarding appeal rights when he/she applies for the waiver or whenever such information is requested, whether or not an adverse action has been taken by the CMA.
  2. The CMA shall attend an appeals hearing to defend a determination of enrollment, denial or discontinuation .
  3. The CMA shall not attend an appeal hearing for a denial or discontinuation based on financial eligibility unless subpoenaed or requested by the Department.

**8.519.11 PRIOR AUTHORIZATION REQUESTS**

- 8.519.11.A The CMA shall complete and submit a PAR form within one calendar month of determination of eligibility for the HCBS-CWA waiver.
1. All units of service requested shall be listed on the Care Plan form.
  2. The first date for which services can be authorized shall be the later of any of the following:
    - a. The financial eligibility start date, as determined by the financial eligibility site.

- b. The assigned start date on the certification page of the ULTC Instrument.
  - c. The date on which the client's parent(s) and/or legal guardian(s) signs the Care Plan form or Intake form, as prescribed by the Department, agreeing to receive services.
- 3. The PAR shall not cover a period of time longer than that indicated on the ULTC Instrument.
- 4. The CMA shall submit a revised PAR if a change in the Care Plan results in a change in type or amount of services.
  - a. The revised Care Plan shall list the services being changed and state the reason for the change. Services on the revised Care Plan form, plus all services on the original Care Plan, shall be entered on the revised PAR.
  - b. Revisions to the Care Plan requested by providers after the end date on a PAR shall be disapproved.
- 5. A revised PAR shall not be submitted if services on the Care Plan are decreased, unless the services are being eliminated or reduced in order to add other services while maintaining cost-effectiveness.
- 6. If services are decreased without the client's parent(s) and/or legal guardian(s) agreement, the case manager shall notify the client's parent(s) and/or legal guardian(s) of the adverse action and of appeal rights using the LTC 803 form in accordance with the 10 day advance notice period.

**8.519.11 REIMBURSEMENT**

- 8.519.11.A. Reimbursement for CMA functions shall be determined by the number of clients served and the type of services provided and is subject to the availability of funds.
- 8.519.11.B. Providers shall be reimbursed at the lower of:
  - 1. Submitted charges; or
  - 2. A fee schedule as determined by the Department.

**8.520 HOME HEALTH SERVICES**

**8.521 LEGAL BASIS**

The Medicaid Home Health Program in Colorado is authorized under 1905(a)(7) of the Social Security Act (P.L. 74-271); and by state law at 26-4-202(1) f, C.R.S. (1994 Supp.) and 26-4-302(l) m, C.R.S. (1994 Supp.).

## **8.522 COVERED SERVICES**

All Home Health providers enrolled in the Medicaid program shall be in compliance with the Colorado Medicaid Home Health Services Benefit Coverage Standard, effective January 1, 2013, incorporated by reference. The incorporation of the Home Health Benefit Policy Statement excludes later amendments to, or editions of, the referenced material.

The Benefit Coverage Standard is available from Colorado Medicaid's Benefits Collaborative Web site at [Colorado.gov/hcpf](http://Colorado.gov/hcpf). Click "Boards & Committees," and click "Benefits Collaborative," and click "Approved Benefit Standards." Pursuant to 24-4-103 (12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided, at cost, upon request. Any material that has been incorporated by reference may be examined in any Colorado State Publications Depository Library.

## **8.523 ELIGIBILITY**

- .10 Home Health services are a benefit available to all Medicaid clients and to all Modified Medical Program clients when all program and services requirements are met. To be eligible for Long Term Home Health services, as set forth at Section 8.523.11.K, Medicaid clients 18 and over shall meet the Level of Care Screening Guidelines for Long Term Care Services at Section 8.401. Medicaid clients under the age of twenty-one may be eligible for special Home Health benefits according to rules at 8.527, PRIOR AUTHORIZATION OF EXTRA-ORDINARY HOME HEALTH AS EPSDT EXPANDED SERVICES.
- .11 Home Health services are eligible for reimbursement under Medicaid only when the services meet all of the following requirements:
  - A. Services are provided for the treatment of an illness, injury, or disability which may include mental disorders.
  - B. Services are medically necessary.
  - C. Services are reasonable in amount, duration, and frequency.
  - D. Services are provided under a plan of care as defined at Section 8.524 DEFINITIONS.
  - E. Services are provided on an intermittent basis, as defined at Section 8.524, DEFINITIONS.
  - F. The only alternative to Home Health services is hospitalization or the emergency room; or the client's medical records accurately justify a medical reason that the services should be provided in the client's home instead of a physician's office, clinic, or other out-patient setting, according to one or more of the following guidelines:
    1. The client, due to the client's illness, injury or disability, is not able to go to a physician's office, clinic or other out-patient setting for the needed service, for example, a client with quadriplegia who needs aide services to get in and out of bed.

2. If, because of the client's illness, injury, or disability, going to a physician's office, clinic, or other out-patient setting for the needed service would create a medical hardship for the client. Any statement on the plan of care regarding such medical hardship must be supported by the totality of the client's medical records. Examples of medical hardship would include: a client who would require ambulance transportation, a client in severe pain, or a client who is just out of the hospital after major surgery. Some examples of conditions that would not by themselves be considered creation of a medical hardship would include: a client who is on oxygen, a client who walks with a limp, or a client who uses a cane.
  3. Going to a physician's office, clinic, or other out-patient setting for the needed service is contra-indicated by the client's documented medical condition, for example, a client who must be protected from exposure to infections.
  4. Going to a physician's office, clinic, or other out-patient setting for the needed service would interfere with the effectiveness of the service. Examples include a young child who would not benefit from out-patient therapy because of extreme fear of the hospital where the out-patient setting is located; clients living in regions where traveling to out-patient therapy would require hours of travel; a client who needs a service repeated at frequencies that would be extremely difficult to accommodate in the physician's office, clinic, or other out-patient setting, such as IV care three times per day, or daily insulin injections; a client who needs regular and prn catheter changes and having Home Health in place will prevent emergency room visits for unscheduled catheter changes due to dislodgement or blockage; a client who, because of the client's illness, injury or disability, including mental disorders, has demonstrated past failure to comply with going to a physician's office, clinic, or other out-patient setting for the needed service, and has suffered adverse health consequences as a result, including use of emergency room and hospital admissions.
  5. The client's medical condition requires teaching which is most effectively accomplished in the client's home on a short-term basis.
- G. Services are provided in the client's place of residence. The client's place of residence is where the client lives, except that home health services shall not be reimbursed if the client's place of residence is a nursing facility or hospital. Assisted living facilities of any kind are places of residence. If a client is visiting relatives or staying in a hotel during a trip, or similar temporary accommodations, the place where the client is staying will be considered the temporary place of residence for purposes of this rule. Services shall not be reimbursed if provided at the workplace, school, child day care, adult day care, or any other place that is not the client's place of residence, except when the services are prior authorized according to 8.527, PRIOR AUTHORIZATION OF EXTRA-ORDINARY HOME HEALTH AS EPSDT EXPANDED SERVICES, or Section 8.531 through 8.539, HOME HEALTH AIDE PILOT PROGRAM.
1. Monitoring of health care status may be provided remotely through Home Health Telehealth services.
- H. Services are provided by a Medicaid-certified Home Health agency.
- I. The Client is unable to perform the health care tasks for him or herself, and no unpaid family/caregiver able and willing to perform the tasks.
- J. When the client has Medicare or other third-party insurance, Medicaid Home Health shall be reimbursed only if the client's care does not meet the Home Health coverage guidelines for Medicare or other insurance.

- K. The Client's care falls under one of the following three categories:
1. Acute Home Health, which means Medicaid-reimbursed Home Health services that are:
    - a. Provided for 60 calendar days; and
    - b. Provided for the treatment of any of the acute conditions listed below. A condition is considered acute only until it is resolved or until 60 calendar days after onset, whichever comes first.
      - 1) Infections.
      - 2) New medical conditions such as, but not limited to, stroke, heart attack, cancer, injury, diabetes.
      - 3) Care related to post-surgical recovery.
      - 4) Post-hospital care provided as follow-up care for the condition that required hospitalization, including neonatal disorders.
      - 5) Exacerbation or severe instability of a chronic condition.
      - 6) New diagnosis of a long term chronic condition, such as, but not limited to, diabetes.
      - 7) Complications of pregnancy.
  2. Long Term Home Health, which means Medicaid-reimbursed Home Health services that are:
    - a. Provided for 61 calendar days or longer; or
    - b. Provided for less than 61 calendar days when services are provided solely for the care of chronic conditions.
  3. Long Term with Acute Episode Home Health, which means Medicaid-reimbursed Home Health services that are:
    - a. Provided for care of long-term chronic conditions; and
    - b. Additionally provided for the treatment of any of the acute episodes listed below. An episode is considered acute only until it is resolved or until 60 calendar days after onset, whichever comes first.
      - 1) Infections.
      - 2) New medical conditions such as, but not limited to, stroke, heart attack, cancer, injury, decubitus.
      - 3) Care related to post-surgical recovery.
      - 4) Post-hospital care provided as follow-up care for the condition that required hospitalization.

- 5) Exacerbation of a chronic condition.
- 6) New diagnosis of a long term chronic condition, such as, but not limited to, diabetes.
- 7) Complications of pregnancy.

**8.524 DEFINITIONS**

**.10 HOME HEALTH AIDE ASSIGNMENT FORM**

Home health aide assignment form means the form which the home health agency uses to list the duties to be performed by the home health aide at each visit.

**.11 HOME HEALTH SERVICES**

Home Health Services means those services listed at Section 8.522, COVERED SERVICES, and described at Section 8.525, SERVICES REQUIREMENTS.

**.12 HOME HEALTH TELEHEALTH**

Home Health Telehealth means the remote monitoring of clinical data through electronic information processing technologies.

**.13 INTERMITTENT**

Intermittent is defined as no more than the combined number of all visits and/or other units of service which will cause the reimbursement per calendar day to equal the maximum reimbursement limits as set forth in the Reimbursement section of these rules. Visits and/or units or combinations thereof may directly follow each other without any break and still be considered intermittent, as long as the maximum reimbursement limit per day is not exceeded.

**.14 PLAN OF CARE**

A plan of care means a coordinated plan developed by the Home Health agency as ordered by the attending physician for provision of services to a client at his or her residence, and periodically reviewed and signed by the physician in accordance with Medicare requirements.

**.15 STATE**

State means the state agency designated as the single state Medicaid agency for Colorado, or any divisions or sub-units within that agency.

**8.525 SERVICES REQUIREMENTS**

**.10 NURSING SERVICES**

- A. Nursing services include those skilled nursing services that are provided by a registered nurse under applicable state and federal laws, and professional standards.
- B. Nursing services also includes skilled nursing services which are provided by a licensed practical nurse under the direction of a registered nurse, to the extent allowed under applicable state and federal laws.

- C. Nursing services include the remote monitoring of health status through Home Health Telehealth.

**.11 HOME HEALTH AIDE SERVICES**

- A. Home health aide services may be provided when a nurse or therapist determines that an eligible client requires the services of a qualified home health aide, as such services are defined in this section.
- B. Home health aide services must be supervised according to Medicare Conditions of Participation for Home Health Agencies found at 42 CFR 84.36 (d). No later amendments to or editions of 42 CFR 484.36 (d) are included. Copies of 42 CFR 484.36 (d) are available for public inspection during normal business hours and will be provided at cost upon request to the Home Health Administrator at the Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, Colorado 80203-1714; or may be examined at any state publications depository library.
  - 1. If the client receiving home health aide services also requires and receives skilled nursing care or physical, occupational or speech therapy, the supervising registered nurse or therapist must make on-site supervisory visits to the client's home no less frequently than every two weeks.
  - 2. If the client receiving home health aide services does not require skilled nursing care or physical, occupational or speech therapy, the supervising registered nurse must make on-site supervisory visits to the client's home no less frequently than every 62 days. Each supervisory visit must occur while the home health aide is providing care. Visits by the registered nurse to supervise and to reassess the care plan are considered costs of providing the home health aide services, and shall not be billed to Medicaid as nursing visits.
  - 3. Registered nurses and physical, occupational and speech therapists supervising home health aides must comply with applicable State laws governing their respective professions. In addition, the Nurse Aide Practice Act at § 12-38.1-102(5) C.R.S. (1998), which requires supervision of the practice of nurse aide services, must be followed. No later amendments to or editions of § 12-38.2-102(5) C.R.S. (1998) are included. Copies of § 12-38.1-102(5) C.R.S. (1998) are available for public inspection during normal business hours and will be provided at cost upon request to the Home Health Administrator at the Colorado Department of Health Care Policy and Financing, 1575 Sherman Street. Denver, Colorado 80203-1714; or may be examined at any state publications depository library.
- C. Before providing any services, all home health aides shall be trained and certified according to Federal Medicare regulations at 42 CFR 484.36 and all applicable State and Federal laws and regulations governing nurse aide certification, as amended, except that later amendments to or editions of 42 CFR 484.36 shall not be included in this rule. Copies of 42 CFR 484.36 are available for public inspection or will be provided at cost upon request by the Home Health Program Administrator at the Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, Colorado 80203-1714; or may be examined at any state publications depository library.

- D. Home, health aide services include skilled personal care, unskilled personal care, and homemaking as defined below:
  - 1. Skilled personal care includes nurse aide tasks performed by a certified nurse aide pursuant to the nurse aide scope of practice defined by the State Board of Nursing, but does not include those tasks that are allowed as unskilled personal care, in HCBS personal care regulations at Section 8.489, PERSONAL CARE.
  - 2. Unskilled personal care means those tasks which are allowed as unskilled personal care at Section 8.489, HOME AND COMMUNITY BASED SERVICES-EBD, PERSONAL CARE. Unskilled care shall be provided only as secondary to required skilled personal care, provided within contiguous units of service.
  - 3. Homemaking includes those tasks that are allowed as homemaking tasks at Section 8.490, HOME AND COMMUNITY BASED SERVICES. - EBD, HOMEMAKER SERVICES. Homemaking services shall be provided only as secondary to required skilled personal care provided within contiguous units of service.
  - 4. Home health aide services solely for the purpose of behavior management are not a benefit under Medicaid Home Health, because behavior management is outside the nurse aide scope of practice.

**.12 PHYSICAL THERAPY SERVICES**

- A. Physical therapy includes any evaluations and treatments allowed under state law at 12-41-101 through 130, C.R.S. (1991, as amended), which are applicable to the home setting.
- B. When devices and equipment are indicated by the therapy plan of care, the therapist shall assist in initiating or writing the request and shall assist in training or the use of the equipment.
- C. Treatment must be provided by or under the supervision of a licensed physical therapist who meets the qualifications prescribed by federal regulation for participation under Medicare, at 42 CFR 484.4; and who meets all requirements under state law. Later amendments to or editions of 42 CFR 484.4 shall not be included in this rule. Copies of 42 CFR 484.4 are available for public inspection or will be provided at cost upon request by the Home Health Administrator at the Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, Colorado 80203-1714; or may be examined at any state publications depository library.
- D. For clients who do not require skilled nursing care, the physical therapist may open be case and establish the Medicaid plan of care.
- E. Effective September 1, 2002, physical therapy services are available for Acute Home Health clients when medically necessary and clients under 18 years of age when medically necessary. EPSDT-Extraordinary home health services are available for clients under 21 years of age. Clients 18 years and over may obtain long-term therapy services in an outpatient hospital setting or by a qualified nonphysician practitioner described at 8.201.A.

**.13 OCCUPATIONAL THERAPY SERVICES**

- A. Occupational therapy includes any evaluations and treatments allowed under the standards of practice authorized by the American Occupational Therapy Association, which are applicable to the home setting.
- B. When devices and equipment are indicated by the therapy plan of care, the therapist shall assist in initiating or writing the request and shall assist in training on the use of the equipment.
- C. Treatment must be provided by or under the supervision of a certified occupational therapist who meets the qualifications prescribed by federal regulations for participation under Medicare at 42 CFR 484.4. Later amendments to or editions of 42 CFR 484.4 shall not be included in this rule. Copies of 42 CFR 484.4 are available for public inspection or may be provided at cost upon request by the Home Health Program Administrator at the Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, Colorado 80203-1714; or may be examined at any state publications depository library.
- D. For clients who do not require skilled nursing care or physical or speech therapy, the occupational therapist may open the case and establish the Medicaid plan of care.
- E. Effective September 1, 2002, occupational therapy services are available for Acute Home Health clients when medically necessary and for clients under 18 when medically necessary. EPSDT-Extraordinary home health services are available for clients under 21 years of age. Clients 18 years and over may obtain long-term therapy services in an outpatient hospital setting or by a qualified nonphysician practitioner described at 8.201.A.

**.14 SPEECH/LANGUAGE PATHOLOGY SERVICES**

- A. Speech/language pathology services include any evaluations and treatments allowed under the American Speech-Language-Hearing Association (ASHA) authorized scope of practice statement, which are applicable to the home setting.
- B. When devices and equipment are indicated by the therapy plan of care, the therapist shall assist in initiating or writing the request in accordance with Section 8.590 through 8.594.03, Durable Medical Equipment, and shall assist in training on the use of the equipment.
- C. Treatment must be provided by a speech/language pathologist who meets the qualifications prescribed by federal regulations for participation under Medicare at 42 CFR 484.4. Later amendments to or editions of 42 CFR 484.4 shall not be included in this rule. Copies of 42 CFR 484.4 are available for public inspection or will be provided at cost upon request by the Home Health Program Administrator at the Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, Colorado 80203-1714; or may be examined at any state publications depository library.
- D. For clients who do not require skilled nursing care, the speech therapist may open the case and establish the Medicaid plan of care.

- E. Effective September 1, 2002; speech/language pathology services are available for Acute Home Health, clients when medically necessary and for clients under 18 when medically necessary. EPSDT-Extraordinary home health services are available for clients under 21 years of age. Clients 18 years and over may obtain long-term therapy services in an outpatient hospital setting or by a qualified nonphysician practitioner described at 8.201A.

**.15 HOME HEALTH TELEHEALTH SERVICES**

- A. The home health telehealth service is the remote monitoring of clinical data through electronic information processing equipment.
- B. The information and data collected remotely will be transmitted through electronic information processing equipment from the client to the home health provider. The transmission of the data shall meet HIPAA compliance standards.
- C. The home health agency shall create policies and procedures for the use and maintenance of the monitoring equipment and the process of telehealth monitoring. This service shall be used to monitor the client and manage the client's care, and shall include all of the following elements:
  - 1. All data collected must be reviewed by a registered nurse, or licensed practical nurse consistent with state law, within 24 hours of receipt of the ordered transmission,
  - 2. Any planned interventions must be overseen by the client's designated nurse.
  - 3. Collection of clinical data;
  - 4. Transmission of the clinical data from the client to the home health provider;
  - 5. Clinical review and assessment of the clinical data by a registered nurse.
  - 6. Client specific parameters and protocols defined by the agency staff and the client's authorizing physician or podiatrist; and
  - 7. Documentation of the clinical data in the client's chart and a summary of response activities, if needed.
    - a. Documentation shall be signed and dated by the nurse who assessed the clinical data,
    - b. Documentation shall include the health care data that was transmitted and the services or activities that are recommended based on the data.
- D. Monitoring equipment shall have the capability to measure any changes in the monitored diagnoses, and meet all of the following requirements:
  - 1. Monitoring equipment shall be FDA certified or UL listed, and used according to the manufacturer's instructions;
  - 2. Monitoring equipment shall be maintained in good repair and free from safety hazards; and
  - 3. Monitoring equipment shall be sanitized before it is installed in a client's home.

- E. Home health telehealth services are available to clients receiving home health services, when all of the following requirements are met:
  - 1. Client is receiving services from a home health provider for at least one of the following diagnoses:
    - a. Congestive Heart Failure;
    - b. Chronic obstructive pulmonary disease;
    - c. Asthma; or
    - d. Diabetes.
  - 2. Client requires ongoing and frequent, minimum of 5 times weekly, monitoring to manage their qualifying diagnosis, as defined and ordered by a physician or podiatrist;
  - 3. Client has demonstrated a need for ongoing monitoring as evidenced by having been hospitalized two or more times in the last twelve months for conditions related to the qualifying diagnosis; or, if the client has received home health services for less than six months, the client was hospitalized at least once in the last three months, an acute exacerbation of a qualifying diagnosis that requires telehealth monitoring, or new onset of a qualifying disease that requires ongoing monitoring to manage the client in their residence;
  - 4. Client or caregiver misses no more than 5 transmissions of the provider and agency prescribed monitoring events in a thirty-day period; and
  - 5. Client's home environment has the necessary connections to transmit the telehealth data to the agency and has space to set up and use the equipment as prescribed.
- F. The Home Health Agency shall make at least one home health nursing visit every 14 days to a client using Home Health Telehealth services.
- G. The Home Health Agency shall develop agency-specific criteria for assessment of the need for home health telehealth services, to include patient selection criteria, home environment compatibility, and patient competency. These assessment forms must be completed prior to the submission of the Enrollment Application and on file at the agency

#### **8.526 PROVIDER AGENCY REQUIREMENTS**

- .10 A Home Health agency must be a public agency or private organization or part of such an agency or organization which:
  - A. Is certified for participation as a Medicare Home Health provider under Title XVIII of the Social Security Act; and
  - B. Has a valid agreement with the State, according to Section 8.130, PROVIDER AGREEMENTS, of this manual, to provide Medicaid Home Health services, as defined above. The Medicaid agreement will cover only those services which are covered by the agency's Medicare certification; and

- C. Maintains liability insurance for the minimum amount set annually by the Colorado Department of Health Care Policy and Financing.
- .11 Home Health agencies which perform procedures in the client's home that are considered waived clinical laboratory procedures under the Clinical Laboratory Improvement Act of 1988 must possess a certificate of waiver from the Health Care Financing Administration or its designated agency.
- .12 Home Health agencies must have written policies regarding nurse delegation.
- .13 For all clients who are expected to need home health aide services for at least a year, the supervising nurse must, during supervisory visits:
  - A. Obtain the client's, or the-client's designated representative's, input into the home health aide assignment form, including all home health aide tasks to be performed during each scheduled time period. Details such as, but not limited to, housekeeping duties and standby assistance, must be negotiated and included on the home health aide assignment form so that all obligations and expectations are clear. The home health aide assignment form shall contain information regarding special functional limitations and needs, safety considerations, special diets, special equipment, and any other information that is pertinent to the care that will be given by the aide. The client or the client's designated representative must sign the form, and must be given a copy, at the beginning of services, and at least once per year thereafter. For purposes of complying with this rule, once per year shall be defined as sometime within the certification period which includes the anniversary date of the last signature on a home health aide assignment form.
  - B. Give each client, and/or the client's designated representative, a new copy of the Patient's Rights form, and explain those rights whenever the home health aide assignment form is renegotiated and rewritten.
- .14 Home Health agencies shall obtain the official Medicaid rules, 10 CCR 2505-10 also known as Volume 8, and shall subscribe annually to the official updates. These rules shall be made available to all staff.
- .15 Home Health agencies shall have written policies regarding maintenance of clients durable medical equipment, and shall make full disclosure of these policies to all clients with durable medical equipment in the home. The policies shall provide such disclosure to the client at the time of intake.
- .16 Home Health agencies shall have written policies regarding procedures for communicating with case managers of clients who are also enrolled in HCBS programs. Such policies shall include, at a minimum, how agencies will inform case managers that services are being provided or are being changed; and procedures for sending copies of plans of care if requested by case managers. These policies shall be developed with input from case managers.
- .17 Any Home Health Agency applying to become a Medicaid participating Home Health Agency shall submit an acceptable compliance plan as a condition of eligibility for entering into a Medicaid provider agreement in Colorado. The plan must demonstrate how the agency will assure compliance with Colorado Medicaid rules, and must demonstrate that the applicant agency knows and understands the rules.
- 18. A home health provider shall not discontinue or refuse services to a client unless documented efforts have been made to resolve the situation that triggers such discontinuation or refusal to provide services.

19. A Home Health Agency may be denied or terminated from participation in Colorado Medicaid independently of participation in Medicare, according to procedures found at Section 8.050 through Section 8.051.44, based on good cause, as defined at 8.051.01. Good cause for denial or termination of a Home Health Agency shall include, but not be limited to, the following:
- A. Medicare Conditions Out of Compliance. For purposes of this section, the applicable Medicare Conditions of Participation are found in 42 CFR 484, at 484.10, 484.12, 484.14, 484.16, 484.18, 484.30, 484.32, 484.36, 484.48, and 484.52. No later amendments to or editions of 42 CFR 484 are included. Copies of 42 CFR 484 are available for public inspection during normal business hours and will be provided at cost upon request to the Home Health Administrator at the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203 or the material may be examined at any State Publications Depository Library.
    - 1. Any Home Health Agency that is found to be out of compliance with the above-referenced Medicare Conditions of Participation on the first re-certification survey after initial certification, or on a complaint investigation prior to the first re-certification survey.
    - 2. Any Home Health Agency that is found to be out of compliance with the above-referenced Medicare Conditions of Participation on two consecutive surveys and/or complaint investigations.
    - 3. Any Home Health Agency that is found to be out of compliance with the above-referenced Medicare Conditions of Participation on three non-consecutive surveys and/or complaint investigations.
  - B. Medicare Standards Out of Compliance. For purposes of this section, the applicable Medicare Standards are the Standards under each of the above-referenced Medicare Conditions of Participation, with special emphasis on standards found at 484.10 (b)(4), (b)(5), and (c); 484.12 (a) and (c); 484.14 (c)(d) and (g); 484.18 (b) and (c); 484.30 (a); 484.36 (c); and 484.52 (b). No later amendments to or editions of 42 CFR 484 are included. Copies of 42 CFR 484 are available for public inspection during normal business hours and will be provided at cost upon request to the Home Health Administrator at the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203 or the material may be examined at any State Publications Depository Library.
    - 1. Any Home Health Agency that receives repeated deficiency citations on the same standard, or standards, more than twice, or less often if the scope and severity is high.
    - 2. Number of, as well as severity and scope of deficiency citations against standards shall be considered as factors in decisions to deny or terminate provider agreements.
  - C. Improper Billing Practices: Any Home Health Agency that is found by the State or its agent(s) to have engaged in the following practices may be denied or terminated from participation in Colorado Medicaid:
    - 1. Billing for visits without documentation to support the claims billed. Acceptable documentation for each visit billed shall include the nature and extent of services, the care provider's signature, the month, day, year, and the exact time in and time out of the client's home. Providers shall submit or produce requested documentation in accordance with rules at 8.079.62.

2. Billing for unnecessary visits, or visits that are unreasonable in amount, frequency and duration; especially nursing visits solely for the purpose of assessment and teaching.
3. Billing for home health aide visits on which no skilled tasks were performed and documented, or the skilled tasks performed were not medically necessary.
4. Billing for home health services provided at locations other than the client's, place of residence. This rule shall not apply for out-of-home Services provided with prior authorization as EPSDT extra-ordinary Home Health.
5. Unbundling of home health aide and personal care or homemaker services, which is defined as any and all of the following practices by any Home Health Agency that is also certified as a personal care/homemaker provider, for all time periods during which regulations were in effect that defined the unit for home health aide services as one visit up to a maximum of two and one-half hours:
  - a. One employee makes one visit, and the agency bills Medicaid for one home health aide visit, and bills all the hours as HCBS personal care or homemaker.
  - b. One employee makes one visit, and the agency bills for one home health aide visit, and bills some of the hours as HCBS personal care or homemaker, when the total time spent on the visit does not equal at least 2 ½ hours plus the number of hours billed for personal care and homemaker.
  - c. Two employees make contiguous visits, and the agency bills one visit as home health aide and the other as personal care or homemaker, when the time spent on the home health aide visit was less than 2 ½ hours.
  - d. One or more employees make two or more visits at different times on the same day, and the agency bills one or more visits as home health aide and one or more visits as personal care or homemaker, when any of the aide visits were less than 2 ½ hours and there is no reason related to the client's medical condition or needs that required the home health aide and personal care or homemaker visits to be scheduled at different times of the day.
  - e. One or more employees make two or more visits on different days of the week, and the agency bills one or more visits as home health aide and one or more visits as personal care or homemaker, when any of the aide visits were less than 2 ½ hours and there is no reason related to the client's medical condition or needs that required the home health aide and personal care or homemaker visits to be scheduled on different days of the week.
  - f. Any other practices that circumvent these rules and result in excess Medicaid payment through unbundling of home health aide and personal care or homemaker services.

