DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

Medical Services Board

MEDICAL ASSISTANCE - SECTION 8.600

10 CCR 2505-10 8.600

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

8.600 Services for Individuals with Intellectual and Developmental Disabilities

8.600.1 Authority

A. These rules are promulgated under the authorities established in Section 25.5-10, C.R.S.

B. These rules and the program guidelines, standards and policies of the Colorado Department of Health Care Policy and Financing, These rules and the program guidelines, standards and policies of the Colorado Department of Health Care Policy and Financing, shall apply to all community centered boards, service agencies and regional centers receiving funds administered by the Colorado Department of Health Care Policy and Financing.

8.600.2 Scope and Purpose

These rules govern services and supports for individuals with developmental disabilities authorized and funded in whole or in part through the Colorado Department of Health Care Policy and Financing. These services and supports include the following, as provided by the Colorado Revised Statutes and through annual appropriation authorizations by the Colorado General Assembly:

A. Services and supports provided to residents of a State operated facility or program or purchased by the Department.

B. The purchase of services and supports through Community Centered Boards, case management agencies, and service agencies.

C. Other services and supports specifically authorized by the Colorado General Assembly.

D. Services and supports funded through the Home and Community-Based Services waivers under Sections 1915(c), 1902(a)(10), and 1902(a)(1) of the Social Security Act and under Section 25.5-4-401, et seq., C.R.S.

8.600.3 Consequences for Non-Compliance

A. Pursuant to Title 25.5, Article 10, C.R.S., upon a determination by the Executive Director or designee that services and supports have not been provided in accordance with the program or financial administration standards contained in these rules, the Executive Director or designee may reduce, suspend, or withhold payment to a community centered board, service agency under contract with a community centered board, or service agency from which the Department purchases services or supports directly.

B. Prior to initiating action to reduce, suspend, or withhold payment to a community centered board or service agency for failure to comply with rules and regulations of the Department, the Executive Director or designee shall specify the reasons therefor in writing and shall specify the actions necessary to achieve compliance.

C. The Executive Director or designee may revoke the designation of a community centered board upon a finding that the community centered board is in violation of provisions of Section 25.5-10, C.R.S., other state or federal laws, or these rules.

8.600.4 Definitions

As used in these rules, unless the context requires otherwise:

“Abuse” is as defined at Sections 16-22-102 (9), 19-1-103, 25.5-10-202 (1) (a)-(c), and 26.3.1-101 C.R.S..

“Algorithm” means a formula that establishes a set of rules that precisely defines a sequence of operations. An algorithm is used to assign Clients into one of six support levels in the Home and Community Based Services for Persons with Developmental Disabilities (HCBS-DD) and Home and Community Based Services-Supported Living Services (HCBS-SLS) waivers.

“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.

“Assistive Technology Services” includes, but is not limited to, the evaluation of a person's need for assistive technology; helping to select and obtain appropriate devices; designing, fitting and customizing those devices; purchasing, repairing or replacing the devices; and, training the individual, or if appropriate a family member, to use the devices effectively.

“Authorized Representative” means an individual designated by a Client or by the parent or guardian of the Client, if appropriate, to assist the Client in acquiring or utilizing services and supports, this does not include the duties associated with an Authorized Representative for Consumer Directed Attendant Support Services (CDASS) as defined in 8.510.1.

“Authorized Services” means those services and supports authorized pursuant to Section 25.5-10-206, C.R.S., which the Department shall provide directly or purchase subject to available appropriations for persons who have been determined to be eligible for such services and supports and as specified in the eligible person's individualized plan.

“Caretaker” is as defined at Section 25.5-10-202(1.6)(a)-(c), C.R.S.

“Caretaker Neglect” is as defined at Section 25.5-10-202(1.8)(a)-(c), C.R.S.

“Case Management Agency” (CMA) means a public or private not-for-profit or for-profit agency that meets all applicable state and federal requirements and is certified by the Department to provide case management services for Home and Community Based Services waivers pursuant to Section 25.5-10-209.5, C.R.S. and pursuant to a provider participation agreement with the state department.

“Challenging Behavior” means behavior that puts the person at risk of exclusion from typical community settings, community services and supports, or presents a risk to the health and safety of the person or others or a significant risk to property.

"Client" means an individual who has met Long-Term Services and Supports (LTSS) eligibility requirements and has been offered and agreed to receive Home and Community Based Services (HCBS) in the Children's Extensive Supports (HCBS-CES) waiver, the HCBS waiver for Children's Habilitation Residential Program (CHRP), the HCBS waiver for Persons with Developmental Disabilities (HCBS-DD), Family Support Services Program (FSSP),or the Supported Living Services (HCBS-SLS) waiver.

"Community Centered Board" means a private corporation, for-profit or not-for-profit that is designated pursuant to Section 25.5-10-209, C.R.S., responsible for, but not limited to conducting Developmental Disability determinations, waiting list management Level of Care Evaluations for Home and Community Based Service waivers specific to individuals with intellectual and developmental disabilities, and management of State Funded programs for individuals with intellectual and developmental disabilities.

"Comprehensive Review of the Person's Life Situation" means a thorough review of all aspects of the person's current life situation by the program approved service agency in conjunction with other members of the interdisciplinary team.

"Comprehensive Services" means habilitation services and supports that provide a full day (24 hours) of services and supports to ensure the health, safety and welfare of the individual, and to provide training and habilitation services or a combination of training and supports in the areas of personal, physical, mental and social development and to promote interdependence, self-sufficiency and community inclusion. Services include residential habilitation services and supports, day habilitation services and supports and transportation.

"Consent" means an informed assent, which is expressed in writing and is freely given. Consent shall always be preceded by the following:

A. A fair explanation of the procedures to be followed, including an identification of those which are experimental;

B. A description of the attendant discomforts and risks;

C. A description of the benefits to be expected;

D. A disclosure of appropriate alternative procedures together with an explanation of the respective benefits, discomforts and risks;

E. An offer to answer any inquiries regarding the procedure;

F. An instruction that the person giving consent is free to withdraw such consent and discontinue participation in the project or activity at any time; and,

G. A statement that withholding or withdrawal of consent shall not prejudice future provision of appropriate services and supports to individuals.

"Developmental Delay" means that a child meets one or more of the following:

A. A child who is less than five (5) years of age at risk of having a developmental disability because of the presence of one or more of the following:

1. Chromosomal conditions associated with delays in development,

2. Congenital syndromes and conditions associated with delays in development,

3. Sensory impairments associated with delays in development,

4. Metabolic disorders associated with delays in development,

5. Prenatal and perinatal infections and significant medical problems associated with delays in development,

6. Low birth weight infants weighing less than 1200 grams, or

7. Postnatal acquired problems resulting in delays in development.

B. A child less than five (5) years of age who is significantly delayed in development in one or more of the following areas:

1. Communication,

2. Adaptive behavior,

3. Social-emotional,

4. Motor,

5. Sensory, or

6. Cognition.

C. A child less than three (3) years of age who lives with one or both parents who have a developmental disability.

“Critical Incident” means an actual or alleged event that creates the risk of serious harm to the health or welfare of an individual receiving services; and it may endanger or negatively impact the mental and/or physical well-being of an individual. Critical Incidents include, but are not limited to: Injury/illness; abuse/neglect/exploitation; damage/theft of property; medication mismanagement; lost or missing person; criminal activity; unsafe housing/displacement; or death

“Developmental Disabilities Professional” means a person who has at least a Bachelor’s Degree and a minimum of two (2) years’ experience in the field of developmental disabilities or a person with at least five (5) years of experience in the field of developmental disabilities with competency in the following areas:

A. Understanding of civil, legal and human rights;

B. Understanding of the theory and practice of positive and non-aversive behavioral intervention strategies;

C. Understanding of the theory and practice of non-violent crisis and behavioral intervention strategies.

“Developmental Disability” means a disability that:

A. Is manifested before the person reaches twenty-two (22) years of age;

B. Constitutes a substantial disability to the affected individual, as demonstrated by the criteria below at C, 1 and/or C, 2; and,

C. Is attributable to an intellectual and developmental disability or related conditions which include Prader-Willi syndrome, 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 an intellectual and developmental disability. Unless otherwise specifically stated, the federal definition of "developmental disability" found 42 U.S.C. § 15002, et seq., shall not apply.

1. "Impairment of general intellectual functioning" means that the person has been determined to have a full scale 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).

a. A secondary score comparable to the General Abilities Index for a Wechsler Intelligence Scale that is two or more standard deviations below the mean may be used only if a full scale score cannot be appropriately derived.

b. Score shall be determined using a norm-referenced, standardized test of general intellectual functioning comparable to a comprehensively administered Wechsler Intelligence Scale or Stanford-Binet Intelligence Scales, as revised or current to the date of administration. The test shall be administered by a licensed psychologist or a school psychologist.

c. When determining the intellectual quotient equivalent score, a maximum confidence level of ninety percent (90%) shall be applied to the full scale score to determine if the interval includes a score of 70 or less and shall be interpreted to the benefit of the Applicant being determined to have a developmental disability.

2. "Adaptive behavior similar to that of a person with intellectual disability " means that the person has an overall adaptive behavior composite or equivalent score that is two or more standard deviations below the mean.

a. Measurements shall be determined using a norm-referenced, standardized assessment of adaptive behaviors that is appropriate to the person's living environment and comparable to a comprehensively administered Vineland Scale of Adaptive Behavior, as revised or current to the date of administration. The assessment shall be administered and determined by a professional qualified to administer the assessment used.

b. When determining the overall adaptive behavior score, a maximum confidence level of ninety percent (90%) shall be applied to the overall adaptive behavior score to determine if the interval includes a score of 70 or less and shall be interpreted to the benefit of the Applicant being determined to have a developmental disability.

D. A person shall not be determined to have a developmental disability if it can be demonstrated such conditions are attributable to only a physical or sensory impairment or a mental illness.

"Emergency", as used in Section 8.608.3 regarding restraint, means a serious, probable, imminent threat of bodily harm to self or others where there is the present ability to affect such bodily harm.

“Emergency Control Procedure” means an unanticipated use of a restrictive procedure or restraint in order to keep the person receiving services and others safe.

“Executive Director” means the Executive Director of the Colorado Department of Health Care Policy and Financing unless otherwise indicated.

“Exploitation” is as defined in Section 25.5-10-202(15.5)(a)-(d) and 26-3.1-101 C.R.S.

“Extreme Safety Risk to Self” means a factor in addition to specific Supports Intensity Scale (SIS) scores that is considered in the calculation of a Client's support level. This factor shall be identified when a Client:

A. Displays self-destructiveness related to self-injury, suicide attempts or other similar behaviors that seriously threaten the Client's safety; and,

B. Has a rights suspension in accordance with Section 8.604.3 or has a court order that imposes line of sight supervision unless the Client is in a controlled environment that limits the ability of the Client to harm himself or herself.

“Family”, as used in rules pertaining to support services and the Family Support Services Program means a group of interdependent persons residing in the same household that consists of a family member with a developmental disability or a child under the age of five (5) years with a developmental delay, and one or more of the following:

A. A mother, father, brother(s), sister(s) or any combination; or,

B. Extended blood relatives such as grandparent(s), aunt(s) or uncle(s); or,

C. An adoptive parent(s); or,

D. One or more persons to whom legal custody of a person with a developmental disability has been given by a court; or,

E. A spouse and/or his/her children.

“Family Support Council” means the local group of persons within the Community Centered Board's designated service area who have the responsibility for providing guidance and direction to the Community Centered Board for the implementation of the Family Support Services Program.

“Family Support Plan (FSP)” means a plan which is written for the delivery of family support services as specified in Section 8.613.

“Functional Analysis” means a comprehensive analysis of the medical, social, environmental, and personal factors that may influence current behavior. This analysis shall also investigate the person's ability to communicate, analyze whether the current behavior is a means to communicate, and identify historical factors which may contribute to the understanding of the current behavior.

“Guardian” means a person who has qualified as a guardian of a minor or incapacitated person by testamentary or count appointment but excludes a Guardian Ad Litem.

“Harmful Act” is as defined at Section 25.5-10-202 (18.5) and 26.3.1-101 C.R.S.

“Home and Community-Based Services Waivers (HCBS)” means HCBS waiver programs, including the Home and Community Based Waiver for the Developmentally Disabled (HCBS-DD), Supported Living Services (SLS) and Children's Extensive Support (CES). “Host Home Provider” is an individual(s)who provides residential supports in his/her home to persons receiving comprehensive services who are not family members as defined in Section 25.5-10-202(16), C.R.S. A host home provider is not a developmental disabilities service agency pursuant to Section 8.602 of these rules.

“Human Rights Committee” means a third-party mechanism to adequately safeguard the legal rights of persons receiving services by participating in the granting of informed consent, monitoring the suspension of rights of persons receiving services, monitoring behavioral development programs in which persons with intellectual and developmental disabilities are involved, monitoring the use of psychotropic medication by persons with intellectual and developmental disabilities, and reviewing investigations of allegations of mistreatment of persons with intellectual and developmental disabilities who are receiving services or supports.

“Individual Service and Support Plan (ISSP)” means a plan of intervention or instruction which directly addresses the needs identified in the person's Individualized Plan and which provides specific direction and methodology to employees and contractors providing direct service to a person.

“Interdisciplinary Team (IDT)” means a group of people convened by a Community Centered Board which shall include the person 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 such person's needs and preferences, who are assembled in a cooperative manner to develop or review the individualized plan.

“Mechanical Restraint” means the use of devices intended to restrict the movement or normal functioning of a portion of an individual's body. Mechanical restraint does not include the use of protective devices used for the purpose of providing physical support or prevention of accidental injury.

“Minimum Effective Dose” means the smallest medication dosage necessary to produce the intended effect.

“Mistreated” or “Mistreatment” is as defined at Sections 25.5-10-202(29.5)(a)-(d) and 26-3.1-101 C.R.S.:

“Notice” means written notification hand delivered to or sent by first class mail that contains at least all of the following:

A. The proposed action;

B. The reason or reasons for that action;

C. The effective date of that action;

D. The specific law, regulation, or policy supporting the action;

E. The responsible agency with whom a protest of the action may be filed including the name and address of the director.

F. The dispute resolution procedure, including deadlines, in conformity with Section 8.605 and procedures on accessing agency records:

1. For disputes involving individuals as defined in Section 8.605.2, information on availability of advocacy assistance, including referral to publicly funded legal services, corporation, and other publicly or privately funded advocacy organizations, including the protection and advocacy system required under 42 U.S.C. 15001, the Developmental Disabilities Assistance and Bill of Rights Act; and,

2. For disputes involving individuals as defined in Section 8.605.2 an explanation of how the agency will provide services to a currently enrolled person during the dispute resolution period, including a statement that services will not be terminated during the appeal. Such explanation will include a description of services currently received.

“Parent” means the biological or adoptive parent.

“Person-Centered Support Plan” means as defined in Section 8.390.1 DEFINITIONS.

“Physical Restraint” means the use of manual methods to restrict the movement or normal functioning of a portion of an individual's body through direct physical contact by others except for the purpose of providing assistance/prompts. Assistance/prompts is the use of manual methods to guide or assist with the initiation or completion of and/or support the 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.

“PRN” (Pro Re Nata) means giving drugs on an “as needed” basis through a standing prescription or standing order.

“Program Approved Service Agency” means a developmental disabilities service agency or typical community service agency as defined in Section 8.602, which has received program approval by the Department pursuant to Section 8.603 of these rules.

“Program Services” means an organized program of therapeutic, habilitative, specialized support or remedial services provided on a scheduled basis to individuals with developmental disabilities.

“Prospective New Service Agency” means an individual or any publicly or privately operated program, organization or business that has completed and submitted an application with a Community Centered Board for selection and approval as a service agency to provide comprehensive services.

“Public Safety Risk-Convicted” means a factor in addition to specific SIS scores that is considered in the calculation of a Client's support level. This factor shall be identified when a Client has:

A. Been found guilty through the criminal justice system for a criminal action involving harm to another person or arson and who continues to pose a current risk of repeating a similar serious action; and,

B. A rights suspension in accordance with Section 8.604.3 or through parole or probation, or a court order that imposes line of sight supervision unless the Client is in a controlled environment that limits his or her ability to engage in the behaviors that pose a risk or to leave the controlled environment unsupervised.

“Public Safety Risk-Not Convicted” means a factor in addition to specific SIS scores that is considered in the calculation of a Client's support level. This factor shall be identified when a Client has:

A. Not been found guilty through the criminal justice system, but who does pose a current and serious risk of committing actions involving harm to another person or arson; and,

B. A rights suspension in accordance with Section 8.604.3or through parole or probation, or a court order that imposes line of sight supervision unless the Client is in a controlled environment that limits his or her ability to engage in the behaviors that pose a risk or to leave the controlled environment unsupervised.

“Rate” means the amount of money, determined by a standardized rate setting methodology, reimbursed for each unit of a defined waiver service provided to a Client by a qualified provider.

“Referral” means any notice or information (written, verbal, or otherwise) presented to a Community Centered Board which indicates that a person may be appropriate for services or supports provided through the developmental disabilities system and for which the Community Centered Board determines that some type of follow-up activity for eligibility is warranted.

“Request for Provider (RFP)” means a formal process for case managers to notify Program Approved Provider Agencies when a Client is seeking authorized services including, but not limited to, a non-identifying description of the client’s support and supervision needs.

“Regional Center” means a facility or program operated directly by the Department of Human Services, which provides services and supports to persons with developmental disabilities.

“Respondent” means a person participating in the SIS assessment who has known the Client for at least three months and has knowledge of the Client's skills and abilities. The respondent must have recently observed the Client directly in one or more places such as home, work, or in the community.

“Restrictive Procedure” means any of the following when the intent or plan is to bring an individual’s behavior into compliance:

A. Limitations of an individual's movement or activity against his or her wishes; or,

B. Interference with an individual's ability to acquire and/or retain rewarding items or engage in valued experiences.

“Request for Developmental Disability Determination” means written formal documentation, either handwritten or a signed standardized form, which is submitted to a Community Centered Board requesting that a determination of developmental disability be completed.

“Safety Control Procedure” means a restrictive procedure or restraint that is used to control a previously exhibited behavior which is anticipated to occur again and for which the planned method of intervention is developed in order to keep the person and others safe.

“Screening for Early Intervention Services” means a preliminary review of how a child is developing and learning in comparison to other similarly situated children. “Seclusion” means the placement of a Client alone in a closed room for the purpose of punishment. Seclusion for any purpose is prohibited.

“Service Agency” means an individual or any publicly or privately operated program, organization or business providing services or supports for persons with developmental disabilities.

“SIS Interviewer” means an individual formally trained in the administration and implementation of the Supports Intensity Scale by a Department approved trainer using the Department approved curriculum. SIS Interviewers must maintain a standard for conducting SIS assessments as measured through periodic interviewer reliability reviews.

“Statewide Database” means the state web-based system that contains consumer-related demographic and program data.

"Support Coordinating Agency" means a Community Centered Board which has been designated as the agency responsible for the coordination of support services (supported living services for adults and the children's extensive support program) within its service area.

"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.

"Undue Influence" means use of influence to take advantage of a person with an intellectual or developmental disability's vulnerable state of mind, neediness, pain, or emotional distress.

"Waiver Services" means those optional Medicaid services defined in the current federally approved HCBS waiver document and do not include Medicaid State Plan services.

8.600.5 OTHER PROVISIONS

A. All regional centers, community centered boards, and program approved service agencies shall maintain copies of statutes and rules and regulations relevant to the provision of authorized services, and shall ensure that appropriate employees and contractors have access to such copies and are oriented to the content of the statutes and rules.

B. All regional centers, community centered boards, and program approved service agencies shall have written policies and procedures concerning the exercise and protection of individual rights pursuant to Title 25.5, Article 10, C.R.S.

C. All regional centers, community centered boards, and program approved service agencies shall have written procedures for the protest of agency decisions or actions of the agency's employees or contractors by the person receiving services or parent of a minor or guardian of such person, or authorized representative if within the scope of his/her duties, which procedures shall meet requirements of Section 8.605 of these rules. Interpretation in native languages other than English and through such modes of communication as may be necessary shall be made available upon request.

D. Community centered boards shall serve as the single point of entry into authorized services funded by the State of Colorado, Department of Health Care Policy and Financing, both in community settings and regional centers.

E. Persons with developmental disabilities will be considered for referral, enrollment or discharge from authorized services, funded in whole or in part by the State of Colorado, without discrimination on the basis of race, religious or political affiliation, gender, national origin, age or disability.

F. All regional centers, community centered boards, and service agencies shall provide information and reports as required by the Department including, but not limited to, data necessary for the Department's data system, COPAR, billing records, and legislative reports

G. A waiver of the specific requirements of these rules and regulations may be granted for a specifically stated duration by the Department in accordance with this section:

1. A waiver of these rules and regulations may be granted only upon a finding that the waiver would not adversely affect the health, safety, welfare or rights and privileges of persons with developmental disabilities and upon further finding that a valid programmatic reason exists or a demonstrated financial hardship on the community centered board or service agency seeking the waiver such that the provision of necessary services and supports to persons served would be endangered.

2. The Department shall not waive any requirement of these rules and regulations that would in any way jeopardize the receipt of federal financial participation or other funding necessary for the provision of services and supports to persons with developmental disabilities, nor shall the Department approve waivers of rules and regulations that would in any way materially affect the rights and privileges of individuals with developmental disabilities as provided by the Colorado Revised Statutes and other applicable state and federal laws and regulations.

3. No waiver granted by the Department shall in any way constitute a waiver of the obligations of the community centered board or service agency under rules and regulations of other departments and agencies of the State of Colorado or the federal government.

4. The community centered board, service agency or regional center seeking a waiver of any of the rules and regulations contained herein bears the burden of proof in demonstrating that the waiver sought is in conformity with these provisions.

H. The community centered board, service agency, and regional center shall allow access by authorized personnel of the Department, or designee, for the purpose of reviewing services and supports which are funded by the Department and shall cooperate with the Department in the evaluation of such services and supports.