- g. If any of the above practices occur, the Home Health Agency shall not be absolved from liability by failure or refusal to include personal care and/or homemaking needs on the Home Health plan of care.
- 1. For all time periods during which the unit of reimbursement for home health aide is defined as hour and/or half-hour increments, all the practices described in 5 above shall constitute unbundling if the home health aide does not stay for the maximum amount of time for each unit billed.
- 2. Billing for excessive units of home health aide services for all time periods during which regulations are in effect defining the unit for home health aide as hour and/or half hour increments.
- 8. Billing for any services that are found to be out of compliance with any of the rules in this section, including but not limited to, those found in post-payment review rules at 8.529.
- D. Prior Termination From Medicaid Participation. A Home Health Agency shall be denied or terminated from Medicaid participation if the agency or its owner(s) have previously been involuntarily terminated from Medicaid participation as a Home Health Agency or any other type of service provider.
- E. Abrupt Prior Closure. A Home Health Agency may be denied or terminated from Medicaid participation if the agency or its owner(s) have abruptly closed, as any type of Medicaid provider, without proper prior client notification.
- 20. Any Medicaid overpayments to a provider for services that should not have been billed shall be subject to recovery. Overpayments that are made as a result of a provider's false representation shall be subject to recovery plus civil monetary penalties and interest. False representation means an inaccurate statement that is relevant to a claim which is made by a provider who has actual knowledge of the false nature of the statement, or who acts in deliberate ignorance or with reckless disregard for truth. A provider acts with reckless disregard for truth if the provider fails to maintain records required by the department or if the provider fails to become familiar with rules, manuals, and bulletins issued by the State, the Medical Services Board, or the State's fiscal agent.
- 21. When a Home Health Agency voluntarily discloses improper billing, and makes restitution, the State shall consider deferment of interest and penalties in the context of the particular situation.

## **8.527 PRIOR AUTHORIZATION**

### **.10 ACUTE HOME HEALTH**

Acute Home Health services, as defined at Section 8.523, ELIGIBILITY, do not require prior authorization. This includes episodes of Acute Home Health for Long Term Home Health clients.

**.11 LONG TERM HOME HEALTH**

Long Term Home Health services, as defined at Section 8.523, ELIGIBILITY, shall be prior authorized according to the requirements below.

**A. PRIOR AUTHORIZATION PROCESS**

Long Term Home Health services provided to Medicaid clients shall be prior authorized by the Department or its designated review entity.

1. When an agency accepts an HCBS waiver client 18 years of age and older to Long Term Home Health services, the Home Health Agency shall contact the client's case management agency to inform the case manager of the client's need for Home Health services.
2. The Home Health Agency shall submit the formal written prior authorization request to the Department or its designated review entity within 10 working days of the "from" date on the Home Health plan of care or within 10 working days of the end of the client's Acute Home Health period or current Long Term Home Health PAR. Physician signature on the plan of care is not needed for prior authorization purposes. The Department or its designated review entity shall not send the prior authorization to the fiscal agent until the Home Health Agency submits the formal, complete, written prior authorization request (PAR).
3. The complete formal written PAR shall include:
  - a. A completed Department-prescribed Prior Authorization Request Form;
  - b. A Home Health plan of care which shall include all clinical assessments and current clinical summaries or updates of the client. The plan of care shall be on the HCFA-485 form, or a form that is identical in content to the HCFA-485, and all sections of the form shall be completed. For clients 20 years of age or younger, all therapy services requested shall be included in the plan of care or addendum, which shall list the specific procedures and modalities to be used and the amount, duration, frequency and goals. If extended aide units, as described in 8.528.11.B and C, are requested, there shall be sufficient information about services on each visit to justify the extended units. Documentation to support any PRN visits shall also be provided. If there are no nursing needs, the plan of care and assessments may be completed by a therapist if the client is 20 years of age or younger and is receiving home health therapy services.
  - c. If applicable, written instructions from the therapist or other medical professional to support a current need when range of motion or other therapeutic exercise is the only skilled service performed on a home health aide visit;
  - d. When the PAR includes a request for nursing visits solely for the purpose of pre-pouring medications, the record shall document that the client's pharmacy was contacted and advised/the Home Health Agency that the pharmacy will not provide medication set-ups.

- e. When a PAR includes a request for reimbursement for two aides at the same time to perform two-person transfers, the record shall provide documentation supporting the current need for two person transfers and the reason adaptive equipment cannot be used instead.
- 4. Authorization time frames:
  - a. Prior authorization requests shall be submitted and may be approved for up to a one year period.
  - b. Home Health Agencies shall not be required to change dates on the Home Health plans of care to match the client's waiver program certification dates, if a client is in an HCBS waiver program.
  - c. Home Health Agencies shall send new plans of care and other documentation as requested by the Department or its designated review entity.
  - d. The Department or its designated review entity may initiate PAR revisions if the plans of care indicate significantly decreased services.
  - e. PAR revisions for increases initiated by Home Health Agencies shall be submitted and processed according to the same requirements as for new PARs, except that current written assessment information pertaining to the increase in care may be submitted in lieu of the HCFA-485.
- 5. The prior authorization request shall be reviewed by the Department or its designated review entity to determine compliance with Medicaid rules, and shall be approved, denied, or returned for additional information within 10 working days of receipt. The PAR shall not be backdated to a date prior to the 'from' date of the HCFA-485.
- 6. The Department or its designated review entity shall approve or deny according to the following guidelines for safeguarding clients:
  - a. PAR Approval: If services requested are in compliance with Medicaid rules, and are medically necessary and appropriate for the diagnosis and treatment plan, the services shall be approved retroactively to the start date on the PAR form. Services may be approved retroactively for no more than 10 days prior to the PAR submission date.
  - b. PAR Denial:
    - 1. The Department or its designated review entity shall notify Home Health Agencies in writing of denials that result from non-compliance with Medicaid rules or failure to establish medical necessity (the PAR is not consistent with the client's documented medical needs and functional capacity). Denials based on medical necessity shall be determined by a registered nurse or physician.

2. The Department or its designated review entity, through the Medicaid fiscal agent, shall notify clients of Long Term Home Health denials, including partial denials, and appeal rights in accordance with Section 8.393.28 and Section 8.057, RECIPIENT APPEALS.
  3. If any services have already been provided, but are subsequently denied on the prior authorization request, the Department or its designated review entity shall notify the Home Health Agency of the denial. Services already provided may be approved for payment, retroactive to the start date on the PAR form, or up to 30 working days whichever is shorter. If denied, services shall be approved for 15 additional days after the date on which the notice of denial is mailed to the client, so that the client's right to advance notice is preserved. An informal case conference may be arranged to discuss disagreements. If the disagreement is not satisfactorily resolved, the Home Health Agency may file a provider appeal in accordance with Section 8.050, PROVIDER APPEALS.
7. Neither the presence nor the absence of a preliminary authorization or a formal written PAR approval from the authorizing agent shall exempt a Home Health Agency at any time from:
  - a. Following all applicable Medicaid rules;
  - b. Providing only services that are medically necessary to the needs of the client; or
  - c. Ensuring the accuracy of preliminary and formal written PAR information provided to the Department or its designated review entity.
8. EXPEDITED AUTHORIZATION PROCESS

If requested by a Home Health Agency, for extreme emergencies or complicated cases, following the initial assessment by the Home Health Agency, and after receipt of HCFA-485 or care notes in writing, the Department or its designated review entity may use the information provided by the Home Health Agency to take one of the following actions:

  - a. Provide preliminary authorization of the services until the formal written PAR procedure delineated at 8.527.11.A.1-8 above is completed, for up to a maximum of 15 calendar days. If an expedited authorization was provided by the Department or its designated review entity the date of service effective under the expedited authorization (never dated back prior to "from" date on HCFA-485) shall be indicated on the prior authorization form that is forwarded to the fiscal agent;
  - b. Postpone/deny preliminary authorization until the Home Health Agency provides full documentation as delineated at 8.527.11.A. 3. The Home Health Agency shall submit a formal written PAR in order for due process to occur as delineated at 8.527.11.A.6.

9. If the client has an acute episode, the Home Health Agency shall bill for Acute Home Health, in accordance with billing manual instructions, without obtaining prior authorization approval from the Department or its designated review entity. The Home Health Agency shall inform the SEP case manager or the Medicaid fiscal agent within ten (10) working days of the beginning and within ten (10) working days of the end of the acute care episode.

Note: The Section numbered 8.527.10 A was deleted effective August 30, 2012.

Note: The Section numbered 8.527.11 B was deleted effective July 1, 2002.

**.12 EPSDT SERVICES**

Home Health services may be provided when identified as medically necessary for pediatric clients 20 years of age or younger through Early Periodic Screening Diagnosis and Treatment (EPSDT), and prior authorized according to the requirements below.

- A. Home Health services above and beyond the restrictions in these rules at SECTION 8.520 through 8.530 shall be reviewed for medical necessity under the EPSDT Federal requirement.
- B. Home Health services above and beyond the restrictions in these rules at SECTION 8.520 through 8.530 shall not include services that are available under other Colorado Medicaid benefits, and for which the client is eligible, including but not limited to, Private Duty Nursing, Section 8.540; HCBS personal care, Section 8.489; School Health and Related Services, Section 8.290, or out-patient therapies, Section 8.330. Exceptions may be made if EPSDT Home Health services will be more cost-effective, provided that client safety is assured. Such exceptions shall in no way be construed as mandating the delegation of nursing tasks.
- C. Prior authorization requests for EPSDT Home Health shall be submitted and reviewed as outlined in SECTION 8.527.11 A.
  1. The complete prior authorization request shall include all documentation outlined in SECTION 8.527.11.3 and shall include any other medical information which will document the medical necessity for the EPSDT Home Health services. The plan of care shall include the place of service for each Home Health visit.

**.13 HOME HEALTH TELEHEALTH SERVICES**

- A. Home Health Telehealth services are available to clients only after the Home Health Agency has received prior authorization.
- B. The Home Health Agency shall request prior authorization every 60 days that continuing telehealth services are needed.
- C. The PAR shall include all of the following:
  1. A completed Home Health Telehealth enrollment form;
  2. An order for Telehealth monitoring signed and dated by the ordering physician or podiatrist;

3. A home health plan of care, which shall include nursing and/or therapy assessments for clients. Telehealth monitoring shall be included on the HCFA-485 form, or a form that contains similar information to the HCFA-485, and all applicable forms shall be completed; and
4. For on-going telehealth, the agency shall include documentation on how Telehealth data has been used to manage the client's care, if the client has been using Telehealth services.

.14 The complete prior authorization request must include:

- A. A State-prescribed Prior Authorization Request Form;
- B. A physician-signed plan of care on the HCFA-485 or a form that is identical in content to the HCFA-485, which shall include nursing and therapy assessments, current clinical summaries and updates of the client, and all therapy services requested, including the specific procedures and modalities to be used and the amount, duration and frequency;
- C. Written documentation of the results of the EPSDT medical screening, or other equivalent examination results provided by the client's third-party insurance; and
- D. Any other medical information which will document the medical necessity for the Home Health services.

## **8.528 REIMBURSEMENT**

### **.10 CLAIMS**

Claims shall be submitted to the fiscal agent according to Section 8.040, RULES GOVERNING SUBMISSION OF CLAIMS, and Section 8.043, TIMELY FILING REQUIREMENTS.

Home Health providers shall maintain adequate financial records for all claims, including documentation of services as specified at Section 8.040.2, RULES GOVERNING SUBMISSION OF CLAIMS, and Section 8.130, PROVIDER AGREEMENTS.

### **.11 UNIT OF REIMBURSEMENT**

- A. The unit of reimbursement for the Home Health services of nursing, physical therapy, occupational therapy, and speech therapy shall be one visit, which is defined as the length of time required to provide the needed care, up to a maximum of two and one-half hours spent in client care or treatment.
- B. The Basic Unit of reimbursement for home health aide services shall be up to one hour. A unit of time that is less than fifteen minutes shall not be reimbursable as a basic unit.
- C. For home health aide visits that last longer than one hour, Extended Units may be billed in addition to the Basic Unit. Extended Units shall be increments of fifteen minutes up to one-half hour. Any unit of time that is less than fifteen minutes shall not be reimbursable as an extended unit.]

- D. Reimbursement for supplies used by Home Health agency staff is included in the reimbursement for nursing, home health aide, physical therapy, occupational therapy, and speech/language pathology services, to the following extent:
  - 1. Supplies used during provision of any Home Health services by Home Health agency staff for the practice of universal precautions shall be the financial responsibility of the Home Health agency. This excludes gloves used for bowel programs and catheter care but includes all other supplies required for the practice of universal precautions by Home Health agency staff. If a Home Health agency asks a client to provide such supplies, this will constitute a failure to accept Medicaid payment in full, in violation of Section 8.012, PROHIBITION OF CHARGES TO RECIPIENTS.
  - 2. Supplies other than those required for practice of universal precautions which are used by the Home Health agency staff to provide Home Health care services shall not be the financial responsibility of the Home Health agency. Such supplies may be requested by the physician as a benefit to the client under Section 8.590, DURABLE MEDICAL EQUIPMENT.
  - 3. Supplies used for the practice of universal precautions by the client's family or other informal caregivers shall not be the financial responsibility of the Home Health agency. Such supplies may be requested by the physician as a benefit to the client under Section 8.590, DURABLE MEDICAL EQUIPMENT.
- E. The unit of reimbursement for home health telehealth is one calendar day.
  - 1. The Home Health Agency may bill one initial visit per client each time the monitoring equipment is installed in the home.
  - 2. The Home Health Agency may bill the daily rate for each day the telehealth monitoring equipment is used to monitor and manage the client's care.
- .12 The following restrictions shall be placed on Home Health services for purposes of reimbursement:
  - A. Nursing visits shall not be reimbursed by Medicaid if solely for the purpose of psychiatric counseling, because that is the responsibility of the Mental Health Assessment and Services Agencies. Nursing visits for mentally ill clients shall be reimbursed under Medicaid Home Health for pre-pouring of medications, venipuncture, or other nursing tasks, provided that all other requirements in this section are met.
  - B. The state shall not authorize nor reimburse home health aide services for the purpose of providing only unskilled personal care and/or homemaking services. Units during which unskilled personal care and/or homemaking services are provided and billed under the home health aide benefit must be contiguous with units during which services defined as skilled personal care are provided. For clients who are also eligible for HCBS personal care and homemaker services, the units spent on unskilled personal care and homemaker services and billed as aide services shall be reasonable in relation to the skilled care provided on the contiguous units. For example, if the transfer and bath are skilled, it would be reasonable for the aide to also dress the client, and to wipe up any water spills on the bathroom floor, and to prepare a meal if the aide is there at mealtime. It would not be reasonable for the aide to stay four more hours to do all the weekly cleaning and laundry, unless the client is not eligible for homemaker services under HCBS.

- C. The maximum reimbursement for any twenty-four hour period, as measured from midnight to midnight, shall not exceed \$270, effective July 1, 2002, for Acute Home Health Services or Long Term with Acute Episode Home Health Services; and shall not exceed \$211, effective My 1, 2002, for Long Term Home Health Services.

Effective September 1, 2002, the maximum reimbursement for any twenty-four hour period, as measured from midnight to midnight, shall not exceed S291 for Acute Home Health Services or Long Term with Acute Episode Home Health Services, and shall not exceed \$227 for Long Term Home Health Services.

Criteria for the three different categories of care are found at 8.523.11, K in this section. The maximum daily reimbursement includes reimbursement for nursing visits, home health aide units, physical therapy visits, occupational therapy visits, speech/language pathology visits, and any combinations thereof.

- D. Medicaid will not reimburse for two nurses during one visit, two home health aides at the same time, two physical therapists during one visit, two occupational therapists during one visit, or two speech therapists during one visit. An exception to this rule is for two home health aides, when two are required for transfers, and there are no other, persons available to assist, and when there is a justifiable reason why adaptive equipment cannot be used instead. Another exception is for two nurses when two are required to perform a procedure. For these exceptions, the provider may bill for two visits, or for all units for both aides. Reimbursement for all visits or units will be counted toward the maximum reimbursement limit.
- E. If a client is seen simultaneously by two persons to provide a single service, for which one person supervises or instructs the other, the Home Health agency shall only bill and be reimbursed for one employee's visit or units. For example, if two nurses visit the client, and the first nurse provides care and also orients and trains the second nurse in the client's care, only the first nurse's time counts as a reimbursable visit.
- F. Any visit made solely for the purpose of supervising the home health aide shall not be reimbursed.
- G. Any visit made by a nurse or therapist to simultaneously serve two or more clients residing in the same household shall be reimbursed as one visit only, unless services to each client are separate and distinct. If two or more clients residing in the same household receive Medicaid home health aide services, the personal care for each client shall be documented and billed separately for each client. Any homemaker services provided during units contiguous to skilled personal care units shall be billed to any one of the clients in the household, but the homemaker services shall not be duplicated and/or billed for more than one client. For example, if more than one client in the household needs meal preparation, it is expected that one aide prepare the meal for all of them. If the clients in the same household use different agencies, the agencies shall coordinate with each other to prevent duplication of homemaking.
- H. No more than one Home Health agency shall be reimbursed for providing Home Health services during a specific plan period to the same client, unless the second agency is providing a Home Health service that is not available from the first agency. The first agency must take responsibility for the coordination of all Home Health services. Home and Community Based Services, including personal care, are not Home Health services.

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- I. Physical, occupational, or speech therapy visits shall be reimbursed only when:
1. Improvement of functioning is expected or continuing;
  2. The therapy assists in overcoming developmental problems;
  3. Therapy visits are necessary to prevent deterioration;
  4. Therapy visits are indicated to evaluate and change ongoing treatment plans for the purpose of preventing deterioration; and to teach home health aides or others to carry out such plans, when the ongoing treatment does not require the skill level of a therapist; and/or
  5. Therapy visits are indicated to assess the safety or optimal functioning of the client in the home, or to train in the use of equipment used in implementation of the therapy plan of care.
- J. Nursing visits provided solely for the purpose of assessing and/or teaching shall be reimbursed by Medicaid only under the following guidelines:
1. For an initial assessment visit ordered by a physician when there is a reasonable expectation that ongoing nursing or home health aide care may be needed. Initial nursing assessment visits shall not be reimbursed if provided solely to open the case for physical, occupational, or speech therapy.
  2. If a nursing visit involves the nurse performing a nursing task for the purpose of demonstrating to the client or the client's unpaid family/caregiver how to perform the task, that visit shall not be considered as being solely for the purpose of assessing and teaching. A nursing visit during which the nurse does not perform the task, but observes the client or unpaid family/caregiver performing the task to verify that the task is being performed correctly shall be considered a visit that is solely for the purpose of assessing and teaching.
  3. Nursing visits solely for the purpose of assessing the client and/or teaching the client or the client's unpaid family/caregiver shall not be reimbursed unless the care is Acute Home Health or Long Term Home Health With Acute Episode, as defined in Section 8.523, ELIGIBILITY, or the care is for extreme instability of a chronic condition under Long Term Home Health, as defined in Section 3.523, ELIGIBILITY.
  4. Nursing visits provided solely for the purpose of assessment and/or teaching shall not exceed the frequency that is justified by the client's documented medical condition and symptoms, up to the maximum reimbursement limits. Assessment visits shall continue only as long as there is documented clinical need for assessment, management, and reporting to physician of specific conditions and/or symptoms which are not stable and/or not resolved. Teaching visits shall be as frequent as necessary, up to the maximum reimbursement limits, to teach the client or the client's unpaid family/caregiver, and shall continue only as long as needed for the client or the client's unpaid family/caregiver to demonstrate understanding or to perform care, or until it is determined that the client or unpaid family/caregiver is unable to learn or to perform the skill being taught. The visit on which the nurse determines that there is no longer a need for assessment and/or teaching shall be reimbursed if it is the last visit provided solely for assessment and/or teaching.

5. Nursing visits provided solely for the purpose of assessment and/or teaching shall not be reimbursed if the client is capable of self-assessment and of contacting the physician as needed; and if the client's medical records do not justify a need for client teaching beyond that already provided by the hospital and/or attending physician, as determined and documented on the initial Home Health assessment
  6. Nursing visits provided solely for the purpose of assessment and/or teaching shall not be reimbursed if there is an available and willing unpaid family/caregiver who is capable of assessing the client's condition and needs and contacting the physician as needed; and if the client's medical records do not justify a need for teaching of the client's unpaid family/caregiver beyond the teaching already provided by the hospital and/or attending physician, as determined and documented on the initial Home Health assessment.
- K. Nursing visits provided solely for the purpose of assessment and/or teaching and foot care shall not be reimbursed unless the visit meets the guidelines to be reimbursed as a visit provided solely for assessment and/or teaching, and/or the guidelines to be reimbursed as a foot care visit.

Nursing visits provided solely for the purpose of providing foot care shall be reimbursed by Medicaid only if the client has a documented and supported diagnosis that supports the need for foot care to be provided by a nurse, and the client and/or unpaid family/caregiver is not able or willing to provide the foot care. This will include documented and supported diagnoses that involve severe peripheral involvement, anti-coagulation therapy, or other conditions such as, but not limited to, spasticity and compromised immune system which could lead to a high risk of medical complications from injuries to the feet.

Documentation in the medical record shall specifically, accurately, and clearly show the signs and symptoms of the disease process at each visit the clinical record must indicate and describe an assessment of the foot or feet, physical and clinical findings consistent with the diagnosis and the need for foot care to be provided by a nurse. Severe peripheral involvement shall be supported by documentation of more than one of the following:

1. absent (not palpable) posterior tibial pulse;
2. absent (not palpable) dorsalis pedis pulse;
3. three of the advanced trophic changes such as:
  - a. hair growth (decrease or absence),
  - b. nail changes (thickening),
  - c. pigmentary changes (discoloration),
  - d. skin texture (thin, shiny),
  - e. skin color (rubor or redness);
4. claudication (limping, lameness);
4. temperature changes (cold feet);

5. edema;
  6. parasthesia;
  7. burning.
- L. Nursing visits provided solely for the purpose of assessment and/or teaching and pre-pouring of medications shall not be reimbursed unless the visit meets either the guidelines to be reimbursed as a visit provided solely for assessment and/or teaching, or the guidelines for reimbursement as a visit solely for the purpose of pre-pouring medications. Nursing visits provided solely for the purpose of pre-pouring medications into medication containers such as med-minders or electronic medication dispensers shall be reimbursed by Medicaid under the following guidelines:
1. The client is not living in a licensed personal care boarding home, including Adult Foster Home or Alternative Care Facility, where the facility staff is trained and qualified to pre-pour medications under the medication administration law at 25-1-107 (ee) (1.5), C.R.S., as amended by House Bill 98-1015. No later amendments to or editions of 25-1-107 (ee) (1.5), C.R.S., as amended by House Bill 98-1015 are included. Copies of 25-1-107 (ee) (L5), C.R.S., as amended by House Bill 98-1015 are available for public inspection during normal business hours and will be provided at cost upon request to the Home Health Administrator at the Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, Colorado 80203-1714 or the material may be examined at any State Publications Depository Library; and
  2. The client is not physically or mentally capable of pre-pouring his/her own medications or has a medical history of non-compliance with taking medications if they are not pre-poured; and
  3. The client has no unpaid family/caregiver who is willing or able to pre-pour the medications for the client; and
  4. There is documentation in the client's chart that the client's pharmacy was contacted upon admission to the Home Health Agency, and that the pharmacy will not provide this service; or that having the pharmacy provide this service would not be effective for this particular client.
- M. Nursing visits solely for the purpose of performing venipuncture, or for venipuncture and assessment and/or teaching, shall be reimbursed only if all the regulations in Section 8.520 through Section 8.530.10, B, HOME HEALTH SERVICES, are met.

**.13 RATES OF REIMBURSEMENT**

- A. Payment for Home Health services, other than nursing visits, shall be the lower of the billed charges or the maximum unit rate of reimbursement.

For nursing visits the payment shall be the lower of the billed charges, the maximum unit rate of reimbursement or prior authorized charges.

Prior authorized charges for stable clients requiring uncomplicated daily visits shall not exceed \$50.00 for the first brief nursing visit of the day and \$35.00 for the second or subsequent brief nursing visit of the day.

B. Maximum interim payment unit rates are:

Effective July 1, 2002:

1. Nursing visits: \$67.85
2. Acute Home Health Aide Basic unit: \$22.37
3. Long Term Home Health Aide Basic unit: \$30.08
4. Home Health Aide Extended unit: \$8.99
5. Physical Therapy visits: \$58.36
6. Occupational Therapy visits: \$61.98
7. Speech Therapy visits: \$63.60

Effective September 1, 2002:

1. Nursing visits: \$71.42
2. Any Home Health Aide Basic unit \$31.66
3. Home Health Aide Extended unit: \$9.46
4. Physical Therapy visits: \$61.43
5. Occupational Therapy visits: \$65.24
6. Speech Therapy visits: \$66.95

Effective February 1, 2000, interim payment rates shall be adjusted to equal no more than 16.5% average increase per unduplicated client for State Fiscal Year 99-00. The interim rates shall not be reduced, if total Medicaid home health expenditures in State FY 99-00 do not exceed \$73,571,787. If total expenditures for the Home Health budget do exceed \$73,571,787, the Department shall determine which Home Health Agencies received average per unduplicated client payments for State FY 99-00 Home Health services which were more than 16.5% over State FY 98-99 average per unduplicated client payments, and shall recoup from those agencies the amounts over the 16.5% average per unduplicated client increase. This shall be accomplished by decreasing each agency's unit rates, retro-active to February 1, 2000, by a percentage that will bring each agency's average payment per unduplicated client for State FY 99-00 to no more than a 16.5% increase over its State FY 98-99 average per unduplicated client payment. Agencies that became newly certified as Medicare/Medicaid providers in State FY 99-00 and have no Medicaid Home Health payment history for State FY 98-99 shall be exempt.

D. Effective September 1, 2000, interim payment rates shall be adjusted to equal no more than 16.5% average increase per unduplicated client for State Fiscal Year 00-01 with the following exemptions:

1. Exempt Agencies
  - a) Agencies that became newly certified as Medicare/Medicaid providers in State FY 00-01 and have no Medicaid Home Health payment history for State FY 99-00 shall be exempt.