8.600.7 INCORPORATION BY REFERENCE

Any material that has been incorporated by reference in these rules does not include any later amendments or editions to the incorporated material after the referenced date provided. Pursuant to section 24-4-103(12.5), C.R.S., the Department maintains copies of the incorporated material in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203. Certified copies of incorporated materials are provided at cost upon request.

8.601 ADMINISTRATIVE SERVICES

8.601.1 COMMUNITY CENTERED BOARDS (CCB)

A. Annually, any private corporation, for profit or not for profit, seeking designation as a Community Centered Board shall submit an application for designation to the Department.

1. Applications shall be submitted in a form and manner specified by the Department which shall be made available to applicants upon request.

2. The Department shall notify all applicants by first class mail of its determination of designation or non-designation by May 15 of each year.

3. The designation shall cover a twelve (12) month period beginning July 1 and ending June 30.

4. Designation of a Community Centered Board shall be based on the following factors:

a. Utilization of existing service agencies, social networks or natural sources of support in the designated service area. This shall be determined and based on an actual count of service agencies within a designated service area and a description of utilization of such agencies as well as a description of existing social networks and natural sources of support which were utilized.

b. Encouragement of competition among service agencies within the designated service area to provide newly identified services or supports, the variety of service agencies available to the person receiving services within the designated service area, and the demonstrated effort to purchase new or expanded services or supports from service agencies other than those affiliated with the Community Centered Board. This shall be evaluated based on the ability of the applicant to substantiate such activities.

c. Utilization of state funded services and supports administered at the local level, including, but not limited to, public education, social services, public health, and rehabilitation programs. This shall be determined based on a description of local utilization of state funded services and on a review of the previous fiscal year audit, current budget submission and the designated service area plan.

d. Quality of services and supports provided for persons with developmental disabilities. Quality shall be measured based on compliance with federal and state licensing or program approval requirements, accreditation reports, agencies' self-evaluation efforts, and Department's quality assurance monitoring activities. Other resources to evaluate quality that may be considered include: analysis of disputes and complaints, use of grievance procedures, and measures of satisfaction by persons receiving services or supports.

e. The establishment of new services and supports for the prevention of institutionalization, the support of deinstitutionalization, and a commitment to innovative, effective, and inclusive services and supports for persons with developmental disabilities. This shall be determined based on past performance, documented use of innovative and inclusive service and support approaches, effectiveness measures, and a description of the Community Centered Board's future plans.

f. The demonstrated effort of the applicant to pursue authorized services and supports for all eligible persons within the designated service area. This shall be determined based on both past performance and the applicant's written plan for addressing needed but unavailable services and supports.

g. Compliance with the transparency requirements included in Section 25.5-10-209(6)-(8), C.R.S. and these rules.

5. Any applicant that has not previously functioned as a Community Centered Board shall respond to the application process with statements of intent and plans in any area where past performance cannot be documented.

B. If the Department determines that the Community Centered Board is in substantial compliance, the Community Centered Board shall receive designation. Upon designation, a Community Centered Board shall agree by contract to meet all requirements of Section 25.5-10, C.R.S., all rules and the following requirements:

1. In order to assure public accountability, the Community Centered Board shall be under the control and direction of a board of directors or trustees, pursuant to Section 25.5-10-209(2)(a), C.R.S.

2. Staff members of the Community Centered Board, employees or board members of service agencies, or contractors to the Community Centered Board or service agencies providing services to individuals through the specific Community Centered Board may not serve on the governing board.

3. Community Centered Board governing board members shall recuse themselves from proceedings which may affect their direct or indirect financial interests.

4. The Community Centered Board shall notify the Department in writing within ten (10) business days of any changes in the board of directors.

5. Each Community Centered Board shall provide to the incoming members of its board of directors training in such topics as the duties of a board member, the financial and fiduciary responsibilities assumed by board members, the intellectual and developmental disability system in the state, the overall business functions of the Community Centered Board, and any other matters that will, in the determination of the community centered board, allow the board member to better understand and fulfill his or her obligations to the board of directors and the community centered board and the role played by Community Centered Boards in the state in connection with the delivery of services for persons with intellectual and developmental disabilities.

    a. The Community Centered Board shall keep documentation indicating that each board member has received training materials. This documentation and copies of all training materials shall be provided to the department upon request.

6. The board of directors of each designated Community Centered Board shall meet no less than once each quarter of the calendar year.

7. Each Community Centered Board shall provide a direct e-mail address to each member of its board of directors on the website of the community centered board. The e-mail address selected must specify the name of the individual board member and make reference to the particular community centered board for which he or she serves as a member of the board of directors.

    a. An e-mail that is sent to a member of the board of directors of a community centered board shall not be filtered by an employee of the Community Centered Board. The CCB shall insure that all emails addressed to a member of the board of directors are provided to that board member.

    b. In the event a board member is unable to access a computer or needs assistance with e-mail, the Community Centered Board shall provide appropriate assistance, including providing e-mails in alternative formats upon request or mailing correspondence through the U.S. postal service.

8. The board of directors or trustees shall adopt specific bylaw provisions which ensure that they are in compliance with all provisions of Section 25.5-10-209(2)(b), C.R.S., and:

    a. Notices of meetings of the board of directors shall be posted in an identified public place at the Community Centered Board.

b. The Community Centered Board shall post the date, time, and location of each regularly scheduled meeting of its board of directors on the website of the Community Centered Board not less than fourteen business days prior to the date of the meeting.

c. The Community Centered Board shall post on the website of the Community Centered Board the date, time, and location of any special or emergency meeting of the board of directors not less than twenty-four hours before the meeting.

d. Each Community Centered Board shall post the agenda for each meeting of its board of directors on the website of the Community Centered Board not less than seven business days prior to the date of the meeting. Agendas shall remain posted on the website for at least three months.

e. The Community Centered Board shall post on the website of the community centered board the agenda of any special or emergency meeting of the board of directors not less than twenty-four hours before the meeting. Special or emergency meeting agendas shall remain posted on the website for at least three months.

f. The board of directors of each Community Centered Board shall present the financial statements of the corporation for the approval of the board at each regularly scheduled meeting of the board of directors. The financial statements must reflect accurate and current financial information and be prepared using generally accepted accounting principles. Where exigent circumstances are present that materially affect the preparation of the financial statements on a monthly basis, such statements may be presented for the approval of the board of directors at the next regularly scheduled meeting of the board but not less than at least once each quarter of the calendar year.

g. Each Community Centered Board shall post on the website of the Community Centered Board the minutes of each meeting of its board of directors as such minutes are approved by the board of directors. Each Community Centered Board shall also post on the website of the Community Centered Board any additional documents that were distributed to the board at such meeting that were not, as of that date, already posted on the website of the Community Centered Board unless the public distribution of such documents, or any portion of such documents, is otherwise prohibited pursuant to the privacy requirements specified in the health insurance portability and accountability act or as otherwise prohibited by law. Minutes of special meetings of the board of directors must be posted after approval by the board of the same at the board's next regular meeting.

    i. Meeting minutes shall remain posted on the website of the Community Centered Board for a minimum of three calendar years.

h. All meetings of a quorum of the board at which any public business is discussed or at which any formal action may be taken shall be open to the public for input. This does not apply to those matters covered in executive session pursuant to Section 25.5-10-209(2)(b)(IV), C.R.S.

    i. Each meeting of the board must allow for public comment, and the agenda must reflect this requirement. Public comment must be reasonably permitted during the board meeting to accommodate community needs.

i. This section does not apply to any chance meeting or social gathering of the board at which discussion of the public business of the board is not the central purpose.

j. Any documents related to functions of the Community Centered Board to be distributed at a meeting of the board of directors that are available for public dissemination at the time the agenda is posted must also be posted on the website of the Community Centered Board at the time the agenda is posted, and written copies of such documents must be made available for public dissemination at the board meeting. Such documents shall remain posted on the website for at least three months.

k. This posting requirement does not apply to any document, or any portion of such document, the disclosure of which requires the approval of the board of directors and which approval has not been obtained as of the time the agenda is posted or any other document, or any portion of such document, containing any information that is legally prohibited from being disclosed to the public pursuant to the privacy requirements specified in the health insurance portability and accountability act, any document that has been or will be discussed by the board of directors meeting in executive session, or any other document the disclosure of which is otherwise prohibited by law.

l. Any contract that each Community Centered Board enters into with either the Department of Health Care Policy And Financing or the Department of Human Services must be posted on the website of the Community Centered Board in a place on the website that allows access to the public in a clear, accessible, easily operated, and uncomplicated manner not later than thirty days following approval of the contract by the board of directors of the Community Centered Board.

i. All contracts shall remain posted on the website for at least three calendar years.

9. Upon designation the Community Centered Board shall within available appropriations provide or arrange for services and supports which meet all the provisions of Section 25.5-10-209(2)(c) through (h), C.R.S., and:

a. In accordance with reporting requirements of the Department's data system, maintain and update records of persons determined to be eligible for services and supports and who are receiving case management services.

b. Provide for case management services pursuant to Section 8.607 of these rules.

c. Notify the eligible person and, if appropriate, their parents or guardian regarding the availability of services and supports pursuant to requirements of Sections 8.607 and 8.605.2.

d. Establish a Human Rights Committee(s) as required in Section 8.608.5 of these rules.

e. Devise and implement a plan for monitoring the programmatic practices of the Community Centered Board and contracted service agencies, pursuant to Section 8.607.6 in these rules.

C. Each Community Centered Board shall submit annually a written long-range plan or an annual update to that plan for its designated service area pursuant to guidelines developed by the Department.

1. The long-range plan or annual updates to the plan shall be developed through collaborative community efforts, facilitated by the community centered board, and shall include an annual public forum.

   At a minimum, the designated service area planning process shall include appropriate opportunities and times for participation and input for persons with developmental disabilities who are receiving or waiting for services and supports: families who are receiving or waiting for services and supports; and service agencies under contract with the Community Centered Board.

2. Copies of the written long-range plan or annual update must be available to the public during business hours at a reasonable cost not to exceed the costs allowed in Section 24-72-205, C.R.S.

D. The Department shall review each Community Centered Board to assure that it complies with the requirements set forth in these rules.

E. The Department will maintain a website allowing for community members to make anonymous complaints regarding Community Centered Board transparency.

F. Community Centered Boards found to be in violation of section 25.5-10-209, C.R.S. or these rules shall be notified by electronic mail. Community Centered Boards shall have five (5) business days from the date of the notification to remedy any violation.

G.. Community Centered Boards remaining out of compliance after five (5) business days, shall be required to develop a corrective action plan, upon written notification by the Department. The Community Centered Board shall submit to the Department the written corrective action plan within ten (10) business days of the receipt of the written request from the Department. Compliance with the corrective action plan shall be monitored by the Department. Failure to timely submit or make corrections specified in the corrective action plan may result in withholding of contract payments or revocation of designation.

H. The Executive Director or designee may revoke the designation of a Community Centered Board upon a finding that the Community Centered Board is in violation of Section 25.5-10-101, C.R.S., et seq., as amended, other state or federal laws, or these rules.

Revocation of the designation of the Community Centered Board shall conform to the provisions and procedures specified in Section 24-4-104, C.R.S.

I. Once a designation has been revoked, the Executive Director or designee may designate another private corporation, for profit or not-for-profit, to perform the case management services and administrative duties of the Community Centered Board pending designation of a new Community Centered Board.

J. Any party may protest the decision of the Executive Director or designee to designate a Community Centered Board pursuant to provisions of Section 24-4-104(5), C.R.S.

8.602 SERVICE AGENCIES

A. Pursuant to section 25.5-10-202(34), C.R.S., a service agency may be an individual or any publicly or privately operated program, organization, or business providing services or supports for persons with developmental disabilities. Service agencies are classified into one of the following three categories:

1. Individual service agency is a person providing services under contract with a community centered board or program approved service agency.

2. A typical community service agency is a public or privately operated program, organization or business providing services predominantly for persons without developmental disabilities.

3. A developmental disabilities service agency is a publicly or privately operated program, organization or business providing services predominantly for persons with developmental disabilities. This includes community centered boards when they provide direct services.

B. All developmental disabilities service agencies and typical community service agencies providing comprehensive services must be approved by the Department pursuant to section 8.603.

8.602.1 SELECTION AND APPROVAL OF SERVICE AGENCIES BY COMMUNITY CENTERED BOARDS

A. Community centered boards shall select and approve all developmental disabilities service agencies as defined in section 8.602, and any typical community service agency as defined in section 8.602, providing comprehensive services to provide authorized services in a designated service area in accordance with these rules and regulations unless otherwise noted in section 8.603.A.

The community centered board shall select and approve a service agency based on information considered pertinent in determining if the service agency has adequate resources financially and programmatically to provide the services and supports needed. This shall include, but not be limited to:

1. The service agency's ability to provide the type of services and supports needed;

2. Review of relevant policies and procedures of the service agency including a review, and, as appropriate, a site visit of agency programs;

3. Verification of applicable licenses, registrations or certifications;

4. A listing of banking and other fiduciary relationships of the prospective service agency;

5. A copy of the most recent fiscal audit of the agency or, if an audit has not been conducted, other financial information determined to satisfy the requirement;

6. Proof of insurance coverages;

7. A listing of the membership of the board of directors or trustees of the agency along with their affiliations, as applicable;

8. A copy of the by-laws of the agency and articles of incorporation;

9. A description of the organizational structure of the agency; and,

10. A statement of assurances from the service agency to comply with statutory and regulatory requirements and to cooperate with quality assurance surveys or reviews and related activities.

B. Any out-of-state corporation approved to provide services or supports in a designated service area shall organize a local advisory board consisting of individuals who reside within the designated service area. Such advisory board shall be representative of the community at large and include persons receiving services and their families.

C. The approval of a service agency by the community centered board carries no assurance that the service agency will receive state or federal funding from the Colorado Department of Health Care Policy and Financing or through subcontracts with community centered boards.

D. Service agencies shall allow access by authorized personnel of the Department, or designee, for the purpose of reviewing services and supports provided by the service agencies and shall cooperate with the Department in the evaluation of services and supports provided.

8.602.2 PURCHASE OF AUTHORIZED SERVICES

Subject to available appropriations, the Department shall purchase authorized services and supports through community centered boards or provide services and supports through regional centers, except that services and supports may be purchased directly from service agencies under the conditions outlined in section 25.5-10-206(4), C.R.S.

8.602.3 DEPARTMENT ALLOCATION OF RESOURCES

The Department shall determine the resources to be allocated to each designated service area based upon available resources, designated service area data, and the overall State plan. The Department will inform each community centered board of the amount of base and new resources being allocated each year. New resources are to be used in a manner that considers individuals' preferences and affords service agencies a fair and equal opportunity to provide services and supports. The process for choosing service agencies to provide services for an individual shall be in accordance with sections 8.602.4 and 8.602.5.

8.602.4 CHOICE OF SERVICE AGENCIES FOR SUPPORT SERVICES FOR AN INDIVIDUAL

A. Persons and/or their guardian, as appropriate, and families who will be receiving support services shall have the freedom to choose providers from service agencies which have been selected or selected and approved in accordance with Sections 8.602.1 and 8.603, as applicable, and section 8.609.1 and with concurrence of the support coordinating agency as defined in section 8.600.4.

B. Persons, their guardians, and authorized representative, as appropriate, shall be provided information on all providers selected and approved for support services within the service area.

8.603 PROGRAM APPROVAL BY THE DEPARTMENT

A. All service agencies approved by a community centered board to provide comprehensive services shall also be approved by the Department to provide the authorized service(s) for which they have been selected prior to delivery of such services.

The program approved service agency maintains overall responsibility for services provided to a person receiving services. A service agency may, however, arrange with an individual or typical community service agency to provide a portion of the authorized services without the individual or the typical community service agency being approved by the Department when:

1. The program approved service agency is directly involved in the provision of services and supports required by the person due to his/her developmental disabilities; or,

2. The program approved service agency directly provides the majority of services and supports to persons receiving residential, or adult habilitation day services or supports under the HCB-DD Medicaid waiver; or,

3. The services are provided by a host home provider; or,

4. Services are provided by a qualified professional in his/her professional discipline; for example, physical therapy and nursing.

B. A developmental disabilities service agency selected and approved by a community centered board to provide support services shall be approved by the Department prior to the delivery of such services when it is not otherwise approved by the Department within the service area.

C. Each community centered board shall be approved by the Department to provide support services.

D. The community centered board shall recommend to the Department a service agency for program approval and Medicaid certification only if it meets requirements set forth in section 25.5-10, C.R.S., and rules of the Department.

1. Recommendations for Department program approval shall be made in a manner prescribed by the Department.

2. The Department shall review the application for program approval for completeness and accuracy and act upon the recommendation of the community centered board.

E. Community centered boards and service agencies approved by the Department shall be regularly evaluated by the Department. Evaluations shall be conducted by the Department or, with Department concurrence, the following may be substituted:

1. Accreditation of program approved service agencies providing adult day habilitation services and supports by a national accreditation body acceptable to the Department; or,

2. Licensure, certification or approval acceptable to the Department from another state regulatory body; or,

3. Some combination of the above approaches which provides oversight of both programmatic and safety areas.

F. Program approval shall be renewed when, based on the results of the evaluation, the community centered board or service agency is found to be in substantial compliance with requirements pertaining to the program evaluated.

G. Program approval shall lapse for a service agency not under contract with a community centered board or the Department unless otherwise continued by the Department; and,

H. The Department may revoke program approval upon a finding that the service agency is in violation of section 25.5-10, C.R.S., other state or federal laws, or these rules.

Revocation shall conform to the provisions and procedures specified in section 24-4-104, C.R.S.

8.603.1 CONTRACTUAL ISSUES BETWEEN COMMUNITY CENTERED BOARD AND PROGRAM APPROVED SERVICE AGENCY REGARDING PERFORMANCE

A. All service agencies are responsible for the services they provide directly. In addition, program approved service agencies are responsible for any services provided through contract.

B. If purchased services and supports fall below the acceptable level of service provision, which shall be determined through on-site review of programs and other monitoring against rules and regulations of the Department, the community centered board shall notify the program approved service agency of its findings and shall provide the agency reasonable opportunity to comply with requirements. The community centered board shall also notify the Department of its findings.

Nothing in this procedure shall prohibit the community centered board from taking appropriate action when necessary to preserve the health, safety or welfare of persons receiving services or the public.

C. Prior to terminating a contract with a program approved service agency, the community centered board must provide the service agency with notice of such action, including documentation of the reasons for such action.

D. Prior to terminating a contract with a program approved service agency the community centered board shall notify the Department of the grounds for termination, including specific instances of failure of the program approved service agency in question to comply with requirements of section 25.5-10-101, C.R.S., et seq., and these rules.

8.603.2 DISPUTE RESOLUTION PROCESS BETWEEN COMMUNITY CENTERED BOARD AND PROGRAM APPROVED SERVICE AGENCY FOR THE NON-RENEWAL OF AN EXISTING CONTRACT

A. The community centered board shall establish procedures and timeframes which provide reasonable notice, at a minimum thirty (30) days, to a service agency in the event it decided not to renew a contract with the program approved service agency.

B. The program approved service agency whose contract the community centered board has decided not to renew shall be provided an opportunity to present its concerns by first protesting the non-renewal to the community centered board.

1. The community centered board shall provide a written response to the program approved service agency within fifteen (15) days of the service agency protesting the non-renewal of a contract.

2. As soon as possible after reaching the decision not to renew, the community centered board shall send notice as defined in section 8.600.4 to all affected individuals.

3. The community centered board shall inform the Department of any decision to not renew a contract with a program approved service agency. Within seven (7) days the Department may:

a. Require a transition plan for providing services to the affected individuals;

b. Require that any additional information, as defined by the Department, be sent to all affected individuals; and,

c. Require that the community centered board and program approved service agency mediate the dispute.

8.603.3 FISCAL AND PERSONNEL ADMINISTRATION

Medicaid-funded services for persons with developmental disabilities are administered by the Colorado Department of Health Care Policy and Financing.

8.603.4 CONTRACTS/WRITTEN AGREEMENTS

A. Contracts between the Department and community centered boards or service agencies for services for persons with developmental disabilities shall comply with the contractual requirements of Chapter 3 of the State Fiscal Rules promulgated pursuant to section 24-30-202, C.R.S.

B. Contracts between the community centered board and program approved service agencies, as identified in section 8.603 of these rules, must be current and signed prior to the delivery of services. Contracts must contain any state prescribed provisions and, at a minimum, address the following:

1. The amount, duration, and scope of services to be provided.

2. The rate at which the listed services are to be reimbursed.

3. A clause stipulating the listed services are not assignable.

4. The requirements regarding submission of service provision and billing information.

5. A clause stipulating the requirement for comprehensive general liability insurance to be in effect at all times.

6. A clause specifying the requirements for cancellation of the contract by either party.

7. Actions that may be taken in situations involving suspected or alleged mistreatment, abuse, neglect or exploitation to protect the safety of the person receiving services pursuant to section 8.608.8.

C. Agreements between the community centered board or a program approved service agency and other service agencies must be in writing and signed prior to the delivery of services. Written agreements must contain any state prescribed provisions and specific language that at a minimum addresses section 8.603.4.B.1 through 7.

1. All contracts pursuant to 25.5-10-206, C.R.S., must contain the contract provisions specified by the Department. Contracts and written agreements entered into between community centered boards and service agencies may contain contract provisions in addition to those contract provisions specified by the Department. Any such additional provisions shall not contradict the Department's specified provisions nor in any way diminish or alter the provisions of these rules.

2. Contracts for Medicaid-funded services shall be governed by the rules and regulations of the Colorado Department of Health Care Policy and Financing's Medical Assistance Staff Manual (10 C.C.R. 2505-10).

3. A transfer of ownership or operation of a community centered board or a program approved service agency terminates the contract and Medicaid provider certification. In order to participate in the Medicaid program, the new owner or operator of the community centered board or service agency must establish that the program meets the conditions for participation as provided in these rules and enter into a new contract and receive Medicaid provider certification. No payments to the new owner will be made by the community centered board or the State until Medicaid provider certification is granted and applicable licenses are received and a valid contract exists.