- b) Agencies that had total Medicaid Home Health payments of less than \$125,000 in FY 99-00 shall be exempt.
  - 2. Exempt Clients
    - a) Clients who are newly enrolled in Medicaid shall be exempt if they receive Medicaid Home Health services within thirty days of their very first Medicaid enrollment. Clients with prior spans of Medicaid eligibility shall not be considered newly enrolled even if there was a period of non-enrollment between eligibility spans.
    - b) Clients who are deinstitutionalized from nursing facilities shall be exempt if the nursing facility care was billed to Medicaid and was not billed as respite care; if they begin receiving Home Health services no later than thirty days after discharge, from the nursing facility; and if they do not return to nursing facility placement after an interim period of Home Health care.
- E. The FT 00-01 interim rates shall not be reduced if total Medicaid community long term care expenditures in State FY 00-01 do not exceed \$198,862,688. If total expenditures for the community long term care budget do exceed \$198,862,688, the Department shall determine which non-exempt Home Health Agencies received average per non-exempt unduplicated client payments for State FY 00-01 Home Health services which were more than 16.5% over State FY 99-00 average per unduplicated client payments, and shall recoup from those agencies the amounts over the 16.5% average per unduplicated client increase. This shall be accomplished by decreasing each non-exempt agency's unit rates, retroactive to September 1, 2000, by a percentage that will bring each agency's average payment per non-exempt unduplicated client for State FY 00-01 to no more than 16.5% increase over its State FY 99-00 average per unduplicated client payment.
- F. Services shall be billed according to category of service upon publication of instructions in the provider-billing manual.
  - 1. For Acute Home Health Services, Home Health Agencies shall bill nursing, home health aide, physical therapy, occupational therapy, and speech therapy, as Acute Home Health.
  - 2. For Long Term Home Health Services provided to a minor, Home Health Agencies shall bill nursing, home health aide, physical therapy, occupational therapy, and speech therapy as Long Term Home Health. For Long Term Home Health Services provided to an adult, Home Health Agencies shall bill nursing, and home health aide services as Long Term Home Health. Clients 18 years and over may obtain long-term therapy services in an outpatient hospital setting or by a qualified nonphysician practitioner described at 8.201.A.
  - 3. For Long Term with Acute Episode Home Health Services, Home Health Agencies shall bill all nursing, home health aide, physical therapy, occupational therapy, and speech therapy, as Acute Home Health, until the client's care becomes Long Term Home Health again.
  - 4. For all nursing visits provided solely for the purpose of assessment and teaching, not including initial assessment visits at the start of care, Home Health Agencies shall bill a revenue code assigned for nursing assessment and teaching visits.
- G. Maximum unit rates may be adjusted by the State as funding becomes available.

**.14 SPECIAL REIMBURSEMENT CONDITIONS**

- A. Reimbursement for third party resource and Medicare crossover claims shall not exceed Medicaid costs.
- B. When Home Health agencies provide Home Health services, in accordance with these regulations, to clients who receive Home and Community Based Services for the Developmentally Disabled (HCBS-DD), the Home Health agency shall be reimbursed:
  - 1. Under normal procedures for Home Health reimbursement, if the client resides in an Intermediate Care Facility for the Mentally Retarded (ICF/MR), or Individual Residential Services & Supports (IRSS) Host Homes and Settings; or
  - 2. By the group home provider, if the client resides in Group Residential Services & Supports (GRSS), because the provider has already received Medicaid funding for the home health services and is responsible for payment to the Home Health agency.
- C. Acute Home Health services provided to Medicaid HMO clients, including Medicaid HMO clients who are also HCBS recipients, shall not be reimbursed under the Medicaid Home Health program, but shall be reimbursed under Medicaid HMO rules. If a client's Home Health service need exceeds 60 days, the Home Health Agency shall submit a Prior Authorization for Long Term: Home Health to the designated review entity.
- D. All Medicare requirements shall be met and exhausted prior to any dual eligible client's claims being billed to Medicaid, as demonstrated by a Medicare denial of benefits, except in the specific cases listed at 8.528.14.D.1 and 8.525.14.D.2.
  - 1. A Home Health Agency may bill Medicaid without billing Medicare if the services below are the only services on the claim:
    - a. Pre-pouring of medications;
    - b. Certified Home Health Aide services;
    - c. Occupational Therapy services when provided as the sole skilled service; or
    - d. Routine Laboratory Draw services.
  - 2. A Home Health Agency may bill Medicaid at the time of services, if the conditions below apply. The claim must also be submitted to Medicare so that the denial, when received, is part of the client's file.
    - a. The client is stable;
    - b. The client is not experiencing an acute episode; and
    - c. The client routinely leaves the home without taxing effort and unassisted for social, recreational, educational, or employment purposes.
  - 3. The Home Health Agency shall maintain clear documentation in the client's record of the conditions and services that are billed to Medicaid without billing Medicare.

4. A Home Health Advance Beneficiary Notice (HHABN) shall be filled out as prescribed by Medicare.
- E. A dual eligible Long Term Home Health Care client who has an Acute Episode shall be switched from Medicaid to Medicare reimbursement. Medicaid resumes as the payer of record when Medicare denies payment as a non-covered benefit and the service is a Medicaid benefit, or when the service consists of those listed in 8.528.14.D.2.
- F. If both Medicare and Medicaid reimburse for the same visit or service provided to a client in the same episode, the reimbursement shall be considered a duplication of payment and the Medicaid reimbursement shall be returned to the Department.
  1. Upon receiving a duplicate payment, Home Health agencies shall return the payment to Medicaid within sixty (60) calendar days of final Medicare payment.
  2. Failure to return the Medicaid payment to the Department shall be deemed a false claim and subject to the provisions set forth in 25.5-4-303.5, C.R.S., et seq. and referred to the Medicaid Fraud Control Unit in the Colorado Department of Law for criminal investigation.

**8.529 POST-PAYMENT REVIEW**

- .10 The Medicaid Quality Assurance Unit shall periodically conduct post-payment reviews of selected Home Health services.
- .11 Home Health agencies shall submit or produce requested documentation of services to the Medicaid Quality Assurance Unit in accordance with rules at 8.079.62. Such documentation shall include, at a minimum:
  - A. Physician-signed plans of care, which shall include nursing and/or therapy assessments, or current clinical summaries or updates of the client. The plan of care must be on the HCFA-485 form, or a form that is identical in format to the HCFA-485, and all sections of the form must be completed. All therapy services provided must be included in the plan of care, which must list the specific procedures and modalities to be used and the amount, duration and frequency.
  - B. Records documenting the nature and extent of the care actually provided such as, but not limited to, nursing notes.
- .12 The Medicaid Quality Assurance Unit shall review all information available from any source, shall contact clients, and may conduct on-site visits to Home Health agencies and/or clients.
- .13 The Medicaid Quality Assurance Unit shall initiate appropriate administrative, civil, or criminal investigations and/or sanctions for all services which:
  - A. Are found to be out of compliance with all applicable regulations;
  - B. Are not consistent with the client's documented medical needs and functional capacity,
  - C. Are not reasonable in amount, frequency, and duration;
  - D. Are duplicative of any other services that the client received or that the client received funds to purchase;

- E. Total more than twenty-four hours per day of paid care, regardless of funding source (An example of care totaling more than 24 hours per day would be 5 home health visits plus 12 hours of personal care);
  - F. Consist of visits or contiguous units which are shorter or longer than the length of time required to perform all the tasks prescribed on the care plan.
- .14 Clients and families of clients shall not be billed by home health agencies for any services for which Medicaid reimbursement is recovered as a result of post-payment review.
- .15 Providers may appeal post-pay sanctions in accordance with Section 8.050, PROVIDER APPEALS AND HEARINGS.

### **8.530 DENIAL, TERMINATION, OR REDUCTION IN SERVICES**

- .10 When services are denied, terminated, or reduced by action of the Home Health agency, the Home Health agency shall notify the client.
- A. Termination of Services to Clients Still Medically Eligible for Coverage of Medicaid Home Health Services

When a Home Health agency decides to terminate services to a client who needs and wants continued Home Health services, and who remains eligible for coverage of services under the Medicaid Home Health rules, the agency shall give the client, and/or the client's designated representative, written advance, notice of at least fifteen business days, and the attending physician shall also be notified. Notice shall be provided in person or by certified mail, and shall be considered given when it is documented that the recipient has received the notice. The notice shall provide the reason for the change in services. The agency shall make a good faith effort to assist the client in securing the services of another agency. If there is indication that ongoing services from another source can not be arranged by the end of the advance notice period, the terminating agency shall ensure client safety by making referrals to appropriate case management agencies and/or County Departments of Social Services; and the attending physician shall be informed about the situation. Exceptions will be made to the requirement for 15 days advance notice when the provider has documented that there is danger to the client, Home Health agency, staff, or when the client has begun to receive Home Health services through a Medicaid HMO. Clients who believe that a Home Health agency has not acted properly, in terminating services may call me Home Health Hotline, at 1-800-842-8826 to request an investigation.

NOTE: Section 8.530.10.B.was deleted effective September 1, 2002.

### **8.535 PEDIATRIC PERSONAL CARE SERVICES**

#### **8.535.1 Definitions**

**Assessment** means the systematic and ongoing collection, validation and evaluation of data to monitor client status and response to treatment.

**Behavioral Intervention** means techniques, therapies, and methods used to modify or minimize aggressive (verbal/physical), combative, destructive, disruptive, repetitious, resistive, self-injurious, or other inappropriate behaviors outlined on the CMS-485 Plan of Care (defined below). Behavioral interventions exclude frequent verbal redirection or additional time to transition or complete a task, which are part of the general assessment of the client's needs.

**Care Coordination** means the deliberate organization of client care tasks between two or more participants (including the client) involved in a client's care to facilitate the appropriate delivery of health care and other health care support services.

**Care Plan** means a written specific list of tasks and frequencies to be provided to the client, and which is ordered and signed by the Ordering Provider.

**Certified Nurse Aide (CNA)** means an employee of a Home Health Agency with a CNA certification.

**CMS-485 Plan of Care (485)** means a coordinated plan developed by the Home Health Agency as ordered by the attending physician for provision of services to a client in his or her Residence. Also referred to as the 485 or the HCFA 485.

**Cuing** means providing a prompt or direction to assist a client to perform a task they are physically capable of performing but unable to reliably initiate.

**Department** means the Colorado Department of Health Care Policy and Financing (or any division or sub-units within that agency) which is designated as the single State Medicaid agency for Colorado.

**Designated Review Entity** means an entity that has been contracted by the Department to review Prior Authorization Requests (PAR) for medical necessity and appropriateness.

**Exacerbation** means a sudden or progressive worsening of a client's chronic illness, injury, or disability (or its symptoms).

**Home Care Agency** means a Class A or Class B-designated entity that provides Home Health or Personal Care Services. When referred to in this rule without a 'Class A' or 'Class B' designation, the term encompasses both types of agency.

**Home Health Agency** means an agency licensed as a Class A Home Care Agency that is certified to provide Skilled Care Services to Medicare and Medicaid eligible clients. A licensed, Class A Home Care Agency may also provide Personal Care Services based on the agency's policies and procedures.

**Intermittent Basis** means Personal Care visits that have a distinct start time and stop time and are task-oriented with the goal of meeting a client's specific needs for that visit.

**Ordering Provider** means a licensed primary care physician, advanced practice nurse, or physician specialist who is responsible for writing orders and overseeing the client's Care Plan. This may include an alternate physician who is authorized by the Ordering Provider to care for the client in the Ordering Provider's absence.

**Personal Care Agency** means an agency licensed as a Class B Home Care Agency certified by the Colorado Department of Public Health and the Environment.

**Personal Care Services** means providing specific unskilled tasks to assist clients with activities of daily living.

**Personal Care Worker** means an employee of a licensed Home Care Agency who has completed the required training to provide Personal Care Services, or who has verified experience providing Personal Care Services for clients.

**Qualified Physician** means a licensed primary care physician or other physician specialist.

**Residence** means a place where the client lives. The residence may be temporary or permanent. A residence does not include nursing facilities or other institutions as defined by CMS and the State of Colorado.

**Skilled Care Services** means services that, due to the inherent complexity of the service, can only be performed safely and correctly by a licensed/certified Registered Nurse (RN) or Licensed Practical Nurse (LPN) , Therapist (Physical Therapist, Occupational Therapist, or Speech Language Therapist), or CNA.

**Skilled Nursing Services** means services provided by an actively licensed RN who practices under applicable state and federal laws and professional standards. Skilled Nursing Services include services provided by a LPN under the direction of a RN, to the extent allowed under applicable state and federal laws.

**Unpaid Family Caregiver** means a person who provides care to the client without reimbursement by the Department or other entity. This can be the client's parent, legal guardian, foster parent, spouse, relative, or other person who is responsible for the well-being of the client.

#### **8.535.2. Client Eligibility**

Personal Care services are a benefit for Colorado Medicaid clients who meet the following criteria:

- 8.535.2.A. Are 20 years of age and younger; and
- 8.535.2.B. Require assistance with a minimum of three Personal Care Tasks;

#### **8.535.3 Provider Eligibility**

**8.535.3.A.** Home **Care Agencies** licensed by the **State of Colorado as a Class A or Class B Home Care Agency** shall meet the following requirements:

- 1. Are enrolled as a Medicaid Provider; and
- 2. Are in good standing.

#### **8.535.4. Covered Services**

Covered Personal Care Services shall meet the following requirements:

- 8.535.4.A. Services are medically necessary as defined at 10 C.C.R. 2505-10, § 8.076.1.8.3;
- 8.535.4.B. Services are provided on an Intermittent Basis;
- 8.535.4.C. Services are unskilled;
- 8.535.4.D. Services are ordered by a licensed Physician, as regulated by the Department of Regulatory Agencies, at 3 C.C.R. 713; or an Advanced Practice Nurse, as licensed by the Department of Regulatory Agencies, at 3 C.C.R. 716-1.
- 8.535.4.E. Services are provided under a current Care Plan, signed by the Ordering Provider:
  - 1. The Care Plan or 485 shall include the usual frequency for each task;
  - 2. Home Care agencies shall maintain documentation supporting why a task is required more than the typical frequency.

8.535.4.F. If a client requires a skilled transfer to complete a Personal Care task (such as bathing or hygiene), the associated task shall be considered skilled in nature.

8.535.4.G. Home Care Agencies may decline to perform any specific task or service if the supervisor or the Personal Care Worker perceives a safety concern to the client or the Personal Care Worker due to the specific task, regardless of whether the task is covered as a Personal Care Service.

8.535.4.H. Covered Personal Care Services

Covered Personal Care Services include assistance with the following tasks:

1. Ambulation/Locomotion
  - a. Includes walking/moving from place to place with or without an assistive device (including wheelchair). A Personal Care Worker may provide this task only when:
    - i) The client has the ability to balance and bear weight reliably;
    - ii) The client is independent with an assistive device; or
    - iii) Assisting a medically-skilled care provider or Unpaid Family Caregiver who is competent in providing the skilled aspect of care.
  - b. Factors that make Task Skilled:
    - i) The client is unable to assist in the task, direct care, or when hands on assistance is required for safe ambulation;
    - ii) There is a documented decline in condition or an ongoing need documented in the client's record.
  - c. Special Considerations:
    - i) Ambulation shall not be the standalone reason for a visit.
    - ii) Transferring and positioning into and out of assistive devices is not ambulation, and should be addressed in the transferring and positioning section of this rule, at 10 CCR 2505-10 § 8.535.4.B.11.
2. Bathing/Showering
  - a. Includes preparing bathing supplies and equipment, assessing water temperature, applying soap (including shampoo), rinsing off, and drying the client. The task also includes cleaning up after the bath, shower, bed bath, or sponge bath as needed. All transfers and ambulation related to the bathing task, and all hair care, pericare, and skin care provided in conjunction with the bathing are included in this task. A Personal Care Worker may provide this task only when:
    - i) The client is able to maintain balance and bear weight reliably, or is able to use safety equipment (such as a shower bench) to safely complete bathing;
    - ii) The skin is unbroken or the client is independent with assistive devices.

- iii) Assisting a medically-skilled care provider or Unpaid Family Caregiver who is competent in providing this aspect of care.
  - b. Factors that make Task Skilled:
    - i) The presence of open wound(s), stoma(s), broken skin and/or active chronic skin disorder(s);
    - ii) The client is unable to maintain balance or to bear weight reliably due to illness, injury, or disability, history of falls, or a temporary lack of mobility due to surgery or other exacerbation of illness, injury, or disability;
    - iii) There is a documented decline in condition or ongoing need documented in the client's record.
  - c. Usual Frequency: Once daily.
  - d. Special Considerations: A Personal Care Worker may be staffed with a skilled care provider or Unpaid Family Caregiver when required to safely bathe the client, which is supported by documentation that illustrates that the client needs moderate to total assistance to safely complete this task.
- 3. Dressing
  - a. Includes putting on and taking off ordinary clothing, including pantyhose or socks and shoes. Dressing includes getting clothing out, and may include braces and splints if purchased over the counter or were not ordered by a Qualified Physician. A Personal Care Worker may provide this task only when:
    - i) Providing assistance with ordinary clothing and application of support stockings of the type that can be purchased without a physician's prescription;
    - ii) Providing transfers and positioning related to dressing and undressing. May include cleaning and maintenance of braces, prosthesis, or other DME; or
    - iii) Assisting a medically-skilled care provider or Unpaid Family Caregiver who is competent in providing the application of anti-embolic or pressure stockings, or placement of braces or splints that can be obtained only with a prescription of a Qualified Physician, or when the client is unable to assist or direct care.
  - b. Factors that make Task Skilled:
    - i) The client requires assistance with the application of anti-embolic or pressure stockings, placement of braces or splints that can be obtained only with a prescription of a qualified physician;
    - ii) The client is unable to assist or direct care;
    - iii) The client experiences a temporary lack of mobility due to surgery or other exacerbation of illness, injury, or disability;

- iv) There is a documented decline in condition or ongoing need documented in the client's record.
  - c. Usual Frequency: Up to two times daily.
  - d. Special Considerations: A Personal Care Worker may be staffed with a skilled care provider or Unpaid Family Caregiver when required to safely dress the client if it is supported by documentation illustrating that the client needs moderate to total assistance to safely complete this task.
- 4. Meal Preparation
  - a. Includes preparing, cooking, and serving food to client. Includes formula preparation and ensuring food is a proper consistency based on client's ability to swallow safely. A Personal Care Worker may provide all meal preparation, except as defined in part b. of this section.
  - b. Factors that make Task Skilled:
    - i) Diet requires nurse oversight to administer correctly;
    - ii) Meals must have a modified consistency;
    - iii) There shall be a documented decline in condition and/or ongoing need documented in the client's record.
  - c. Usual frequency: Up to three times daily.
- 5. Feeding
  - a. Includes ensuring food is at the proper temperature, cutting food into bite-size pieces, or ensuring the food is the proper consistency for the client, up to and including placing food in client's mouth. A Personal Care Worker may provide this task when:
    - i) The client can independently chew and swallow without difficulty and be positioned upright;
    - ii) The client is able to safely eat or be fed with adaptive utensils.
  - b. Factors that make Task Skilled:
    - i) Syringe feeding and tube feeding;
    - ii) Oral feeding when:
      - 1) The client is unable to communicate verbally, non-verbally or through other means;
      - 2) The client is unable to be positioned upright;
      - 3) The client is on a modified texture diet;
      - 4) When the client has a physiological or neurogenic chewing and/or swallowing problem;

- 5) When a structural issue (such as cleft palate) is present; or
      - 6) Other documented swallowing issues.
    - iii) The client has a history of aspirating food or is on mechanical ventilations.
    - iv) Oral suctioning is required.
    - v) There is a documented decline in condition, or ongoing need documented in the client's record.
  - c. Usual Frequency: Up to three times daily (snacks are not included)
6. Hygiene – Hair Care/Grooming
- a. Includes shampooing, conditioning, drying, styling and combing. Does not include perming, hair coloring, or other or extensive styling such as, but not limited to, updos, placement of box braids or other elaborate braiding or placing hair extensions. A Personal Care Worker may provide this task only when:
    - i) Assisting client with the maintenance and appearance of his/her hair;
    - ii) Shampooing with non-medicated shampoo or medicated shampoo that does not require a physician's prescription;
    - iii) Drying, combing and styling of hair;
    - iv) Active and chronic skin issues such as dandruff and cradle cap do not make this task skilled.
  - b. Factors that make Task Skilled:
    - i) The client is unable to complete task independently;
    - ii) The client requires shampoo/conditioner that is prescribed by a qualified physician and dispensed by a pharmacy;
    - iii) The client has open wound(s) or stoma(s) on the head;
    - iv) There is a documented decline in condition, or ongoing need documented in the client's record.
  - c. Usual Frequency: Up to twice daily.
7. Hygiene – Mouth Care
- a. Includes brushing teeth, flossing, use of mouthwash, denture care, or swabbing (toothette). A Personal Care Worker may provide this task only when:
    - i) Assisting with basic oral hygiene;
    - ii) Denture care;

- iii) The presence of gingivitis, receding gums, cavities and other general dental problems do not make mouth care skilled.
  - b. Factors that make Task Skilled:
    - i) The client is unconscious;
    - ii) The client has difficulty swallowing or is at risk for choking and/or aspiration;
    - iii) The client has decreased oral sensitivity or hypersensitivity;
    - iv) The client is on medications that increase the risk of dental problems or bleeding, injury or medical disease of the mouth;
    - v) The client requires oral suctioning;
    - vi) There is a documented decline in condition, or ongoing need documented in the client's record.
  - c. Usual Frequency: Up to three times daily
- 8. Hygiene – Nail Care
  - a. Includes soaking, filing and cuticle care. A Personal Care Worker may provide this task only when:
    - i) Assisting with nail care, soaking of nails, pushing back cuticles without utensils, and filing of nails;
    - ii) Assistance by the Personal Care Worker shall not include nail trimming.
  - b. Factors that make Task Skilled:
    - i) The client has a medical condition that involves peripheral circulatory problems or loss of sensation;
    - ii) The client is at risk for bleeding and/or is at high risk for injury secondary to the nail care;
    - iii) The client requires nail trimming;
    - iv) There is a documented decline in condition, or ongoing need documented in the client's record.
  - c. Usual Frequency: Up to one time weekly.
- 9. Hygiene – Shaving
  - a. Includes assisting with shaving of face, legs and underarms with a safety or electric razor. A Personal Care Worker may provide this task only when assisting a client with shaving with an electric or a safety razor.

- b. Factors that make Task Skilled:
    - i) The Client has a medical condition that involves peripheral circulatory problems or loss of sensation;
    - ii) The client has an illness or takes medications that are associated with a high risk for bleeding;
    - iii) The client has broken skin at/near shaving site, or has a chronic active skin condition;
    - iv) The client is unable to shave themselves;
    - v) There is a documented decline in condition, or ongoing need documented in the client's record.
  - c. Usual Frequency: Up to one time daily
10. Hygiene – Skin Care
- a. Includes applying lotion or other skin care product, only when not completed in conjunction with bathing or toileting (bladder and bowel). May be included with positioning. A Personal Care Worker may provide this task only when:
    - i) General skin care assistance, only when a client's skin is unbroken, and when any chronic skin problems are not active;
    - ii) Skin care is preventative – rather than therapeutic – in nature and may include the application of non-medicated lotions and solutions, or of lotions and solutions not requiring a physician's prescription.
  - b. Factors that make Task Skilled:
    - i) The client requires additional skin care lotions or solutions that must be prescribed by a qualified physician;
    - ii) The client has broken skin, wound(s) or an active skin disorder, and is unable to apply product independently due to illness, injury or disability;
    - iii) There is a documented decline in condition, or ongoing need documented in the client's record.
  - c. Special Considerations: Skin care completed in conjunction with bathing and toileting as ordered on the 485 is not included in this task.

11. Mobility – Positioning

- a. Includes moving the client from a starting position to a new position while maintaining proper body alignment and support to a client's extremities, and avoiding skin breakdown. A Personal Care Worker may provide this task only when:
  - i) Assisting a client with positioning when the client is able to identify to the provider, verbally, non-verbally, or through other means, when their position needs to be changed and only when skilled skin care is not required in conjunction with positioning;
  - ii) Alignment in a bed, wheelchair, or other furniture;
  - iii) Placing any padding required to maintain proper alignment;
  - iv) Receiving direction from or assisting a medically-skilled care provider or Unpaid Family Caregiver who is competent in providing this aspect of care.
- b. Factors that make Task Skilled:
  - i) The client is unable to communicate verbally, non-verbally or through other means;
  - ii) The client is not able to perform this task independently due to fragility of illness, injury or disability, temporary lack of mobility due to surgery or other exacerbation of illness, injury or disability;
  - iii) Adjusting the client's alignment or posture in a bed, wheelchair, other furniture, assistive devices, or Durable Medical Equipment that has been ordered by a qualified physician;
  - iv) There is a documented decline in condition, or ongoing need documented in the client's record.
- c. Special Considerations:
  - i) Positioning and padding shall not be the sole purpose for the Personal Care visit;
  - ii) A Personal Care Worker may be staffed with a skilled care provider or Unpaid Family Caregiver when required to safely position the client, which is supported by documentation that illustrates that the client needs moderate to total assistance to safely complete this task;
  - iii) Visits shall be coordinated to ensure that effective positioning scheduling is utilized for Skilled Care and Personal Care Services. Positioning shall be done in conjunction with other skilled tasks;
  - iv) Positioning is not considered a separate task when a transfer is performed in conjunction with bathing, bladder care, bowel care, or other Personal Care Tasks requiring positioning.

12. Mobility – Transfer

- a. Includes moving the client from a starting location to a different location in a safe manner. It is not considered a separate task when a transfer is performed in conjunction with bathing, bladder care, bowel care or other Personal Care Task. A Personal Care Worker may provide this task only when:
  - i) Assisting with a transfer when the client has sufficient balance and strength to reliably stand, pivot and assist with the transfer to some extent;
  - ii) Transferring clients with adaptive and safety equipment (including lifts) if:
    - 1) The client and the Personal Care Worker are fully trained in the use of the equipment; and
    - 2) The client or client's Unpaid Family Caregiver can direct the transfer step by step; or
    - 3) The Personal Care Worker is deemed competent in the specific transfer technique for the client.
  - iii) Gait belts may be used in a transfer as a safety device, if the Personal Care Worker has been properly trained in their use.
- b. Factors that make task Skilled:
  - i) The client is unable to communicate verbally, non-verbally or through other means;
  - ii) The Client is not able to perform this task independently due to illness, injury or disability, temporary lack of mobility due to surgery and/or other exacerbation of illness, injury or disability;
  - iii) The client lacks the strength and stability to stand or bear weight reliably;
  - iv) The client is not deemed independent in the use of assistive devices or Durable Medical Equipment that has been ordered by a qualified physician;
  - v) The client requires a mechanical lift for safe transfers;
  - vi) There is a documented decline in condition, or ongoing need documented in the client's record.
- c. Special Considerations:
  - i) Transferring shall not be the sole purpose for the visit.
  - ii) A Personal Care Worker may be staffed with a skilled care provider or Unpaid Family Caregiver when required to safely transfer the client.
  - iii) A Personal Care Worker may never assist with a transfer if the client is unable to assist with the transfer.

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13. Protective Oversight
- a. Includes monitoring a client to reduce or minimize the likelihood of injury or harm due to the nature of the client's injury, illness or disability. A Personal Care Worker may provide this task only when:
    - i) Providing protective oversight as stand-by assistance with any other Personal Care Task;
    - ii) Trained in appropriate intervention and redirection techniques if the client requires protective oversight to prevent wandering or dangerous or destructive behaviors.
  - b. Special Considerations:
    - i) Protective Oversight may only be provided during the completion of other Personal Care Tasks listed in this rule.
    - ii) The need for Protective Oversight is indicated by significant impairment in behavior, memory, or cognition.
14. Toileting – Bladder Care
- a. Includes assistance with toilet, commode, bedpan, urinal, or diaper use, as well as emptying and rinsing the commode or bedpan after each use. This includes transfers, skin care, ambulation and positioning related to bladder care. This task concludes when the client is returned to his/her pre-urination state. A Personal Care Worker may provide this task only when:
    - i) Assisting a client to and from the bathroom, and with bedpans, urinals and commodes;
    - ii) Pericare, and changing of clothing and pads of any kind used for the care of incontinence;
    - iii) Assisting a medically-skilled care provider or Unpaid Family Caregiver who is competent in providing this aspect of care.
  - b. Factors that make Task Skilled:
    - i) The client is unable to assist or direct care;
    - ii) The client has broken skin or a recently healed skin breakdown (less than 60 days);
    - iii) The client requires skilled skin care associated with bladder care;
    - iv) The client has been assessed as having a high and ongoing risk for skin breakdown;
    - v) There is a documented decline in condition, or ongoing need documented in the client's record.

- c. Special Considerations: A Personal Care Worker may be staffed with a skilled care provider or Unpaid Family Caregiver when required to safely complete bladder care with the client, which is supported by documentation that illustrates that the client needs moderate to total assistance to safely complete this task.

**15. Toileting – Bowel Care**

- a. Includes changing and cleaning incontinent client or hands-on assistance with toileting. This includes returning client to pre-bowel movement status, transfers, skin care, ambulation and positioning related to the bowel program. A Personal Care Worker may provide this task only when:
  - i) Assisting the client to and from the bathroom, and with bedpans and commodes;
  - ii) Pericare, and changing of clothing and pads of any kind used for the care of incontinence;
  - iii) Assisting a medically-skilled care provider or Unpaid Family Caregiver who is competent in providing this aspect of care.
- b. Factors that make Task Skilled:
  - i) The client is unable to assist or direct care;
  - ii) The client has broken skin or a recently healed skin breakdown (less than 60 days);
  - iii) The client requires skilled skin care associated with bowel care;
  - iv) The client has been assessed as having a high and ongoing risk for skin breakdown;
  - v) There is a documented decline in condition, or ongoing need documented in the client's record.
- c. Special Considerations: A Personal Care Worker may be staffed with a skilled care provider or Unpaid Family Caregiver when required to safely complete bowel care with the client, which is supported by documentation that illustrates that the client needs moderate to total assistance to safely complete this task.

**16. Toileting – Bowel Program**

- a. Includes emptying and changing the ostomy bag, as ordered by the client's qualified physician. This includes skin care at the site of the ostomy and returning the client to pre-bowel program status. A Personal Care Worker may provide this task only when:
  - i) Emptying ostomy bags;
  - ii) Providing client-directed assistance with other ostomy care only when there is no need for skilled skin care, or for observation or reporting to a nurse;

- b. Factors that make task Skilled:
    - i) The client requires the use of digital stimulation, suppositories, or enemas;
    - ii) There is a documented decline in condition, or ongoing need documented in the client's record.
  - c. Special Considerations: The Personal Care Worker shall not perform digital stimulation, insert suppositories, or give an enema.
- 17. Toileting – Catheter Care
  - a. Includes perineal care and emptying catheter bag. This includes transfers, skin care, ambulation and positioning related to the catheter care. A Personal Care Worker may provide this task only when:
    - i) Emptying urinary collection devices, such as catheter bags, when there is no need for observation or reporting to a nurse;
    - ii) Providing pericare if the client has an indwelling catheter.
  - b. Factors that make Task Skilled:
    - i) Emptying catheter collection bags (indwelling or external) when there is a need to record and report the client's urinary output to the client's nurse;
    - ii) All insertion and removal of catheters, and all care of catheters;
    - iii) Changing from a leg to a bed bag and cleaning of tubing and bags;
    - iv) If the indwelling catheter tubing needs to be opened for any reason and the client is unable to do so independently; or
    - v) There shall be a documented decline in condition and/or ongoing need documented in the client's record.
  - c. Usual Frequency: Up to two times a day.
  - d. Special Considerations: Catheter care shall not be the sole purpose of the visit.
- 18. Medication Reminders
  - a. Include verbally communicating to a client that it is time for medication, opening and handing pre-filled medication reminder container to a client. A Personal Care Worker may provide this task only when:
    - i) Inquiring as to whether medications were taken;
    - ii) Verbal prompting to take medications;
    - iii) Handing the appropriately marked medication reminder container to the client; and

- iv) Opening the appropriately marked medication reminder container for the client if the client is physically unable to open the container.
- v) All medication (prescription medications and all over-the-counter medications) must be:
  - 1) Pre-selected by the client, the client's Unpaid Family Caregiver, a nurse, or a pharmacist;
  - 2) Stored in pre-filled medication reminder boxes that are marked as to day and time of dosage.
- b. Special Considerations:
  - i) Medication reminders are Skilled Care tasks when the client requires services within the scope of a CNA-MED certified CNA. Skilled Care Services which can be provided by a CNA-MED certified CNA can be found in this rule at Section 8.520.5.E.8.o and 3 C.C.R. § 716-1 Chapter 19 Section 6.
  - ii) CNAs may not administer medications without obtaining the CNA-MED certification from the DORA approved course.

**8.535.5. Documentation Requirements**

8.535.5.A. Client Files: Home Care Agencies shall maintain records on each client. The specific record for each client shall include, at a minimum, the following information:

1. A written order for Personal Care Services;
2. A Care Plan completed by the Ordering Provider (updated at least annually, or as required by the client's needs and/or condition);
3. All other client file information as required by the Colorado Department of Public Health and Environment, at 6 C.C.R. 1011-1 Chapter 26 § 6.20.

8.535.5.B.. Personal Care Worker Files: All Personal Care Workers shall have a completed and up-to-date personnel file containing proof of current training, education, and Personal Care Worker competency as appropriate to the client's needs and as required by the Colorado Department of Public Health and Environment, at 6 C.C.R. 1011-1 Chapter 26 § 8.6.

**8.535.6. Non-Covered Services**

Medicaid does not reimburse for the following services under the Medicaid State Plan Personal Care Services benefit:

8.535.6.A. Transportation of a client;

8.535.6.B. Services provided by a person under 18 years of age, or services provided by a person not employed by the Home Care Agency;

8.535.6.C. Services provided at:

1. Hospitals;

2. Nursing facilities;
  3. Intermediate Care Facilities for Persons with Intellectually Disabled (ICF/ID);
  4. Public school grounds;
  5. Individual Residential Services & Supports IRSS;
  6. Group Residential Services & Supports (GRSS);
  7. Alternative care facilities;
  8. Medical offices; or
  9. Other Medicaid reimbursed settings.
- 8.535.6.D. Tasks that are defined as Skilled Care Services, as defined in 10 CCR 2505-10 § 8.520, et seq;
- 8.535.6.E. Services provided for the purpose of companionship, respite, financial management, child care, education or home schooling, for the benefit of someone other than the Medicaid client, or are not justified by the documentation provided are not eligible.
- 8.535.6.F. Homemaker services, or tasks that are performed to maintain a household. These tasks are considered to be non-medical tasks and include grocery shopping, laundry, and housekeeping.
- 8.535.6.G. Exercise and range of motion services.
- 8.535.6.H. Time or mileage required to travel to the client's place of service.
- 8.535.6.I. Any services that are reimbursed by another insurance agency or other state, federal or private agency.
- 8.535.6.J. Visits that occur for the sole purpose of supervising or training the Personal Care Worker.
- 8.535.6.K. Personal Care Services provided or billed during a Skilled Care Services visit.
- 8.535.6.L. When the client or the client's Unpaid Family Caregiver is willing and able to perform the services or tasks independently.
- 8.535.6.M. Any service or task for a single client performed by two staff (any combination of Registered Nurse, Licensed Practical Nurse, CNA, Physical Therapist, Occupational Therapist, Speech Language Therapist, or Personal Care Workers) during the same visit, from the same or a different agency, except when two staff are required to safely complete the service or task and there is no other person available to assist.
1. If services are provided by two staff, the highest level of required care will subsume the other service. For example: A CNA and a Personal Care Worker perform a Skilled Care and a Personal Care Service respectively. Only the CNA visit will be paid, because the Personal care service should have been performed during the CNA visit.
  2. In instances where the two staff are of the same type, but from different agencies, the Home Care Agency which usually provides services to the client will be paid for the service.

8.535.6.N. Assistance with services that are being provided as a reasonable accommodation as part of the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and/or Part B of the Individuals with Disabilities Education Act (IDEA).

8.535.6.O. CNA visits shall not be approved for, nor shall CNA extended units be billed for the sole purpose of completing Personal Care Services that are billable under this benefit.

8.535.6.P. In accordance with Section 1905 (a)(24) of the Social Security Act, Personal Care Services provided by the client's parent, spouse, or other legally responsible adult cannot be reimbursed by Medicaid.

8.535.6.Q. Physical behavioral interventions, such as restraints, shall not be used, per the Colorado Department of Health and the Environment rights of the consumer, at 6 CCR 1011-1, Chapter 26, Section 6.4.

**8.535.7. Prior Authorization Requirements (PAR)**

8.535.7.A. Personal Care Services require prior authorization by the Department (or its Designated Review Entity) using the approved utilization management tool.

1. Personal Care PARs may be submitted for up to a full year of anticipated services unless: The client is not expected to need a full year of services, the client's eligibility is not expected to span the entire year, or as otherwise specified by the Department or its Designated Review Entity.
2. A PAR will be pended by the Department or its Designated Review Entity if all of the required information is not provided in the PAR request, or additional information is required by the Designated Review Entity to complete the review.
3. PARs shall be submitted to the Department or its Designated Review Entity in the manner required by the Department or its designee, and with the required documentation. It is the Home Care Agency's responsibility to provide sufficient documentation to support the necessity for the requested services.

8.535.7.B. When a PAR includes a request for reimbursement for two staff members at the same time (excluding supervisory visits) to perform two-person transfers and/or two persons are needed for a task, documentation supporting the need for two people and the reason adaptive equipment cannot be used shall be included.

8.535.7.C. All other information determined necessary by the Department or its Designated Review Entity to make a decision on the medical necessity and appropriateness of the proposed treatment plan shall be included.

8.535.7.D. The Home Care Agency is required to request a revision to the Care Plan as necessary when the client experiences a change in condition necessitating a change in the amount, duration or frequency of Personal Care Services being delivered to the client.

8.535.7.E. **Approval of the PAR does not guarantee payment by Medicaid. The client and the Personal Care Worker shall meet all applicable eligibility requirements at the time services are rendered and services shall be delivered in accordance with all applicable service limitations. Medicaid is always the payer of last resort and the presence of an approved or partially approved PAR does not release the agency from the requirement to bill Medicare or other third party insurance prior to billing Medicaid.**

**8.535.8. Reimbursement**

8.535.8.A. All Personal Care Services will be reimbursed at the Medicaid Personal Care rate even if the person providing Personal Care holds credentials for CNA, RN or other skilled profession.

8.535.8.B. Medicaid is the payer of last resort, except under certain circumstances as defined in Medicaid provider billing manuals, Personal Care rules and regulations, provider bulletins, and Early Intervention services.

8.535.8.C. Clients eligible for both Colorado Medicaid and the Colorado Department of Human Services Home Care Allowance program, at 9 C.C.R. 2503-5 Section 3.570, may choose to have their Personal Care needs met either through the State Plan Medicaid Personal Care benefit or receive assistance through the Home Care Allowance program, but cannot receive both.

**8.540 PRIVATE DUTY NURSING SERVICES**

**8.540.1 DEFINITIONS**

Family/In-Home Caregiver means an unpaid individual who assumes a portion of the client's Private Duty Nursing care in the home, when Home Health Agency staff is not present. A Family/In-Home Caregiver may either live in the client's home or go to the client's home to provide care.

Home Health Agency means a public agency or private organization or part of such an agency or organization which is certified for participation as a Medicare Home Health provider under Title XVIII of the Social Security Act.

Plan of Care means a care plan developed by the Home Health Agency in consultation with the client, that has been ordered by the attending physician for provision of services to a client at his/her residence, and periodically reviewed and signed by the physician in accordance with Medicare requirements at 42 C.F.R. 484.18.

Private Duty Nursing (PDN) means face-to-face Skilled Nursing that is more individualized and continuous than the nursing care that is available under the home health benefit or routinely provided in a hospital or nursing facility.

Re-Hospitalization means any hospital admission that occurs after the initial hospitalization for the same condition.

Skilled Nursing means services provided under the licensure, scope and standards of the Colorado Nurse Practice Act, Title 12 Article 38 of the Colorado Revised Statutes, performed by a registered nurse (RN) under the direction of a physician, or a licensed practical nurse (LPN) under the supervision of a RN and the direction of a physician.

Technology Dependent means a client who:

- a. Is dependent at least part of each day on a mechanical ventilator; or
- b. Requires prolonged intravenous administration of nutritional substances or drugs; or
- c. Is dependent daily on other respiratory or nutritional support, including tracheostomy tube care, suctioning, oxygen support or tube feedings when they are not intermittent.

### **8.540.2 BENEFITS**

8.540.2.A. All PDN services shall be prior authorized by the Department's Utilization Review Contractor (URC).

8.540.2.B. A pediatric client may be approved for up to 24 hours per day of PDN services if the client meets the URC medical necessity criteria. PDN for pediatric clients is limited to the hours determined medically necessary by the URC pursuant to Section 8.540.4.A, as applicable.

1. The URC shall determine the number of appropriate pediatric PDN hours by considering age, stability, need for frequent suctioning and the ability to manage the tracheostomy.
2. The URC shall consult with the Home Health Agency and the attending physician or primary care physician, to provide medical case management with the goal of resolving the problem that precipitated the need for extended PDN care of more than 16 hours.
3. The URC shall consider combinations of technologies and co-morbidities when making medical criteria determinations.

8.540.2.C. Twenty-four hour care may be approved for pediatric clients during periods when the family caregiver is unavailable due to illness, injury or absence periodically for up to 21 days in a calendar year.

8.540.2.D. Adult clients may be approved for up to 16 hours of PDN per day.

8.540.2.E. A client who is eligible and authorized to receive PDN services in the home may receive care outside the home during those hours when the client's activities of daily living take him or her away from the home. The total hours authorized shall not exceed the hours that would have been authorized if the client received all care in the home.

### **8.540.3 BENEFIT LIMITATIONS**

8.540.3.A. A client who meets both the eligibility requirements for PDN and home health shall be allowed to choose whether to receive care under PDN or under home health. The client may choose a combination of the two benefits if the care is not duplicative and the resulting combined care does not exceed the medical needs of the client.

8.540.3.B. Hours of PDN shall never exceed the hours per day that the URC determines are medically necessary.

### **8.540.4 ELIGIBILITY**

8.540.4.A. A client shall be eligible for PDN services when the client is:

1. Technology Dependent.
2. Medically stable, except for acute episodes that can be safely managed under PDN, as determined by the attending physician.
3. Able to be safely served in their home by a home health agency under the agency requirements and limitations of the PDN benefit and with the staff services available.
4. Not residing in a nursing facility or hospital at the time PDN services are delivered.
5. Eligible for Medicaid in a non-institutional setting.

6. Able to meet one of the following medical criteria:
  - a. The client needs PDN services while on a mechanical ventilator.
  - b. The client needs PDN services for ventilator weaning during the hours necessary to stabilize the client's condition. A stable condition shall be evidenced by the ability to clear secretions from tracheostomy, vital signs that are stable, blood gases that are stable with oxygen greater than 92% and a pulse oximetry greater than 92%.
  - c. The pediatric client needs PDN services after tracheostomy decannulation during the hours necessary to stabilize the client's condition. A stable condition shall be evidenced by the ability to clear secretions, not using auxiliary muscles for breathing, vital signs that are stable, blood gases that are stable with oxygen greater than 92% and a pulse oximetry greater than 92%.
  - d. The pediatric client needs PDN services during the hours spent on continuous positive airway pressure (C-PAP), until the client is medically stable.
  - e. The pediatric client needs PDN services for oxygen administration only if there is documentation of rapid desaturation without the oxygen as evidenced by a drop in pulse oximeter readings below 85% within 15-20 minutes, and/or respiratory rate increases, and/or heart rate increases and/or skin color changes. If oxygen is the only technology present, the URC shall review for an individual determination of medical necessity for PDN.
  - f. The pediatric client needs PDN services during the hours required for prolonged intravenous infusions, including Total Parenteral Nutrition (TPN), medications and fluids.
  - g. The URC shall consider combinations of technologies and co-morbidities when making medical determinations for the following medical conditions:
    - i) A pediatric client with tube feedings, including nasogastric tube, gastric tube, gastric button and jejunostomy tube, whether intermittent or not, who is not on mechanical ventilation.
    - ii) An adult client with a tracheostomy, who is not on mechanical ventilation or being weaned from mechanical ventilation.
    - iii) An adult client with a tracheostomy decannulation, who is not on mechanical ventilation or being weaned from mechanical ventilation.
    - iv) An adult client who has Continuous Positive Airway Pressure (C-PAP), but is not on mechanical ventilation or being weaned from mechanical ventilation.
    - v) An adult client with oxygen supplementation, who is not on mechanical ventilation or being weaned from mechanical ventilation.
    - vi) An adult client receiving prolonged intravenous infusions, including Total Parenteral Nutrition (TPN), medications and fluids who is not on mechanical ventilation or being weaned from mechanical ventilation.

- vii) An adult client with tube feedings that are continuous, including nasogastric tube, gastric tube, gastric button and jejunostomy tube who is not on mechanical ventilation nor being weaned from mechanical ventilation.
- 7. The medical judgment of the attending physician and the URC shall be used to determine if the criteria are met wherever the medical criteria are not defined by specific measurements.

#### **8.540.5 APPLICATION PROCEDURES**

- 8.540.5.A. The hospital discharge planner shall coordinate with the Home Health Agency to:
  - 1. Refer the client or the client's authorized representative to appropriate agencies for Medicaid eligibility determination in the non-institutional setting, as needed.
  - 2. Plan for the client's hospital discharge by:
    - a. Arrange services with the Home Health Agency, medical equipment suppliers, counselors and other health care service providers as needed.
    - b. Coordinate, in conjunction with the physician and the Home Health Agency, a home care plan that is safe and meets program requirements.
    - c. Advise the Home Health Agency of any changes in medical condition and care needs.
    - d. Ensure that the client, family and caregivers are educated about the client's medical condition and trained to perform the home care.
  - 3. Submit an application to determine PDN eligibility to the URC if the client is hospitalized when services are first requested or ordered.
- 8.540.5.B. The Home Health Agency case coordinator shall submit the application for PDN services to the URC if the client is not in the hospital.
- 8.540.5.C. An application may be submitted up to six months prior to the anticipated need for PDN services. Updated medical information shall be sent to the URC as soon as the service start date is known.
- 8.540.5.D. The application shall be submitted on a Department PDN application form. Any medical information necessary to determine the client's medical need shall be included with the application form.
- 8.540.5.E. If the client has other insurance that has denied PDN coverage, a copy of the denial letter, explanation of benefits or the insurance policy shall be included with the application.
- 8.540.5.F. If services are being requested beyond the 16 hour per day benefit as a result of an EPSDT medical screening, written documentation of those screening results shall be included with the application. The EPSDT claim form shall not meet this requirement.
- 8.540.5.G. The URC nurse reviewer shall review applications for PDN according to the following procedures:
  - 1. Review the information provided and apply the medical criteria.

2. Return the application to the submitting party for more information within seven working days of receipt of an incomplete application if the application is not complete.
3. Approve the application, or refer the application to the URC physician reviewer within 10 working days of receipt of the complete application. The physician reviewer shall have 10 working days to determine approval or denial of the application for PDN.
4. Notify the client or the client's designated representative and the submitting party of application approval.
5. Notify the client, the client's designated representative and the submitting party of the client's appeal rights by placing written notification in the mail within one working day of a denial decision.

8.540.5.H. Clients who are approved and who subsequently discontinue PDN for any reason do not need an application to request resumption of PDN services within six months of discontinuing PDN services. Services may be resumed upon approval of a Prior Authorization Request (PAR).

#### **8.540.6 PROVIDER REQUIREMENTS**

8.540.6.A. A certified Home Health Agency may be authorized to provide PDN services if the agency meets all of the following:

1. Employs nursing staff currently licensed in Colorado with experience in providing PDN or care to Technology-Dependent persons.
2. Employs nursing personnel with documented skills appropriate for the client's care.
3. Employs staff with experience or training, in providing services to the client's particular demographic or cultural group.
4. Coordinates services with a supplemental certified Home Health Agency, if necessary, to meet the staffing needs of the client.
5. Requires the primary nurse and other personnel to spend time in the hospital prior to the initial hospital discharge or after Re-Hospitalization, to refine skills and learn individualized care requirements.
6. Provides appropriate nursing skills orientation and on going in-service education to nursing staff to meet the client's specific nursing care needs.
7. Requires nursing staff to complete cardio pulmonary resuscitation (CPR) instruction and certification at least every two years.
8. Provides adequate supervision and training for all nursing staff.
9. Designates a case coordinator who is responsible for the management of home care which includes the following:
  - a. Assists with the hospital discharge planning process by providing input and information to, and by obtaining information from, the hospital discharge planner and attending physician regarding the home care plan.
  - b. Assesses the home prior to the initial hospital discharge and on an ongoing basis for safety compliance.

- c. Submits an application for PDN to the URC if the client is not in the hospital at the time services are requested.
  - d. Refers the client or the client's designated representative to the appropriate agency for Medicaid eligibility determination, if needed.
  - e. Ensures that a completed PAR is submitted to the URC prior to the start of care and before the previous PAR expires.
  - f. Provides overall coordination of home services and service providers.
  - g. Involves the client and Family/In Home Caregiver in the plan for home care and the provision of home care.
  - h. Assists the client to reach maximum independence.
  - i. Communicates changes in the case status with the attending physician and the URC on a timely basis, including changes in medical conditions and/or psychological/social situations that may affect safety and home care needs.
  - j. Assists with communication and coordination between the service providers supplementing the primary Home Health Agency, the primary care physician, specialists and the primary Home Health Agency as needed.
  - k. Makes regular on-site visits to monitor the safety and quality of home care, and makes appropriate referrals to other agencies for care as necessary.
  - l. Ensures that complete and current care plans and nursing charts are in the client's home at all times. Charts shall include interim physician orders, current medication orders and nursing notes. Records of treatments and interventions shall clearly show compliance with the times indicated on the care plans.
  - m. Communicates with Single Entry Point or other case managers as needed regarding service planning and coordination.
10. Makes and documents the efforts made to resolve any situation that triggers a discontinuation or refusal to provide services prior to discontinuation or refusal to provide services.
11. Documents that the Family/In-Home Caregiver:
- a. Is able to assume some portion of the client's care.
  - b. Has the specific skills necessary to care for the client.
  - c. Has completed CPR instruction or certification and/or training specific to the client's emergency needs prior to providing PDN services.
  - d. Is able to maintain a home environment that allows for safe home care, including a plan for emergency situations.
  - e. Participates in the planning, implementation and evaluation of PDN services.
  - f. Communicates changes in care needs and any problems to health care providers and physicians as needed.

- g. Works toward the client's maximum independence, including finding and using alternative resources as appropriate.
    - h. Has notified power companies, fire departments and other pertinent agencies, of the presence of a special needs person in the household.
  - 12. Performs an in-home assessment and documents that the home meets the following safety requirements:
    - a. Adequate electrical power including a back up power system.
    - b. Adequate space for equipment and supplies.
    - c. Adequate fire safety and adequate exits for medical and other emergencies.
    - d. A clean environment to the extent that the client's life or health is not at risk.
    - e. A working telephone available 24 hours a day.
- 8.540.6.B. The Home Health Agency shall coordinate with the client's attending physician to:
  - 1. Determine that the client is medically stable, except for acute episodes that can be managed under PDN, and that the client can be safely served under the requirements and limitations of the PDN benefit.
  - 2. Cooperate with the URC in establishing medical eligibility.
  - 3. Prescribe a plan of care at least every 60 days.
  - 4. Coordinate with any other physicians who are treating the client.
  - 5. Communicate with the Home Health Agency about changes in the client's medical condition and care, especially upon discharge from the hospital.
  - 6. Empower the client and the Family/In-Home Caregiver by working with them and the Home Health Agency to maximize the client's independence.

**8.540.7 PRIOR AUTHORIZATION PROCEDURES**

- 8.540.7.A. The Home Health Agency shall submit the initial PAR to the URC prior to the start of PDN.
- 8.540.7.B. The PAR shall be approved for up to six months for a new client and up to one year for ongoing care depending upon prognosis for improvement or recovery, according to the medical criteria.
- 8.540.7.C. The PAR information shall:
  - 1. Be submitted on a Department PAR form. A copy of the current plan of care shall be included. For new clients admitted to PDN directly from the hospital, a copy of the transcribed verbal physician orders may be substituted for the plan of care if the client has been approved for admission to PDN.

2. Be submitted with the plan of care that:
    - a. Is on the CMS 485 form, or a form that is identical in format to the CMS 485. All sections of the form relating to nursing needs shall be completed.
    - b. Includes a signed nursing assessment, a current clinical summary or update of the client's condition and a physician's plan of treatment. A hospital discharge summary shall be included if there was a hospitalization since the last PAR.
    - c. Indicates the frequency and the number of times per day that all technology-related care is to be administered. Ranges and a typical number of hours needed per day are required. The top of the range is the number of hours ordered by the physician as medically necessary. The lower number is the amount of care that may occur due to family availability or choice, holidays or vacations or absence from the home.
    - d. Includes a process by which the client receiving services and support may continue to receive necessary care, which may include respite care, if the client's family or caregiver is unavailable due to an emergency situation or unforeseen circumstances. The family or the caregiver shall be informed of the alternative care provisions at the time the individual plan is initiated.
  3. Include an explanation for the decision to use an LPN. This decision shall be at the discretion of the attending physician, the Home Health Agency and the RN responsible for supervising the LPN.
  4. Cover a period of up to one year depending upon medical necessity determination.
  5. Include only the services of PDN-RN and/or PDN-LPN. If any other services are included on the PAR, the URC shall return the PAR without processing it.
  6. Be submitted within five working days of the change as a revision when a change in the plan of care results in an increase in hours. A revised plan of care or a copy of the physician's verbal orders for the increased hours including the effective date shall be included with the PAR form.
  7. Be submitted to decrease the number of hours for which the client may be eligible when a change in the client's condition occurs which could affect the client's eligibility for PDN, or decrease the number of hours for which the client may be eligible. The agency shall notify the URC within one working day of the change. Failure to notify the URC may result in recovery of inappropriate payments, if any, from the Home Health Agency.
  8. Be submitted within five working days of the discharge or death, as a revised PAR when a client is discharged or dies prior to the end date of the PAR. The revision is to the end date and the number of service units.
- 8.540.7.D. The URC shall review PARs according to the following procedures:
1. Review information provided and apply the medical criteria as described herein.
  2. Return an incomplete PAR to the Home Health Agency for correction within seven working days of receipt.
  3. Approve the PAR, or refer the PAR to the URC physician reviewer, within 10 working days of receipt of the complete PAR.