8.603.5 PAYMENT FOR SERVICES PURCHASED

A. Services purchased by community centered boards or services agencies under contract with the Department are subject to available appropriations and the amounts specified in the contract.

B. Community centered boards or service agencies under contract with the Department and service agencies under contract with the community centered board shall submit enrollment, attendance data and billing invoices in the format prescribed by the Department.

C. The development and implementation of an Individualized Plan for each eligible person, as set forth herein, is a condition of funding by the Department for services and supports. The Department shall disallow payments to community centered boards, or service agencies under direct contract with the Department, in the amount of funds provided for the eligible person for whom the Individualized Plan has not been developed and implemented for the period of time until an Individualized Plan is developed and implemented.

D. The submission of the LTC-102 form for continued stay reviews is a condition of funding by the Department for services and supports. The Department will disallow payments to the community centered board or service agency under direct contract with the Department, in the amount of funds provided for the eligible person for whom the LTC-102 form has not been submitted.

E. Program approval by the Department is a condition of Departmental funding of community centered boards and service agency programs requiring program approval as identified in section 8.603. The Department shall disallow payments to community centered boards or service agencies in the amount of funds provided for instances when program approval has not been obtained prior to delivery of program services to eligible individuals.

F. The Department shall pay to the community centered board or service agency the amount due within thirty (30) days of presentation of a billing.

G. Payment to the community centered board or service agency shall be made by using the rates established by the Department which are net of any required five percent (5%) local matching funds. Funds that require the five-percent local match will be identified in the contract for purchase of services between the Department and each service agency.

H. Local matching funds include:

1. Funds provided for general operating expenses by any political subdivision of the State;

2. Funds provided for general operating expenses through cash donations or contributions;

3. In-kind goods and services as defined by generally accepted accounting principles and Departmental policies; and,

4. Donations made for a donor-restricted purpose (such as purchase of equipment or property).

I. Local matching funds may be provided by the community centered board or service agency. When either party provides the local match for the other party, the providing party must certify in writing, for audit purposes, to the other party, the following information:

1. The amount of matching funds;

2. The source of matching funds as described in section 8.603.5.G; and,

3. A statement assuring that these matching funds are not being used to meet the local matching requirement of any other state or federal program.

J. Any community centered board under contract with the Department providing services to persons with developmental disabilities which fails to meet the five percent (5%) match requirements shall document the good faith effort necessary to achieve a ratio of ninety-five percent (95%) state participation and five-percent (5%) local participation. Should the community centered board not show a good faith effort to obtain a five-percent local match, the community centered board will be subject to the administrative penalties identified in the contract with the Department.

K. Reimbursement for Residential Habilitation Services and Supports shall exclude any costs associated with room and board expenses as required by 42 C.F.R. 441.310. The maximum monthly amount charged for room and board expenses to persons receiving comprehensive services by an agency shall not exceed an amount equal to the monthly benefit for Supplemental Security Income (SSI), less an amount specified by the Department for personal needs.

L. Reimbursement for the final month of services provided (not necessarily the final month of a contract period) by a service agency shall be withheld until audits have been completed to determine that no adjustments resulting in moneys due the service agency, the State, or the persons receiving services remain unadjusted. Such reimbursement shall continue to be withheld until all questions and issues raised by the audits are resolved.

M. When providers are paid for Medicaid services based on Medicaid claims submitted by providers, these payments are made on the condition that the providers accept them as payment-in-full for the service and agree not to seek additional reimbursement for the service from the recipient or recipient's family.

Services provided in conjunction with Medicaid reimbursable services that are not themselves Medicaid reimbursable may be billed to recipients and their families.

N. Targeted case management services are only reimbursed for individuals enrolled in the HCBS-DD, Supported Living Services and Children's Extensive Support Waiver Programs. Individuals enrolled in the HCBS-DD waiver who continue to receive comprehensive habilitation services which are not billed to Medicaid because units have been exhausted continue to be eligible for targeted case management services.

O. Failure to prepare the IP and ISSP or failure to submit the IP, ULTC-100 or LTC-102 forms in accordance with Department policies and procedures shall result in the denial of reimbursement for services authorized retroactive to first date of service, and the case management agency and/or providers may not seek reimbursement for these services from the person receiving services.

1. If the community centered board makes an error in billing the Medicaid fiscal agent for services delivered by a sub-contracting service agency, and the error results in loss of Medicaid reimbursement, the community centered board shall reimburse the service agency for the amount of the loss.

2. If the community centered board causes an individual enrolled in Medicaid waiver services to have a break in payment authorization, the community centered board will ensure that all services continue and will be solely financially responsible for any losses incurred by other providers until payment authorization is reinstated.

8.603.6 ACCOUNTING SYSTEMS

A. The community centered board or program approved service agency shall provide for the maintenance and operation of an accounting system that meets the Department's requirements.

B. The community centered board or program approved service agency shall submit financial reports in a format and manner prescribed by the Department, including but not limited to, an annual financial statement prepared in accordance with generally accepted accounting principles and Departmental policies.

8.603.7 AUDITS, FINANCIAL INFORMATION AND BUDGET INFORMATION

A. Each designated Community Centered Board is subject to the requirements of the "Colorado Local Government Audit Law," see section 29-1-601 et seq., C.R,S.

1. Each Community Centered Board shall require the person or entity that performs financial audits of the Community Centered Board to present and discuss the results of the audit to the board of directors not less than once each year at a regularly scheduled meeting of the board of directors.

2. Each completed financial audit shall be posted on The Community Centered Board's website, in a place that allows access to the public in a clear, accessible, easily operated, and uncomplicated manner.

3. Each completed financial audit shall be posted on the website of the Community Centered Board within thirty days of acceptance by the corporation's board of directors. Completed audits shall remain posted on the website for no less than three fiscal years.

B. Each Community Centered Board is subject to a performance audit by the state auditor in accordance with Section 25.5-10-209(4), C.R.S. The Community Centered Board shall cooperate with the performance audit by the state auditor.

C. Each Community Centered Board shall post on their website the most current Form 990 that has been filed with the internal revenue service. Form 990 shall be posted no later than thirty days following the filing of the form with the Internal Revenue Service. Each Form 990 shall remain posted on the website for a minimum of three fiscal years.

D. The Community Centered Board shall make the following information available upon request, not later than five business days after the request is made:

1. The annual budget of the Community Centered Board for each calendar or fiscal year, as applicable, not later than thirty days after final approval of the budget by the board of directors of the Community Centered Board;

2. An annual summary of all revenues and expenditures of the Community Centered Board as have been appropriated by the state concerning capacity building, Family Support Services, State General Fund Supported Living Services, and State General Fund Early Intervention that is calculated by September 30 of each year for the prior year, as applicable; and

3. A description of the policies and procedures it follows to track, manage, and report its financial resources and transactions, which policies and procedures are also known and may be referred to as its "financial controls".

8.603.8 INSURANCE AND LIABILITY COVERAGE

A. Community centered boards and program approved service agencies shall maintain, in force at all times, a comprehensive general liability insurance policy, issued by a company authorized to do business in Colorado in an amount acceptable to the Department as specified by contract for total injuries or damages arising from any one incident, for bodily injuries or damages.

B. Program approved service agencies shall maintain or require to be maintained in force at all times, comprehensive general liability insurance coverage for services that are provided directly by the agency or through contract.

C. The community centered board or a program approved service agency shall obtain and maintain at all times a fidelity bond in an amount acceptable to the Department covering the activities of its officers or agents.

D. Adequate insurance coverage, as required by state law or regulation, for the protection of vehicle fleets, riders and operating personnel, must be provided by anyone transporting persons with disabilities.

E. A community centered board or a program approved service agency managing personal needs funds shall purchase and maintain a surety bond in an amount specified by the Department, or provide an irrevocable letter of credit in the same amount, made payable to the state, to protect the personal needs of the person receiving services.

8.603.9 PERSONNEL AND CONTRACTOR ADMINISTRATION

A. Community centered boards and program approved service agencies shall establish qualifications for employees and contractors (Host Home and other providers) and maintain records documenting the qualifications and training of employees and contractors who provide services pursuant to these rules and regulations.

B. The community centered board or service agency may, in accordance with section 27-90-110, C.R.S., conduct background checks and reference checks prior to employing staff providing supports and services and contracting with Host Home and other providers.

C. The community centered board in its role as support coordinating agency, as defined in section 8.609.1, shall have screening procedures for individual providers who are not agency employees and for other entities providing services and supports.

D. The community centered board and program approved service agency shall have an organized program of orientation and training of sufficient scope for employees and contractors to carry out their duties and responsibilities efficiently, effectively and competently. The program shall, at a minimum, provide for:

1. Extent and type of training to be provided prior to employees or contractors providing supports and services having unsupervised contact with persons receiving services;

2. Training related to health, safety and services and supports to be provided within the first ninety (90) days for employees and contractors; and,

3. Training specific to the individual(s) for whom the employees or contractors will be providing services and supports.

E. Community centered boards shall ensure that individuals who are hired to fulfill the duties of case management services on or after October 8, 2021 meet the requirements in Section 8.519.5.B.

F. All employees and contractors, not otherwise authorized by law to administer medication, who assist and/or monitor persons receiving services in the administration of medications or the filling of medication reminder systems shall have passed a competency evaluation offered by an approved training entity, as defined in 6 CCR 1011-1, Chapter 24, *et seq*.

8.603.10 PURCHASE OF SERVICE RATES

A. Annually the Department shall make available a schedule of program rates to be used to purchase non-community centered board specific authorized services for persons with developmental disabilities. The established rates shall be based upon the annual appropriation from the General Assembly, the Department's determination of approved program cost and the 5% local match.

B. Annually, the community centered board shall make available a schedule of program rates and/or rate ranges used in their designated service area to purchase authorized services for persons with developmental disabilities.

C. Administration of community centered board Purchase of Service Rates shall comply with the following:

1. Pursuant to section 25.5-10-206(5), C.R.S., the following rules are provided for the purpose of delineating rates to be used by community centered boards for purchase of services from service agencies for persons receiving services for whom funds have been made available pursuant to section 25.5-10-206(5), C.R.S.

2. The community centered board is authorized to negotiate specific program rates for purchasing services from service agencies. The community centered board must maintain written documentation on how rates were established and paid, and an audit trail of provider expenses to support payments and future rate negotiations. The parameters to be followed in negotiating rates are as follows:

   a. Rates must be consistent with efficiency, economy and quality of care.

   b. The policy and methods used in setting payment rates must be in writing and consistently applied to all providers including the community centered board as provider.

   c. Documentation of payment rates must be maintained and made available upon request.

   d. Providers must be given sufficient information concerning the service obligations to assist them in developing cost effective and efficient rate proposals.

3. When a community centered board proposes to charge fees to service agencies for services, the following must be complied with:

   a. The board of directors must approve all plans to charge service agencies;

b. The community centered board must provide the service agency with a written description for each service provided and the amount of the proposed fee for each service;

c. The proposed fee to service agencies cannot be established to pay for services otherwise reimbursed, as determined by the Department;

d. Any proposed fee by community centered boards related to managing the billing process must meet the following criteria:

1) The fee must relate to the cost of processing billings;

2) Not be related on a percentage or other basis to the amount that is billed or collected; and,

3) Not be dependent upon the collection of payment;

e. Negotiated fees between community centered boards and service agencies will not be deducted from any payments for services; and,

f. The community centered board will provide the service agencies with statements for services delivered.

4. The community centered board shall establish procedures and reasonable timeframes that provide the opportunity for a service agency to protest the proposed fee charges to the community centered board, and for a timely written response.

5. The community centered board shall inform the service agency of the opportunities to appeal the decision to the Department; and,

6. The community centered board shall submit a copy of all protests and subsequent proceedings to the Department.

8.604 DUE PROCESS AND CONFIDENTIALITY

8.604.1 RIGHTS OF PERSONS RECEIVING SERVICES

A person receiving services has the same legal rights and responsibilities guaranteed to all other individuals under the federal and state constitutions and federal and state laws including, but not limited to, those contained in section 25.5-10, C.R.S., unless such rights are modified pursuant to state or federal law.

8.604.2 PROCEDURAL REQUIREMENTS REGARDING RIGHTS

A. The policies and procedures of community centered boards, program approved service agencies and regional centers otherwise referred to as “agencies” must, at a minimum, provide that each person receiving services has the rights contained in Sections 25.5-10-218 through 231, C.R.S.

B. Persons receiving services shall have the right to read or have explained any rules or regulations adopted by the Department and policies and procedures of the community centered board, program approved service agency or regional center pertaining to such persons' activities, services and supports, or to obtain copies of section 25.5-10, C.R.S., rules, policies or procedures at no cost or at a reasonable cost in accordance with section 24-72-205, C.R.S.

C. Agencies shall inform persons receiving services, parents of minors, guardians and authorized representatives of the rights provided in section 25.5-10, C.R.S., and:

1. Agencies shall provide a written and verbal summary of rights and a description of how to exercise them, at the time of eligibility determination, at the time of enrollment, and when substantive changes to services and supports are considered through the Individualized Planning process.

2. The information shall be provided in a manner that is easily understood, verbally and in writing, in the native language of the person, or through other modes of communication as may be necessary to enhance understanding.

3. Agencies shall provide assistance and ongoing instruction to persons receiving services in exercising their rights.

D. No person receiving services, his/her family members, guardian or authorized representatives, may be retaliated against in their receipt of services or supports or otherwise as a result of attempts to advocate on their own behalf.

E. Employees and contractors must be made aware of the rights of persons receiving services and procedures for safeguarding these rights.

8.604.3 SAFEGUARDING THE RIGHTS OF PERSONS RECEIVING SERVICES

A. An individual's rights may be suspended only to protect the individual from endangering such person, others, or property. Rights of an adult person receiving services may be suspended only by a developmental disabilities professional in a manner which will promote the least restriction on the person's rights and in accordance with rules and regulations herein or by a court order. Additionally, in the case of a minor, the parent(s) or guardian must approve suspension of any rights which may pertain to the minor.

1. When suspension of an individual's rights is under consideration, the rights to be affected shall be specifically explained to the individual with notice as defined in section 8.600.4 of these rules of such proposed activity given to the appropriate parties.

2. When a right is proposed to be suspended, it is reviewed by the individual's interdisciplinary team and, if suspended, is documented in the Individualized Plan. The person's Individualized Plan must include a statement of what services and supports are required and plans for implementing such services and supports in order to assist the person to the point that suspension of rights is no longer needed. This plan shall meet the requirements of Sections 8.607 and 8.608.

3. When a right has been suspended, the continuing need for such suspension shall be reviewed by the individual's interdisciplinary team at a frequency decided by the team, but not less than every six months.

a. Such review shall include the original reason for suspension, current circumstances, success or failure of programmatic intervention, and the need for continued suspension or modification.

b. Restoration of affected rights shall occur as soon as circumstances justify.

4. At the time a right is suspended, such action shall be referred to the Human Rights Committee for review and recommendation. Such review shall include an opportunity for the person who is affected, parent of a minor, guardian or authorized representative, after being given reasonable notice of the meeting, to present relevant information to the Human Rights Committee.

5. Emergency action may be taken by a developmental disabilities professional, specifically designated for this purpose, by the director of the community centered board, program approved service agency or regional center to suspend the right(s) of a person receiving services if such action is imminently necessary to protect the health and safety of the person, others, or property When such emergency action is necessary, the least intrusive means of right(s) suspension shall be utilized in order to protect the health and safety of the person or others, or property, and the following requirements must be adhered to:

   a. The person assigned case management responsibility pursuant to section 8.607.1.E, must be notified of the right(s) suspension within 24 hours;

   b. The suspended right(s) shall be specifically explained to the individual and notice as defined in section 8.600.4, sent to the appropriate parties within 24 hours of the suspension of the right(s); and,

   c. Immediately initiate the provisions of section 8.604.3.A.2 through 4.

B. Suspension from Services and Supports

1. The community centered board shall ensure that an interdisciplinary team is convened, to review the cause for suspension and to revise the Individualized Plan. If the suspension is part of a restrictive program meeting requirements of section 8.608.2 such a meeting may not be necessary.

2. Provisions for temporary suspension of specific services or supports received by an individual may be made if, in the opinion of the community centered board, program approved service agency or regional center, a person receiving services has demonstrated a serious physical threat to the health or safety of the person or others and such is necessary to protect the health or safety of the person or others.

3. Suspension is considered temporary in nature, may not be used to effect termination from services or supports, and must be fully documented in the record of the person receiving services including provisions of when original services or supports will resume.

4. Suspension of specific services or supports received by an individual shall not relieve the community centered board, program approved service agency or regional center of responsibility to provide case management services, modified services or supports that may be provided in an alternative setting, and continued habilitation and planning to facilitate the person's return to the original services or supports, if appropriate.

5. Services and supports may not be suspended if such suspension would place such person at risk of loss of a place of abode.

6. The Department may authorize suspension of services or supports pending the outcome of a dispute resolution process on termination and enter orders regarding the responsibility to provide alternative services during this time period. The program approved service agency or community centered board may request such authorization by following the process for emergency proceedings outlined at section 8.605.4.

8.604.4 USE OF AN AUTHORIZED REPRESENTATIVE

A. Persons who are eligible for services and supports, the parent or guardian of a minor, or legal guardian of an adult, shall be informed at the time of enrollment and at each annual review of the Individualized Plan that they may designate an authorized representative.

The designation of an authorized representative must occur with informed consent of the person receiving services, or the parent or guardian of a minor, or legal guardian of an adult.

B. Such designation shall be in writing and shall specify the extent of the authorized representative's involvement in assisting the person receiving services in acquiring or utilizing services or supports available pursuant to section 25.5-10, C.R.S, and in protecting their rights.

C. The written designation of an authorized representative shall be maintained in the record of the person receiving services.

D. The person receiving services may withdraw their designation of an authorized representative at any time.

8.605 DISPUTE RESOLUTION PROCEDURES

8.605.1 DISPOSITION OF PETITIONS FOR DECLARATORY ORDERS

The Executive Director of the Department or designee may entertain petitions for declaratory orders in accordance with section 24-4-105(11), C.R.S., when a controversy or uncertainty exists involving the application of these rules or the Developmental Disability Act (section 25.5-10 C.R.S.), to a particular set of circumstances between the parties. A petition may be filed when a process for resolving the controversy is not otherwise provided in these rules and an interpretation of the law will clarify the intent of the law in a particular situation. Thus the petitioner is asking for the Executive Director to “declare” the rights or status of the parties under the law that is at the heart of controversy.

A. Any petition filed pursuant to this rule shall set forth the following:

1. The name and address of the petitioner;

2. The statute, rule or order to which the petition relates;

3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty; and,

4. All parties directly involved in the subject matter of the petition as known to the petitioner.

B. If the Executive Director or designee decides to rule on the petition, the following procedures shall apply:

1. The Executive Director or designee shall provide notice of the petition and an opportunity to respond to the petition to all parties noted by the petitioner or otherwise known to the Department to be directly interested in the petition;

2. The Executive Director or designee may rule upon the petition based solely upon the facts presented in the petition and response. In such a case:

Any ruling of the Department will apply only to the extent of the facts presented in the petition and the response;

3. The Executive Director or designee may request the petitioner or any involved party to submit additional information, or file a written brief, memorandum, or statement of position;

4. The Executive Director or designee may rule upon the petition without a hearing or may set the petition for hearing, upon due notice to all parties to obtain additional facts or information; and,

5. The ruling of the Department shall be binding upon all parties to the matter.

8.605.2 DISPUTES BETWEEN INDIVIDUALS AND PROGRAM APPROVED SERVICE AGENCIES

A. Every community centered board, regional center and program approved service agency shall have procedures which comply with requirements as set forth in these rules and section 25.5-10-212, C.R.S., for resolution of the following disputes involving individuals:

1. The applicant is not eligible for services or supports;

2. The person is no longer eligible for services or supports;

3. Services or supports are to be terminated; or,

4. Services set forth in the IP which are to be provided, or are to be changed or reduced, or denied.

B. The procedure shall contain an explanation of the process to be used by persons receiving services or applicants for services or parents of a minor, guardians and/or authorized representatives in the event that they are dissatisfied with the decision or action of the community centered board, regional center or program approved service agency.

C. The dispute resolution procedure shall be stated in writing, in English. Interpretation in native languages other than English and through such modes of communication as may be necessary shall be made available upon request.

1. The procedure shall be provided, orally and in writing, to all persons receiving services or applicants for services and parents of a minor, guardian, and/or authorized representative at the time of application, at the time the individualized plan is developed, any time changes in the plan are contemplated, and upon request by the above named persons.

2. The procedure shall state that use of the dispute resolution procedure shall not prejudice the future provision of appropriate services or supports to the individual in need of and/or receiving services.

3. The procedure shall state that an individual shall not be coerced, intimidated, threatened or retaliated against because that individual has exercised his or her right to file a complaint or has participated in the dispute resolution process.

D. The procedure of the community centered board, regional center or the program approved service agency shall stipulate that notice of action proposed as defined in section 8.600.4 shall be provided to the person receiving services/applicant, and to the person's parents if a minor, guardian and authorized representative at least fifteen (15) days prior to the date actions enumerated in section 8.605.2.A become effective.

The above named persons may dispute such action(s) by filing a complaint with the agency initiating the action. Upon such complaint, the procedures set forth in section 8.605.2.E and the following provisions shall be initiated.

E. The procedure of the community centered board, regional center and program approved service agency shall provide the opportunity for resolution of any dispute through an informal negotiation process which may be waived only by mutual consent.

Mediation could be considered as one means to informal negotiation if both parties voluntarily agree to this process.

F. The opportunity for resolution of a dispute through informal negotiation shall include the scheduling of a meeting of all parties or their representatives within fifteen (15) days of the receipt of the complaint.

G. After opportunities for informal negotiation of the dispute have been attempted or mutually waived, either party may request that the dispute resolution process set forth in section 8.605.2.H and the following provisions shall be initiated.

Parent(s) or guardian of a minor, age birth to three years, may utilize the dispute resolution process specified under the requirements of the Procedural Safe Guards for early intervention services pursuant to the Individuals with Disabilities Education Act.