4. Process physician review referrals and approve, partially approve, or deny the PAR within 10 working days of receipt from the nurse reviewer. The URC physician reviewer shall attempt to contact the attending physician or the primary care physician for more information prior to a denial or reduction in services.
  5. Provide written notification to the client or client's designated representative and submitting party of all PAR denials and the client's appeal rights, within one working day of the decision.
  6. Approve subsequent continued stay PARs that have been to physician review without referral, if the client's condition and the requested hours have not changed.
  7. Notify the Department of all extraordinary PDN services approved as a result of an EPSDT screen.
  8. Notify the submitting party of all PAR approvals.
  9. Expedite PAR reviews in situations where adhering to the time frames above would seriously jeopardize the client's life or health.
- 8.540.7.E. No services shall be approved for dates of service prior to the date the URC receives a complete PAR. PAR revisions for medically necessary increased services may be approved back to the day prior to receipt by the URC if the revised PAR was received within five working days of the increase in services. Facsimiles may be accepted.
- 8.540.7.F. The URC nurse reviewer may attend hospital discharge planning conferences, and may conduct on site visits to each client at admission and every six months thereafter.

#### **8.540.8 REIMBURSEMENT**

- 8.540.8.A. No services shall be authorized or reimbursed if hours of service, regardless of funding source, total more than 24 hours per day.
- 8.540.8.B. No services shall be reimbursed if the care is duplicative of care that is being reimbursed under another benefit or funding source, including but not limited to home health or other insurance.
- 8.540.8.C. Approval of the PAR by the URC shall authorize the Home Health Agency to submit claims to the Medicaid fiscal agent for authorized PDN services provided during the authorized period. Payment of claims is conditional upon the client's financial eligibility on the dates of service and the provider's use of correct billing procedures.
- 8.540.8.D. No services shall be reimbursed for dates of service prior to the PAR start date as authorized by the URC.
- 8.540.8.E. Skilled Nursing services under the PDN shall be reimbursed in units of one hour, at the provider's usual and customary charge or the maximum Medicaid allowable rates established by the Department, whichever is less. Units of one hour may be billed for RN, LPN, RN group rate (registered nurse providing PDN to more than one client at the same time in the same setting), LPN group rate (licensed practical nurse providing PDN to more than one client at the same time in the same setting) or Blended RN/LPN rate (group rate by request of the Home Health Agency only).

## **8.550 HOSPICE BENEFIT**

### **8.550.1 DEFINITIONS**

Benefit Period means a period during which the client has made an Election to receive hospice care defined as one or more of the following:

- (1) An initial 90-day period.
- (2) A subsequent 90-day period.
- (3) An unlimited number of subsequent 60-day periods.

The periods of care are available in the order listed and may be Elected separately at different times.

Certification means that the client's attending physician and/or the Hospice medical director have affirmed that the client is Terminally Ill.

Election/Elect means the client's written expression to choose Hospice care for Palliative and Supportive Medical Services. Home Care Services means Hospice Services that are provided primarily in the client's home but may be provided in a residential facility and/or licensed or certified health care facility.

Hospice means a centrally administered program of palliative, supportive, and Interdisciplinary Team services providing physical, psychological, sociological, and spiritual care to Terminally Ill clients and their families.

Hospice Services means counseling, home health aide, homemaker, nursing, physician, social services, physical therapy, occupational therapy, speech therapy, and trained volunteers.

Interdisciplinary Team or Interdisciplinary Group means a group of qualified individuals, consisting of at least a physician, registered nurse, clergy/counselors, volunteer director and/or trained volunteers, and appropriate staff who collectively have expertise in meeting the special needs of Hospice clients/families.

Palliative and Supportive Medical Services means those services and/or interventions which are not curative but which produce the greatest degree of relief from the symptoms of the Terminal Illness.

Terminally Ill/Terminal Illness means a medical prognosis of life expectancy of nine months or less, should the illness run its normal course.

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**8.550.2 CERTIFICATION**

8.550.2.A. The Hospice shall obtain Certification that a client is Terminally Ill in accordance with the following procedures:

1. For the first Benefit Period of Hospice coverage or re-Election following revocation or discharge from the Hospice benefit, the Hospice shall obtain:
  - a. A written Certification signed by either the medical director of the Hospice or the physician member of the Hospice Interdisciplinary Group and the client's attending physician. The written Certification shall be obtained and on file prior to submitting any claim for reimbursement to the Medicaid fiscal agent. The written Certification shall include:
    - i) A statement of the client's life expectancy including diagnosis of the terminal condition, other health conditions whether related or unrelated to the terminal condition, and current clinically relevant information supporting the diagnoses and prognosis for life expectancy and Terminal Illness.
    - ii) The approval of the physician(s) for Hospice care.
  - b. A verbal Certification statement from either the medical director of the Hospice or the physician member of the Hospice Interdisciplinary Group and the client's attending physician, if written certification cannot be obtained within two calendar days after Hospice care is initiated. The verbal Certification shall be documented, filed in the medical record, and include the information described at 8.550.2.A.1.a.i and ii. Written Certification documentation shall follow and be filed in the medical record prior to submitting a claim for payment.
2. At the beginning of each subsequent period, the Hospice shall obtain a written re-Certification prepared by either the attending physician, the medical director of the Hospice or the physician member of the Hospice Interdisciplinary Group.

**8.550.3 ELECTION PROCEDURES**

8.550.3.A. An Election of Hospice care continues as long as there is no break in care and the client remains with the Elected Hospice.

1. If a client Elects to receive Hospice care, the client or client representative shall file an Election statement with the Hospice including:
  - a. Designation of the Hospice provider.
  - b. Acknowledgment that the client or client representative has been given a full understanding of the palliative rather than curative nature of Hospice care.
  - c. Designation by the client or client representative of the effective date for the Election period that begins with the first day of Hospice care.

- d. An acknowledgement that for the duration of the Hospice Services, the client waives all rights to Medicaid payments for the following services:
    - i) Hospice Services provided by a Hospice other than the Hospice provider designated by the client (unless provided under arrangements made by the designated Hospice).
    - ii) Any Medicaid services that are related to the treatment of the terminal condition for which hospice care was Elected or a related condition or that are equivalent to hospice care except for services that are:
      - a) Provided by the designated hospice,
      - b) Provided by another hospice under arrangements made by the designated hospice,
      - c) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.
  - e. A signature of either the client or client representative as allowed by Colorado law.
- 2. A client or client representative may revoke the Election of Hospice care by filing a signed statement of revocation with the Hospice. The statement shall include the effective date of the revocation. The client shall not designate an effective date earlier than the date that the revocation is made. Revocation of the Election of hospice care ends the current hospice benefit period.
  - 3. The client may resume coverage of the waived benefits as described at 8.550.3.A.1.d. upon revoking the Election of Hospice care.
  - 4. The client may re-Elect to receive Hospice care at any time after the services are discontinued due to discharge, revocation, or loss of Medicaid eligibility, should the client thereafter become eligible.
  - 5. The client may change the designation of the Hospice provider once each Benefit Period. A change in designation of Hospice provider is not a revocation of the client's Hospice Election. To change the designation of the Hospice provider the client shall file a statement with the current and new provider which includes:
    - a. The name of the Hospice from which the client is receiving care and the name of the Hospice from which he or she plans to receive care.
    - b. The date the change is to be effective.
    - c. The signature of the client or client representative.

#### **8.550.4 BENEFITS**

- 8.550.4.A. Hospice Services shall be reasonable and necessary for the palliation or management of the Terminal Illness as well as any related condition, but not for the prolongation of life.

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- 8.550.4.B. Covered Hospice Services include, but are not limited to:
1. Nursing care provided by or under the supervision of a registered nurse.
  2. Medical social services provided by a qualified social worker or counselor under the direction of a physician.
  3. Counseling services, including dietary and spiritual counseling, provided to the Terminally Ill client and his or her family members or other persons caring for the client.
  4. Bereavement counseling delivered through an organized program under the supervision of a qualified professional. The plan of care for these services should reflect family needs, as well as a clear delineation of services to be provided and the frequency of service delivery (up to one year following the death of the patient).
  5. Short-term general inpatient care necessary for pain control and/or symptom management up to 20 percent of total Hospice days.
  6. Short-term inpatient care of up to five consecutive days per Benefit Period to provide respite for the client's family or other home caregiver.
  7. Medical appliances and supplies, including drugs and biologicals which are used primarily for symptom control and relief of pain related to the Terminal Illness.
  8. Intermittent home health aide services available and adequate in frequency to meet the needs of the client. A home health aide is a certified nurse aide under the general supervision of a registered nurse. Home health aide services may include unskilled personal care and homemaker services that are incidental to a visit.
  9. Occupational therapy, physical therapy, and speech-language pathology appropriate to the terminal condition, provided for the purposes of symptom control or to enable the terminal client to maintain activities of daily living and basic functional skills.
  10. Trained volunteer services.
  11. Any other service that is specified in the client's plan of care as reasonable and necessary for the palliation and management of the client's Terminal Illness and related conditions and for which payment may otherwise be made under Medicaid.
- 8.550.4.C [Expired 05/15/2014 per House Bill 14-1123]
- 8.550.4.D Services not covered as part of the hospice benefit include, but are not limited to:
1. Services provided before or after the Hospice Election period.
  2. Services of the client's attending or consulting physician that are unrelated to the terminal condition which are not waived under the Hospice benefit.
  3. Services or medications received for the treatment of an illness or injury not related to the client's terminal condition.
  4. Services which are not otherwise included in the Hospice benefit, such as electronic monitoring, non-medical transportation, and home modification under a Home and Community-Based Services (HCBS) program.
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5. Personal care and homemaker services beyond the scope provided under Hospice which are contiguous with a home health aide visit.

#### **8.550.5 ELIGIBILITY**

8.550.5.A. A client shall be eligible to Elect Hospice care when the following requirements are met:

1. The client's residence is either a private residence, residential care facility, licensed Hospice facility, intermediate care facility for the mentally retarded (ICF-MR) or a skilled nursing facility (SNF), unless the client is in a waiver program which does not allow residency in an ICF-MR or SNF.
2. The client has been certified as being Terminally Ill by an attending physician and/or Hospice medical director.
3. An initial plan of care has been established by the Hospice provider before services are provided.
4. Hospice clients residing in an ICF-MR or SNF shall meet the Hospice eligibility criteria pursuant to 8.550 et. seq., together with functional eligibility, medical eligibility criteria, and the financial eligibility criteria for institutional care as required by 10 C.C.R. 2505-10, Sections 8.400, 8.401, and 8.482.

8.550.5.B. Eligibility for, and access to, Hospice shall not fall within the purview of the long term care Single Entry Point system for prior authorization. Nursing facility placement for a client who has Medicaid and has Elected Hospice care in a nursing facility does not require a long term care ULTC 100.2 assessment. The nursing facility shall complete a Pre Admission Screening and Resident Review (PASRR).

#### **8.550.6 DISCHARGE**

8.550.6.A. A Hospice may discharge a client when:

1. The client moves out of the Hospice's service area or transfers to another Hospice.
2. The hospice determines that the client is no longer Terminally Ill.
3. The Hospice determines, under a policy set by the Hospice for the purpose of addressing discharge for cause that meets the requirements of 42 C.F.R. Section 418.26 (2005), that the client's (or other person in the client's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care or the Hospice's ability to operate effectively is seriously impaired. No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1818. Material that has been incorporated by reference in this rule may be examined at any state publications depository library.
4. The Hospice shall advise the client that a discharge for cause is being considered, make a serious effort to resolve the problem presented by the situation, ascertain that the proposed discharge is not due to the client's use of necessary Hospice services, document the problem and the effort made to resolve the problem, and enter this documentation into the client's medical record.
5. The Hospice shall obtain a written discharge order from the Hospice medical director prior to discharging a client for any of the reasons in this section.

6. The Hospice medical director shall document that the attending physician involved in the client's care has been consulted about the discharge and include the attending physician's review and decision in the discharge note.
7. The Hospice shall have in place a discharge planning process that takes into account the prospect that a client's condition might stabilize or otherwise change such that the client cannot continue to be certified as Terminally Ill. The discharge planning process shall include planning for any necessary family counseling, patient education, or other services before the client is discharged because he or she is no longer Terminally Ill.

#### **8.550.7 PROVIDER QUALIFICATIONS**

- 8.550.7.A. The Hospice shall be licensed by the Colorado Department of Public Health and Environment, have a valid provider agreement with the Department and meet the Medicare conditions of participation for a Hospice as set forth at 42 C.F.R. Sections 418.50 through 418.98 (2005) and 42 C.F.R. Section 418.100 (a)-(c) (2005). No amendments or later editions are incorporated. Copies are available for inspection from the Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1818. Material that has been incorporated by reference in this rule may be examined at any state publications depository library.
- 8.550.7.B. Laboratory services provided by Hospices are subject to the requirements of 42 U.S.C. Section 263 (a) (2005) entitled the Clinical Laboratory Improvement Act of 1967 (CLIA). No amendments or later editions are incorporated. Copies are available for inspection from the Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1818. Material that has been incorporated by reference in this rule may be examined at any state publications depository library.
- 8.550.7.C. Hospices shall obtain a CLIA waiver from the Department of Public Health and Environment to perform laboratory tests. A Hospice Provider that collects specimens, including drawing blood, but does not perform testing of specimens is not subject to CLIA requirements.

#### **8.550.8 PROVIDER RESPONSIBILITIES**

- 8.550.8.A. The Hospice provider shall determine and document the amount, frequency, and duration of services in accordance with the client's plan of care developed in consultation with the client and his or her physician.
- 8.550.8.B. An individual client record shall be maintained by the designated Hospice including:
1. Eligibility for and Election of Hospice.
  2. The amount, frequency, and duration of services delivered to the client based on the client's plan of care.
  3. Documentation to support the care level for which the Hospice provider has claimed reimbursement.
- 8.550.8.C. Inadequate documentation shall be a basis for recovery of overpayment.
- 8.550.8.D. Notice of the client's Election and Benefit Periods shall be provided to the Medicaid fiscal agent in such form and manner as prescribed by the Department.
- 8.550.8.E. The Hospice provider shall provide reports and keep records as the Department determines necessary including records that document the cost of providing care.

8.550.8.F. The Hospice provider shall perform case management for the client. Medicaid shall not reimburse the Hospice provider separately for this responsibility.

**8.550.9 REIMBURSEMENT**

8.550.9.A. Reimbursement follows the method prescribed in 42 C.F.R. Sections 418.302 through .306 (2005). No amendments or later editions are incorporated. Copies are available for inspection from the Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1818. Material that has been incorporated by reference in this rule may be examined at any state publications depository library.

1. Reimbursement rates are determined by the following:
  - a. Rates are published by the Department annually in compliance with the Centers for Medicare and Medicaid Services (CMS) state Medicaid Hospice reimbursement.
  - b. Each care-level per-diem rate is subject to a wage index multiplier, to compensate for regional differences in wage costs, plus a fixed non-wage component.
  - c. The Hospice wage indices are published annually in the Federal Register.
  - d. Rates are adjusted for cost-of-living increases and other factors as published by the Centers for Medicare and Medicaid Services.
  - e. Continuous home care is reimbursed at the applicable hourly rate, the per-diem rate divided by 24 hours, times the number of hourly units billed from eight up to 24 hours per day of continuous care.
  - f. Reimbursement for routine home care and continuous home care shall be based upon the geographic location at which the service is furnished and not on the business address of the Hospice provider.

8.550.9.B. Reimbursement for Hospice care shall be made at one of four predetermined care level rates, including the routine home care rate, continuous home care rate, inpatient respite care rate, and general inpatient care rate. If no other level of care is indicated on a given day, it is presumed that routine home care is the applicable rate.

1. Care level determination and reimbursement guidelines:
  - a. The routine home care rate is reimbursed for each day the client is at home and not receiving continuous home care. This rate is paid without regard to the volume or intensity of Home Care Services provided.

- b. The continuous home care rate is reimbursed when continuous home care is provided and only during a period of medical crisis to maintain a client at home. A period of crisis is a period in which a client requires continuous care, which is primarily nursing care, to achieve palliation or for the management of acute medical symptoms. Either a registered nurse or a licensed practical nurse shall provide nursing care. A nurse shall provide more than half of the period of care. Homemaker and certified nurse aide services may also be provided to supplement nursing care. The continuous home care rate is divided by 24 hours in order to arrive at an hourly rate. A minimum of eight hours shall be provided. For every hour or part of an hour of continuous care furnished, the hourly rate shall be reimbursed up to 24 hours a day.
  - c. The inpatient respite care rate is paid for each day on which the client is in an approved inpatient facility for respite care. Payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate. Payment for inpatient respite care is subject to the Hospice provider's 20 percent aggregate inpatient days cap as outlined in 8.550.9. D.
  - d. The general inpatient rate shall be paid only during a period of medical crisis in which a client requires 24 hour continuous care, which is primarily nursing care, to achieve palliation or for the management of acute medical symptoms. Payment for general inpatient care is subject to the Hospice provider's 20 percent aggregate inpatient days cap as outlined in 8.550.9. D.
- 2. Hospice is paid a room and board fee in addition to the Hospice per diem for each routine home care day and continuous care day provided to clients residing in an ICF-MR or SNF.
  - a. The payment for room and board is billed by and reimbursed to the Hospice provider on behalf of the client residing in the facility. The Department reimburses 95 percent of the facility per diem amount less any patient payments.
  - b. Payments for room and board are exempt from the computation of the Hospice payment cap.
  - c. The Hospice provider shall forward the room and board payment to the SNF or ICF-MR.
  - d. Clients who are eligible for Post Eligibility Treatment of Income (PETI) shall be eligible for PETI payments while receiving services from a Hospice. The Hospice shall submit claims on behalf of the client and nursing facility or ICF-MR.
  - e. Patient payments for room and board charges shall be collected for Hospice clients residing in a SNF or ICF-MR as required by 10 C.C.R. 2505-10, Section 8.482. While the Medicaid SNF and ICF-MR room and board payments shall be made directly to the Hospice provider, the patient payment shall be collected by the nursing facility or ICF-MR.
  - f. Nursing facilities, ICF-MRs, and Hospice providers shall be responsible for coordinating care of the Hospice client and payment amounts.

3. Reimbursement for date of discharge shall be:
  - a. Reimbursement shall be made at the appropriate home care rate for the day of discharge from general or respite inpatient care, unless the client dies at an inpatient level of care. When the client dies at an inpatient level of care, the applicable general or respite inpatient rate is paid for the discharge date.
  - b. Reimbursement for nursing facility and ICF-MR residents is made for services delivered up to the date of discharge when the client is discharged, alive or deceased, including applicable per diem payment for the date of discharge.

8.550.9.C. Aggregate payment to the Hospice provider is subject to an annual indexed aggregate cost cap. The method for determining and reporting the cost cap shall be identical to the Medicare Hospice Benefit requirements as contained in 42 C.F.R. Sections 418.308 and 418.309 (2005). No amendments or later editions are incorporated. Copies are available for inspection from the Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1818. Material that has been incorporated by reference in this rule may be examined at any state publications depository library.

8.550.9.D. Aggregate days of care provided by the Hospice are subject to an annual limitation of no more than 20 percent general and respite inpatient care days. The method for determining and reporting the inpatient days percentage shall be identical to the Medicare Hospice Benefit requirements as contained in 42 C.F.R. Section 418.302 (2005). No amendments or later editions are incorporated. Copies are available for inspection from the Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1818. Material that has been incorporated by reference in this rule may be examined at any state publications depository library. Inpatient days in excess of the 20 percent limitation shall be reimbursed at the routine home care rate.

8.550.9.E. The Hospice provider shall not collect co-payments, deductibles, cost sharing or similar charges from the client for Hospice care benefits including biologicals and respite care.

8.550.9.F. The Hospice provider shall submit all billing to the Medicaid fiscal agent within such timeframes and in such form as prescribed by the Department.

**8.551 REPEALED, EFFECTIVE FEBRUARY 1, 2014**

**8.552 IN HOME SUPPORT SERVICES**

**8.552.1 DEFINITIONS**

Attendant means a person, or a family member including a spouse, who is directly employed by an In-Home Support Services (IHSS) agency to provide IHSS to a client.

Case Manager means an individual who determines functional eligibility and provides case management services to individuals eligible under the Children's Home and Community Based Services (CHCBS) Waiver program at 10 C.C.R. 2505-10, Section 8.506, the Home and Community Based Services for the Elderly, Blind, and Disabled (HCBS-EBD) Waiver program 10 C.C.R. 2505-10, Section 8.485 or the Home and Community Based Services for Persons with Spinal Cord Injury (HCBS-SCI) Waiver program 10 C.C.R. 2501-10, Section 8.517.

Health Maintenance Activities means those routine and repetitive health related tasks, which are necessary for health and normal bodily functioning, that an individual with a disability would carry out if he/she were physically able, or that would be carried out by family members or friends if they were available. These Activities include any excluded personal care tasks as defined in 10 CCR 2505-10 Section 8.489, as well as Certified Nursing Assistant (CNA) and nursing services. In the event of the observation of new symptoms or worsening condition that may impair the client's ability to direct their care, the agency, in consultation with the client, shall contact the client's physician and receive direction as to the appropriateness of continued care. The outcome of that consultation shall be documented in the client's record.

In-Home Support Services (IHSS) means services that are provided in the home and in the community by an Attendant under the direction of the client or client's authorized representative including Health Maintenance Activities and support for activities of daily living which include homemaker and personal care services.

In-Home Support Services Agency means an agency that is certified by the state department and provides independent living core services as defined in section 26-8.1-102 (3), C.R.S. and In-Home Support Services.

IHSS Plan means a written plan of IHSS between the client or the client's authorized representative and the IHSS agency. The IHSS Plan shall include a statement of allowable attendant and personal care service hours and a detailed listing of amount, scope and duration of each service to be provided for each day and visit., The IHSS Plan shall also include documentation of the level of oversight by a licensed health care professional determined by the client or the client's authorized representative and the IHSS agency, documentation that adequate staffing including backup staff will be available to provide necessary services, a dispute resolution process, and who will be providing each service. The IHSS Plan shall be signed by the client or the client's authorized representative and the IHSS agency.

## **8.552.2 ELIGIBILITY**

8.552.2.A. To be eligible for IHSS a client shall:

1. Be enrolled in the HCBS-EBD, HCBS-SCI, or CHCBS Waiver programs; and
2. Provide a statement from his/her primary physician stating that the client or client's guardian has sound judgment and the ability to self-direct care,or
3. The client has an authorized representative who has the judgment and ability to assist in acquiring and using services, or
4. The IHSS agency is able and willing to support the client as necessary to participate in IHSS.
5. For a client with an unstable medical condition, the physician's statement shall include a recommendation regarding whether additional in-home monitoring is necessary and if so, the amount and scope of the in-home monitoring.

8.552.2.B. A client shall no longer be eligible when:

1. The client is no longer enrolled in the HCBS-EBD, HCBS-SCI or CHCBS Waiver programs.
2. The client's medical condition deteriorates causing an unsafe situation as documented by the primary physician.

3. The client refuses to designate an authorized representative or receive assistance from an IHSS agency when the client is unable to direct his/her own care as documented by the primary physician

### **8.552.3 IHSS SERVICES**

8.552.3.A. Covered services shall be for the benefit of only the client and not for the benefit of other persons living in the home.

8.552.3.B. Services include:

1. Homemaker as defined at 10 C.C.R. 2505-10, Section 8.490
2. Personal care as defined at 10 C.C.R. 2505-10, Section 8.489
3. Health maintenance activities

### **8.552.4 PROVIDER ELIGIBILITY**

8.552.4.A. A client or client's authorized representative has the right to:

1. Present a person(s) of his/her own choosing to the IHSS agency as a potential attendant.
2. Train and schedule attendant(s) to meet his/her needs.
3. Dismiss attendants who are not meeting his/her needs.
4. Directly schedule, manage, and supervise attendants.
5. Determine, in conjunction with the IHSS agency, the level of oversight by a licensed health care professional.
6. Document permanent and significant changes in scheduling of attendants.

### **8.552.5 PROVIDER ELIGIBILITY**

8.552.5.A. The IHSS agency shall conform to all certification standards and procedures set forth at 10 C.C.R. 2505-10, Section 8.487 and shall meet additional requirements set forth in 8.552.6.

8.552.5.B. The IHSS agency may be terminated from participation in the program pursuant to 10 C.C.R. 2505-10, Sections 8.487.70 and 8.487.80.

### **8.552.6 PROVIDER RESPONSIBILITIES**

8.552.6.A. The IHSS agency shall assure and document that all clients were offered peer counseling including, but not limited to cross-disability peer counseling, information and referral services, individual and systems advocacy.

8.552.6.B. The IHSS agency shall provide 24-hour back-up service to clients at any time a scheduled attendant is not available..

1. The IHSS agency shall, at the time the IHSS plan is developed, ensure that adequate staffing is available, including backup staff, to ensure necessary services will be provided.

- 8.552.6.C. The IHSS agency shall provide intake and orientation service to clients or authorized representatives who are new to IHSS. Orientation shall include instruction in the philosophy, policies and procedures of IHSS and information concerning client rights and responsibilities.
- 8.552.6.D. The IHSS agency shall assure and document that all clients were offered assistance in selecting an attendant..
- 8.552.6.E. The IHSS agency shall ensure that a current IHSS Plan is in the client's record and send the IHSS Plan to the appropriate single entry point agency case manager within five days after any change in the IHSS Plan.
- 8.552.6.F. The IHSS agency shall contract with or have on staff a licensed health care professional who is at the minimum a registered nurse, who will verify and document attendant skills and competency to perform IHSS and basic consumer safety procedures.
- 8.552.6.G The IHSS agency shall collaborate with the client or client's authorized representative to determine the level of oversight and monitoring provided by the licensed health care professional beyond the requirements set forth at 8.552.6.F. The decision about the level of oversight shall be documented by the IHSS agency in the IHSS plan.
- 8.552.6.H Oversight and monitoring by the licensed health care professional may include the following activities:
- 1.. Counsel attendant staff on difficult cases and potentially dangerous situations.
  2. Consult with the client, authorized representative or attendant in the event a medical issue arises.
  3. Investigate complaints and critical incidents within 10 working days.
  4. Assure that the attendant is following directives found in the IHSS Plan.
- 8.552.6.I. The IHSS agency shall assure and document that all attendants have received basic training in the provision of IHSS. In lieu of basic training, the IHSS agency's licensed professional may administer a skills validation test.
- 8.552.6.J. Attendant training shall include, but not be limited to:
1. Development of interpersonal skills focused on addressing the needs of persons with disabilities.
  2. Overview of IHSS.
  3. Instruction on basic first aid administration.
  4. Instruction on safety and emergency procedures.
  5. Instruction on infection control techniques, including universal precautions.
- 8.552.6.K. Training may be modified if an attendant demonstrates competence in a given area.
- 8.552.6.L. Training and skills validation shall be completed prior to service delivery unless waived by the client or authorized representative to prevent interruption in services. In no event shall the training or skills validation be postponed for more than 30 days after services begin.

- 8.552.6.M. The IHSS agency shall allow the client or authorized representative to provide individualized attendant training that is specific to his/her own needs and preferences.
- 8.552.6.N. The IHSS agency shall provide functional skills training to assist clients or authorized representatives in developing skills and resources to maximize their independent living and personal management of health care.
- 8.552.6.O. The IHSS agency may discontinue IHSS to a client when:
1. Equivalent care in the community has been secured, or
  2. The client has exhibited inappropriate behavior toward the attendant and the Department has determined that the IHSS agency has made adequate attempts at dispute resolution and dispute resolution has failed. Inappropriate behavior includes, but is not limited to, documented verbal, sexual or physical abuse.
- 8.552.6.P. The IHSS agency shall provide 30 days advance written notice to the client detailing the inappropriate behavior prior to discontinuing services. Upon provider discretion, the provider may allow the client or client representative to use the 30-day notice period to correct the problem.
- 8.552.6.Q. The IHSS agency shall send a copy of the 30-day written discontinuation notice to the single entry point case manager the same day the notice is sent to the client.
- 8.552.6.R. The IHSS agency shall allow the client or the client's authorized representative to directly schedule, manage, and supervise attendants.

#### **8.552.7 SINGLE ENTRY POINT RESPONSIBILITIES**

- 8.552.7.A. The single entry point case manager shall ensure cost-effectiveness and non-duplication of services by:
1. Documenting the discontinuation of previously authorized long-term home health services that shall be replaced by IHSS.
  2. Documenting and justifying any need for both long-term home health services and IHSS.
  3. Ensuring all required information is in the client's IHSS Plan.
  4. Authorizing cost-effective and non-duplicative services via the prior authorization request (PAR). A client may receive services from multiple attendants if they are not reimbursed for providing the same service at the same time.
  5. Reviewing the IHSS PAR and giving approval prior to services rendered.
  6. Ensuring that the IHSS plan delineates services to be provided and the physician's statement or authorized representative's signed statement are completed prior to PAR approval.
  7. Documenting the amount of health care provider oversight determined by the client in conjunction with the IHSS agency.

#### **8.552.8 REIMBURSEMENT**

- 8.552.8.A. Reimbursement for IHSS shall occur only upon approval of the IHSS Care Plan and after the PAR has been submitted and approval received by the single entry point case manager.

- 8.552.8.B. For IHSS personal care and homemaker services, the reimbursement rate shall be the same as for personal care and homemaker services under the HCBS-EBD Waiver set forth at 10 C.C.R. 2505-10 Section 8.489.50 and at 10 C.C.R. 2505-10 Section 8.490.50.
- 8.552.8.C. For IHSS Health Maintenance Activities the reimbursement rate shall be a blended average equal to 1/8th of a two-hour home health aide visit. The unit of service shall be 15 minutes.
- 8.552.8 D. A member of the client's household may only be paid to furnish extraordinary care as determined by the Case Manager. Extraordinary care is determined by assessing whether the care to be provided exceeds the range of care a family member would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which is necessary to assure the health and welfare of the client and avoid institutionalization.
- 8.552.8 E. For clients enrolled in HCBS-EBD and HCBS-SCI Waivers, a family member shall not be reimbursed for more than forty (40) hours of personal care in a seven day period.
- 8.552.8 F. The agency shall not submit billing for excessive hours that are not justified by the documentation of services provided, or by the client's medical or functional condition. This includes billing all units prior authorized when the allowed and needed services do not require as much time as that authorized.
- 8.552.8 G. Health maintenance activities may include related personal care and homemaker services if such tasks are completed during the health maintenance visit and are secondary and contiguous to the health maintenance activity.
- 8.552.8 H. A client's authorized representative may not be reimbursed for the provision of IHSS.

## **8.553 COMMUNITY TRANSITION SERVICES**

### **8.553.1 DEFINITIONS**

Authorization Request means a request submitted by the Transition Coordination Agency to the Single Entry Point agency to authorize payment for delivery of Community Transition Services.

Community Transition Services (CTS) means activities essential to move a client from a skilled nursing facility and establish a community-based residence.

Independent Living Core Services means information and referral services; independent living skills training; peer counseling, including cross-disability peer counseling; and individual and systems advocacy.

Transition Coordinator means a person employed by a Transition Coordination Agency to provide Transitional Case Management.

Transition Coordination Agency (TCA) means an agency that is certified by the Department to provide CTS and provides at least two Independent Living Core Services.

Transitional Case Management means case management exclusively supporting a client's transition from a skilled nursing facility to a community-based residence.

**8.553.2 BENEFITS**

- 8.553.2.A. CTS shall only be available to clients currently residing in a skilled nursing facility who are eligible for the Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD) waiver.
- 8.553.2.B. CTS shall only be for the benefit of the client and may include the following:
1. Transitional Case Management.
  2. Payment made for the following:
    - a. Security deposits that are required to obtain a lease on a residence.
    - b. Set-up fees or deposits for utility or service access, including telephone, electricity, heating and water.
    - c. Essential household items and furnishings such as a bed, linens, seating, lighting, dishes, utensils and food preparation items.
    - d. Moving expenses required to occupy a community-based residence.
    - e. Health and safety assurances including a one-time pest eradication and a one-time cleaning prior to occupancy.
    - f. A one-time purchase of food not to exceed \$100.
- 8.553.2.C. The cost of CTS shall not exceed \$2,000 per client unless otherwise authorized by the Department.
- 8.553.2.D. Items purchased through CTS shall be the property of the client. The client may take the property with him or her in the event of a move to another residence.

**8.553.3 NON-BENEFITS**

- 8.553.3.A. CTS shall not include the following:
1. Monthly rental expenses or other ongoing periodic residential expenses.
  2. Recreation, entertainment or convenience items.
  3. Items as described in 8.553.2.B.2 when already provided through other means.
  4. Items as described in 8.553.2.B.2 when provided for the benefit of persons other than the client.

**8.553.4 TCA QUALIFICATIONS**

- 8.553.4.A. A TCA shall conform to all certification standards and procedures described in 10 C.C.R. 2505-10, Section 8.487, HCBS-EBD Provider Agencies.
- 8.553.4.B. A TCA shall meet all requirements as set forth in 8.553.5.

**8.553.5 TCA RESPONSIBILITIES**

- 8.553.5.A. TCAs shall administer the CTS benefit.
- 8.553.5.B. The TCA shall perform administrative functions, including ensuring timely reporting, on-site visits to clients, community coordination and outreach and client monitoring.
- 8.553.5.C. Staffing Requirements
1. The TCA shall document that each Transition Coordinator has received 20 hours of training or passed a Department-approved skills validation test in transition coordination knowledge and skills. The Transition Coordinator training or skills validation test shall include, but not be limited to:
    - a. Knowledge of populations served by the TCA and the target population served by the HCBS-EBD waiver.
    - b. Client interviewing and assessment skills.
    - c. Intervention and interpersonal communication skills.
    - d. Knowledge of available community resources and public assistance programs.
    - e. Transition plan development.
  2. The TCA supervisor(s), at a minimum, shall meet all qualifications for a Transition Coordinator. Supervision shall include, but not be limited to, the following activities:
    - a. Arrangement and documentation of training or skills validation testing.
    - b. Assessment of client's satisfaction with services.
    - c. Investigation of complaints.
    - d. Counseling with staff on difficult cases.
    - e. Oversight of record keeping by staff.
  3. Training and skills validation shall be completed prior to the delivery of CTS.
- 8.553.5.D. The Transition Coordinator shall administer a Department-approved assessment to determine the client's needs for housing, services and items necessary to establish a community-based residence.
- 8.553.5.E. The Transition Coordinator shall work with the client to create and implement a transition plan agreed upon by the Transition Coordinator and the client. The Transition Coordinator and the client shall sign the transition plan to signify agreement.
1. The Transition Coordinator shall submit the signed transition plan to the client's Single Entry Point (SEP) case manager for approval prior to plan implementation.
  2. The plan shall include the items needed for the client to transition to a community-based residence. If after the plan has been approved the Transition Coordinator determines additional purchases are required, the Transition Coordinator shall submit a plan revision for approval prior to the purchases.

8.553.5.F. The Transition Coordinator shall work with the client to obtain a residence and any items necessary to establish a community-based residence.

8.553.5.G. The Transition Coordinator shall conduct a minimum of four on-site visits of the residence to ensure all essential furnishings, utilities, community resources and services are in place. If the Transition Coordinator finds any of the supports to be insufficient for the client to successfully live in the community, the Transition Coordinator shall correct the deficiencies. The on-site visits shall occur at the following intervals:

1. Prior to the client's discharge from the skilled nursing facility.
  - a. If possible, the client shall accompany the Transition Coordinator during the on-site visit prior to discharge. If the client is unable to participate in the on-site visit, the Transition Coordinator shall document the reason in the client's file.
2. The day of the move.
3. One week after the transition to ensure the client has the proper supports to continue successfully living in the community.
4. One month after the transition to ensure the client has the proper supports to continue successfully living in the community.

#### **8.553.6 SINGLE ENTRY POINT AGENCY RESPONSIBILITIES**

8.553.6.A. The SEP case manager shall perform a review to assure all items in the transition plan meet the criteria of the benefit described in 8.553.2.

1. The SEP case manager shall complete a review of the transition plan and shall notify the TCA of approval or denial of the plan within ten business days of receipt.

#### **8.553.7 AUTHORIZATION REQUESTS**

8.553.7.A. The TCA shall submit the Department prescribed Authorization Request (AR) form to the SEP case manager to authorize payment for CTS.

1. The TCA shall only submit the AR to authorize payment for any purchases or deposits after the client transitions to the community. The AR shall include a Department-approved cost report including copies of cancelled checks and copies of receipts detailing the items purchased and the cost.
  - a. Any expenses submitted on the cost report for items that are not included in the approved transition plan shall be considered non-allowable expenses and shall not be reimbursed.
  - b. The SEP case manager shall complete a review of the AR and the cost report and shall notify the TCA of approval or denial of the AR and if applicable, any non-allowable expenses on the cost report within ten business days of receipt.
2. The TCA shall only submit the AR for Transitional Case Management once the Transition Coordinator has conducted the on-site visit one month after the client's transition.
  - a. The SEP case manager shall approve the AR only after verifying that the client is established in a community-based residence.

- b. The SEP case manager shall complete a review of the AR and shall notify the TCA of approval or denial within ten business days of receipt.

8.553.7.B. The SEP case manager shall complete a review of the AR and the cost report within ten business days of receipt. The SEP case manager shall notify the TCA of approval of the AR and if applicable, any non-allowable expenses on the cost report.

1. Approval of the AR by the SEP case manager shall authorize the TCA to submit claims to the Department's fiscal agent for authorized CTS provided during the authorized period. Payment of claims is conditional upon the client's financial eligibility on the dates of service and the TCA's use of correct billing procedures.

8.553.7.C. Incomplete ARs shall be returned to the TCA for correction within ten business days of receipt by the SEP agency.

### **8.553.8 REIMBURSEMENT**

8.553.8.A. The TCA shall conform to all reimbursement procedures described in 10 C.C.R. 2505-10, Section 8.487.200 Provider Reimbursement.

8.553.8.B. Payment for CTS shall be the lower of the billed charges or the maximum rate of reimbursement.

8.553.8.C. The cost of Transitional Case Management shall be reimbursed by one unit of service completed when the client is established in a community-based residence as verified by the SEP case manager.

8.553.8.D. Reimbursement shall be made only for items listed on the transition plan with an accompanying receipt.

## **8.555 COLORADO CHOICE TRANSITIONS (CCT), A MONEY FOLLOWS THE PERSON DEMONSTRATION**

### **8.555.1 DEFINITIONS OF DEMONSTRATION SERVICES PROVIDED**

Assistive Technology means devices, items, pieces of equipment, or product system used to increase, maintain, or improve functional capabilities of clients and training in the use of the technology when the cost is not otherwise covered through the State Plan durable medical equipment benefit or home modification waiver benefit or available through other means.

Behavioral Health Support means services by a paraprofessional to support a client during the transition period to mitigate issues, symptoms, and/or behaviors that are exacerbated during the transition period and negatively affect the client's stability in the community.

Caregiver Support Service means educational and coaching services that assist clients and family members to recruit other family members and friends to form an informal caregiver network to share caregiving responsibilities.

Community Transition Services means services as defined at 10 CCR 2505-10, Section 8.553.

Dental Services means dental services that are inclusive of diagnostic, preventive, periodontal and prosthodontic services, as well as basic restorative and oral surgery procedures to restore the client to functional dental health and not available through the Medicaid State Plan.

Enhanced Nursing Services means medical care coordination provided by a nurse for medically complex clients who are at risk for negative health outcomes associated with fragmented medical care and poor communication between primary care physicians, nursing staff, case managers, community-based providers and specialty care providers.

Home Delivered Meals means nutritious meals delivered to homebound clients who are unable to prepare their own meals and have no outside assistance.

Extended Home Modifications means physical adaptations to the home, required by the client's plan of care, necessary to ensure the health, welfare, safety and independence of the client above and beyond the cost of caps that exist in applicable Home and Community-Based (HCBS) waivers.

Independent Living Skills Training means services designed to improve or maintain a client's physical, emotional, and economic independence in the community with or without supports.

Intensive Case Management means case management services to assist clients' access to needed home and community-based services, Medicaid State Plan services and non-Medicaid supports and services to support the clients' return to the community from placement in a qualified institution and to aid the client in attaining their transition goals.

Mentorship Services means services provided by peers to promote self-advocacy and encourage community living among clients by instructing and advising on issues and topics related to community living, describing real-world experiences as example and modeling successful community living and problem-solving.

Specialized Day Rehabilitation means services offered in a group setting designed and directed at the development and maintenance of the client's ability to independently, or with support, sustain himself/herself physically, emotionally and economically in the community.

Substance Abuse (Transitional) means enhanced individual or group substance abuse counseling, behavioral interventions, or consultations to address issues, symptoms, and/or behaviors that are exacerbated during the transition period and negatively affect the client's sobriety. Services can be provided in the home or office setting.

Vision Services means services that include eye exams and diagnosis, glasses, contacts, and other medically necessary methods to improve specific vision system problems when not available through the Medicaid State Plan.

## **8.555.2 GENERAL DEFINITIONS**

Demonstration services means services unique to the CCT program and provided during a client's enrollment in the demonstration program.

Medically complex means one or more medical conditions that are persistent and substantially disabling or life threatening and meets the following conditions:

1. Requires treatment and services across a variety of domains of care;
2. Is associated with conditions that have severe medical or health-related consequences;
3. Affects multiple organ systems;
4. Requires coordination and management by multiple specialties; and
5. Treatments carry a risk of serious complications.

Operational Protocol means the Centers for Medicare and Medicaid Services (CMS) approved policy and procedures manual for the CCT Program. The Operational Protocol (2012) is hereby incorporated by reference into this rule. Such incorporation, however, excludes later amendments to or editions of the referenced material. The Operational Protocol is available for public inspection at the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. The Department shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the Operational Protocol from the Department.

Paraprofessional means a person with a Bachelor's Degree in psychology, social work or other human service related field who is employed by a mental health provider; is supervised by a Licensed Professional Counselor, Licensed Clinical Social Worker or Licensed Psychologist; and has experience with facilitating the implementation of a behavioral management plan among families, a client, providers and other members of a support system for the client.

Qualified institution means a nursing facility; intermediate care facilities for people with intellectual disabilities (ICF/ID); or institutions for mental diseases (IMDs), which include Psychiatric Hospitals only to the extent medical assistance is available under the State Medicaid plan for services provided by such institution.

Qualified residence means a home owned or leased by the client or the client's family member; a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside; or an apartment with an individual lease, eating, sleeping, cooking and bathing areas, lockable access and egress, and not associated with the provision or delivery of services.

Qualified services mean services that are provided through an existing HCBS waiver and may continue if needed by the client and if the client continues to meet eligibility for HCBS at the end of his or her enrollment in CCT.

Transition Assessment/Plan means an assessment of client needs completed by a transition coordinator prior to a transition and the corresponding plan developed by the coordinator to meet the needs of the client in a community-setting post-transition.

### **8.555.3 LEGAL BASIS**

The Colorado Choice Transitions (CCT) program is created through a Money Follows the Person (MFP) grant award authorized by section 6071 of the Deficit Reduction Act of 2005. Section 2403 of Patient Protection and Affordable Care Act extended the program through September 30, 2016. The United States Department of Health and Human Services awarded the MFP demonstration grant to Colorado. This demonstration program is administered by the Centers for Medicare and Medicaid Services (CMS). The MFP statute provides waiver authority for four provisions of title XIX of the Social Security Act, to the extent necessary to enable a State initiative to meet the requirements and accomplish the purposes of the demonstration. These provisions are:

1. Statewideness (Section 1902(a)(1) of the Social Security Act) - in order to permit implementation of a State initiative in a selected area or areas of the State.
2. Comparability (Section 1902(a)(10)(B) - in order to permit a State initiative to assist a selected category or categories of individuals enrolled in the demonstration.
3. Income and Resource Eligibility (Section 1902(a)(10)(C)(i)(III) – in order to permit a State to apply institutional eligibility rules to individuals transitioning to community-based care.
4. Provider agreement (Section 1902(a)(27)) - in order to permit a State to implement self-direction services in a cost-effective manner for purposes of this demonstration program.

CCT is designed to complement the Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD); Home and Community Based Services for People with Brain Injury (HCBS-BI); Home and Community Based Services for Community Mental Health Supports (HCBS-CMHC); Home and Community Based Services for the Developmentally Disabled (HCBS-DD); and Home and Community Based Services for Supported Living Services (HCBS-SLS) programs. These waivers are authorized through Section 1915(c) of the Social Security Act (42 U.S.C. § 1396n). Title 42 of the United States Code, Section 1396n (2012) is hereby incorporated by reference into this rule. Such incorporation, however, excludes later amendments to or editions of the referenced material. These regulations are available for public inspection at the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Pursuant to 24-4-103(12.5), C.R.S., the Department of Health Care Policy and Financing maintains either electronic or written copies of the incorporated texts for public inspection. The Department shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline or rule.

#### **8.555.4 SCOPE AND PURPOSE**

- 8.555.4.A. The CCT program assists clients currently residing in qualified institutions with exploring their community-based options for long term supports and services and transitioning to a community setting with services and supports if they choose to transition; if the right services and supports can be arranged in the community to ensure the health, welfare and safety of the client; and if willing and qualified providers are available to deliver services.
- 8.555.4.B. The CCT program strengthens the transition process for residents of qualified institutions and provides additional supports and services for a successful transition. These additional supports and services are demonstration services.
- 8.555.4.C. Clients may be enrolled in the CCT program for 365 days. Days in a hospital or qualified institution for a period of less than 30 days during the enrollment period will not count towards the 365 days.
- 8.555.4.D. CCT clients will be concurrently enrolled in the CCT program and one of the following waivers:
1. Home and Community Based Services for the Elderly, Blind and Disabled (HCBS-EBD) (10 C.C.R. 2505-10, Section 8.485);
  2. Home and Community Based Services for People with Brain Injury (HCBS-BI) (10 CCR 2505-10, Section 8.515.00);
  3. Home and Community Based Services for Community Mental Health Supports (HCBS-CMHS) (10 CCR 2505-10, Section 8.509);
  4. Home and Community Based Services for the Developmentally Disabled (HCBS-DD) (10 CCR 2505-10, Section 8.500); and
  5. Home and Community Based Services for Supported Living Services (HCBS-SLS) (10 CCR 2505-10, Section 8.500.90).
- 8.555.4.E. At the end of the enrollment period for CCT, case managers will dis-enroll clients from the CCT program.
1. Demonstration services will discontinue at the end of the CCT enrollment period.

2. If clients continue to meet eligibility requirements for one of the waivers listed in 8.555.4.D., case managers will arrange for the continuation of qualified HCBS services after the CCT period ends through the appropriate HCBS waiver.

#### **8.555.5 CLIENT ELIGIBILITY**

##### **8.555.5.A. ELIGIBLE PERSONS**

CCT services shall be offered only to persons who meet all of the following eligibility requirements:

1. Clients shall be aged 18 years or older.
2. Clients shall have resided in a qualified institution for a period of 90 days. Days in a nursing facility for a rehab stay will not count towards the 90 days.
3. Clients shall be enrolled in Medicaid for at least one day prior to transition from a qualified institution.
4. Clients shall reside in a qualified residence post-transition.
5. Clients shall meet criteria of a targeted population which includes persons with mental illness, brain injury, physical disabilities or intellectual disabilities and the elderly.
6. Clients shall meet the eligibility requirements for the appropriate HCBS waiver programs listed in Section 8.555.4.D. in which they will be enrolled post-transition.
7. Clients concurrently enrolled in the HCBS-BI program and CCT shall be in the age range of 18-64 rather than 16-64 as specified in the HCBS-BI eligibility requirements.

##### **8.555.5.B. FINANCIAL ELIGIBILITY**

Clients must meet the financial eligibility requirements specified at 10 CCR 2505-10, Section 8.100.7 LONG TERM CARE MEDICAL ASSISTANCE ELIGIBILITY.

##### **8.555.5.C. LEVEL OF CARE CRITERIA**

Clients shall require long term support services at a level comparable to services typically provided in a nursing facility or ICF/ID in accordance with the waiver to which they will enroll upon transition.

##### **8.555.5.D. NEED FOR CCT SERVICES**

1. Only clients who have agreed to accept demonstration and qualified services as soon as all other eligibility criteria have been met are eligible for the CCT program.
  - a. Case management is a CCT service but case management shall not be used to satisfy this requirement.
  - b. The desire or need for any Medicaid services other than CCT demonstration services, as listed at Section 8.555.1, or qualified services offered through one of the waiver programs listed in Section 8.555.4.D. shall not satisfy this eligibility requirement.

2. Once enrolled, clients who have not received demonstration or qualified services for a period greater than 30 consecutive days shall be discontinued from the program.

**8.555.5.E. EXCLUSIONS**

1. Clients who are residents of nursing facilities, other qualified institutions or hospitals are not eligible to receive CCT or waiver services except for transition coordination or case management services in preparation of discharge.
2. CCT clients readmitted to a qualified institution or hospital may not receive CCT services while admitted except for transition coordination or case management services in preparation for discharge.
  - a. CCT clients admitted to a nursing facility or hospital for 30 consecutive days or longer shall be discontinued from the CCT program but may have the option to re-enroll upon discharge provided they continue to meet all eligibility requirements.
  - b. CCT clients entering a nursing facility for Respite Care as a qualified HCBS waiver service shall not be discontinued from the CCT program.
3. Clients who reside in a residence that is not a qualified residence as defined in Section 8.555.2 are not eligible for CCT services.
4. Certain demonstration services may not be available to clients for certain waivers if those demonstration services are similar to or are the same as services already offered through the waiver in which the client will enroll upon discharge.

**8.555.5.F. COST CONTAINMENT AND SERVICE ADEQUACY**

1. The client shall not be eligible for the CCT program if:
  - a. The Department or its agent determines that the client's needs cannot be met within the specific Cost Containment requirements set for the waiver in which they will enroll upon discharge.
  - b. The transition assessment reveals that the client's needs are more extensive than CCT demonstration services or HCBS qualified services are able to support and/or that the client's health and safety cannot be assured in a community setting.
2. In the event that the Department or its agent denies or reduces the request for services prior to transition, the case manager shall provide the client with the client's appeal rights pursuant to Section 8.555.12.

3. The client may be eligible for continuation with an HCBS waiver program following the CCT enrollment period if the case manager at reassessment determines that qualified services are able to support the client's needs and the client's health and safety can be assured in a community setting with HCBS services.
  - a. If the case manager expects that the services required to support the client's needs will exceed the Cost Containment requirements for the waiver in which the client is enrolled, the Department or its agent will review the service plan to determine if the client's request for services is appropriate and justifiable based on the client's condition.
    - i) The client may request of the case manager that existing qualified services remain intact during this review process. CCT demonstration services will still end on the 365<sup>th</sup> day of the client's enrollment in the CCT program.
    - ii) In the event that the request for services is denied by the Department or its agent, the case manager shall provide the client with:
      - 1) The client's appeal rights pursuant to Section 8.555.12; and
      - 2) Alternative options to meet the client's needs that may include, but are not limited to, nursing facility or ICF/ID placement.

#### **8.555.6 CCT ENROLLMENT**

- 8.555.6.A. Clients shall demonstrate by signature that he or she provides consent to participate in the CCT demonstration program; understands the roles and responsibilities of the client, case manager and transition coordinator; and agrees to participate in the program evaluation activities.
- 8.555.6.B. Guardians shall demonstrate by signature that he or she provides consent for the client to participate in the CCT demonstration program; understands the roles and responsibilities of the client, case manager and transition coordinator; and agrees to participate in the program evaluation activities.
- 8.555.6.C. Transition coordinators and case managers will ensure that clients meet all eligibility requirements identified in Section 8.555.5 prior to enrollment.
- 8.555.6.D. Transition coordinators shall complete the Department approved Transition Assessment and Plan for each client within 10 days of the initial meeting with the client.
- 8.555.6.E. Transition coordinators and case managers will follow all steps and processes stated in Section B.1, Enrollment and Eligibility, and Section B.2, Informed Consent and Guardianship, of the CCT Operational Protocol to complete the transition process and enrollment of the CCT client.
- 8.555.6.F. Transition coordinators shall act in accordance with Department guidance and the requirements established in 10 C.C.R. 2505-10, Section 8.553.

#### **8.555.7 START DATE FOR SERVICES**

- 8.555.7.A. The start date of eligibility for CCT services shall not precede the date that all of the requirements at Section 8.555.5 have been met.

8.555.7.B. The first date for which CCT services may be reimbursed shall be the date of discharge from a qualified institution.

8.555.7.C. Transition coordination services and case management services may be offered prior to the client's transition in preparation of the transition to a community setting. Other services may be provided pre-transition with Departmental approval if the service is necessary for transition. Services shall be billed retroactively upon the date of discharge or up to 120 days after discharge.

#### **8.555.8 CASE MANAGEMENT FUNCTIONS**

8.555.8.A. The requirements at 10 CCR 2505-10, Section 8.486 shall apply to the Case Management Agencies performing the case management functions of the CCT program and the HCBS-EBD, HCBS-CMHS or HCBS-BI waiver programs. Case managers for these waivers shall comply with these requirements and the CCT-specific requirements in the rest of this section.

8.555.8.B. The requirements at 10 CCR 2505-10, Section 8.760 shall apply to the Case Management Agencies performing the case management functions of the CCT program and the HCBS-SLS or HCBS-DD programs. Case managers for these waivers shall comply with these requirements and the CCT-specific requirements in the rest of this section.

8.555.8.C. The case manager is responsible for:

1. Assessing needs;
2. Determining CCT and waiver program eligibility;
3. Service planning and authorization;
4. Arranging services;
5. Identifying potential risks for reinstitutionalization;
6. Implementing strategies with the client and family to mitigate risks;
7. Monitoring services;
8. Monitoring the health, welfare and safety of the client; and
9. Promotion of client's self-advocacy.

8.555.8.D. The case manager shall conduct a home visit with the transition coordinator on the date of discharge to:

1. Confirm the start of services;
2. Ensure clients are safe; and
3. Identify and address any unanticipated concerns, issues and problems clients may have with the transition.

8.555.8.E. The case manager shall conduct a check-in with the client by phone 48 hours after discharge and conduct any necessary follow-up activities needed.

8.555.8.F. The case manager shall conduct three additional home visits in the first month that clients are enrolled in the program to provide support for success with community living.

8.555.8.G. The case manager shall have weekly contacts with clients, family members, guardians or other designated representative for the duration of their enrollment in the CCT program to monitor services and the health, welfare and safety of the clients; to review functional status; and to conduct any necessary follow-up activities necessary to ensure independent living in the community.

Contacts may either be phone contacts or home visits based on necessity.

8.555.8.H. The case manager shall revise the service plan as needed based on the weekly contacts or as otherwise needed due to change in the client's condition.

8.555.8.I. The case manager shall review the client's most recent ULTC 100.2 and update the ULTC 100.2 assessment if a change in functional status or a significant change impacting eligibility has occurred, in accordance with 10 CCR 2505-10, Section 8.401.1.

8.555.8.J. The case manager in accordance with Section B.10, Continuity of Care Post Demonstration, in the CCT Operational Protocol shall begin preparing clients for dis-enrollment from the CCT program 90 days prior to the end of the clients' CCT enrollment period and arrange for the continuation of HCBS services if the clients continue to meet the eligibility requirements for a waiver listed at 8.555.4.D.