H. The dispute resolution procedures of the community centered board, regional center or program approved service agency shall, at a minimum, afford due process by providing for:

1. The opportunity of the parties to present information and evidence in support of their positions to an impartial decision maker. The impartial decision maker may be the director of the agency taking the action or their designee. The impartial decision maker shall not have been directly involved in the specific decision at issue;

2. Timely notification of the meeting (at least ten days prior) to all parties unless waived by the objecting parties;

3. Representation by counsel, authorized representative, or another individual if the objecting party desires;

4. The opportunity to respond to or question the opposing position;

5. Recording of the proceeding by electronic device or reporter;

6. Written decision within fifteen (15) days of the meeting setting forth the reasons therefore;

7. Notification that if the dispute is not resolved, the objecting party may request that the Executive Director of the Department or designee review the decision; and,

8. Notification to the Department by the community centered board, regional center or program approved service agency of all disputes proceeding according to section 8.605.2.H and the determination made thereon.

I. The dispute resolution procedure of the Department shall be as follows:

1. A request to the Executive Director of the Department to review the outcome of the dispute resolution process shall be submitted to the Department within fifteen (15) working days from which the written decision was postmarked;

2. The request for review shall also contain a statement of the matters in dispute and all information or evidence which is deemed relevant to a thorough review of the matter. The community centered board, regional center or the program approved service agency or other party shall be afforded the opportunity likewise to respond within fifteen (15) working days;

3. The Executive Director of the Department or designee shall have the right to additional information and may request oral argument or a hearing if deemed necessary by the Executive Director or designee to render a decision;

4. The Executive Director of the Department or designee shall provide a de novo review of the dispute and shall render a decision within ten (10) working days of the submission of all relevant information; and,

5. The decision of the Executive Director of the Department shall constitute final agency action on the dispute.

J. No person receiving services may be terminated from services or supports during the dispute resolution process unless the Department determines an emergency situation, as meeting the criteria set forth in section 8.605.4 exists.

8.605.3 DISPUTES BETWEEN DEPARTMENT AND COMMUNITY CENTERED BOARD OR DEPARTMENT AND PROGRAM APPROVED SERVICE AGENCY

A. Pursuant to section 25.5-10-208(2)(c), C.R.S., the following shall apply in the event that the terms of a contract between the Department and a community centered board or program approved service agency are disputed by either party:

1. The community centered board or program approved service agency shall notify the Manager of the Office of Community Living of the circumstances of the dispute.

   a. The parties shall informally meet at a mutually agreeable time to attempt resolution.

   b. If the dispute cannot be resolved through this informal process then the formal process at section 8.605.3.A.2 shall be used.

2. The community centered board or program approved service agency shall submit a written request for formal dispute resolution to the Department.

   a. The request shall state the specific grounds for the dispute.

   b. It shall include all available exhibits, evidence, arguments, and documents believed to substantiate the protest, and the relief requested.

3. The Department may request additional information deemed necessary to resolve the dispute.

4. Within fifteen (15) working days following the receipt of written materials and additional requested information, the Department shall respond to the request by issuing a written decision, which shall be inclusive of the reasons for the decision.

5. A copy of the documentation presented or considered, the decision made and the contract shall be maintained in the files of the Department.

6. The Department's decision shall represent final agency action on the disputed issue.

B. Notwithstanding the dispute, the community centered board or program approved service agency shall honor all contractual obligations entered into in its contract with the Department. No agency shall have its contract terminated pending resolution of a contractual dispute, unless necessary for the preservation of public health, safety or welfare, as determined pursuant to section 8.605.4.

C. Nothing in this procedure shall prohibit the Department from initiating action to revoke designation of a community centered board or program approval of a service agency based on evidence presented in the request for Departmental intervention or during its review.

8.605.4 EMERGENCY PROCEEDINGS

A. The Department retains the authority to enter emergency orders, when necessary, to preserve the health, safety or welfare of the public or of persons receiving services, including, but not limited to, situations that:

1. Are ongoing or likely to recur if not promptly corrected or otherwise resolved and, likely to result in serious harm to the individual or others; or,

2. Arise out of a service provider's discontinuance of operation generally, or discontinuance of services to a particular individual because the service agency is unable to ensure that person's safety or the safety of others.

B. The party requesting the Department to enter an emergency order shall submit all relevant documentation to the Department to which the opposing party shall have the opportunity to respond.

C. The Department may request additional information as needed and shall determine the timeframes for the submission.

D. In addition to ruling on the request for emergency order, the Department may review the substantive issues involved in the dispute and determine the required course of action.

8.605.5 GRIEVANCE/COMPLAINT PROCESS

A. Every community centered board, regional center and program approved service agency shall have procedures setting forth a process for the timely resolution of grievances or complaints of the person receiving services, parents of a minor, guardian and/or authorized representative, as appropriate. Use of the grievance procedure shall not prejudice the future provision of appropriate services or supports.

B. The procedure shall be provided, orally and in writing, to all persons receiving services, the parents of a minor, guardian and/or authorized representative, as appropriate, at the time of admission and at any time that changes to the procedure occur.

C. The grievance procedure shall, at a minimum, include the following:

1. Who within the agency will receive grievances;

2. Identification of support person(s) to assist in the submission of a grievance;

3. An opportunity for individuals to come together in order to attempt finding a mutually acceptable solution. This could include the use of mediation if both parties voluntarily agree to this process;

4. Timelines for the resolution of the grievance;

5. Consideration by the agency director or designee if the grievance cannot be resolved at a lower level; and,

6. No individual shall be coerced, intimidated, threatened or retaliated against because the individual has exercised his or her right to file a grievance or has participated in the grievance process.

8.606 CONFIDENTIALITY

8.606.1 GENERAL PROVISIONS OF INFORMATION PERTAINING TO PERSONS SEEKING OR RECEIVING SERVICES:

A. Identifying information regulated by this rule is any information which could reasonably be expected to identify the person seeking or receiving services or their family or contact persons, including, but not limited to, name, Social Security number, Medicaid number, household number or any other identifying number or code, street address, and telephone number, photograph, or any distinguishing mark. Identifying numbers assigned and used internally within a single agency shall be excluded from this regulation.

B. The Department, Developmental Disabilities Services, regional centers, community centered boards, and program approved service agencies are hereinafter referred to as “agencies,” within this section.

C. At the time of eligibility determination and enrollment, the person, parent of a minor, guardian and/or other person acting as an advisor to the person-must be advised of the type of information collected and maintained by the agency, and to whom and where it is routinely disclosed.

D. This rule applies to confidential information in any format including, but not limited to, individual records, correspondence or other written materials, verbal communication, photographs, and electronically stored data.

E. The records and all other documentation or correspondence concerning persons seeking or receiving services are the property of the agency which is responsible for maintaining and safeguarding their contents.

F. All written authorizations referenced within this chapter must be:

1. Signed and dated;

2. For a specified time period;

3. Specific as to the information or photograph to be disclosed and the intended use of such information or photograph; and,

4. Specific as to whom it will be disclosed.

G. Authorizations may be revoked in writing or verbally at anytime by the person who provided the authorization.

8.606.2 DISCLOSURE OF CONFIDENTIAL INFORMATION

A. Disclosure of confidential information shall be limited to:

1. The person seeking or receiving services, parent of a minor, or guardian.

2. Persons or entities having written authorization signed by the person seeking or receiving services, parent of a minor, or guardian.

3. The authorized representative of the person seeking or receiving services as defined in section 25.5-10-202(1), C.R.S., if access to confidential information is within the scope of their authority.

4. Qualified professional personnel of community centered boards, regional centers and other service agencies including boards of directors and Human Rights Committee members to the extent necessary for the acquisition, provision, oversight, or referral of services and supports.

5. To the Department or its designees as deemed necessary by the Executive Director to fulfill the duties prescribed by Title 25.5, Article 10 of Colorado Revised Statutes.

6. To the extent necessary, qualified professional personnel of authorized external agencies whose responsibility it is to license, to accredit, to monitor, to approve or to conduct other functions as designated by the Executive Director of the Department.

7. Physicians, psychologists, and other professional persons providing services or supports to a person in an emergency situation which precludes obtaining consent in such an instance:

    a. Documentation of this access shall be entered into the person's record.

    b. This documentation shall contain the date and time of the disclosure, the information disclosed, the names of the persons by whom and to whom the information was disclosed, and the nature of the emergency.

8. The court or to persons authorized by an order of the court, issued after a hearing, notice of which was given to the person, parents of a minor or legal guardian, where appropriate, and the custodian of the information.

9. Other persons or entities authorized by law; and,

10. The entity designated as the protection and advocacy system for Colorado pursuant to 42 U.S.C. 604 when:

    a. A complaint has been received by the protection and advocacy system from or on behalf of a person with a developmental disability; and,

    b. Such person does not have a legal guardian or the state or the designee of the state is the legal guardian of such person.

B. Nothing in this regulation should be taken to construe that a person or entity who is authorized to access confidential information regarding an individual per section 8.606.2.A can access any and all confidential information available regarding that individual. Disclosure of confidential information must be limited to those aspects of that information which are necessary to performing the duties of that person or entity requiring access. The person seeking or receiving services, parent of a minor, or guardian may access any and all aspects of that person's record. The authorized representative of a person may access those aspects of a person's record which are within the scope of their authority.

8.606.3 SAFEGUARDING RECORDS

A. Records pertaining to persons seeking or receiving services shall be maintained in accordance with these rules and other federal and state regulations and accreditation standards. Where no superseding regulation or policy applies, records may be purged and destroyed per agency policy.

B. An individual designated by the agency shall be responsible for the record at all times during the examination of the record by entities other than employees of that agency.

C. Records shall be made available for review at the agency to authorized persons within a reasonable period of time as negotiated by the agency and the party seeking access.

D. At no time may a person examining a record remove anything from it or otherwise make changes in it, except as delineated below:

1. If the person seeking or receiving services, parent of a minor, guardian or authorized representative, if within the scope of his/her authority, objects to any information contained in the record, he/she may submit a request for changes, corrections, deletions, or other modifications.

2. The person seeking or receiving services, parent of a minor, guardian or authorized representative shall sign and date the request.

3. The agency administrator will make the final determination regarding the request and will notify the requesting party of the decision.

4. If the agency administrator denies the request, then the requestor has the right to have a statement regarding their request entered into the record.

E. Records or portions of records may be photocopied or otherwise duplicated only in accordance with written agency procedures, and any fee for duplication shall be reasonable pursuant to section 24-72-205, C.R.S. A person receiving services is entitled to one free copy of any information contained in his/her record.

8.607 CASE MANAGEMENT SERVICES

Case management service for Individuals with Intellectual and Developmental Disabilities HCBS waivers shall be provided pursuant to Section 8.519.1 through 8.519.23.

8.607.1 ADMINISTRATION

A. Community Centered Boards and regional centers shall be responsible to maintain sufficient documentation of case management activities performed and to support billings.

B. Community Centered Boards shall be responsible to maintain or have access to information about public and private, state and local services, supports and resources which may be available for persons with developmental disabilities, and shall make such information available to persons eligible for services and supports and authorized persons inquiring upon their behalf.

C. Each Community Centered Board and regional center, as appropriate, shall establish agency procedures sufficient to execute case management services according to the provisions of these rules and regulations.

D. Case management services shall be a direct responsibility of the executive level of the Community Centered Board or regional center organization and are separate from the delivery of services and supports unless otherwise approved by the Department.

E. The Community Centered Board or regional center shall assign one (1) primary person who ensures case management services are provided on behalf of the person receiving services across all program, professional and agency lines. Reasonable efforts shall be made by the Community Centered Board or regional center to include the preferences of the eligible person in this assignment.

8.607.2 DETERMINATION OF DEVELOPMENTAL DISABILITY

A. Any person, his/her legal guardian, parent(s) of a minor or such person(s) authorized by law may submit a written request for a determination of whether the applicant has a developmental disability.

B. A determination of developmental disability does not constitute a determination of eligibility for services or supports. The Community Centered Boards shall determine whether a person has a developmental disability and therefore may be eligible to receive services and supports pursuant to Sections 25.5-10-202(2) and 211, C.R.S., in accordance with criteria as specified by the Department.

Eligibility for Medicaid funded programs specific to persons with developmental disabilities shall be determined pursuant to the Colorado Department of Health Care Policy and Financing's Medical Assistance rules (10 C.C.R. 2505-10).

C. The developmental disability determination shall be made according to Department procedures, which shall identify the qualifications of person(s) making such a determination.

D. A request for determination of developmental disability shall be submitted to the Community Centered Board in the designated service area where the person resides, including temporary residence such as incarceration or hospitalization.

E. At the time of request, the Community Centered Board shall:

1. Provide the applicant any required forms and a list of the minimum required documents and information necessary for the determination of developmental disability; and,

2. Provide the applicant with information on where to obtain testing for the level of intellectual functioning and adaptive behavior, if requested. The responsibility for obtaining such assessments shall be with the applicant and/or legal guardian.

F. The applicant and/or legal guardian shall provide all documentation and information necessary for the determination of developmental disability within ninety (90) calendar days of the request.

1. The Community Centered Board may request additional documentation and/or information, as needed, to complete the determination of developmental disability.

2. The applicant and/or legal guardian may have additional assessments completed and submitted to the Community Centered Board for consideration.

G. If the applicant and/or legal guardian has not provided the documentation and information necessary for the determination within ninety (90) calendar days of the request, the Community Centered Board shall:

1. Close the request and notify the applicant in writing according to the procedures established at Section 8.607.2.L.4; or,

2. The Community Centered Board may, at the request of the applicant and/or legal guardian, extend the deadline for providing the necessary documentation and information by up to an additional ninety (90) calendar days.

    a. In no case shall the deadline for providing the necessary documentation and information exceed one hundred eighty (180) calendar days.

    b. The Community Centered Board shall provide a written update to the applicant no less than every ninety (90) calendar days until a determination of developmental disability is completed or the request is closed.

    c. If the extended deadline for providing the necessary documentation and information has expired and there is still insufficient information to make a determination of developmental disability, the Community Centered Board shall close the request and notify the applicant and/or legal guardian in writing according to the procedures established at Section 8.607.2.L.4.

H. For all applicants, the Community Centered Board shall enter into the Department's designated data system and shall permanently maintain a written and/or electronic record of the developmental disability determination on a Department prescribed form. The record, at a minimum, shall include:

1. The name of the applicant;

2. The applicant's date of birth;

3. The date of the determination of developmental disability;

4. A description of the rationale for the developmental disability determination including, at minimum, assessment scores and diagnoses;

5. The name(s) and title(s) of the person(s) involved in making the determination.

I. All information and assessments used to determine a developmental disability shall be current so as to accurately represent the applicant's abilities at the time of determination.

1. Assessments of adaptive behavior shall have been completed within three (3) years of the request.

2. Assessments of intellectual functioning shall have been completed as follows:

    a. If an individual is between five (5) and eighteen (18) years of age, at least one intellectual assessment shall have been completed to determine the individual's impairment of general intellectual functioning; or,

    b. If an individual is eighteen (18) years of age or older and there is only one intellectual assessment available to determine the individual's impairment of general intellectual functioning, the assessment shall have been completed when the individual was at least eighteen (18) years of age and shall have been completed within ten (10) years of the request; or,

c. If there is historical pattern of consistent scores, based on two (2) or more intellectual assessments, that demonstrates an impairment of general intellectual functioning, the assessments may be used regardless of the individual's age at the time of determination.

3. An established neurological condition shall be documented as follows:

a. A diagnosed neurological condition shall be determined by a licensed medical professional practicing within the scope of his/her license; or,

b. If a specific diagnosis is not possible, a written statement from a licensed medical professional, practicing within the scope of his/her license, or a licensed psychologist may be used as long as there is a documented effort to determine a diagnosis and the available assessment information reasonably supports a conclusion that a neurological impairment is present.

4. The effects of mental illness or physical or sensory impairment must be considered to determine the extent to which such impairments are the sole contributing factor to the impairment of general intellectual functioning or limitations to adaptive behavior.

J. Prior to July 1, 2015, the Community Centered Board shall make the determination of developmental disability within ninety (90) calendar days of the receipt of all necessary information. On or after July 1, 2015, the Community Centered Board shall make the determination of developmental disability within thirty (30) calendar days of the receipt of all necessary information.

K. The date of the developmental disability determination shall be the date that the Department prescribed form and all documentation and information necessary for the determination of developmental disability was received by the Community Centered Board.

If a delay to the determination of developmental disability is due to the actions or inactions of the Community Centered Board, the original date of request shall be used.

L. The Community Centered Board making the developmental disability determination shall, in writing, notify the applicant or legal guardian, and the authorized person requesting the determination, if other than the applicant or legal guardian, and other such persons as designated by the applicant, of the decision. Such notification shall:

1. Be mailed to the person within seven (7) calendar days of the date of determination;

2. Be provided in such alternative means of communication as to reasonably ensure that the information has been communicated in an understandable form; and,

3. For persons determined to have a developmental disability, contain an explanation of the process that will occur and notice that, at a minimum, an Individualized Plan shall be developed upon enrollment into a developmental disability service;

4. For persons determined not to have a developmental disability or persons whose request is closed without the determination of a developmental disability, state the reasons for the determination or closure, and provide a written For persons determined not to have a developmental disability or persons whose request is closed without the determination of a developmental disability, state the reasons for the determination or closure, and provide a written Long-Term Care Notice of Action form in accordance with the provisions of Section 8.057 regarding the applicant's right to appeal the decision to the Office of Administrative Courts.

M. Applicants determined not to have a developmental disability may request a new determination of developmental disability at any time upon receipt of new or missing required information, and a new request date shall be established.

N. A determination of developmental disability shall be accepted by other Community Centered Boards, service agencies and regional centers.

O. A determination of developmental disability shall be permanent and shall not require renewal or review unless:

1. The interdisciplinary team determines that developmental disability services are no longer needed due to improvement in a person's condition and recommends a redetermination; or,

2. Information from a new evaluation becomes available which demonstrates sufficient improvement in a person's condition such that the determination should be reviewed.

8.607.3 SERVICE AND SUPPORT COORDINATION

A. Service and support coordination shall be the responsibility of the community centered boards and regional centers. Service and support coordination shall be provided in partnership with the person receiving services, the parents of a minor, legal guardian and public and private agencies to the extent such partnership is requested by these individuals. Persons receiving services who are their own guardians may also request their family or others to participate in this partnership.

B. Service and support coordination shall assist the eligible person to ensure:

1. An Individualized Plan is developed, utilizing necessary information for the preparation of the Individualized Plan and using the Interdisciplinary Team process;

2. Facilitating access to and provision of services and supports identified in the Individualized Plan;

3. The coordination of services and supports identified in the Individualized Plan for continuity of service provision; and,

4. The Individualized Plan is reviewed periodically, as needed, to determine the results achieved, if the needs of the person receiving services are accurately reflected in the Individualized Plan, whether the services and supports identified in the Individualized Plan are appropriate to meet the person's needs and what actions are necessary for the plan to be achieved.

8.607.4 INDIVIDUALIZED PLAN (IP)

A. Under the coordination and direction of the community centered board or regional center, the Interdisciplinary Team (IDT) shall develop the Individualized Plan (IP).

B. There shall be at least ten (10) days written notice from the timestamped date given to all Interdisciplinary Team members prior to an Individualized Plan meeting unless waived by the person receiving services or guardian as necessary and desirable.

Every effort shall be made to convene the meeting at a time and place convenient to the person receiving services, their legal guardian, authorized representative and parent(s) of a minor. Upon Department approval, contact may be completed by the case manager at an alternate location, via the telephone or using virtual technology methods. Such approval may be granted for situations in which face-to-face meetings would pose a documented safety risk to the case manager or client (e.g. natural disaster, pandemic, etc.).

C. The community centered board, and service agency or regional center as applicable, shall make available to the interdisciplinary team for each person receiving services such information as is necessary to develop the Individualized Plan.

D. The Individualized Plan shall:

1. Identify the unique strengths, abilities, preferences, desires, and needs of the person receiving services and their family, as appropriate;

2. Identify the specific services and supports appropriate to meet the needs of the eligible person, and family, as appropriate;

3. Document decisions made through the interdisciplinary team planning process including, but not limited to, rights suspension, the existence of appropriate services and supports, the actions necessary for the plan to be achieved, including which services and supports will be addressed through the development of an Individual Service and Support Plan (ISSP). The services and supports funded by the Department to be provided shall be described in sufficient detail as to provide for a clear understanding by the service agency(ies) of expected responsibilities and performance;

4. Describe the results to be obtained from the provision of services and supports identified in the Individualized Plan;

5. Document the authorized services and supports funded by the Department and the projected date of initiation;

6. Identify a contingency plan for how necessary care for medical purposes will be provided in the event that the person's family or caregiver is unavailable due to an emergency situation or to unforeseen circumstances. “Medical purposes” refers to a medical condition that places the individual at risk of not surviving, and that requires the support of persons qualified to address the specific medical needs of the person receiving services. Such medical conditions include, but are not limited to:

   a. Dependency on technology, such as respirators, tracheotomy tubes, or ventilators;

   b. Monitoring of medical equipment, such as a heart monitor; or,

   c. Uncontrolled seizures for which a response while receiving services is likely.

   A contingency plan is not needed for non-medical purposes or if the person receiving services does not have specific medical needs that would place him/her at risk because of the unavailability of the family or service provider. The development of a contingency plan in and of itself does not create an entitlement for services, for which none existed before.

7. Have a listing of the Interdisciplinary Team participants and their relationship to the person receiving services; and,

8. Contain a statement of agreement with the plan signed by the person receiving services or other such person legally authorized to sign on behalf of the person and a representative of the community centered board or regional center. The case manager may accept digital signatures on the agreement.

E. Copies of the Individualized Plan shall be disseminated to all persons involved in implementing the Individualized Plan including the person receiving services, their legal guardian, authorized representative and parent(s) of a minor, and the Department or others, as necessary and appropriate. If requested, copies shall be made available prior to the provision of services or supports; or within a reasonable period of time not to exceed thirty (30) days from the development of the Individualized Plan and in accordance with these rules.