#### **8.555.9 SERVICE PLAN**

8.555.9.A. The service plan will be developed with input from the transition coordinator, staff from the discharging facility, the resident wanting to transition and others at the invitation of the client or guardian.

8.555.9.B. The transition assessment/plan, the client's level of functioning, service needs, available resources and potential funding resources will inform the development of the service plan.

8.555.9.C. The Transition Administrator at the Department shall approve the service plan before the transition occurs.

8.555.9.D. The service plan shall:

1. Address client's assessed needs and personal goals, including health and safety risk factors, either by waiver qualified services, CCT demonstration services or through other means;
2. Identify risks to reinstitutionalization and outline a contingency plan identifying paid and unpaid supports and services necessary to mitigate the risk.
3. Be in accordance with the rules, policies and procedures related to service plans established by the Division for Developmental Disabilities if clients are enrolled in the HCBS-SLS (10 CCR 2505-10, Section 8.500.95) or -DD waivers (10 CCR 2505-10, Section 8.500.6);
4. Be in accordance with the rules, policies and procedures established related to service plans by the Department of Health Policy and Financing for clients enrolled in the HCBS-EBD (10 CCR 2505-10, Section 8.486.51), -CMHS (10 CCR 2505-10, Section 8.509.31.D.) or -BI waivers (10 CCR 2505-10, Section 8.515.30.E.);
5. Be in accordance with the rules, policies and procedures of the CCT Operational Protocol; and

6. Include updates and revisions when warranted by changes in the client's needs or conditions.
- 8.555.9.E. The service plan shall document that the client has been offered a choice:
1. Between community-based services or institutional care;
  2. Between the CCT Program or a traditional HCBS Waiver;
  3. Among qualified and demonstration services; and
  4. Among qualified providers.
- 8.555.9.F. A new service plan will be developed each time a client is reinstitutionalized and plans to return to a community setting. The service plan shall address the reasons for the client's reinstitutionalization.

**8.555.10 PROVIDER REIMBURSEMENT**

- 8.555.10.A. All CCT demonstration and qualified services must be prior authorized by the Department or its agent.
- 8.555.10.B. The Department shall develop the Prior Authorization Request (PAR) form to be completed by case managers who shall comply with all applicable regulations when completing the form.
- 8.555.10.C. The Department or its agent shall determine if the services requested are:
1. Consistent with the client's documented medical condition and functional capacity;
  2. Reasonable in amount, scope, frequency, and duration;
  3. Not duplicative of the other services included in the client's service plan;
  4. Not for services for which the client is receiving funds to purchase; and
  5. Do not total more than 24 hours per day of care.
- 8.555.10.D. The services requested on the PAR must meet all criteria listed at 8.555.10.C for the Department or its agent to approve the request.
- 8.555.10.E. If the Department or its agent determines that the services requested on the PAR do not meet the criteria at 8.555.10.C., the Department or its agent shall deny the PAR and work with the case management agency to submit a revised request.
1. If services are reduced or denied through a revised PAR, the case manager shall provide the client with the client's appeal rights pursuant to Section 8.555.12.
- 8.555.10.F. The prior authorization of services does not constitute an entitlement to those services, and does not guarantee payment.
- 8.555.10.G. The PAR start date shall not precede the start date of CCT eligibility in accordance with Section 8.555.7.

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- 8.555.10.H. The PAR end date shall not exceed the end date of the initial CCT enrollment period, which cannot exceed 365 calendar days.
- 8.555.10.I. Revisions to the PAR that are requested six months or more after the end date of CCT enrollment shall be disapproved.
- 8.555.10.J. Prior to the end date, case managers shall establish a new CCT enrollment period and create a new PAR to reflect any days during the initial enrollment period that a client entered a hospital, nursing home, ICF/ID or other long term care institution for a period less than 30 days to ensure the client has a full 365 days of CCT enrollment in the community.
1. The numbers of days for the new enrollment period and PAR shall be equal to the numbers of days that the client was placed in an institution and shall commence on the first day after the end date of the initial enrollment period.
- 8.555.10.K. Prior Authorization Requests for clients enrolled in the HCBS-DD waiver shall be completed in accordance with Section 8.500.12
- 8.555.10.L. Prior Authorization Requests for clients enrolled in the HCBS-SLS waiver shall be completed in accordance with Section 8.500.101.
- 8.555.10.M. The PAR for qualified and demonstration services shall be sent to the Transition Administrator at the Department for approval.
- 8.555.10.N. Approval of the PAR by the Department shall authorize providers of CCT services to submit claims to the fiscal agent and to receive payment for authorized services provided during the period of time covered by the PAR. However, a PAR does not guarantee payment.
- 8.555.10.O. Reimbursement shall be claimed only by a qualified provider who delivers services in accordance with the service definition and policy guidance established by the Department.
- 8.555.10.P. Payment for CCT Services
1. Payment for CCT services shall reflect the lower of billed charges or the maximum rate of reimbursement set by the Department.
    - a. Rates for Behavioral Health Support, Caregiver Support Service, Enhanced Nursing Services, Home Delivered Meals, Independent Living Skills Training, Intensive Case Management, Mentorship Service, Specialized Day Rehabilitation, Substance Abuse Counseling (Transitional) are reimbursed on a fee-for-service basis and payment is based on the rate for each service found on the Departments statewide fee schedule.
    - b. The statewide fee schedule for these services are reviewed annually and published in the provider billing manual.
    - c. Payment for Assistive Technology, Dental Services, Extended Home Modifications and Vision services are reimbursed the billed cost but cannot exceed the Department established maximums.
  2. Payment for CCT services is also conditional upon:
    - a. The client's eligibility for CCT services;
    - b. The provider's certification status; and

- c. The submission of claims in accordance with proper billing procedures.

**8.555.11 PROVIDER AGENCIES**

- 8.555.11.A. CCT providers providing demonstration services to clients enrolled in CCT and HCBS-EBD, -BI, or -MI shall abide by all general certification standards, conditions, and processes established at 10 CCR 2505-10, Section 8.487.
- 8.555.11.B. CCT providers providing demonstration services to clients enrolled in CCT and HCBS-DD shall abide by all general certification standards, conditions, and processes established at 10 CCR 2505-10, Section 8.500.9.
- 8.555.11.C. CCT providers providing demonstration services to clients enrolled in CCT and HCBS-SLS shall abide by all general certification standards, conditions, and processes established at 10 CCR 2505-10, Section 8.500.98.
- 8.555.11.D. CCT providers of specific demonstration services must comply with any additional certification standards or conditions contained in Appendix L of the CCT Operational Protocol. Appendix L (2012) is hereby incorporated by reference in this rule. Such incorporation, however, excludes later amendments to or editions of the referenced material. These materials are available for public inspection at the Department of Health Care Policy and Financing, 1570 Grant St, Denver, CO 80203. The Department shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline or rule.

**8.555.12 APPEAL RIGHTS**

- 8.555.12.A. Case management agencies shall follow the rules for notification and appeals established for the waiver in which the client will enroll upon discharge.
  - 1. For clients enrolled on HCBS-EBD, -BI and -CMHS, the case management agencies or utilization review contractor shall provide notification of adverse actions and appeals rights in accordance with 8.393.28.A.
  - 2. For clients enrolled on HCBS-DD, the case management agencies shall provide notification of adverse actions and appeal rights in accordance with 8.500.16.
  - 3. For clients enrolled on HCBS-SLS, the case management agencies shall provide notification of adverse actions and appeal rights in accordance with 8.500.106.

**8.560 CLINIC SERVICES – CERTIFIED HEALTH AGENCIES**

Clinic Services rendered by certified health agencies shall be a benefit of the Colorado Medical Assistance Program for categorically eligible individuals.

**8.560.1 DEFINITIONS**

For the purposes of this Section 8.560, the following definitions shall apply:

- A. Certified health agency: a county/district health department, regional health department or local board of health established pursuant to part 5, 6, or 7 of article 1 of title 25, C.R.S., that is certified by the Colorado State Department of Health.

- B. Nurse/Nurse practitioner: a registered professional nurse who is currently licensed to practice in the State of Colorado and who meets the qualifications established by the Nurse Practice Act.
- C. Nurse-midwife: a registered professional nurse currently licensed to practice in the State of Colorado who meets the following requirements: is certified as a nurse-midwife by the American College of Nurse-Midwives; is authorized under state statute to practice as a nurse-midwife; and whose services are rendered pursuant to the Colorado Medical Practice Act.
- D. Physician assistant/child health associate: a certified individual who performs under the supervision of a physician and meets the qualifications of the Colorado State Board of Medical Examiners.
- E. Physician: a doctor of medicine, osteopathy, legally authorized to provide medicine or surgery in Colorado.
- F. Medicaid primary care physician: a physician enrolled in the Primary Care Physician Program under the Colorado Medical Assistance Program.
- G. Visit: a face-to-face encounter between a clinic patient and nurse/nurse practitioner/nurse-midwife, physician assistant/child health associate, or physician providing services reimbursable under the Medicaid Program. If a patient sees more than one health professional, or meets more than once with the same health professional, on the same day and at a single location, this shall be counted as one visit.

#### **8.561 REQUIREMENTS FOR CERTIFICATION**

- A. Participating health agencies must be certified by the Colorado State Department of Health in accord with federal regulations 42 CFR 431.610, October 1991 edition. No amendments or later editions are incorporated. Copies are available for inspection and available at cost at the following address: Manager, Health and Medical Services, Colorado Department of Social Services, 1575 Sherman Street, Denver, Colorado 80203-1714. Certified health agencies performing laboratory services must be certified as a clinical laboratory in accordance with regulations cited at 8.660 through 8.666. Certified health agencies must obtain a certificate of waiver from the Health Care Financing Administration or its designated agency if the health agency only performs waived tests as defined by Clinical Laboratory Improvement Amendments of 1988 (CLIA).
- B. All certified health agencies and staff shall comply with all applicable federal, state and local regulations concerning the operation of such clinic services. These include but are not limited to the following: certification, organization, staffing, licensure of personnel, service provision responsibilities, maintenance of health records and program evaluation.
- C. Termination of certification or non-renewal of certification will be determined by the Colorado State Department of Health.

#### **8.562 REQUIREMENTS FOR PARTICIPATION**

Health agencies providing clinic services must be certified by the Colorado State Department of Health, must enroll in the Medical Assistance Program and provide proof of their certification status in order to participate under Medicaid. The certification document must be attached to the Medical Assistance enrollment form. Medical Assistance enrollment and/or reimbursement cannot be accomplished without proof of certification on file with the State's fiscal agent for the effective date of enrollment and date of service for which reimbursement is claimed.

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**8.563 BENEFITS AND LIMITATIONS**

Clinic Services are a benefit of the Medical Assistance Act in Colorado when:

- A. The services are benefits of the Colorado Medicaid Program as determined by the Colorado State Department of Social Services;
- B. The services which are performed are medically necessary;
- C. The services are provided by certified health agencies;
- D. The services which are performed are within the scope of the providers' Medical and/or Nurse Practice Acts;
- E. The services are provided by a registered nurse, qualified nurse practitioner, or certified nurse-midwife or by a physician or physician's assistant (including child health associates) certified by the Colorado State Board of Medical Examiners;
- F. The services provided are obstetrical services which are benefits of the Medicaid program; or
- G. The services provided are EPSDT medical screening services which meet the requirements set forth in sections 8.285.02 through 8.287.01.

**8.564 BILLING PROCEDURES**

- A. Certified health agencies providing clinic services must bill the Medical Assistance Program directly using the designated billing method and the prescribed procedure codes recognized by the Colorado State Department of Social Services. The amount of the provider's usual and customary charges to the general public will be billed if applicable.
- B. Obstetrical services and adjunctive services, except for EPSDT medical screenings, must be billed directly as described in 10 C.C.R. 2505-10, Section 8.040.2.
- C. EPSDT medical screening services must be billed directly on the EPSDT Screening/Claim Form.

**8.565 REIMBURSEMENT**

Reimbursement shall be made according to the following:

- A. Payment for benefit services shall be in accord with the physician reimbursement policies as cited in Section 8.200 et seq.
- B. Each certified health agency will be reimbursed for only those services performed for which it is certified and for only one visit per recipient per day.
- C. Reimbursement for injectable vaccines obtained through the Infant Immunization Program is limited to the maximum allowed administrative fee.
- D. A health agency must be certified on any date for which reimbursement is being claimed. If reimbursement is claimed for a date of service on which the health agency is not certified, reimbursement shall be denied.

## **8.566 APPEALS**

Provider grievances and appeals, resulting from State actions under this section of regulations, shall be handled in accordance with existing appeals regulations delineated in Sections 8.049 through 8.051.44.

## **8.567 CERTIFIED HEALTH AGENCY/PHYSICIAN RELATIONSHIP**

- A. Obstetrical services require referral from the Medicaid Primary Care (PCP) or "Lock-In" physician. The certified agency will contact the PCP to obtain the appropriate referral for obstetrical services.
- B. EPSDT medical screenings require referral from the Medicaid Primary Care (PCP) or "Lock-In" physician. The certified agency will contact the PCP to obtain the appropriate referral for EPSDT Medical screening services.
- C. Medical support and approval for the policies and procedures of the local certified health agency's Well Child Clinics and Prenatal Clinics may be provided by the agency health officer, medical director or other physician (pediatrician, family practitioner or obstetrician) agreed upon by the public health nursing staff and their health officer. A physician must sign and annually review the agency's emergency procedures for reactions to biologicals.
- D. The certified health agency shall assure that a physician is available during agency hours by direct means of communication for assistance in emergencies and for consultation and referral if medical diagnosis and/or treatment is needed. This requirement may be satisfied by agreements with one or more physicians. Whenever possible, the certified health clinic practitioner will interact with the client's primary care physician when medical consultation is needed and will provide the primary care physician a copy of each EPSDT medical screening and obstetrical service record.

## **8.570 AMBULATORY SURGERY CENTERS**

### **8.570.1 DEFINITIONS**

Ambulatory Surgery Center (ASC) means an entity that operates exclusively for the purpose of furnishing surgical services for its clients that do not require hospitalization. An ASC may be independent or part of a hospital, but only if the building space utilized by the ASC is physically, administratively, and financially independent and distinct from other operations of the hospital.

CMS means the Centers for Medicare and Medicaid Services.

The Department refers to the Colorado Department of Health Care Policy and Financing.

Inpatient Basis in Hospitals means preventive, therapeutic, surgical, diagnostic, medical and rehabilitative services that are furnished by the Hospital for the care and treatment of inpatients and are provided in the Hospital by or under the direction of the physician.

### **8.570.2 REQUIREMENTS FOR PARTICIPATION**

- 8.570.2.A. An ASC shall be certified by CMS to participate in the Medicare program as an ASC and be licensed by the Colorado Department of Public Health and Environment as an ASC.

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**8.570.3 COVERED SERVICES AND LIMITATIONS**

8.570.3.A. Covered services are those surgical and other medical procedures that:

1. Are ASC procedures that are grouped into categories corresponding to the CMS defined groups.
2. Are commonly performed on an inpatient basis in hospitals, but may be safely performed in an ASC.
3. Are limited to those requiring a dedicated operating room (or suite), and generally requiring a post-operative recovery room or short-term (not overnight) convalescent room.

8.570.3.B. Covered surgical procedures are limited to those that do not generally exceed:

1. A total of 4 hours recovery or convalescent time.

8.570.3.C. If the covered surgical procedures require anesthesia, the anesthesia must be:

1. Local or regional anesthesia; or
2. General anesthesia.

**8.570.4. DENTAL PROCEDURES**

1. Qualifying clients may receive covered and medically necessary dental services in an ASC when those services cannot be delivered safely and effectively in a private office.

**8.570.5 NON-COVERED SERVICES**

8.570.5.A Non-covered services are those services that:

1. Are not commonly performed or may safely be performed in a physician's office;
2. Generally result in extensive blood loss;
3. Require major or prolonged invasion of body cavities;
4. Directly involve major blood vessels; or
5. Are generally emergency or life-threatening in nature.
6. Pose a significant safety risk to clients or are expected to require active medical monitoring at midnight of the day on which the surgical procedure is performed (overnight stay) when furnished in an ASC.
7. Are not listed in the annual ASC billing manual.

**8.570.6. CLIENT ELIGIBILITY**

Eligible Clients include any Client enrolled in Colorado Medicaid for whom a covered ASC service is a medical necessity as defined at 10 CCR 2505-10 Section 8.076.1.8.

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**8.570.7. PRIOR AUTHORIZATION**

The physician performing the surgery shall be responsible for obtaining all necessary Prior Authorizations for those procedures requiring pre-procedure approval by the Department.

**8.570.8 REIMBURSEMENT**

8.570.8.A For payment purposes, ASC surgical procedures are placed into groupers. The Health Care Procedural Coding System (HCPCS) is used to identify surgical services.

8.570.8.B Reimbursement for approved surgical procedures shall be allowed only for the primary or most complex procedure. No reimbursement is allowed for multiple or subsequent procedures. No reimbursement shall be allowed for services not included on the Department approved list for covered services. Approved surgical procedures identified in the ASC groupers shall be reimbursed a facility fee at the lower of the following:

1. Submitted charges; or
2. Department approved list for covered services.

**8.570.9 ALLOWABLE COSTS**

8.570.9.A The services payable under this rule are facility services furnished to clients in connection with covered surgical procedures specified in Section 8.570.3.

1. Services and items reimbursed as part of the facility fee include, at a minimum, the following:
  - a. Use of the facilities where the surgical procedures are performed.
  - b. Nursing, technician, and related services.
  - c. Drugs, biologicals, surgical dressings, supplies, splints, casts, and appliances and equipment directly related to the provision of surgical procedures.
  - d. Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure.
  - e. Administrative, record keeping and housekeeping items and services.
  - f. Materials for anesthesia.
  - g. Intra-ocular lenses (IOLs).
  - h. Supervision of the services of an anesthetist by the operating surgeon.
2. Services and items that are not reimbursed as part of the facility fee, but that may be reimbursed separately include the following:
  - a. Physician services.
  - b. Anesthetist services.
  - c. Laboratory, X-ray or diagnostic procedures (other than those directly related to performance of the surgical procedure.)

- d. Prosthetic devices (except IOLs).
- e. Ambulance services.
- f. Leg, arm, back and neck braces.
- g. Artificial limbs.
- h. Durable medical equipment for use in the client's home.

**8.571 CLINIC SERVICES - AMBULATORY SURGERY CENTER, PHYSICIAN PRIOR AUTHORIZATION**

The physician performing the surgery shall be responsible for obtaining all necessary Prior Authorizations for those procedures requiring pre-procedure approval by the Department.

**8.580 OXYGEN AND OXYGEN EQUIPMENT**

**8.580.1 OXYGEN AND OXYGEN EQUIPMENT PROVIDED IN CLIENT HOMES**

- 8.580.1.A. Oxygen and oxygen equipment, and/or supplies, when medically necessary and prescribed by the physician, are a Medicaid benefit if provided in the client's home, or place of residence, not to include intermediary or skilled nursing facilities.
- 8.580.1.B. The oxygen provider shall directly bill the Department for medically necessary liquid or gaseous oxygen equipment and supplies provided in a client's home or place of residence, not to include intermediary or skilled nursing facilities. Reimbursement shall be the lower of the provider's billed charge or the Department's fee schedule.

**8.580.2 OXYGEN, AND OXYGEN EQUIPMENT, PROVIDED TO HOSPITAL CLIENTS**

- 8.580.2.A. Oxygen and oxygen equipment, and/or supplies, when medically necessary and prescribed by the physician for any form of oxygen for a client in an inpatient hospital setting are a benefit.
- 8.580.2.B. Oxygen and oxygen equipment, and/or supplies, when medically necessary and prescribed by the physician for any form of oxygen for a client in an inpatient hospital setting shall be provided by the hospital and is included in the Medicaid payment for inpatient hospital services.

**8.580.3 OXYGEN, AND OXYGEN EQUIPMENT PROVIDED TO NURSING HOME CLIENTS**

- 8.580.3.A. Oxygen, oxygen equipment and/or supplies when medically necessary and prescribed by the physician for clients residing in an intermediary or skilled nursing facility are a benefit.
- 8.580.3.B. Oxygen equipment and/or supplies for clients residing in a nursing facility being reimbursed a per diem amount, shall be provided by the nursing facility, except when the facility orders oxygen equipment and/or supplies specifically for the unique needs of an individual client. In such cases, the oxygen equipment and/or supply provider shall bill the Department directly.

8.580.3.C. Oxygen concentrators for use by clients residing in a nursing facility being reimbursed a per diem rate shall be provided in one of the following ways:

1. Oxygen concentrators purchased by the facilities shall be included in the facility cost report and reimbursed through the per diem. All necessary oxygen-related supplies shall be provided by the facility in accordance with 10 C.C.R. 2505-10, Section 8.441.5.K.
2. Clients residing in facilities that do not purchase oxygen concentrators shall obtain equipment and supplies from an authorized Medicaid oxygen provider. The oxygen provider shall provide equipment, oxygen and supplies for use by a specific client, as ordered by the client's physician, and shall bill on the state approved form.

8.580.3.D. The oxygen provider shall bill the Department directly for medically necessary liquid or gaseous oxygen provided to clients residing in intermediary or skilled nursing facilities that are reimbursed a per diem amount.

8.580.3.E. The oxygen provider shall bill based on the information provided by the nursing facility. Claims shall be coded appropriately as defined by the Department. Reimbursement shall be the lower of the provider's billed charges or the Department's fee schedule.

#### **8.580.4 DME Oxygen Benefit Coverage Standard Incorporation by Reference**

##### **8.580.4.A Standard Incorporated by Reference**

All eligible providers of DME oxygen enrolled in the Colorado Medicaid program shall be in compliance with the Colorado Medicaid DME Oxygen Benefit Coverage Standard (approved September 1, 2011), which is hereby incorporated by reference. The incorporation of the DME Oxygen Benefit Coverage Standard excludes later amendments to, or editions of, the referenced material.

The Benefit Coverage Standard is available from Colorado Medicaid's Benefits Collaborative Web site at [Colorado.gov/hcpf](http://Colorado.gov/hcpf). Click "Boards & Committees," and click "Benefits Collaborative," and click "Approved Benefit Coverage Standards." Pursuant to § 24-4-103 (12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

#### **8.585 OXYGEN, OXYGEN EQUIPMENT, AND SUPPLIES**

Medically necessary oxygen, oxygen equipment, and supplies are a benefit of the Colorado Medicaid Program. Medical necessity shall be provided in a manner approved by the Department, and shall be maintained in the provider's files for a minimum of six (6) years. The Department reserves the right to request copies of documentation of medical necessity.

- .01 With the exception of liquid or gaseous oxygen provided in a nursing facility, and the supplies and equipment necessary to administer each, medical equipment and/or supplies for Medicaid clients residing in a nursing facility, or group home receiving daily Medicaid reimbursement, must be provided by the facility. Costs of equipment and/or supplies unrelated to the use of gaseous or liquid oxygen are included in the facility's cost report and reimbursed through the Medicaid per diem.

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- .02 Any form of oxygen for use by clients in an inpatient hospital setting must be provided by the hospital and is included in the Medicaid payment. Oxygen concentrators for use by clients residing in a nursing facility, or group home receiving daily Medicaid reimbursement, may be provided in one of two ways.
- A. Nursing facilities or group homes committed to a program of purchasing concentrators for use by their Medicaid residents may bill a monthly fee to the Department using the Nursing Home Claim Form, in accordance with 8.465. All necessary oxygen -related disposable supplies shall also be provided by the facility.
  - B. Residents of facilities which do not wish to purchase concentrators for patient use shall obtain needed equipment from an authorized Medicaid oxygen supplier. The oxygen supplier shall bill a monthly fee using the Supply Claim. Reimbursement will be the lower of billed charges or the Department's fee schedule.
- .03 Liquid and gaseous oxygen, as well as equipment and supplies provided by the medical equipment supplier for administration in a nursing facility or group home, shall be billed directly to the Department's fiscal agent by a Medicaid supply provider, in accordance with Department policy.
- .04 Medical suppliers providing oxygen to Medicaid clients shall provide equipment, supplies and oxygen for use by a specific client, based upon the physician's prescription.
- .05 In order to assure accurate and appropriate billing by the medical supplier, the nursing facility or group home shall be responsible for providing the following information to the medical supplier within 20 days following the date the supplier delivers the item to be billed. The required information shall be in the form of a certification statement and shall contain the following, as a minimum:
- A. the name and state ID number for all Medicaid clients provided liquid or gaseous oxygen, or the equipment/supplies necessary for administration by the medical supplier.
  - B. an indicator of Medicare Part A or B, or other third party resources.
  - C. the name and state ID number for all Medicaid clients utilizing an oxygen concentrator being rented from the oxygen supplier. This applies only to patients in those facilities which choose not to commit to the purchase of concentrators.
  - D. certification guaranteeing that equipment, supplies, and oxygen were used only by the patient for which they were supplied; or in the case of centralized oxygen systems, each client's oxygen usage, expressed in liters.
- .06 The medical supplier shall bill the Medicaid program based upon the above information provided by the nursing facility, using the appropriate HCPCS coding. Reimbursement shall be made in accordance with the Department's fee schedule or the provider's usual and customary charges, whichever is lower.

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## **8.590 DURABLE MEDICAL EQUIPMENT AND DISPOSABLE MEDICAL SUPPLIES**

### **8.590.1 DEFINITIONS**

Abuse, for purposes of this rule only, means the intentional destruction of or damage to equipment that results in the need for repair or replacement.

Cochlear Implant or cochlear prosthesis means an electrode or electrodes surgically implanted in the cochlea which are attached to an induction coil buried under the skin near the ear, and the associated unit which is worn on the body.

Complex Rehabilitation Technology means individually configured manual Wheelchair systems, power Wheelchair systems, adaptive seating systems, alternative positioning systems, standing frames, gait trainers, and specifically designated options and accessories, which qualify as Durable Medical Equipment that:

- a. Are individually configured for individuals to meet their specific and unique medical, physical, and functional needs and capacities for basic activities of daily living and instrumental activities of daily living, including employment, identified as medically necessary to promote mobility in the home and community or prevent hospitalization or institutionalization of the client;
- b. Are primarily used to serve a medical purpose and generally not useful in the absence of illness or injury; and
- c. Require certain services provided by a qualified Complex Rehabilitation Technology Supplier to ensure appropriate design, configuration, and use of such items, including patient evaluation or assessment of the client by a Qualified Health Care Professional, and that are consistent with the client's medical condition, physical and functional needs and capacities, body size, period of need, and intended use.

Complex Rehabilitation Technology Professional means an individual who is certified by the Rehabilitation Engineering and Assistive Technology Society of North America or other nationally recognized accrediting organizations as an assistive technology professional.

Complex Rehabilitation Technology Supplier means a provider who meets all the requirements of Section 8.590.5.D.

Disposable Medical Supplies (Supplies) means supplies prescribed by a physician that are specifically related to the active treatment or therapy for an illness or physical condition. Supplies are non-durable, disposable, consumable and/or expendable.

Durable Medical Equipment (DME) means medically necessary equipment prescribed by a physician that can withstand repeated use, serves a medical purpose, and is appropriate for use outside of a medical facility.

Financial Relationship means any ownership interest, investment interest or compensation arrangement between a Qualified Health Care Professional and a Complex Rehabilitation Technology Supplier, or their officers, directors, employees or Immediate Family Members. An ownership or investment interest may be reflected in equity, debt, or other instruments and includes, but is not limited to, mortgages, deeds of trust, notes or other obligations secured by either entity.

Facilitative Device means DME with a retail price equal to or greater than one hundred dollars that is exclusively designed and manufactured for a client with disabilities to improve, maintain or restore self-sufficiency or quality of life through facilitative technology. Facilitative Devices do not include Wheelchairs.

Hearing Aid means a wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories thereto, including ear molds but excluding batteries and cords.

Immediate Family Member means any spouse, natural or adoptive parent, natural or adoptive child, stepparent, stepchild, sibling or stepsibling, in-laws, grandparents and grandchildren.

Medical Necessity, for purposes of rule 8.590, means DME, Supplies and Prosthetic or Orthotic Devices that are necessary in the treatment, prevention or alleviation of an illness, injury, condition or disability.

Misuse means failure to maintain and/or the intentional utilization of DME, Supplies and Prosthetic or Orthotic Device in a manner not prescribed, recommended or appropriate that results in the need for repairs or replacement. Misuse also means DME, Supply or Prosthetic Device use by someone other than the client for whom it was prescribed.

Prosthetic or Orthotic Device means replacement, corrective or supportive devices that artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body.

Qualified Health Care Professional means a licensed physical therapist, a licensed occupational therapist, or other licensed health care professional who performs specialty evaluations within his/her scope of practice and who has no Financial Relationship with a Complex Rehabilitation Technology Supplier.

Related Owner means an individual with 5% or more ownership interest in a business and one entitled to a legal or equitable interest in any property of the business whether the interest is in the form of capital, stock, or profits of the business.

Related Party means a provider who is associated or affiliated with, or has control of, or is controlled by the organization furnishing the DME, Supplies and Prosthetic or Orthotic Device. An owner related individual shall be considered an individual who is a member of an owner's immediate family, including a spouse, natural or adoptive parent, natural or adoptive child, stepparent, stepchild, sibling or stepsibling, in-laws, grandparents and grandchildren.

Wheelchair means any wheelchair or scooter that is motor driven or manually operated for the purposes of mobility assistance, purchased by the Department or donated to the client.

Wrongful Disposition means the mismanagement of DME, Supplies and Prosthetic or Orthotic Devices by a client by selling or giving away the item reimbursed by the Department.

## **8.590.2 BENEFITS**

8.590.2.A. DME, Supplies and Prosthetic or Orthotic Devices are a benefit when Medically Necessary. To determine Medical Necessity the equipment, supplies, and Prosthetic or Orthotic Device shall:

1. Be prescribed by a physician and when applicable, be recommended by an appropriately licensed practitioner.

2. Be a reasonable, appropriate and effective method for meeting the client's medical need.
  3. Have an expected use that is in accordance with current medical standards or practices.
  4. Be cost effective, which means that less costly and medically appropriate alternatives do not exist or do not meet treatment requirements.
  5. Provide for a safe environment.
  6. Not be experimental or investigational, but generally accepted by the medical community as standard practice.
  7. Not have as its primary purpose the enhancement of a client's personal comfort or to provide convenience for the client or caretaker.
- 8.590.2.B. DME, Supplies and Prosthetic or Orthotic Devices shall not be provided to clients residing in a hospital, nursing facility or other facility receiving daily Medicaid reimbursement except under the following circumstances:
1. DME, Supplies and Prosthetic or Orthotic Devices may be provided to clients residing in a hospital, nursing facility or other facility receiving daily Medicaid reimbursement if the client is within fourteen days of discharge and when prior authorization and/or training are needed to assist the client with equipment usage and the equipment is needed immediately upon discharge from the facility.
  2. Repairs and modifications to client owned DME, Prosthetic or Orthotic Devices not required as part of the per diem reimbursement shall be provided to clients residing in a hospital, nursing facility or other facility receiving daily Medicaid reimbursement.
  3. Prosthetic or Orthotic Devices may be provided to clients residing in a hospital, nursing facility or other facility receiving daily Medicaid reimbursement if Prosthetic or Orthotic benefits are not included in the facilities' per diem rate.
- 8.590.2.C. DME, Supplies and Prosthetic or Orthotic Devices shall not be duplicative or serve the same purpose as items already utilized by the client unless it is medically required for emergency or backup support. Backup equipment shall be limited to one.
- 8.590.2.D. All items purchased by the Department shall become the property of the client unless the client and provider are notified otherwise by the Department at the time of purchase.
- 8.590.2.E. Rental equipment shall be provided if the Department determines it to be cost effective and Medically Necessary.
- 8.590.2.F. Supplies shall be for a specific purpose, not incidental or general purpose usage.
- 8.590.2.G. The following DME and Supplies are benefits for clients regardless of age:
1. Ambulation devices and accessories including but not limited to canes, crutches or walkers.
  2. Bath and bedroom safety equipment.
  3. Bath and bedroom equipment and accessories including, but not limited to, specialized beds and mattress overlays.

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4. Manual or power Wheelchairs and accessories.
  5. Diabetic monitoring equipment and related disposable supplies.
  6. Elastic supports/stockings.
  7. Blood pressure, apnea, blood oxygen, Pacemaker and uterine monitoring equipment and supplies.
  8. Oxygen and oxygen equipment in the client's home, a nursing facility or other institution. The institutional oxygen benefit is fully described in 10 C.C.R. 2505-10, Section 8.580.
  9. Transcutaneous and/or neuromuscular electrical nerve stimulators (TENS/NMES) and related supplies.
  10. Trapeze, traction and fracture frames.
  11. Lymphedema pumps and compressors.
  12. Specialized use rehabilitation equipment.
  13. Oral and enteral formulas and supplies.
  14. Parenteral equipment and supplies.
  15. Environmental controls for a client living unattended if the controls are needed to assure medical safety.
  16. Facilitative Devices.
    - a. Telephone communication devices for the hearing impaired and other facilitative listening devices, except hearing aids, and cochlear implants.
    - b. Computer equipment and reading devices with voice input or output, optical scanners, talking software, Braille printers and other devices that provide access to text.
    - c. Computer equipment with voice output, artificial larynges, voice amplification devices and other alternative and augmentative communication devices.
    - d. Voice recognition computer equipment software and hardware and other forms of computers for persons with disabilities.
    - e. Any other device that enables a person with a disability to communicate, see, hear or maneuver including artificial limbs and orthopedic footwear.
  17. Complex Rehabilitation Technology.
- 8.590.2.H. The following DME are benefits to clients under the age of 21:
1. Hearing aids and accessories.
  2. Phonic ear.
  3. Therapy balls for use in physical or occupational therapy treatment.
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4. Selective therapeutic toys.
  5. Computers and computer software when utilization is intended to meet medical rather than educational needs.
  6. Vision correction unrelated to eye surgery.
- 8.590.2.I. The following Prosthetic or Orthotic Devices are benefits for clients regardless of age:
1. Artificial limbs.
  2. Facial Prosthetics.
  3. Ankle-foot/knee-ankle-foot orthotics.
  4. Recumbent ankle positioning splints.
  5. Thoracic-lumbar-sacral orthoses.
  6. Lumbar-sacral orthoses.
  7. Rigid and semi-rigid braces.
  8. Therapeutic shoes.
  9. Orthopedic footwear, including shoes, related modifications, inserts and heel/sole replacements.
  10. Specialized eating utensils and other medically necessary activities of daily living aids.
  11. Augmentative communication devices and communication boards.
- 8.590.2.J. Repairs and replacement parts are covered under the following conditions:
1. The item was purchased by Medicaid; or
  2. The item is owned by the client, client's family or guardian; and
  3. The item is used exclusively by the client; and
  4. The item's need for repair was not caused by client misuse, abuse or neglect; and
  5. The item is no longer under the manufacturer warranty.
- 8.590.2.K. Repairs, replacement, and maintenance shall be based on the manufacturer's recommendations and shall be performed by a qualified rehabilitation professional. Repairs, replacement and maintenance shall be allowed on the client's primary equipment and/or one piece of backup equipment. Multiple backup equipment will not be repaired, replaced or maintained.
- 8.590.2.L. If repairs are frequent and repair costs approach the purchase price of new equipment, the provider shall make a request for the purchase of new equipment. The prior authorization request shall include supporting documentation explaining the need for the replacement equipment and the cost estimates for repairs on both the old equipment and the new equipment purchase.

8.590.2.M. Supplies are a covered benefit when related to the following:

1. Surgical, wound or burn care.
2. Syringes or needles.
3. Bowel or bladder care.
4. Antiseptics or solutions.
5. Gastric feeding sets and supplies.
6. Tracheostomy and endotracheal care supplies.
7. Diabetic monitoring.

8.590.2.N. Quantities of supplies shall not exceed one month's supply unless they are only available in larger quantities as packaged by the manufacturer.

8.590.2.O. Medicaid clients for whom Wheelchairs, Wheelchair component parts and other specialized equipment were authorized and ordered prior to enrollment in a Managed Care Organization, but delivered after the Managed Care Organization enrollment shall be the responsibility of the Department. All other DME and disposable supplies for clients enrolled in a Managed Care Organization shall be the responsibility of the Managed Care Organization.

8.590.2.P. Items used for the following are not a benefit to a client of any age:

1. Routine personal hygiene.
2. Education.
3. Exercise.
4. Participation in sports.
5. Client or caretaker convenience.
6. Cosmetic purposes.
7. Personal comfort.

8.590.2.Q. For clients age 21 and over, the following items are not a benefit:

1. Hearing aids and accessories.
2. Phonic ears.
3. Therapeutic toys.
4. Vision correction unrelated to eye surgery.

**8.590.2.R. Rental Policy.**

1. The Department may set a financial cap on certain rental items. The monetary price for those items shall be determined by the Department and noted in the Medicaid bulletin. The provider is responsible for all maintenance and repairs as described at 8.590.4.P-Q, until the cap is reached.
2. Upon reaching the capped amount, the equipment shall be considered purchased and shall become the property of the client. The provider shall give the client and/or caregiver all applicable information regarding the equipment as described at 8.590.4.C.4. The equipment shall not be under warranty after the rental period ends.
3. The rental period may be interrupted, for a maximum of sixty consecutive days.
4. If the rental period is interrupted for a period greater than sixty consecutive days, the rental period must begin again. The interruption must be justified, documented by a physician, and maintained in the provider file.
5. If the client changes providers, the current rental cap remains in force.

**8.590.2.S DME and Supply Benefit Coverage Standards Incorporated by Reference**

All eligible providers of Durable Medical Equipment and Disposable Medical Supplies enrolled in the Colorado Medicaid program shall be in compliance with the following Colorado Medicaid Benefit Coverage Standards, which are hereby incorporated by reference:

1. Alternative and Augmentative Communication Devices (AACD) (approved June 28, 2013). The incorporation of the AACD Benefit Coverage Standard excludes later amendments to, or editions of, the referenced material.

These Benefit Coverage Standards are available from Colorado Medicaid's Benefits Collaborative Web site at [Colorado.gov/hcpf](http://Colorado.gov/hcpf). Click "Boards & Committees," and click "Benefits Collaborative," and click "Approved Benefit Coverage Standards." Pursuant to § 24-4-103 (12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, CO 80203. Certified copies of incorporated materials are provided at cost upon request.

**8.590.3 PRIOR AUTHORIZATION**

**8.590.3.A.** Selected DME, Supplies, and Prosthetic or Orthotic Devices require prior authorization before they will be provided. All items requiring prior authorization are listed in the Medicaid bulletin.

**8.590.3.B.** Prior authorization shall not be required for Medicare Crossover claims.

**8.590.3.C.** Prior authorization shall be required for clients who have other primary insurance besides Medicare.

**8.590.3.D.** Prior authorization requests shall include the following information:

1. A full description of the item(s).
2. The requested number of items.

3. A full description of all attachments, accessories and/or modifications needed to the basic item(s).
4. The effective date and estimated length of time the item(s) will be needed.
5. The diagnosis, prognosis, previous and current treatments and any other clinical information necessary to establish Medical Necessity for the client.
6. Any specific physical limitations the client may have that are relevant to the prior authorization consideration.
7. The client's prescribing physician's, primary care physician's and provider's name and identification numbers.
8. The serial numbers for all Wheelchair repairs.
9. The ordering physician's signature. The physician can either sign the authorization or attach a written prescription or letter of medical necessity to the authorization.

8.590.3.E. Diagnostic and clinical information shall be completed prior to the physician's signature. The provider shall not complete or add information to the prior authorization after the physician has signed the request.

8.590.3.F. Requests for prior authorization shall be submitted in a timely fashion. Requests submitted with a begin date in excess of three months prior to the date of submission shall include additional, updated documentation indicating the continued Medical Necessity of the request. Retroactive approval beyond three months without such documentation shall be considered only in cases of client retroactive program eligibility.

8.590.3.G. Approval of a prior authorization does not guarantee payment or constitute a waiver of any claims processing requirements including eligibility and timely filing.

#### **8.590.4 PROVIDER RESPONSIBILITIES**

Providers shall issue express warranties for Wheelchairs and Facilitative Devices and shall assure that any refund resulting from the return of a Wheelchair or other Facilitative Device is returned to the Department in compliance with Sections 6-1-401 to 6-1-412, C.R.S. (2005) and Sections 6-1-501 to 6-1-511, C.R.S. (2005). Sections 6-1-401 to 6-1-412 and 6-1-501 to 6-1-511, C.R.S. (2005) are incorporated herein by reference. No amendments or later editions are incorporated. The Acute Care Benefits Section Manager, Colorado Department of Health Care Policy and Financing may be contacted at 1570 Grant Street, Denver, Colorado 80203, for a copy of the statute, or the materials may be examined at any publications depository library.

8.590.4.A. The Provider shall implement a system that supports client autonomy and describes how equipment will be serviced and maintained, routine follow-up and response procedures to prevent any interruption of services to the clients. This system shall include provisions describing how service and repairs may occur at the client's location when appropriate.

8.590.4.B. The Provider shall implement and maintain a process for honoring all warranties expressed and implied under applicable State laws.

8.590.4.C. Providers of custom Wheelchairs, seating products and any other DME shall be able to appropriately assess and provide adequate repairs, adjustment and service by qualified rehabilitation professionals for all products they distribute.

- 8.590.4.D. Providers shall maintain the following for all items provided to a client:
1. Physician prescriptions.
  2. Approved prior authorization requests.
  3. Additional documentation received from physicians or other licensed practitioners.
  4. Documentation that the client and/or caregiver have been provided with the following:
    - a. Manufacturer's instructions.
    - b. Warranty information.
    - c. Registration documents.
    - d. Service manual.
    - e. Operating guides.
  5. Documentation on all reimbursed equipment, which shall include:
    - a. Manufacturer's name and address.
    - b. Date acquired.
    - c. Acquisition cost.
    - d. Model number.
    - e. Serial number.
    - f. Accessories, attachments or special features included in the item.
  6. Providers shall verify that equipment requiring repairs belongs to the presenting client.
- 8.590.4.E. Providers shall retain all documentation for a period of six years.
- 8.590.4.F. Providers shall provide a copy of all documentation to a client or his/her representative, if requested.
- 8.590.4.G. Providers shall be responsible for delivery of and instructing the client on the proper use of the ordered/authorized equipment or supplies appropriate for the stated purpose consistent with the requirements, goals and desired outcomes at the time of the prescription and delivery.
- 8.590.4.H. The provider shall be responsible for client evaluation, wheelchair measurements and fittings, client education, adjustments, modifications and delivery set-up installation of equipment in the home. If modifications require the provider to fabricate customized equipment or orthotics to meet client needs, the provider shall justify the necessity and the cost of additional materials of the modifications. Modifications shall not alter the integrity, safety or warranty of the equipment.

- 8.590.4.I. The provider shall pick-up inappropriate or incorrect items within five business days of being notified. The provider shall not bill the Department for items known to be inappropriate or incorrect and awaiting pick-up. The provider shall submit a credit adjustment to the Department within twenty business days following the pick-up date if a claim was submitted prior to notification an item was inappropriate or incorrect.
- 8.590.4.J. Providers shall confirm continued need for disposable supplies with the client or caretaker prior to supply shipment.
- 8.590.4.K. All purchased equipment shall be new at the time of delivery to the client unless an agreement was reached in advance with the client and Department.
- 8.590.4.L. Providers shall provide DME, Supplies, Prosthetic or Orthotic Devices, repairs and all other services in the same manner they provide these services to non-Medicaid clients.
- 8.590.4.M. Providers shall ensure the equipment provided will be warranted in accordance with the manufacturer's warranty. The provider shall not bill Medicaid or the client for equipment, parts, repairs, or other services covered by the warranty.
- 8.590.4.N. The following requirements shall apply to warranted items:
1. The provider shall be able to provide adequate repairs, adjustments and services by appropriately trained technicians for all products they distribute.
  2. The provider shall complete services or repairs in a timely manner and advise the client on the estimated completion time.
  3. The provider shall arrange for appropriate alternative, like equipment in the absence of client owned backup equipment. The provider shall provide the alternative equipment at no cost. If the backup equipment is not available as loan equipment, the provider shall arrange for a temporary equipment rental through the Department.
  4. The provider shall exclude from warranty provisions, replacement or repairs to equipment that are no longer able to meet client needs due to changes in anatomical and/or medical condition that occurred after purchase.
  5. The provider may refuse warranty services on items for which there have been documented patterns of specific client abuse, misuse or neglect. The provider shall notify the Department in all documented cases of abuse, misuse or neglect within ten business days of learning of the incident of abuse.
- 8.590.4.O. Previously used or donated DME may be provided to the client if agreed upon by the client and the Department Departmental approval will be coordinated by the Acute Care Benefits Section.
- 8.590.4.P. The Provider shall assure the item provided meets the following conditions:
1. The item is fully serviced and reconditioned.
  2. The item is functionally sound and in good operating condition.
  3. The item will be repaired and have parts replaced in a manner equivalent to an item that is new. The item will have parts available for future repairs in a manner equivalent to the manufacturer's warranty on a like item which is new.

4. The provider will make all adjustments and modifications needed by the client during the first year of use, except for changes and adjustments required due to growth or other anatomical changes or for repairs not covered by the manufacturer's warranty on a like new item.
- 8.590.4.Q. The provider shall receive and perform service and repairs in the same manner they provide services for non-Medicaid clients for rental equipment.
- 8.590.4.R. The provider shall assure the following for rental equipment:
1. Appropriate service to the item.
  2. Complete services or repairs in a timely manner with an estimate of the approximate time required.
  3. Appropriate alternative equipment during repairs.
  4. Provision and replacement of all expendable items, including but not limited to hoses, fuses, and batteries.

#### **8.590.5 PROVIDER REQUIREMENTS**

- 8.590.5.A. Providers are required to have one or more physical location(s), within the State of Colorado, or within fifty (50) miles of any Colorado border.
- 8.590.5.B. The above providers must also have:
1. A street address; and
  2. A local business telephone number;
  3. An inventory; and
  4. Sufficient staff to service or repair products.
- 8.590.5.C. Providers who do not meet the requirements of 8.590.5.A may apply to become a Medical provider if the DME or disposable medical supplies are medically necessary and cannot otherwise be purchased from a provider who meets the requirements of 8.590.5.A.
1. Applications from providers who do not meet the requirements of 8.590.5.A must be submitted to the DME Program Coordinator for approval.
  2. Applications submitted pursuant to this section will be reviewed for approval on a case-by-case basis for those specialty items only.
- 8.590.5.D. To qualify as a Complex Rehabilitation Technology Supplier, a provider must meet the following requirements:
1. Be accredited by a recognized accrediting organization as a supplier of Complex Rehabilitation Technology;
  2. Meet the supplier and quality standards established for Durable Medical Equipment suppliers under the Medicare or Medical Assistance Program;

3. Employ at least one Complex Rehabilitation Technology Professional at each physical location to:
  - a. Analyze the needs and capacities of a client for a Complex Rehabilitation Technology item in consultation with the evaluating clinical professionals;
  - b. Assess and determine the appropriate Complex Rehabilitation Technology for a client, with such involvement to include seeing the client either in person or by any other real-time means within a reasonable time frame during the determination process; and
  - c. Provide the client with technology-related training in the proper use and maintenance of the selected Complex Rehabilitation Technology items.
4. Maintain a reasonable supply of parts, adequate physical facilities, qualified and adequate service or repair technicians to provide clients with prompt service and repair of all Complex Rehabilitation Technology it sells or supplies; and
5. Provide the client with written information at the time of sale on how to access service and repair.

#### **8.590.6 CLIENT RESPONSIBILITIES**

- 8.590.6.A. Clients or client caregivers shall be responsible for the prudent care and use of DME, Supplies, and Prosthetic or Orthotic Devices. Repairs, servicing or replacement of items are not a benefit if there is documented evidence of client Abuse, Misuse, Neglect or Wrongful Disposition.
- 8.590.6.B. Clients shall be responsible for the cost of any additional items or enhancements to equipment not deemed Medically Necessary. The client shall sign an agreement with the provider that states:
1. The cost of the items.
  2. That the client was not coerced into purchasing the items.
  3. That the client is fully responsible for the cost, servicing and repairs to the items after the warranty period is completed.
- 8.590.6.C. The client shall contact the point of purchase for service and repairs to covered items under warranty. Clients may contact a participating provider of their choice for service and repairs to covered items not under warranty or for an item under warranty if the original point of purchase is no longer a participating provider.
- 8.590.6.D. The client shall become the owner of any equipment purchased by the Department and remains subject to Medicaid DME rules unless otherwise notified by the Department at the time of purchase.
- 8.590.6.E. The client shall be responsible for obtaining a police report for items being replaced due to theft, fire damage or accident. The police report shall be attached to the prior authorization requesting replacement of the item.
- 8.590.6.F. The client shall be responsible for reporting to the manufacturer, dealer or alternative warranty service provider instances where a Wheelchair or Facilitative Device does not conform to the applicable express warranty.

8.590.6.G. The client or caregiver shall be responsible for routine maintenance on all equipment purchased or rented by the Department. Routine maintenance is the servicing described in the manufacturer's operating manual as being performed by the user to properly maintain the equipment. Non-performance of routine maintenance shall be considered Neglect. Routine maintenance includes, but is not limited to:

1. Cleaning and lubricating moving parts.
2. Adding water to batteries.
3. Checking tire pressure.
4. Other prescribed Manufacturer procedures.

8.590.6.H. The client utilizing rental equipment shall be responsible for notifying the provider of any change of address. The client shall be responsible for any rental fee accrued during the time the equipment's location is unknown to the provider.

8.590.6.I. The client shall not remove rental equipment from Colorado.

#### **8.590.7 REIMBURSEMENT**

8.590.7.A. Invoices received from Related Owners or Related Parties shall not be accepted. Only invoices received from unrelated manufacturers or wholesale distributors shall be recognized as allowable invoices.

8.590.7.B. The provider shall not bill the Department for authorized accessory items included by the manufacturer as part of a standard package for an item.

8.590.7.C. The provider shall credit the cost of any accessory or part removed from a standard package to the Department.

8.590.7.D. Clients and providers may negotiate in good faith a trade-in amount for DME items no longer suitable for a client because of growth, development or a change in anatomical and or medical condition. Such trade-in allowances shall be used to reduce the cost incurred by the Department for a replacement item.

8.590.7.E. The refund amount due the Department on a returned Wheelchair or Facilitative Device shall be agreed upon by the dealer or manufacture; wherever the item was returned, and the Department.

8.590.7.F. Reimbursement for allowable modifications, service, and repairs on durable medical equipment is as follows:

1. Labor for modifications, service, and repairs on durable medical equipment shall be reimbursed at the lesser of submitted charges or the rate specified on the Department fee schedule.
2. Parts that are listed on the Department's fee schedule, with a HCPCS code, that have a maximum allowable reimbursement rate shall be reimbursed at the lesser of submitted charges or the rate specified on the Department fee schedule.
3. Manually priced parts are reimbursed according to the same methodology used for purchased equipment, as described in 8.590.7.I.

4. The provider shall not be reimbursed for labor or parts in excess of unit limitations.
  5. Reimbursement for a modification that requires the original equipment provider to supply a part from their own inventory or stock is contingent upon the provider submitting supporting documentation that demonstrates the need and actual cost of the parts to be used in the modification.
- 8.590.7.G. Reimbursement for used equipment shall include:
1. A written, signed and dated agreement from the client accepting the equipment.
  2. Billing the Department, the lesser of 60% of the maximum allowable reimbursement indicated in the most recent Medicaid Bulletin or 60% of the provider's usual submitted charges.
- 8.590.7.H. Reimbursement for purchased or rented equipment shall include, but is not limited to:
1. All elements of the manufacturer's warranties or express warranties.
  2. All adjustments and modification needed by the client to make the item useful and functional.
  3. Delivery, set-up and installation of equipment in the home, and if appropriate to a specific room in the home.
  4. Training and instruction to the client or caregiver in the safe, sanitary, effective and appropriate use of the item and necessary servicing and maintenance to be done by the client or caregiver.
  5. Training and instruction on the manufacturer's instructions, servicing manuals and operating guides.
- 8.590.7.I. Reimbursement rate for a purchased item shall be as follows:
1. Fee Schedule items, with a HCPC or CPT code, that have a maximum allowable reimbursement rate shall be reimbursed at the lesser of submitted charges or the Department fee schedule rate.
  2. Manually priced items that do not have an assigned Fee Schedule rate shall be reimbursed at the lesser of submitted charges or current manufacturer suggested retail price (MSRP) less 19.86 percent.
  3. Manually priced items that do not have an MSRP or Fee Schedule rate shall be reimbursed at the lesser of submitted charges or by invoice of actual acquisition cost, minus any discount to the provider as set forth in policy, plus 17.26 percent.
- 8.590.7.J. Reimbursement for rental items shall be billed and paid in monthly increments unless otherwise indicated in the Medicaid Bulletin.
- 8.590.7.K. Reimbursement for clients eligible for both Medicare and Medicaid shall be made in the following manner:
1. The provider shall bill Medicare first unless otherwise authorized by the Department.

2. If Medicare makes payment, Medicaid reimbursement will be based on appropriate deductibles and co-payments.
  3. If Medicare denies payment, the provider shall be responsible for billing the Department. Reimbursement is dependent upon the following conditions:
    - a. A copy of the Explanation of Medicare Benefits' shall be maintained in the provider's files when billing electronically or attached to the claim if it is billed manually; or
    - b. Medicaid reimbursement shall not be made if the Medicare denial is based upon provider submission error.
- 8.590.7.L. Reimbursement for Complex Rehabilitation Technology provided to clients shall be made when the following conditions are met:
1. The billing provider is a Complex Rehabilitation Technology Supplier;
  2. The client has been evaluated or assessed, for selected Complex Rehabilitation Technology identified in the Medicaid Bulletin, by:
    - a. A Qualified Health Care Professional; and
    - b. A Complex Rehabilitation Technology Professional employed by the billing provider.
  3. The Complex Rehabilitation Technology is provided in compliance with all applicable federal and state laws, rules, and regulations, including those rules governing the Medical Assistance Program.

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### **Editor's Notes**

10 CCR 2505-10 has been divided into smaller sections for ease of use. Versions prior to 3/4/07, Statements of Basis and Purpose, and rule history are located in the first section, 10 CCR 2505-10. Prior versions can be accessed from the All Versions list on the rule's current version page. To view versions effective on or after 3/4/07, select the desired section of the rule, for example 10 CCR 2505-10 8.100, or 10 CCR 2505-10 8.500.

### **History**

*[For history of this section, see Editor's Notes in the first section, 10 CCR 2505-10]*