F. The Individualized Plan shall remain in effect for a period not to exceed one year without review, and shall be reviewed and amended more frequently by the Interdisciplinary Team, as determined necessary and appropriate by Interdisciplinary Team members in order that the Individualized Plan accurately reflects the eligible person's current needs and circumstances. The community centered board or regional center shall coordinate the scheduling of such reviews.

8.607.5 OBTAINING SERVICES AND SUPPORTS

A. Each community centered board shall establish and maintain a system to disseminate a Request for Provider (RFP) for clients who are seeking a Program Approved Provider Agency and to refer the client to approved providers who respond to the RFP.

B. Each community centered board shall establish one (1) waiting list for services and supports for eligible persons for whom funding from the Department is unavailable. This waiting list shall be maintained in an up-to-date, consolidated written form as specified by the Department and managed pursuant to the rules of the Colorado Department of Health Care Policy and Financing's Medical Assistance Staff Manual (10 C.C.R. 2505-10), and the guidelines of the Department regarding waiting lists for Developmental Disabilities Services.

8.607.6 MONITORING

Regional centers shall be responsible to monitor the overall provision of services and supports authorized by the Department.

A. The frequency and level of monitoring shall meet the guidelines of the program in which the person is enrolled. At a minimum, monitoring shall include the following for each person:

1. The delivery and quality of services and supports identified in the Individualized Plan;

2. The health, safety and welfare of individuals;

3. The satisfaction with services and choice in providers; and,

4. That the regional center’s and service agency’s practices promote a person's ability to engage in self-determination, self-representation and self-advocacy.

B. A review of overall services and supports provided on an agency and system level shall be conducted to determine:

1. The general satisfaction of persons in regard to services and supports received;

2. The general practices of service agencies regarding health, safety and welfare of persons receiving services;

3. Fiscal compliance related to the implementation of Individualized Plans; and,

4. The nature and frequency of complaints regarding a service agency.

8.607.8 MEDICAID PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

A. Regional Center Referral Process

1 A Client may be referred to a regional center for emergency short-term placement not to exceed ninety (90) days. Such referral shall be made as specified by the Colorado Department of Human Services (CDHS) and, at minimum, shall ensure that the CMA has exhausted all reasonable alternatives in an effort to procure or provide emergency services and supports in the Client's local community.

2. Clients may be referred to a regional center for long-term placement as specified by the CDHS. Such procedures shall include, but are not limited to:

A. The CMA responsible for case management services has notified the appropriate regional center and has involved the regional center in the evaluation process;

B. The CMA, Client, and the service planning team have reviewed and recommended placement;

C. All reasonable alternatives have been exhausted by the CMAto procure services and supports in the Client's local community and such efforts have been documented; and,

D. The Client or legal guardian is a resident of Colorado.

B. Nursing Facilities

For persons referred for a Preadmission Screening and Annual Resident Review (PASARR), the completion of the PASARR in accordance with the Department's guidelines, shall be the responsibility of the Community Centered Board in the area in which the person is physically residing, unless otherwise agreed upon by the Community Centered Boards affected.

8.608 SERVICE AND SUPPORT PLANNING, SUPPORTING PEOPLE WITH CHALLENGING BEHAVIOR, AND PROTECTIONS

Pursuant to section 25.5-10-101, C.R.S., these rules establish requirements for planning and providing humane services and supports in humane physical environments. These rules are designed to assist and guide the provision of services and supports within the best practices known to the Department, encourage the maintenance and continued development of best practices within community centered boards, service agencies, and regional centers, and to protect persons from abuse, mistreatment, neglect, and exploitation.

All community centered boards, service agencies, and regional centers shall actively work to make available to each person with a developmental disability the full opportunity to be included in community life, make increasingly sophisticated and responsible choices, exert greater control over his or her life, establish and maintain relationships and a sense of belonging, develop and exercise their competencies and talents, and experience personal security and self respect.

These agencies shall also actively work to make available to each person the patterns and conditions of everyday life, which are consistent with those of persons without disabilities, including jobs and homes to the maximum extent possible. All services and supports offered will be appropriate to the chronological age of the person and shall take individual preferences into consideration.

8.608.1 SERVICE AND SUPPORT PLANNING AND DEVELOPMENT

A. Written Individual Service and Support Plans shall be developed by service agencies to address the prioritized needs for training (i.e., instruction, skill acquisition), habilitation and/or supports as developed by the interdisciplinary team in the Individualized Plan in such areas as personal, physical, mental and social development and to promote self-sufficiency and community inclusion.

1. Program approved service agencies providing comprehensive services shall develop Individual Service and Support Plans for all persons receiving services in accordance with the Individualized Plan.

2. Individual Service and Support Plans for support services shall be developed, as needed, to ensure that services and supports are provided consistently and reach the intended results, and as determined by the Interdisciplinary Team.

3. An Individual Service and Support Plan is not required for case management services, family support services, transportation services, or other such services as specified by the Department.

4. An Individual Service and Support Plan is required whenever a restrictive procedure is to be used. Any Individual Service and Support Plan including a restrictive procedure must meet the requirements outlined at section 8.608.2.

B. The purposes and content of the Individual Service and Support Plan document shall be to provide:

1. A written statement of the objective or result that the Individual Service and Support Plan is to accomplish;

2. A written explanation of the specific methodology, strategy or procedure that will be implemented;

3. A means for consistent implementation between the various service agencies providing services and supports provided for the person; and,

4. Criteria against which the effectiveness of the Individual Service and Support Plan shall be measured, the data to be collected, and timelines for reviews.

C. The development and implementation of the written Individual Service and Support Plan shall be the responsibility of the program approved service agency(ies) from which the person receives services or supports, and a copy shall be submitted to the community centered board or regional center. The person receiving service, guardian and/or authorized representative, as appropriate, shall be made aware that a copy of the Individual Service and Support Plan will be made available to them upon request. The CCB shall document the request in the Individualized Plan if asked to do so. If requested, the ISSP shall be provided within 30 days of the date given in the IP for it to be written.

D. The Individual Service and Support Plan and subsequent reviews shall be written and become part of the master record.

E. When a person needs assistance with challenging behavior, including a person whose behavior is dangerous to himself, herself or others, or engages in behavior which results in significant property destruction, the program approved service agency in conjunction with other members of the person's interdisciplinary team shall complete a comprehensive review of the person's life situation including:

1. The status of friendships, the degree to which the person has access to the community, and the person's satisfaction with his or her current job or housing situation;

2. The status of the family ties and involvement, the person's satisfaction with roommates or staff and other providers, and the person's level of freedom and opportunity to make and carry out decisions;

3. A review of the person's sense of belonging to any groups, organizations or programs for which they may have an interest, a review of the person's sense of personal security, and a review of the person's feeling of self-respect;

4. A review of other issues in the person's current life situation such as staff turnover, long travel times, relationship difficulties and immediate life crises, which may be negatively affecting the person;

5. A review of the person's medical situation which may be contributing to the challenging behavior; and,

6. A review of the person's Individualized Plan and any Individual Service and Support Plans to see if the services being provided are meeting the individual's needs and are addressing the challenging behavior using positive approaches.

F. If any aspects of this review suggests that the person's life situation could be or is adversely affecting his or her behavior, these circumstances shall be evaluated by the interdisciplinary team, and specific actions necessary to address those issues shall be included in the Individualized Plan and/or Individual Service and Support Plan, prior to the use of any restrictive procedures to manage the person's behavior.

G. Issues identified in this comprehensive review that cannot be addressed by the interdisciplinary team should be documented in the Individualized Plan or Individual Service and Support Plan, and the community centered board or regional center administration should be notified of these issues and the present or potential effect they will have on the person involved.

8.608.2 INDIVIDUAL SERVICE AND SUPPORT PLAN (ISSP) INCLUDING A RESTRICTIVE PROCEDURE

A. When restrictive procedures, as defined in section 8.600.4, are recommended or used to change a person's challenging behavior, the following steps must be completed:

1. The program approved service agency in conjunction with other members of the person's interdisciplinary team shall complete a comprehensive review of the person's life situation;

2. The program approved service agency shall complete a functional analysis of the person's challenging behavior for review by the interdisciplinary team; and,

3. In conjunction with the interdisciplinary team, the program approved service agency shall prepare an Individual Service and Support Plan that explains the use of any restrictive procedure and includes, at a minimum:

a. A description of the behavior to be changed or improved, described when possible, in observable and measurable terms;

b. Baseline data which demonstrates why the behavior has been targeted for change;

c. A description of the specific methodology and procedures that will be used to implement the Individual Service and Support Plan;

d. Identification of the person(s) who will monitor the implementation of the Individual Service and Support Plan;

e. A description of the behavior to be developed, if necessary and appropriate;

f. Identification of the person(s) who will implement the Individual Service and Support Plan and assurance that they have demonstrated competency in its implementation;

g. Criteria which will measure the effectiveness of the Individual Service and Support Plan;

h. Data to be collected; and,

i. Specific timelines for review.

4. The person receiving services, parents of a minor, or legal guardian shall grant informed consent for the use of the Individual Service and Support Plan with a restrictive procedure prior to its implementation.

8.608.3 REQUIREMENTS WHEN USING RESTRAINT

A. Physical or mechanical restraint can only be used by employees or contractors trained in its use, in an emergency situation, when alternatives have failed, and when necessary to protect the person from injury to self or others.

1. The individual shall be released from physical or mechanical restraint as soon as the emergency condition no longer exists.

2. Physical or mechanical restraint cannot be a part of an Individual Service and Support Plan and can only be used as an emergency or safety control procedure in accordance with these rules and regulations.

3. No physical or mechanical restraint of a person receiving services shall place excess pressure on the chest or back of that person or inhibit or impede the person's ability to breathe.

4. During physical restraint, the person's breathing and circulation shall be checked to ensure that these are not compromised.

5. Each community centered board, program approved service agency, and regional center shall have written policies and procedures on the use of physical restraint exceeding fifteen (15) minutes. Such policies and procedures shall allow for physical restraint exceeding fifteen (15) minutes only when absolutely necessary for safety reasons and shall provide for backup by appropriate professional and/or agency staff.

6. Relief periods of, at a minimum, ten (10) minutes every one (1) hour shall be provided to an individual in mechanical restraint, except when the individual is sleeping. A record of relief periods shall be maintained.

7. An individual placed in a mechanical restraint shall be monitored at least every fifteen (15) minutes by employees or contractors trained in the use of mechanical restraint to ensure that the individual's physical needs are met and the individual's circulation is not restricted or airway obstructed. A record of such monitoring shall be maintained.

B. Mechanical restraints used for medical purposes following a medical procedure or injury shall be authorized by a physician's order which shall be renewed every twenty-four (24) hours. Requirements of section 8.608.3.A applicable to mechanical restraint shall also apply.

C. Mechanical or physical restraints used for a diagnostic or other medical procedure conducted under the control of the agency (e.g., drawing blood by an agency nurse) shall be dually authorized by a licensed medical professional and agency administrator, and its use documented in the person's record.

8.608.4 REQUIREMENTS FOR EMERGENCY AND SAFETY CONTROL PROCEDURES

A. An Emergency Control Procedure is the unanticipated use of a restrictive procedure or restraint in order to keep the person receiving services and others safe.

1. Each Community Centered Board, program approved service agency, and regional center shall have written policies on the use of emergency control procedures, the types of procedures which may be used, and requirements for staff training.

2. Behaviors requiring emergency control procedures are those which are infrequent and unpredictable.

3. Emergency control procedures shall not be employed as punishment, for the convenience of staff, or as a substitute for services, supports or instruction.

4. Within twenty-four (24) hours after the use of an emergency control procedure, the responsible staff person shall file an incident report. The incident report shall meet all requirements of Section 8.608.6.B and shall also include:

a. A description of the emergency control procedure employed, including beginning and ending times;

b. An explanation of why the procedure was judged necessary; and,

c. An assessment of the likelihood that the behavior that prompted the use of the emergency control procedure will recur.

5. Within three (3) days after use of an emergency control procedure, the Community Centered Board, case management agency or regional center, parent of a minor, guardian, and authorized representative if within the scope of his or her duties, shall be notified.

B. Safety control procedures must be developed when it can be anticipated that there will be a need to use restrictive procedures or restraints to control a previously exhibited behavior which is likely to occur again. The use of safety control procedures shall comply with the following:

1. Each Community Centered Board, program approved service agency, and regional center shall have written policies on the use of safety control procedures, the types of procedures which may be used, and requirements for staff training;

2. When a safety control procedure is used, the service agency shall file an incident report within three (3) days with the Community Centered Board, case management agency or regional center which meets all requirements of Section 8.608.6.B and the conditions associated with each use of a safety control procedure; and,

3. If the safety control procedure is used more than three times within the previous thirty (30) days, the person's interdisciplinary team shall meet to review the situation and to endorse the current plans or to prepare other strategies.

8.608.5 HUMAN RIGHTS COMMITTEES (HRC)

A. Each community centered board and regional center shall establish at least one Human Rights Committee (HRC) as a third party mechanism to safeguard the rights of persons receiving services. The Human Rights Committee is an advisory and review body to the administration of the community centered board or regional center.

B. Such committee shall be constituted as required by section 25.5-10-209(2)h, C.R.S.

C. If a consultant to the community centered board, regional center, or service agency serves on the Human Rights Committee, procedures shall be developed by the community centered board or regional center and the Human Rights Committee related to potential conflicts of interest.

D. The community centered board and regional center shall orient members regarding the duties and responsibilities of the Human Rights Committee.

E. The community centered board and regional center shall provide the Human Rights Committee with the necessary staff support to facilitate its functions.

F. Each program approved service agency shall make referrals as required in rules and regulations for review by the Human Rights Committee(s) in the manner required by the community centered board or regional center.

G. The recommendations of the Human Rights Committee shall become a part of the community centered board's, service agency's or regional center’s record as well as a part of the individual's master record.

H. The Human Rights Committee shall develop operating procedures which include, but are not limited to, Human Rights Committee responsibilities for the committee's organization, the review process, and provisions for recording dissenting opinions of committee members in the committee's recommendations.

I. The Human Rights Committee shall establish and implement operating and review procedures to determine that the practices of the community centered board, service agencies and regional centers are in compliance with section 25.5-10, C.R.S., are consistent with the mission, goals and policies of the Department, community centered board or regional center, and ensure that:

1. Informed consent is obtained when required from the person receiving services, the parent of a minor, or the guardian as appropriate;

2. Suspension of rights of persons receiving services occurs only within procedural safeguards as stipulated in section 8.604.3 and that continued suspension of such rights is reviewed by the interdisciplinary team at a frequency decided by the team, but not less than every six months;

3. Emergency control procedures, safety control procedures and Individual Service and Support Plans with restrictive procedures are used in accordance with the requirements of these rules;

4. The use of psychotropic medications and other medications used for the purpose of modifying a person's behavior by persons receiving comprehensive services and supports are used in accordance with the requirements of section 8.609.6.D.7 and 8, and are monitored by the Human Rights Committee on a regular basis; and,

5. Allegations of mistreatment, abuse, neglect and exploitation are investigated and the investigation report reviewed.

8.608.6 INCIDENT REPORTING

A. Community centered boards, service agencies and regional centers shall have a written policy and procedure for the timely reporting, recording and reviewing of incidents which shall include, but not be limited to:

1. Injury to a person receiving services;

2. Lost or missing persons receiving services;

3. Medical emergencies involving persons receiving services;

4. Hospitalization of persons receiving services;

5. Death of person receiving services;

6. Errors in medication administration;

7. Incidents or reports of actions by persons receiving services that are unusual and require review;

8. Allegations of abuse, mistreatment, neglect, or exploitation;

9. Use of safety control procedures;

10. Use of emergency control procedures; and,

11. Stolen personal property belonging to a person receiving services.

B. Reports of incidents shall include, but not be limited to:

1. Name of the person reporting;

2. Name of the person receiving services who was involved in the incident;

3. Name of persons involved or witnessing the incident;

4. Type of incident;

5. Description of the incident;

6. Date and place of occurrence;

7. Duration of the incident;

8. Description of the action taken;

9. Whether the incident was observed directly or reported to the agency;

10. Names of persons notified;

11. Follow-up action taken or where to find documentation of further follow-up; and,

12. Name of the person responsible for follow-up.

C. Allegations of abuse, mistreatment neglect and exploitation, and injuries which require emergency medical treatment or result in hospitalization or death shall be reported immediately to the agency administrator or designee, and to the community centered board within 24 hours.

D. Reports of incidents shall be-placed in the record of the person.

E. Records of incidents shall be made available to the community centered board, and the Department upon request.

F. Community centered boards, program approved service agencies and regional centers shall review and analyze information from incident reports to identify trends and problematic practices which may be occurring in specific services and shall take appropriate corrective action to address problematic practices identified.

G. Community centered boards must follow all critical incident reporting requirements outlined at Section 8.519.16.

8.608.7 RESEARCH

A. Any experimental research performed by or under the supervision of the community centered board, service agency or regional center shall be governed by policies/procedures which shall:

1. Require adherence to ethical and design standards in the conduct of research;

2. Require review by the Human Rights Committee;

3. Address the adequacy of the research design;

4. Address the qualifications of the individuals responsible for coordinating the project;

5. Address the benefits of the research in general;

6. Address the benefits and risks to the participants;

7. Address the benefits to the agency;

8. Address the possible disruptive effects of the project on agency operations;

9. Require obtaining informed consent from participants, their guardians or the parents of a minor. Such consent may be given only after consultation with:

    a. The interdisciplinary team; and,

    b. A developmental disabilities professional not affiliated with the service agency from which the person receives services; and

10. Require procedures for dealing with any potentially harmful effects that may occur in the course of the research activities.

B. No person shall be subjected to experimental research or hazardous treatment procedures if the person implicitly or expressly objects to such procedures or such procedures are prohibited.

8.608.8 ABUSE, MISTREATMENT, NEGLECT, AND EXPLOITATION

A. Pursuant to Section 25.5-10-221, C.R.S., all Community Centered Boards, case management agencies, service agencies and regional centers shall prohibit abuse, mistreatment, neglect, or exploitation of any person receiving services.

B. Community Centered Boards, case management agencies, program approved service agencies and regional centers shall have written policies and procedures for handling cases of alleged or suspected abuse, mistreatment, neglect, or exploitation of any person receiving services. These policies and procedures must be consistent with state law and:

1. Definitions of abuse, mistreatment, neglect, or exploitation must be consistent with state law and these rules;

2. Provide a mechanism for monitoring to detect instances of abuse, mistreatment, neglect, or exploitation. Monitoring is to include, at a minimum, the review of:

    a. Incident reports;

    b. Verbal and written reports of unusual or dramatic changes in behavior(s) of persons receiving services; and,

    c. Verbal and written reports from persons receiving services, advocates, families, guardians, and friends of persons receiving services.

3. Provide procedures for reporting, reviewing, and investigating all allegations of abuse, mistreatment, neglect, or exploitation;

4. Ensure that appropriate disciplinary actions up to and including termination, and appropriate legal recourse are taken against employees and contractors who have engaged in abuse, mistreatment, neglect, or exploitation;

5. Ensure that employees and contractors are made aware of applicable state law and agency policies and procedures related to abuse, mistreatment, neglect or exploitation;

6. Require immediate reporting when observed by employees and contractors according to agency policy and procedures and to the agency administrator or his/her designee;

7. Require reporting of allegations within 24 hours to the parent of a minor, guardian, authorized representative, and Community Centered Board or regional center;

8. Ensure prompt action to protect the safety of the person receiving services. Such action may include any action that would protect the person(s) receiving services if determined necessary and appropriate by the service agency or Community Centered Board pending the outcome of the investigation. Actions may include, but are not limited to, removing the person from his/her residential and/or day services setting and removing or replacing staff;

9. Provide necessary victim supports;

10. Require prompt reporting of the allegation to appropriate authorities in accordance with statutory requirements and pursuant to Section 8.608.8.C;

11. Ensure Human Rights Committee review of all allegations; and,

12. Ensure that no individual is coerced, intimidated, threatened or retaliated against because the individual, in good faith, makes a report of suspected abuse, mistreatment, neglect or exploitation or assists or participates in any manner in an investigation of such allegations in accordance with Section 8.608.8.D.

C. Any and all actual or suspected incidents of abuse, mistreatment, neglect, or exploitation shall be reported immediately to the agency administrator or designee. The agency shall ensure that employees and contractors obligated by statute, including but not limited to, Section 19-3-304, C.R.S., (Colorado Children's Code), Section 18-6.5-108, C.R.S., (Colorado Criminal Code - Duty To Report A Crime), and Section 26-3.1-102, C.R.S., (Human Services Code - Protective Services), to report suspected abuse, mistreatment, neglect, or exploitation, are aware of the obligation and reporting procedures.

D. All alleged incidents of abuse, mistreatment, neglect, or exploitation shall be thoroughly investigated in a timely manner using the specified investigation procedures. However, such procedures must not be used in lieu of investigations required by law or which may result from action initiated pursuant to Section C, above.

1. Within 24 hours of becoming aware of the incident, a critical incident report shall be made available to the agency administrator or designee and the Community Centered Board or regional center.

2. The agency shall maintain a written administrative record of all such investigations including:

   a. The incident report and preliminary results of the investigation;

   b. A summary of the investigative procedures utilized;

   c. The full investigative finding(s);

   d. The actions taken; and,

   e. Human Rights Committee review of the investigative report and the action taken on recommendations made by the committee.

3. The agency shall ensure that appropriate actions are taken when an allegation against an employee or contractor is substantiated, and that the results of the investigation are recorded, with the employee's or contractor's knowledge, in the employee's personnel or contractor's file.

8.609 PROGRAM SERVICES AND SUPPORTS

8.609.1 SUPPORT SERVICES

Support services include supported living services for adults 18 years and older and the children's extensive support program for children through age 17.

A. Supported Living Services for adults are intended to provide the necessary assistance and support to meet the daily living and safety needs of persons who are responsible for their own living arrangements in the community. Services are intended to augment available supports for those individuals who can live independently with limited supports, or who, if they need extensive support, are getting that support from other sources.

B. Children's extensive support services are intended to provide the services and supports to children most in need because of the severity of the disability and provide for stability of the family setting which would allow the child to continue to remain in the family home.

C. Medicaid funded supported living services for adults and children's extensive support services are provided through the home and community based services program which is described in Section 8.500.

8.609.2 SUPPORT SERVICES GENERAL PROVISIONS

A. Services and supports shall be provided pursuant to the person's Individualized Plan and Individual Service and Support Plans, as appropriate.

Individual Service and Support Plans shall be developed, as needed, to ensure that services and supports are provided consistently and reach the intended results, as determined by the Interdisciplinary Team.

B. Services and supports provided shall be in accordance with the Department’s rules.

C. Each support coordinating agency shall be responsible to ensure there is no interruption of services and supports that are critical to a person's health and safety and which if not delivered could result in imminent harm to the person.

D. Individuals, parents of a minor or guardians shall have the opportunity to choose and direct services necessary to meet their identified and prioritized needs and to choose among qualified service providers. Provision of services by family members, as defined in Section 25.5-10-202(16), C.R.S., living in the same household (under the same roof and same physical address) with the program participant shall be on an exception basis only and in accordance with the requirements of the applicable Medicaid waiver.

E. Each support coordinating agency shall establish and implement written procedures for:

1. The assignment of resources as prescribed by the Department; and,

2. Approving expenditures for adaptations and devices as prescribed by the Department.

F. For persons receiving services who are assisted in the administration of medications by a person other than a relative, the following is required:

1. A written record of medications, including time and the amount of medication, taken by the person;

2. Written orders by a licensed physician or dentist for all medications;

3. Documentation of the effects of psychotropic medications and any changes in medication; and,

4. The use of medication reminder boxes pursuant to Section 25-1.5-303(1) C.R.S.

G. The support coordinating agency shall provide for the regular monitoring of the health, safety and welfare of persons and the services and supports provided.

H. The support coordinating agency shall conduct an evaluation of consumer satisfaction no less than every three (3) years. The evaluation shall, at a minimum, include satisfaction with choice of services and providers.

I. The support coordinating agency shall maintain a record for each person receiving services which includes the information required by these rules and as prescribed by the Department.

Staff, providers and other support personnel shall have ready access to records and information required by them to carry out their responsibilities.

8.609.3 CHILDREN'S EXTENSIVE SUPPORT PROGRAM

A. The child participating in the Children's Extensive Support Program shall live at home with his/her biological, adoptive parent(s) or guardian, or be in an out of home placement and being returned home with the provision of the program.

B. There shall be a record that the child's physician has certified that the medical services and supports identified in the Individualized Plan are sufficient to meet the child's needs in the home setting.

8.609.4 COMPREHENSIVE HABILITATION SERVICES AND SUPPORTS

Medicaid funded Comprehensive Habilitation Services and Supports are provided through the Home and Community Based Services program which is described in the Colorado Department of Health Care Policy and Financing rules and regulations, Medical Assistance staff manual, section 8.500 (10 C.C.R. 2505-10) and the Department's program descriptions. State funded Comprehensive Habilitation Services and Supports are provided pursuant to the Department's program description. Comprehensive Habilitation Services and Supports specifically for individuals with developmental disabilities include:

A. Residential Habilitation Services and Supports

1. Individual Residential Services and Supports

2. Group Residential Services and Supports

B. Day Habilitation Services and Supports

1. Integrated employment services

2. Integrated activities services

3. Prevocational services

4. Other activities services

C. Transportation Acquisition Services

8.609.5 RESIDENTIAL HABILITATION SERVICES AND SUPPORTS DESCRIPTION AND GENERAL PROVISIONS

Residential Habilitation Services and Supports provide a full day (24 hours) of services and supports to ensure the health, safety and welfare of the individual, and to provide training and habilitation services or a combination of training (i.e., instruction, skill acquisition) and supports in the areas of personal, physical, mental and social development and to promote interdependence, self-sufficiency and community inclusion. Services and supports are designed to meet the unique needs of each person determined by the assessed needs, personal goals, and other input provided by the Interdisciplinary Team, defined at Section 8.519.1, and to provide access to and participation in typical activities and functions of community life.

A. Program Approved Service Agency Policies, Procedures and Service Provisions

1. Each Program Approved Service Agency (PASA) providing residential services must establish and implement written policies and procedures concerning the use, handling and timely disbursement of personal needs funds and include a record of personal possessions, including clothing, of the participant.

2. PASAs must conduct an evaluation of consumer satisfaction with services and supports no less than every two years. The PASA must review and analyze this data and address any complaints or problematic practices requiring corrective action. PASAs must make the results of the survey available to interested stakeholders upon request.

3. The PASA must maintain a record for each participant which includes the information required by these rules and as prescribed by the Department.

4. Participants receiving Residential Habilitation Services and Supports must have 24-hour supervision. Supervision may be on-site (direct service provider or caregiver is present) or accessible (direct service provider or caregiver is not on site but available to respond when needed). Staffing arrangements must be adequate to meet the health, safety and welfare of participants and the needs of the individual as determined by the Service Plan. The PASA is responsible for verifying that any direct care provider they employ or contract with has the capacity to serve the individuals in their care, as outlined in the Support Plan.

5. Physical facilities utilized as residential settings must meet all applicable fire, building, licensing and health regulations.

6. Services and supports must be provided pursuant to the person's Service Plan, in accordance with Department guidelines and service descriptions, and the HCBS Settings Final Rule at 79 Fed. Reg. 2948 (Jan. 16, 2014) (codified in relevant part at 42 C.F.R. § 441.301).

7. The PASA is responsible for providing services, supplies and equipment as prescribed by the Department.

8. Caregivers, providers and other support personnel must have ready access to records and all necessary, detailed protocols about the participant required to carry out their responsibilities.

9. PASAs must comply with the Colorado Adult Protection Services (CAPS) requirements, outlined in §26-3.1-111, C.R.S. and 12 CCR 2518-1, Volume 30.960. The PASA must maintain accurate records and make records available to the Department upon request.

    a. Direct service provider means any person providing direct services and supports, including case management services, protective services, physical care, mental health services, or any other service necessary for the at-risk adult's health, safety, or welfare, pursuant to C.R.S. 26-3.1-101 (3.5). Direct service provider includes PASA applicants and owners, as they are ultimately responsible for the members they serve.

    b. During the enrollment process the PASA may be granted provisional approval to render Medicaid services. Final PASA approval is contingent on submission of documentation of a completed CAPS check on the PASA applicant and owner within 90 days from the receipt of the provisional approval.

        i. Failure to submit the required documentation within 90 days of the provisional approval period may result in rescindment of the provisional approval.

        ii. For the purposes of C.R.S. 26-3.1-111 (6)(a)(III), the Department of Health Care Policy and Financing is the oversight agency for PASAs and must be informed of CAPS check results for employers who run them on themselves.

    c. Direct Service and backup providers with any of the following are prohibited from providing IRSS to any participant :

        i. A substantiated allegation of abuse, neglect, exploitation, or harmful act, as defined in Section 26-3.1-101, C.R.S., within the last 10 years, by APS at a severity level of "Moderate" or "Severe" as defined in 12 CCR 2518-1 Section 30.100;

        ii. Three or more substantiated allegations of abuse, neglect, exploitation, or harmful act, as defined in Section 26-3.1-101, C.R.S., within the last five years, by APS at the minor severity level as defined in 12 CCR 2518 Section 30.100; or

        iii. A criminal conviction of abuse, neglect, or exploitation against an at-risk adult with IDD as defined in Section 18-6.5-102, C.R.S.

        iv. Only substantiated allegations that have exhausted the appeal period and come to a final disposition, as defined as 12 CCR 2518-1 Section 30.920, shall be included in the above exclusions list.

10. Incident Reporting

    a. The PASA must comply with all incident reporting requirements, as outlined in Section 8.608.6.

    b. The PASA must notify guardians and/or representatives of Incident Reports (IR).

    c. The PASA must have policies and procedures in place for handling cases of alleged or suspected abuse, mistreatment, neglect, or exploitation of any participant, pursuant to Section 8.608.8.

d. The PASA must notify the waiver participant and guardians and/or participants' representatives of investigations, including summary information pertaining to the outcome of the investigation, victim supports accessed, and recommendations to prevent recurrence.

11. The PASA is responsible for the monitoring of conditions at the property and must provide oversight and guidance to safeguard the health, safety, and welfare of the participant.

12. The PASA must provide for and document the regular on-site monitoring of Residential Habilitation Services and Supports. PASA's must conduct an on-site visit of each Individual Residential Support Services (IRSS) or Group Residential Support Services (GRSS) setting before a participant moves in, and at a minimum once every quarter, with at least one visit annually that is unscheduled. On-site monitoring of IRSS and GRSS settings must include, but not be limited to:

a. Inspection of all smoke alarms and carbon monoxide detectors;

b. Ensuring all exits are free from blockages to egress;

c. Review of each participant's emergency and disaster assessment; and

d. Medication administration records and physician orders.

B. Rights of Participants

1. A participant must be presumed able to manage his/her own funds and possessions unless otherwise documented in the Service Plan.

2. Participants must have a key or key code to their home, a bedroom door with a lock, lockable bathroom doors, access to all common areas of the home, and a residential agreement that provides protections for evictions.

3. A participant, guardians, authorized representatives, as appropriate, and the case manager shall be notified at least fifteen (15) days prior to proposed changes in residential placements.

a. If an immediate move is required for the protection of the person, notification must occur as soon as possible before the move or no later than three days after the move.

b. A participant, guardians, and authorized representatives, as appropriate, must be involved in planning subsequent placements and any member of the Interdisciplinary Team may request a meeting to discuss the change in placement.

c. When a participant moves settings or PASA, all residential PASA's involved must be present for the move whenever possible, and will ensure all possessions, medications, money and pertinent records are transferred to the participant within 24 hours.

d. If the participant, guardians, or authorized representative, as appropriate, wants to contest the move they should follow the grievance procedure of the agency.

e. If there is a concern regarding the health, safety, or welfare of the person being jeopardized as a result of the move, any interested party may request an emergency order from the Department pursuant to Section 8.605.4.

4. Participants have a right to annual notification of PASA appeal/grievance policies and procedures.

8.609.6 COMPREHENSIVE HABILITATION SERVICES AND SUPPORTS MEDICAL, THERAPY, AND MEDICATION PROVISIONS

A. Persons receiving comprehensive services and supports shall be assured of medical and dental services necessary to maintain the health of the person and to prevent further disability and shall have dentures, eyeglasses, hearing aids, braces and other aids or therapies as prescribed by an appropriate professional.

B. Each program approved service agency shall have provisions for emergency medical care and procedures to be followed in rendering emergency medical care.

C. Therapy assessments shall be completed as the need for these is identified by the interdisciplinary team and/or physician. Based on these assessments, therapies shall be provided to maintain the health of the person receiving services, to prevent further disability and, whenever possible, to improve the overall functioning of the person receiving services.

1. Therapy programs shall be periodically reviewed by a professional therapist from the relevant specialty area.

2. Persons receiving services who use wheelchairs and other assistive technology services shall receive professional reviews, at a prescribed or recommended frequency, to ascertain the continued applicability and fitness of those devices.

3. Wheelchairs and other assistive technology devices shall be maintained in good repair.

D. The program approved service agency shall provide sufficient supports to persons receiving services in the use of prescription and non-prescription medications to protect the health and safety of persons receiving services. Decisions concerning the type and level of supports provided shall be based on the abilities and needs of the person receiving services as determined by assessment and shall be in compliance with these rules.

1. Each program approved service agency shall establish and implement written procedures for the appropriate procurement, storage, distribution and disposal of medications.

a. All drugs shall be stored under proper conditions of temperature, light, and with regard for safety.

b. Discontinued drugs, outdated drugs, and drug containers with worn, illegible, or missing labels shall be promptly disposed of in a safe manner.

c. A record shall be maintained of missing, destroyed or contaminated medications.

d. The use of medication reminder boxes shall be pursuant to section 25-1.5-303(1) C.R.S.

2. No prescription medication shall be administered without a written order by a licensed physician or dentist.

3. The drug regimen of each person receiving services on prescription medication shall be reviewed and evaluated by a licensed physician no less often than annually and more frequently if recommended by the physician or required by law.

4. Refusals to take medications by a person receiving services and drug reactions shall be recorded. On-going refusals to take medications shall be addressed by the person's physician.

5. For persons receiving services who are not independent in the administration of their own medications the following shall be required:

    a. A written record of medications, including time and the amount of medication, taken by the person receiving services; and,

    b. Physician orders for over the counter medications.

6. For persons receiving services who are independent in the administration of medications and who do not require monitoring each time medication is taken, the program approved service agency shall provide sufficient, at minimum quarterly, monitoring or review of medications to determine that medications are taken correctly.

7. Psychotropic medication for persons receiving residential services and supports shall be used only for diagnosed psychiatric disorders and:

    a. When a specific psychiatric evaluation or consultation has resulted in the recommendation for use of medication;

    b. When the person's Individualized Plan specifies the use of psychotropic medication;

    c. After informed consent of the person receiving services, the parent of a minor, or the legal guardian of an adult has been obtained or pursuant to a valid court order;

    d. After completion of a comprehensive review of the person's life situation and an Individual Service and Support Plan. The Individual Service and Support Plan shall explain the specific methodologies, strategies or procedures that will be implemented to assist the person to maintain stability or that will be implemented in a crisis; and,

    e. When reviewed by the Human Rights Committee.

8. Administration of psychotropic medications to a person receiving residential services and supports shall:

    a. Be authorized through a time-limited prescription of no more than ninety (90) days by a fully licensed physician and reviewed at least annually by a psychiatrist;

    b. Be in the minimum effective dose possible;

    c. Allow for gradual reduction of the dosage and ultimate discontinuation of the drug, unless clinical data establishes the presence of a psychiatric condition requiring that a maintenance level of the drug be administered;

d. Ensure employees and contractors are knowledgeable of potential side effects and adverse reactions to the drugs;

e. Include regular monitoring of the person receiving services for potentially irreversible side effects such as tardive dyskinesia and other abnormal movements and effects, neurotoxicity, and neuroleptic malignant syndrome;

f. Include documentation of the effects of medications and any changes in medication; and,

g. Not be ordered on a PRN or "as needed" basis.

8.609.7 INDIVIDUAL RESIDENTIAL SERVICES AND SUPPORTS (IRSS) SPECIFICATIONS

A. Individual Residential Services and Supports (IRSS) use a variety of living arrangements to meet the unique needs for support, guidance and habilitation of each participant.

1. IRSS settings include, but are not limited to:

a. a home owned, leased or controlled by the Program Approved Service Agency (PASA);

b. a home of a family member;

c. their own home; or

d. a Host Home.

i. The Host Home is the primary residence of the provider, which means that the Host Home provider occupies the residence seventy-five (75) percent of the time. The Host Home provider may not contract to provide services to more than three (3) individuals, inside or outside of the Host Home, at any given time.

B. Program Approved Service Agency Policies, Procedures and Service Provisions

1. The PASA has the responsibility for the living environment, regardless of the setting type.

2. IRSS may be provided to no more than three participants in a single setting. For each participant in a setting, the PASA must ensure the following criteria are met and documented:

a. The participants involved elect to live in the setting;

b. Each participant must have their own bedroom, unless they elect to share a bedroom with a roommate of their choice, which must be documented in the Service Plan;

c. Back-up providers are identified, available and agreed upon by the participant and PASA. When a back-up provider is not available, the PASA assumes responsibility for identifying a provider;

d. The PASA and case management agency of each participant in the setting must be involved in the coordination of placement of each participant;

e. Participants are afforded regular opportunities for community inclusion of their choice;

f. Participants are afforded individual choice, including preference to live near family;

g. Distance from other homes (e.g., apartments, houses) of participants is examined so that persons with developmental disabilities are not grouped in a conspicuous manner;

h. For the placement of an individual into a three-person setting, the following factors must be examined to determine reasonableness of the placement:

i. Level of care and needs of each participant in the home;

ii. Availability to support and provide supervision to participants;

iii. Compliance with HCBS Settings Final Rule at 79 Fed. Reg. 2948 (Jan. 16, 2014) (codified in relevant part at 42 C.F.R. § 441.301); and

iv. Each participant's ability to evacuate.

i. When three participants reside in a single setting, the PASA must conduct monthly monitoring of the setting.

3. Participants must live safely in environments common to other citizens with reasonable and appropriate supports provided to protect their health and safety while simultaneously promoting community inclusion. Providers and caregivers must have the appropriate knowledge, skills, and training to meet the individual needs of the participant before providing care and services. The PASA must have policies and procedures in place outlining the required trainings for providers and caregivers. The policy and procedure shall include, but not be limited to, the following:

a. Training specific to the participants' needs shall be completed by all providers and caregivers. Such training shall include, at a minimum, medical protocols and activities of daily living needs.

b. Providers and caregivers shall receive training in resident rights, abuse and neglect prevention, and reporting abuse, neglect, mistreatment and exploitation.

4. Upon enrollment in services, the PASA must assess each participant's ability to care for their safety needs and take appropriate action in case of an emergency. The assessment must be kept up to date and, at a minimum, address the following emergencies and disasters:

a. Fire;

b. Severe weather and other natural disasters;

c. Serious accidents and illness;

d. Assaults; and,

e. Intruders.

5. There must be a written plan for each person addressing how the emergencies specified above will be handled. The plans must be based on an assessment, maintained current and shall, at minimum, address:

    a. Specific responsibilities/actions to be taken by the participant, approved caregivers or other providers of supports and services in case of an emergency;

    b. How the participant will evacuate in case of fire by specifying, at minimum, two exit routes from floors used for sleeping and the level of assistance needed; and

    c. Telephone access (by the participant or with assistance) to the nearest poison control center, police, fire and medical services.

6. Safety plans and evacuation procedures must be reviewed and practiced at sufficient frequency and varying times of the day, but no less than once a quarter, to ensure all persons with responsibilities for carrying out the plan are knowledgeable about the plan and capable of performing it. All safety plans must be on site at the home and be reviewed by the PASA agency during each on-site monitoring visit.

7. The PASA must provide sufficient oversight and guidance and have established procedures to ensure that the health and medical needs of the participant are addressed. This includes:

    a. Each participant must have a primary physician;

    b. Each participant must receive a medical evaluation at least annually unless a greater or lesser frequency is specified by his/her primary physician. If the physician specifies an annual evaluation is not needed, a medical evaluation must be conducted no less frequently than every two years;

    c. Each participant must be encouraged and assisted in getting a dental evaluation annually;

    d. Other medical and dental assessments and services must be completed as the need for these is identified by the physician, dentist, other medical support personnel or the Interdisciplinary Team; and

    e. Records must contain documentation of:

        i. medical services provided;

        ii. results of medical evaluations/ assessments and of follow-up services required, if any;

        iii. acute illness and chronic medical problems; and,

        iv. weight taken annually or more frequently, as needed.

8. The PASA must have a written contract with each direct service provider that is not directly employed by the PASA and is providing IRSS under the PASA's authority, regardless of the setting type. This includes but is not limited to Host Home providers and family caregivers not directly employed by the PASA.

a. A current list of the above-mentioned contracted IRSS providers and their accompanying contracts must be on file with the program approved service agency and a copy must be provided to the Department or its agent upon request.

b. Each contract must be in writing and contain the following information:

i. Name of contracted IRSS provider;

ii. Responsibilities of each party to the contract, including, but not limited to, responsibility for the safety and accessibility of the physical environment of the home;

iii. An agreement outlining the living arrangements, monitoring of the Host Home, Host Home provider's duties, and any limitations on the Host Home providers duties;

iv. Expectations that participants be provided opportunities for informed choice over a variety of daily choices similar to those exercised by non-participants;

v. Process for correcting non-compliance;

vi. Process for termination of the contract;

vii. Process for modification or revision of the contract;

viii. Process for relocation of the participant if they are in immediate jeopardy of actual or potential for serious injury or harm;

ix. Process for coordinating the care of the participant;

x. Payment rate and method;

xi. Beginning and ending dates; and

xii. A clause that states the contracted IRSS provider shall not sub-contract with any entity to perform in whole the work or services required under the IRSS benefit.

c. PASAs who utilizes the services of subcontractors are responsible for the following, which includes but is not limited to:

i. Vetting, training, monitoring, and taking corrective action with employees and subcontractors.

ii. Nothing in these regulations shall create any contractual relationship between any subcontractor of the PASA and the Department.

d. If a contract is terminated with a contracted IRSS provider due to health, safety or welfare concerns, the PASA must report to the following parties:

i. Within 4 days to the Department or its agent regarding the cited reason for termination of a contracted IRSS provider.

ii. Within 4 days to the guardian or authorized representative and case manager of the participant from the terminated contracted IRSS provider.

9. The PASA must require each contracted direct service provider providing IRSS to document each approved caregiver(s) and report to the agency the names of all persons that reside in the home. Participants and/or guardians have a right to request and receive from the rendering PASA a list of all direct service and backup providers that are approved to provide them services. No backup provider may be hired without PASA approval. The agency must ensure criminal background checks are completed for any non-participant over the age of 18 who lives in the home.

10. The IRSS direct service provider is prohibited from conduct that would pose a risk to the health, safety and welfare of the member including the members mental health.

11. Each PASA must provide quarterly housing and participant updates to the Department or its agent through a specified data collection platform. Failure to provide these quarterly updates may result in payment suspension.

12. The PASA must ensure nutritionally balanced meals are available to participants. Based on an assessment of the person's capabilities, preferences and nutritional needs, the PASA may provide guidance and support to monitor nutritional adequacy.

a. Therapeutic diets must be prescribed by a licensed physician or dietician.

b. Participants must have access to food at all times, choose when and what to eat, the opportunity to provide input into menu planning, comfortable seating for meals where they can choose their own seat, and shall have access to food preparation areas as documented in the Service Plan.

C. Living Environment

1. Homes of participants must, at minimum, meet standards set forth in the Colorado Division of Housing (DOH) IRSS Inspection Protocol. The following setting types must pass the DOH IRSS Inspection Protocol every two years:

a. All Host Homes; and

b. All IRSS settings that are owned or leased by a PASA.

Settings must request an inspection prior to placement of a participant and must pass an inspection within 90 days of becoming an approved setting and providing services. Existing settings have until January 1, 2022 to pass an inspection.

2. The PASA must have a protocol in place for the emergency placement of the participant if a home is deemed not safe by the Division of Housing (DOH).

3. The home (exterior and interior) and grounds must:

a. Be maintained in good repair;

b. Protect the health, comfort and safety of the participant; and

c. Be free of offensive odors, accumulation of dirt, rubbish and dust.

4. There must be two means of exit from floors with rooms used for sleeping. Exits must remain clear and unobstructed.

5. The PASA must ensure entry to the home and an emergency exit is accessible to participants, including participants utilizing a wheelchair or other mobility device.

6. The PASA must ensure that participants who utilize a wheelchair or other mobility device have access to all common areas of the home

7. Bedrooms must meet minimum space requirements (single 80 square feet, double 120 square feet). (Not applicable for studio apartments.)

8. Adequate and comfortable furnishings and supplies must be provided and maintained in good condition.

9. Participants have the right to furnish and decorate their sleeping and/or living units in the way that suits them, while maintaining a safe and sanitary environment.

10. A fire extinguisher must be available in each home. Presence of an operational fire extinguisher shall be confirmed by the PASA during each on-site monitoring visit.

    a. PASA's must follow manufacturer specifications and expiration dates for all fire extinguishers.

11. Smoke alarms and carbon monoxide detectors must be installed in the proper locations in each home to meet Housing and Urban Development (HUD) requirements and/or local ordinances. Smoke and carbon monoxide detectors shall be tested during each on-site monitoring visit by the PASA.

8.609.8 GROUP RESIDENTIAL SERVICES AND SUPPORTS SPECIFICATIONS

A. Group Residential Services and Supports (GRSS) encompass group living environments of at least four and no more than eight persons receiving services.

B. A community residential home for individuals with developmental disabilities shall not be located within 750 feet of another such group home or within 750 feet of facility-based day programs or other program services operated for people with developmental disabilities unless previously approved by the Department.

C. Group Residential Services and Supports shall comply with the Colorado Department of Public Health and Environment Chapter VIII, Part 5 Rules and Regulations, in addition to these rules, and be licensed by the Colorado Department of Public Health and Environment.

D. No residential services and supports for individuals with developmental disabilities shall be recommended for licensure by the Colorado Department of Public Health and Environment, if required, unless approved by the Department.

E. The program approved service agency shall ensure a sufficient number of staff to meet licensing requirements and the needs of persons receiving services as determined by the Individualized Plan.

8.609.9 DAY HABILITATION SERVICES AND SUPPORTS

A. Day Habilitation Services and Supports provide training, support and supervision activities which maximize functional abilities and skills necessary to enable adults to access the community and/or provide the basis for building skills which will assist individuals to access the community.

1. Day Habilitation Services and Supports are to be provided outside of the person's living environment, unless otherwise indicated by the person's needs, through meaningful employment, activities and community participation. If services cannot be provided outside of the living environment due to a person's medical or safety needs, this shall be documented.

2. Integrated employment should be considered as the primary option for all persons receiving Day Habilitation Services and Supports.

3. Day Habilitation Services and Supports include:

a. Integrated employment services (supported employment) which provide individuals with considerable ongoing job related services and supports to obtain and maintain paid work in a regular community work setting.

b. Integrated activities services which utilize the community as a learning environment to provide individuals access to, and participation in, typical activities and functions of community life. These services provide a variety of opportunities to facilitate relationships and natural supports in the community through activities such as volunteer work, community education or training and retirement activities.

c. Prevocational services which are provided in accordance with Section 8.500.5.B.2.e.

d. Other services engage individuals in a variety of functional activities which are primarily habilitative in nature with an emphasis on skill development and focus on generalizing those skills..

B. The physical facilities where day habilitation services are provided shall meet requirements for physical facilities pursuant to section 8.610.

C. Each program approved service agency shall have written plans to address emergencies regardless of service location or type of program.

8.610 FACILITY BASED ADULT DAY HABILITATION SERVICES AND SUPPORTS

The physical facilities where Adult Day Habilitation Services and Supports are provided to individuals receiving comprehensive or supported living services shall meet all applicable fire, building, licensing and health regulations.

A. The physical facilities over which the service agency exercises control shall also meet the following requirements:

1. The physical facilities shall be inspected by the local fire authority prior to occupancy and at least once every three years thereafter. The local fire authority shall be informed of the purpose of the facility and potential mobility or ambulation needs of individuals served. If the purpose of the facility changes and impacts the individuals to be served in that facility, then the service agency shall be responsible for informing the local fire authority to determine if another inspection is required.

2. The service agency shall conduct fire drills at least quarterly at each physical facility.

3. All physical facilities shall have smoke detectors and fire extinguishers.

4. All physical facilities shall have first-aid supplies available.

5. All program approved service agencies shall comply with the Americans with Disabilities Act (ADA) with regard to physical facilities.

B. If the service agency provides services in the community to persons who may visit the offices of the service agency (or another service operated facility), but the persons receive services at such location(s) for less than one hour per visit, requirements of section 8.610.A.1-4 do not apply. The service agency shall, however, ensure that the facility complies with the ADA and contains no hazards which could jeopardize the health or safety of persons visiting the site.

C. For physical facilities used as community integrated sites over which the service agency exercises little or no control, the program approved service agency shall:

1. Conduct an on-site visit to ensure that there is no recognizable safety or health hazards which could jeopardize the health or safety of individuals;

2. Address any safety or health hazards which could jeopardize the health or safety of individuals with the owner/operator of the physical facility.

D. Each program approved service agency shall have written plans to address emergencies which occur during service hours regardless of service location or type of program.

8.611 TRANSPORTATION

A. Definitions

1. Non-Medical Transportation (NMT) services means transportation which enables eligible participants to gain physical access to non-medical community services and supports, as required by the care plan to prevent institutionalization.

2. Non-Medical Transportation Provider (provider) means a provider agency that has met all standards and requirements as specified in Section 8.611.

3. Transportation acquisition services refers to the purchase or provision of transportation for participants receiving day program services under comprehensive services which enables them to gain access to programs and other community services and resources required by their Individualized Plan/Plan of Care. Funding for transportation activities incidental to the Residential Program are included in the Residential rate.

B. Exclusions

1. Non-Medical Transportation services shall not be used to substitute for medical transportation, as defined in Section 8.014.

2. Non-Medical Transportation services shall only be used after the case manager has determined that free or no-cost transportation is not available to the participant. Prior to the use of funds for transportation acquisition services, the Community Centered Board, case management agency or program approved service agency shall investigate the feasibility of the use of public transportation options. If public transportation options are found to be inadequate or inappropriate, this shall be documented.

C. Provider Standards for Non-Medical Transportation Services

1. Providers shall conform to all general standards and procedures set forth in Department regulations at Section 8.611.

2. Providers must maintain liability insurance with the following automobile liability limits:

a. Bodily injury (BI) $300/$600K per person/per accident; and

b. Property damage $50,000.

c. Drivers that utilize their personal vehicle on behalf of a provider agency to provide NMT must maintain insurance that meets the following minimum automobile insurance requirements in addition to the insurance maintained by the provider agency :

i. Bodily injury (BI) $25/$50K per person/per accident; and

ii. Property damage $15,000.

3. Providers shall ensure that each driver rendering NMT meets the following requirements:

a. Drivers must be 18 years of age or older to render services;

b. Have at least one year of driving experience;

c. Possess a valid Colorado driver’s license;

d. Provide a copy of their current Colorado motor driving vehicle record, with the previous seven years of driving history; and

e. Complete a Colorado or National-based criminal history record check.

4. Drivers shall be disqualified from driving for any of the following:

a. A conviction of substance abuse occurring within the seven (7) years preceding the date the criminal history record check is completed;

b. A conviction in the State of Colorado, at any time, of any Class 1 or 2 felony under Title 18, C.R.S.;

c. A conviction in the State of Colorado, within the seven (7) years preceding the date the criminal history record check is completed, of a crime of violence, as defined in C.R.S. § 18-1.3-406(2);

d. A conviction in the State of Colorado, within the four (4) years preceding the date the criminal history record check is completed, of any Class 4 felony under Articles 2, 3, 3.5, 4, 5, 6, 6.5, 8, 9, 12, or 15 of Title 18, C.R.S.;

e. A conviction of an offense in any other state that is comparable to any offense listed in subparagraphs (f)(II)(A) through (D), when conviction for that offense occurs within the same time periods as listed in subparagraphs (f)(II)(A) through (D) of 4 C.C.R. 723-6, § 6114;

f. A conviction in the State of Colorado, at any time, of a felony or misdemeanor unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., or of a comparable offense in any other state or in the United States at any time;

g. A conviction in Colorado within the two (2) years preceding the date the criminal history record check is completed of driving under the influence, as defined in § 42-4-1301(1)(f), C.R.S.; driving with excessive alcoholic content, as described in §42-4-1301(1)(g), C.R.S;

h. A conviction within the two (2) years preceding the date the criminal history record check is completed of an offense comparable to those included in subparagraph (f)(III)(B) in any other state or in the United States; and

For purposes of 4 C.C.R. 723-6 § 6114(f)(IV), a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.

5. Vehicles used during the provision of NMT must be safe and in good working order. To ensure the safety and proper functioning of the vehicles, vehicles must pass a vehicle safety inspection prior to it being used to render services.

   a. Safety inspections shall include the inspection of items as outlined in Rules Regulating Transportation by Motor Vehicle, 4 C.C.R. 723-6; §6104.

   b. Vehicles must be inspected on the following schedule:

      i. Vehicles manufactured within the last five (5 years:): no inspection.

      ii. Vehicles manufactured within the last six (6) to ten (10) years: every 24 months.

      iii. Vehicles manufactured eleven (11) years or later: annually.

      iv. Vehicles for wheelchair transportation: annually, regardless of the manufacture date of vehicle.

   c. The vehicle inspector must be trained to conduct the inspection and be employed by an automotive repair company authorized to do business in Colorado.

6. Transportation providers who maintain a certificate or permit through the Public Utilities Commission (PUC) are not required to meet the above requirements. PUC certificate and permit holders shall submit a copy of the certification to the Department for verification of provider credentials.

8.612 SUPPORTS INTENSITY SCALE ASSESSMENT AND SUPPORT LEVELS

8.612.1 Supports Intensity Scale (SIS) Assessment [Eff. 2/1/12]

A. Completion of a Supports Intensity Scale (SIS) Assessment is a requirement for a Member to participate in the Home and Community Based Services-Supported Living Services (HCBS-SLS) or the Home and Community Based Services for Persons with Developmental Disabilities (HCBS-DD) waiver. A Member, their legal guardian, or their legally authorized representative refusing to have a SIS assessment shall not be enrolled in the HCBS-SLS or HCBS-DD waivers.

B. Specific scores from the Member's SIS assessment shall be used in addition to Risk Factor scores to obtain the Member's Support Level in the HCBS-DD and HCBS-SLS waivers.

C. The Case Management Agency (CMA) shall conduct a SIS assessment for a Member at the time of enrollment. Reassessments shall be conducted upon approval by the Department.

D. The CMA shall:

1. Notify the Member, their legal guardian, or their legally authorized representative of the requirement for and the right to participate in the SIS assessment.

2. Support and encourage the Member to participate in the SIS assessment. If the Member chooses not to participate in the SIS assessment, the CMA shall document their choice in the Member record on the Department required data system.

3. Schedule a SIS Interviewer to conduct the assessment. If the Member, their legal guardian, or their legally authorized representative objects to the assigned SIS Interviewer, they shall be offered a choice of a different SIS Interviewer.

4. Assist the Member or other interdisciplinary team (IDT) members to identify at least two people who know the Member well enough to act as respondents for the SIS assessment. If at least two respondents cannot be identified, the CMA shall document the efforts to find two respondents and the reasons this could not be done and proceed with the assessment using the information available.

5. To facilitate person centered practices, the SIS assessment may be completed by the SIS Interviewer at an alternate location, via the telephone or using virtual technology methods. When practicable the Member’s preference of engagement shall be accommodated.

E. A qualified SIS Interviewer shall conduct the assessment. A SIS Interviewer shall not act as the respondent for a SIS assessment.

F. The CMA shall inform the Member, their legal guardian, or their legally authorized representative of the purpose of the SIS, the SIS Complaint Process, and the Support Level Review Process. The CMA shall document that this information was provided and received on the SIS and Support Level disclosure form. The CMA shall inform the Member that they will receive a copy of the completed SIS assessment within 30 days of the SIS interview date. The CMA shall document provision of a copy of the SIS assessment to the Member, their guardian, or their legally authorized representative in the Department prescribed system.

1. The CMA case manager will provide an overview of the results of the most recent SIS assessment during the initial or continued stay review (CSR) person-centered support planning process. This overview shall include discussion of:

a. The Exceptional Medical and/or Behavioral Support Needs identified in Section 1 of the SIS assessment;

b. The areas of priority support needs identified in Section 2 of the SIS assessment;

c. The resulting Support Level; and,

d. The services necessary to meet these priority areas.

2. If, upon review of the results of the SIS assessment at the initial or CSR planning meeting, there is a significant change in the Member's condition or circumstances, they should refer to G. below for the SIS reassessment process or Section 8.612.4 Support Level Review Process

G. After the initial SIS assessment has been completed, the CMA shall conduct a SIS reassessment for the Member only when approved by the Department through the following process:

1. Prior to a SIS reassessment being conducted, the CMA shall submit a request to the Department for approval in the format prescribed by the Department.

2. The Department shall provide the CMA with a written decision regarding the request to conduct a SIS reassessment within fifteen (15) business days after the date the request was received.

3. Upon receiving approval to conduct a SIS reassessment, the CMA shall coordinate with a SIS Interviewer to complete the SIS reassessment.

4. If the Member, their legal guardian, or their legally authorized representative disagrees with a decision to deny the SIS reassessment request, then a request for review of the decision may be submitted to the Executive Director of the Department, or their designee, within fifteen (15) business days after the date the decision was received.

5. The Department's Executive Director, or their designee, shall review the request for conducting a SIS reassessment and provide a written decision within fifteen (15) business days of the receipt of the request for the Executive Director review.

6. The decision of the Department's Executive Director, or their designee, shall constitute the final agency decision and will be subject to judicial review pursuant to Section 24-4-106, C.R.S.

H. A SIS reassessment shall be conducted only when approved by the Department and when:

1. There has been a change in the Member's life circumstances or condition resulting in a significant change to the amount of services and supports needed to keep the Member safe;

2. The Member, their legal guardian, or their legally authorized representative, family member or case manager, as appropriate, has reason to believe the results of the most recent SIS assessment do not accurately reflect the Member's current support needs; or,

3. The Member, their legal guardian, or their legally authorized representative file a complaint, as outlined in 8.612.2, regarding the administration of the SIS assessment.

I. Administration of the SIS assessments shall be reviewed by the Department for the purpose of quality assurance.

J. When the Department identifies SIS Interviewer practices that result in inaccurate SIS assessments:

1. Remediation efforts by the Department may occur to ensure that the SIS Interviewer performs assessments according to Department standards. The SIS Interviewer(s) who conducted the inaccurate SIS assessment(s) may be deemed no longer qualified to conduct SIS assessments.

2. Payments made for the administration of the inaccurate SIS assessments may be recovered through a repayment agreement; by offsetting the amount owed against current and future SIS determination payments; or, by any other appropriate action within the Department's legal authority.

3. The Member shall receive another SIS assessment conducted by a SIS Interviewer designated by the Department.

4. The Member's Support Level and Service Plan Authorization Limit will be adjusted as necessary and effective on the date determined by the Department.

8.612.2 SIS Complaint Process [Eff. 2/1/12]

A. The Member, their legal guardian, or their legally authorized representative may file a complaint regarding the administration of the SIS assessment up to thirty (30) calendar days after the SIS assessment is conducted.

B. The complaint shall be filed verbally or in writing with the Member's CMA. Additional information to support the complaint may be submitted at that time. If the complaint has been filed verbally the CMA shall document in the Member's record on the Department required data system the time, date and details surrounding the complaint.

C. When the complainant requests that another SIS assessment be completed, the CMA shall submit a request for approval to conduct another SIS assessment, pursuant to the process identified in Section 8.612.1.G.

D. The CMA shall make efforts to resolve the complaint and provide the complainant with a written response within ten (10) business days after receipt of the complaint.

E. When a resolution cannot be reached, the CMA shall inform the complainant that they may submit the complaint to the Department within thirty (30) calendar days after receipt of the CMA response.

F. The Department shall provide a written response to the complainant within fifteen (15) business days after receipt of the complaint.

8.612.3 Support Levels [Eff. 2/1/12]

A. A Member is assigned into one of six Support Levels according to their overall support needs and based upon the standardized algorithm for the HCBS-DD or HCBS-SLS waivers. The SIS-A Assessment converts subscale raw scores for each section into standard scores for each section, which are used in the algorithm for support levels.

B. The structure of the algorithm, defined at Section 8.600.4 definitions, includes the following:

1. Algorithm factors:

a. Standard scores from Section 2: Parts A (Home Living Activities), B (Community Living Activities), and E (Health and Safety Activities) (ABE) from the SIS assessment;

b. Total scores from Section 1A: Exceptional Medial Support Needs score from the SIS assessment;

c Total scores from Section 1B: Exceptional Behavioral Support Needs score from the SIS assessment; and,

d. Whether the Member presents as a safety risk, defined at Section 8.600.4 definitions, as follows:

1) In the HCBS-SLS waiver, Public Safety Risk-Convicted.

2) In the HCBS-DD waiver, Public Safety Risk-Convicted/Not Convicted or Extreme Safety Risk to Self.

2. The subgroups in the algorithm table under each Support Level reflect variations of the intensity of the Member's basic medical and behavioral support needs; no matter which subgroup a Member falls into, they are eligible for that Support Level. The subgroups cluster individuals with similar behavioral and medical support needs within each major group.

3. Following an assessment of the factors defined above, standard scores for each factor are applied to the algorithm.

The Support Level is determined when the scores for each factor meet all of the criteria of a Support Level subgroup.

4. The results of the algorithm are used to assign Members to Support Levels one through six; with a Support Level one indicating a minimal need for supports and a Support Level six indicating a significantly higher need for supports.

5. For the HCBS-SLS waiver, the Support Level determines the Service Plan Authorization Limit (SPAL), which is defined at Section 8.600.4 definitions. The SPALs are posted annually by the Department on the Department's webpage.

6. For the HCBS-DD waiver, the Support Level determines the rate of reimbursement for the provider(s).

C. The CMA in consultation with the IDT shall make a determination whether a Member meets the definition of Public Safety Risk or Extreme Safety Risk to Self through the following process:

1. The decision shall be made by a case management supervisor. They shall:

a. Document the IDT discussion of the Rights Modification identifying the line of sight supervision and/or secured, controlled setting justification, in the Member's record in the Department's prescribed system;

b. Document that the Member meets the Public Safety Risk or Extreme Safety Risk to Self definition(s) in the Department prescribed data system; and,

c. Verify that the signed Informed Consent for the Rights Modification is in the Member's record in the Department's prescribed system.

2. The CMA shall review the status of the Member's Safety Risk Factors at least annually or when significant changes occur, to assure that the Member continues to meet the definition(s).

D. At the point when a Member no longer meets the definition(s) of Public Safety Risk or Extreme Safety Risk to Self , their status must be changed in the Department prescribed data system which will auto-calculate the Member's current algorithm Support Level and the Member's Person-Centered Support Plan (PCSP) shall be updated to reflect the removal of the Risk Factor and any changes in related, identified support needs within 10 business days of the definition(s) no longer being met or, in cases where Section 8.612.3.D.1-4, applies, within 10 business days of receipt of approval or denial of the SLR request.

1. For cases in which a Member's behavior does not satisfy a Safety Risk Factor definition but the Member's needs continue to be substantially higher than those typical of their assigned Support Level (without adjustments for risk factors) and a Rights Modification continues to be in place, the IDT may consider a Support Level Review (SLR) request, as outlined in 10 CCR 2505-10 8.612.4, as a part of the person-centered support planning and Rights Modification process.

2. If the IDT determines a SLR request is needed, the CMA shall submit a SLR request which includes, but is not limited to, detailed information from the PCSP describing the extensive supports needed and the Rights Modification(s), to include all requirements outlined in Section 8.508.102 and Section 8.484.5.

3. The Department shall review the SLR request as outlined in 10 CCR 2505-10 8.612.4.

4. Rights shall be restored as soon as circumstances justify.

a, When rights are restored prior to the end date of the SLR approval period, the CMA shall notify the Department of the change in support needs in a manner determined by the Department.

b. When the right(s) are restored the Department shall adjust the Support Level override in the prescribed system to the original assessed algorithm Support Level.

c. The CMA shall make any necessary PCSP and Prior Authorization (PAR) revisions resulting from the Support Level changes within ten (10) business days of the affected Support Level change.

E. The CMA shall inform each Member, their legal guardian, or their legally authorized representative of their Support Level at the time of the initial or annual person-centered support planning process or when the Support Level changes for any reason.

F. Notification to the Member of a Support Level change shall occur within twenty (20) business days of the date after the Support Level change.

G. The Member shall be notified, pursuant to the Department of Health Care Policy and Financing rules in Section 8.057.2.A when a waiver service is terminated, reduced, or denied. At any time, the Member may pursue a Medicaid Fair Hearing in accordance with Section 8.057.3.A.

H. In HCBS-DD, the Department may assign a Support Level seven (7) reimbursement rate for Day Habilitation Services and Residential Habilitation Services provided to a Member with extraordinary overall needs in accordance with the Support Level Review Process.

I The formula for the algorithm is:

Support Level/Subgroup
Support Level 1
Subgroup 1A: ∑ 2ABE ≤ 25; 1A ≤ 1 AND 1B ≤ 2
Subgroup 1B: ∑ 2ABE ≤ 25; 1A ≤ 2 AND 1B 3-5
Subgroup 1C: ∑ 2ABE ≤ 25; 1A 3-4 AND 1B 3-5
Support Level 2
Subgroup 2A: ∑ 2ABE 26-30; 1A ≤ 1 AND 1B ≤ 2
Subgroup 2B: ∑ 2ABE 26-30; 1A ≤ 2 AND 1B 3-5
Subgroup 2C: ∑ 2ABE 26-30; 1A 3-4 AND 1B 3-5
Subgroup 1D: ∑ 2ABE ≤ 25; 1A 5-6
Subgroup 1G: ∑ 2ABE ≤ 25; 1B 6-9
Subgroup 2D: ∑ 2ABE 26-30; 1A 5-6
Subgroup 2G: ∑ 2ABE 26-30; 1B 6-9
Subgroup 3A: ∑ 2ABE 31-33; 1A ≤ 1 AND 1B ≤ 2
Subgroup 3B: ∑ 2ABE 31-33 1A ≤ 2 AND 1B 3-5
Support Level 3
Subgroup 1H: ∑ 2ABE ≤ 25; 1B 10-13
Subgroup 2H: ∑ 2ABE 26-30; 1B 10-13
Subgroup 3C: ∑ 2ABE 31-33; 1A 3-4 AND 1B 3-5
Subgroup 3D: ∑ 2ABE 31-33; 1A 3-6
Subgroup 3G: ∑ 2ABE 31-33; 1B 6-9
Subgroup 4A: ∑ 2ABE ≥ 34; 1A ≤ 1 AND 1B ≤ 2
Subgroup 4B: ∑ 2ABE ≥ 34 1A ≤ 2 AND 1B 3-5
Support Level 4
Subgroup 1E: ∑ 2ABE ≤ 25; 1A 7-8
Subgroup 1F: ∑ 2ABE ≤ 25; 1A ≥ 9
Subgroup 1I: ∑ 2ABE ≤ 25; 1B 14-15

Subgroup 1J: ∑ 2ABE ≤ 25; 1B ≥ 16
Subgroup 2E: ∑ 2ABE 26-30; 1A 7-8
Subgroup 2I: ∑ 2ABE 26-30; 1B 14-15
Subgroup 2J: ∑ 2ABE 26-30; 1B ≥ 16
Subgroup 3E: ∑ 2ABE 31-33; 1A 7-8
Subgroup 3H: ∑ 2ABE 31-33; 1B 10-13
Subgroup 4C: ∑ 2ABE ≥ 34; 1A 3-4 AND 1B 3-5
Subgroup 4G: ∑ 2ABE ≥ 34; 1B 6-9
Support Level 5
Subgroup 2F: ∑ 2ABE 26-30; 1A ≥ 9
Subgroup 3I: ∑ 2ABE 31-33; 1B 14-15
Subgroup 3J: ∑ 2ABE 31-33; 1B ≥ 16
Subgroup 4D: ∑ 2ABE ≥ 34; 1A 3-6
Subgroup 4E: ∑ 2ABE ≥ 34; 1A 7-8
Subgroup 4H: ∑ 2ABE ≥ 34; 1B 10-13
Subgroup 4I: ∑ 2ABE ≥ 34; 1B 14-15
Group 5A: Public Safety Risk (either status) AND 1b ≤ 11
Support Level 6
Subgroup 4J: ∑ 2ABE ≥ 34; 1B ≥ 16
Subgroup 3F: ∑ 2ABE 31-33; 1A ≥ 9
Subgroup 4F: ∑ 2ABE ≥ 34; 1A ≥ 9
Group 6A: Extreme Safety Risk to Self AND Public Safety Risk (either status) AND 1b ≥ 12
Group 6B: Public Safety Risk (either status) AND 1b ≥ 12

Extreme Safety Risk to Self– this factor acts to increase the level otherwise determined by the above criteria. Level 1 increases to level 3, level 2 increases to level 4, level 3 increases to level 4, level 4 increases to level 5. Subgroup 6A outlines the conditions in which level 5 may increase to level 6.

Public Safety Risk– this factor acts to increase the level otherwise determined by the above criteria. Level 1 increases to level 5, level 2 increases to level 5, level 3 increases to level 5, and level 4 increases to level 6. Subgroup 6B outlines the conditions in which level 5 may increase to level 6.

8.612.4 Support Level Review Process [Eff. 2/1/12]

A. The Member, their legal guardian, or their legally authorized representative, , or CMA may request a review of the Support Level assigned when they have reason to believe it does not meet the Member's needs.

B. When a Support Level Review (SLR) is requested, the CMA shall complete the SLR request in a manner determined by the Department on the Department's prescribed request form.. Once the SLR request form is completed, the CMA shall provide an opportunity for the Member, their legal guardian, or their legally authorized representative to review the request and provide additional information prior to submission to the Department for review.

C. The Department shall convene a review panel to examine Support Level Review requests monthly or as needed.

1. The review panel shall be comprised of the following:

a. A minimum of three (3) members designated by the Department.

b. Members shall include staff from the Department, with extensive knowledge and experience with the SIS assessment, the Support Levels, case management, and HCBS waiver services.

2. The review panel:

a. Shall examine all of the information submitted by the CMA and seek to identify any significant factors not included in the Support Level calculation, which cause the Member to have substantially higher support needs than those in the established Support Level.

b. In cases where the panel finds that the Member does have substantially higher support needs than those in the initial Support Level, the panel may assign the Member to a Support Level that is a closer representation of the Member's overall support needs.

3. A Member who has been assigned to a higher Support Level shall have this assignment re-examined by the review panel at least annually or at a greater or lesser frequency determined by the Department.

a. The CMA shall submit a SLR request to have the Member's Support Level re-examined no later than thirty (30) days prior to the end date determined by the department.,

b. The panel may determine that the Member's condition necessitating a higher Support Level is unlikely to improve and, therefore; does not require a re-examination.

D. The Department shall provide the CMA and the Member, their legal guardian, or their legally authorized representative with the written decision regarding the requested review of the Member's Support Level within fifteen (15) business days after the panel meeting. The written decision notification shall include the date of the SLR request, the Support Level determination, the effective and the end date of the increased Support Level and, if denied, the reason for denial of an increased Support Level.

1. The results of the panel review for a Member enrolled in the HCBS-DD waiver are conclusive.

2. If a Member enrolled in the HCBS-SLS waiver, their legal guardian, or their legally authorized representative disagrees with the decision provided by the panel, the Member, their legal guardian, or their legally authorized representative may request a review by the Department's Executive Director or their designee, within fifteen (15) business days after the receipt of the decision.

   a. The Department's Executive Director, or their designee, shall review the request and provide a written decision within fifteen (15) business days.

   b. The decision of the Department's Executive Director, or their designee, shall constitute the final agency decision and will be subject to judicial review pursuant to Section 24-4-106, C.R.S.

3. The CMA shall make any necessary PCSP and PAR revisions resulting from the Support Level changes, within 10 business days of receipt of approval or denial of the SLR request.

E. The Member shall be notified, pursuant to the Department of Health Care Policy and Financing rules in Section 8.057.2.A when a waiver service is terminated, reduced, or denied. At any time, the Member may pursue a Medicaid Fair Hearing in accordance with Section 8.057.3.A.

8.612.5 Definitions

A. "Extreme Safety Risk to Self" means a factor in addition to specific Supports Intensity Scale (SIS) scores that is considered in the calculation of a Client's support level. This factor shall be identified when a Client:

1. Displays self-destructiveness related to self-injury, suicide attempts or other similar behaviors that seriously threaten the Client's safety; and,

2. Has a rights suspension in accordance with Section 8.604.3 or has a court order that imposes line of sight supervision unless the Client is in a controlled environment that limits the ability of the Client to harm himself or herself.

B. "Member" has the same meaning as the terms "Member" and/or "Client" as defined in Sections 8.500 and 8.500.90C. "Public Safety Risk-Convicted" means a factor in addition to specific SIS scores that is considered in the calculation of a Client's support level. This factor shall be identified when a Client has:

1. Been found guilty through the criminal justice system for a criminal action involving harm to another person or arson and who continues to pose a current risk of repeating a similar serious action; and,

2. A rights suspension in accordance with Section 8.604.3 or through parole or probation, or a court order that imposes line of sight supervision unless the Client is in a controlled environment that limits his or her ability to engage in the behaviors that pose a risk or to leave the controlled environment unsupervised.

D. "Public Safety Risk-Not Convicted" means a factor in addition to specific SIS scores that is considered in the calculation of a Client's support level. This factor shall be identified when a Client has:

1. Not been found guilty through the criminal justice system, but who does pose a current and serious risk of committing actions involving harm to another person or arson; and,

2. A rights suspension in accordance with Section 8.604.3 or through parole or probation, or a court order that imposes line of sight supervision unless the Client is in a controlled environment that limits his or her ability to engage in the behaviors that pose a risk or to leave the controlled environment unsupervised.

8.613 FAMILY SUPPORT SERVICES PROGRAM (FSSP)

A. ADMINISTRATION

1. The Community Centered Board (CCB) shall administer the Family Support Services Program (FSSP), subject to available appropriations and according to the rules, regulations, policies and guidelines of the Department, local Family Support Council (FSC) and CCB.

2. The CCB shall ensure that the FSSP is implemented within its designated service area.

3. The CCB shall designate one (1) person as the contact for the overall implementation and coordination of the FSSP.

4. Referrals to the FSSP shall be made through the CCB pursuant to Section 8.607.

5. Nothing in these rules and regulations shall be construed as to prohibit or limit services and supports available to an individual with an Intellectual and Developmental Disability (IDD) or Developmental Delay and their families which are authorized by other state or federal laws.

6. The CCB, in cooperation with the local FSC, shall ensure that the FSSP is publicized within the designated service area.

7. The CCB shall develop written policies and procedures for the implementation and ongoing operation of the FSSP, which must be kept on file and made available to the Department or the public, upon request.

B. FAMILY SUPPORT COUNCIL (FSC)

1. The CCB shall assist its designated service area to establish and maintain an FSC pursuant to Section 25.5-10-304, C.R.S.

2. The CCB shall establish an FSC roster that includes the names of members, type of membership and identifies the chairperson. The roster shall be available to the Department or the public, upon request.

3. Composition of the FSC:

a. The majority of the members and the chairperson of each FSC shall be family members of an individual with an Intellectual and Developmental Disability (IDD) or Developmental Delay.

b. New members of the FSC shall be recruited from the service area. New members shall be approved by the current FSC and the board of directors of the CCB.

c. The members of the FSC shall receive written notice of their appointment.

d. The CCB shall ensure an orientation and necessary training regarding the duties and responsibilities of the FSC is available for all council members. The training and orientation shall be documented with a record of the date of the training, who provided the training, training topic, and names of attendees.

e. The size of the FSC shall be sufficient to meet the intent and functions of the council, but no fewer than five (5) persons, unless approved by the Department.

f. Each FSC shall establish the criteria for tenure of members, selection of new members, the structure of the council and, in conjunction with the CCB, a process for addressing disputes or disagreements between the FSC and the CCB. Such processes shall be documented in writing. Processes may include a request for mediation assistance from the Department.

4. The FSC duties include providing guidance and assistance to the CCB on the following:

a. Overall implementation of the FSSP;

b. Development of the written annual FSSP report for the designated service area, as defined at Section 8.613.M;

c. Development of written procedures describing how families are prioritized for FSSP funding;

d. Development of written policy defining how an emergency fund is established, funded and implemented. The policy must include a definition of a short-term crisis or emergency and the maximum amount of funds a family may receive per event and/or year;

e. Provide recommendations on defining the “other” service category within the parameters as defined in this part;

f. Monitor the implementation of the overall services provided in the designated service area; and

g. Provide recommendations on how to assist families who are transitioning out of the FSSP.

C. ELIGIBILITY

1. Any individual with an Intellectual and Developmental Disability (IDD) or Developmental Delay, as determined pursuant to Section 25.5-10-211, C.R.S., living with their family is eligible for the FSSP. Living with a family means that the individual's place of residence is with that family.

a. Living with family may include periods of time from one (1) day to up to six (6) months during which time the individual is not in his or her primary residence because of transition into or out of the home.

b. The CCB, in cooperation with the local FSC, shall determine what constitutes a transition.

2. The family and eligible individual shall reside in the State of Colorado.

3. All eligible individuals 18 and older must provide proof of lawful presence in the United States to receive FSSP funding.

    a. Effective July 1, 2022, eligible individuals 18 and older are not required to provide proof of lawful presence in the U.S. to receive FSSP funding.

4. Eligibility for the FSSP does not guarantee the availability of services or supports under this program.

D. WAITING LIST

1. The CCB shall maintain an accurate and up-to-date waiting list of eligible individuals for whom Department funding is unavailable in the current fiscal year.

2. In cooperation with the local FSC, the CCB shall develop written procedures for determining how and which individuals on the waiting list will be enrolled into the FSSP.

3. Individuals receiving ongoing FSSP funding shall not be listed on the waiting list for the program.

4. Individuals determined to be prioritized for FSSP funding shall be served prior to individuals determined at a lower level of prioritization.

5. The CCB must inform eligible families of the program and waiting list procedures and offer assessment and enrollment onto either the waiting list or the program, based on the assessment and available appropriations.

6. Any individual on the waiting list for FSSP may receive emergency funding through the CCB through the FSSP, if the needs meet the parameters set by the FSC and the CCB.

7. Waiting lists shall not exist for any CCB that does not expend all FSSP direct service funds.

E. PRIORITIZATION FOR FAMILY SUPPORT SERVICES PROGRAM (FSSP) FUNDING

1. CCBs must ensure that families with the highest assessed needs shall be prioritized for FSSP state funding.

2. CCBs, in conjunction with the FSC, will develop written procedures that describe how families shall be prioritized and notified of the prioritization process.

3. The assessment process shall be applied equally and consistently to all families who are assessed.

4. CCBs must distribute the prioritization process to families in their designated service area at the time the family requests FSSP funding, when the individual is placed on the waiting list, or upon request.

5. The CCB must notify families in writing of the results of the assessment.

6. All families, both on the waiting list and receiving FSSP services, shall be assessed for level of need on an annual basis or earlier if the family’s circumstances change.

7. The assessment must contain the following components:

a. The qualifying individual's disability and overall care need, which includes:

i. The type of disability or condition and the need and complexity of medical or personal care for the individual;

ii. The need for, frequency of, and amount of direct assistance required to care for the individual; and

iii. The types of services needed that are above and beyond what is typically needed for any individual.

b. The qualifying individual's behavioral concerns including how behaviors disrupt or impact the family's daily life, the level of supervision required to keep the individual and others safe, and the services and frequency required to help with the behaviors.

c. The family composition, which considers obligations and limitations of the parent(s), the number of siblings, disabilities of other family members living in the home, and the level of stability of the family, such as pending divorce or age and disability of parents.

d. The family's access to support networks, which includes the level of isolation or lack of support networks for the family, such as not having extended family nearby, living in rural areas or availability of providers.

e. The family's access to resources such as family income, insurance coverage, HCBS waivers, and/or other private or public benefits.

F. DIRECT SERVICES

1. Services and supports available under the FSSP may be purchased from a variety of providers who are able to meet the individual needs of the family.

2. All services must be needed as a result of the individual's Intellectual and Developmental Disability (IDD) or Developmental Delay and shall not be approved if the need is a typical age-related need. Correlation between the need and the disability must be documented in the Family Support Plan (FSP).

3. All services must be provided in the most cost-effective manner, meaning the least expensive manner to meet the need.

4. All services shall be authorized pursuant to the FSP.

5. Services provided to the family through the FSSP shall not supplant third party funding sources available to the family including, but not limited to, public funding, insurance, or trust funds.

6. CCBs shall not charge a separate fee for assisting individuals to access services identified on the FSP.

7. FSSP funds shall not be used for any donation; religious, political, or otherwise or activities prohibited by law.

8. Direct Services

a. Assistive technology is equipment or upgrades to equipment, which are necessary for the individual with an IDD or Developmental Delay to communicate through expressive and receptive communication, move through or manipulate his or her environment, control his or her environment, or remain safe in the family home.

b. Environmental engineering is home or vehicle modification needed due to the individual's disability and is not a regular maintenance or modification needed by all owners. Modifications to the home or vehicle must be necessary due to the individual's IDD or Developmental Delay; or needed due to health and safety; or to allow the individual to attain more independence; and completed in a cost-effective manner. Cost-effective manner means the least expensive manner to meet the identified need. Home modifications are to be limited to the common areas of the home the individual with an IDD frequents, the individual's bedroom, and one bathroom. Other bedrooms and bathrooms shall not be modified. All devices and adaptations must be provided in accordance with applicable state or local building codes and/or applicable standards of manufacturing, design, and installation. Only homes or vehicles occupied and owned by the family where the eligible individual resides may be modified. Minor modifications may be made to rental units with the permission of the landlord. Rental modifications must be made in a way that the modification can be moved with the eligible individual during a change in residence.

c. Medical and dental items prescribed by a licensed medical professional qualified to prescribe such items and are needed to maintain or attain physical health. Medical, dental, and vision services, exams and procedures are available when not covered by another source.

    i. Over the counter medications and vitamins are excluded, except as indicated at Section 8.800.4.D, when prescribed by a licensed medical professional qualified to write such prescriptions.

d. Other: Services in this category must be identified in the FSP, are specific to the family, and are limited to:

    i. A consultant and/or advocate to assist a family with accessing services outside of the CCB.

    ii. Recreational needs of the individual with an IDD or Developmental Delay when the need of recreation is above and beyond the typical need due to the disability or delay. The cost of family recreation passes shall be limited to $650 or one family pass, whichever is less, per fiscal year and shall be limited to use only at community recreation centers. The following items are specifically excluded under the FSSP and shall not be eligible for coverage:

        1) Entrance fees for zoos;

        2) Museums;

        3) Butterfly pavilion;

        4) Movie, theater, concerts;

        5) Professional and minor league sporting events;

6) Outdoor play structures;

7) Batteries for recreational items; and,

8) Memberships to non-community gyms.

iii. Specialized services as identified by the FSC and CCB, included in their written policy and are available to any family receiving ongoing Family Support Services Program assistance in the service area.

e. Parent and sibling support, which may include special resource materials or publications, cost of care for siblings, or behavioral services or counseling.

f. Professional services are services which require licensure or certification to treat a human condition other than medical, dental or vision, and is provided to the individual with an IDD or Developmental Delay. Professional services must be provided by qualified, certified and/or licensed personnel in accordance with the standards and practices of the industry. Professional services may include related support items or activities which are recommended as part of the therapy with supporting documentation from the treating professional. Insurance expenses directly incurred by the individual with an IDD or Developmental Delay are included.

g. Program expenses are services related to serving multiple families and are funded through the direct service line.

i. This service is not identified in the individual's FSP. This service is provided by the CCB for the benefit of multiple families.

ii. Program expense is the maintenance, operation, or enhancement of a resource library that consists of an inventory of goods and equipment used to meet the needs of individuals with an IDD or Developmental Delay on a temporary basis.

iii. Program expense is the cost associated with participation with other community agencies in the development, maintenance, and operation of projects, supports or services that benefit individuals with an IDD or Developmental Delay.

iv. Program expense is the development or coordination of a training event for families.

v. Program expense is the cost of an event sponsored by the CCB for all eligible individuals and their families to meet other families to provide socialization and an opportunity to build a network of support.

vi. Program expense is the development and coordination of group respite.

vii. The FSC in conjunction with the CCB shall determine the maximum amount of direct services to be used for program expenses.

h. Respite is the temporary care of an individual with an IDD that provides relief to the family.

i. Transportation is the direct cost to the family that is higher than costs typically incurred by other families because of specialty medical appointments or therapies. Specialty medical appointments or therapies are defined as appointments needed due to the individual's IDD or Developmental Delay. The direct cost is the cost of transportation, lodging, food expense, and long-distance telephone calls to arrange for or coordinate medical services which are not covered by other sources.

G. CASE MANAGEMENT

Case management is the coordination of services provided for individuals with an IDD or Developmental Delay that consists of facilitating enrollment, assessing needs, locating, coordinating, and monitoring needed FSSP funded services, such as medical, social, education, and other services to ensure non-duplication of services, and monitor the effective and efficient provision of services across multiple funding sources.

1. At minimum, the case manager is responsible for:

   a. Determining initial and ongoing eligibility for the FSSP;

   b. Development, application assistance, and annual re-evaluation of the Family Support Plan (FSP); and

   c. Ensuring service delivery in accordance with the FSP.

2. Family Support Plan Requirements

   a. Families enrolled into the FSSP shall have an individualized FSP which meets the requirements of an Individualized Plan, as defined in Sections 25.5-10-202 and 25.5-10-211, C.R.S., and includes the following information:

      i. The name of the eligible individual;

      ii. The names of family members living in the household;

      iii.. The date the FSP was developed or revised;

      iv. The prioritized needs requiring support as identified by the family;

      v. The specific type of service or support, how it relates to the family need and the individual's disability or developmental delay, and period which is being committed to in the FSP, including, when applicable, the maximum amount of funds which can be spent for each service or support without amending the FSP;

      vi. Documentation regarding cost-effectiveness of a service or support, which can include quotes, bids, or product comparisons but must include the reason for selecting a less cost-effective service or support, when applicable.

      vii. A description of the desired results, including who is responsible for completion;

      viii. The projected timelines for obtaining the service or support and, as appropriate, the frequency;

ix. A statement of agreement with the plan;

x. Signatures, which may include digital signatures of a family representative and an authorized CCB representative;

xi. The level of need;

xii. The length of time the funds are available; and

xiii. A description of how payment for the services or supports will be made.

b. The FSP shall integrate with other Service Plans affecting the family and avoid, where possible, any unnecessary duplication of services and supports.

c. The FSP shall be reviewed at least annually or on a more frequent basis if the plan is no longer reflective of the family's needs.

i. Any changes to the provision of services and supports identified in the FSP are subject to available funds within the designated service area.

ii. Any decision to modify, reduce or deny services or supports set forth in the FSP, without the family's agreement, are subject to the requirements in Section 8.605.

H. MANAGEMENT AND GENERAL ACTIVITIES

Management and general activities are the financial and corporate administration of the CCB specific to FSSP requirements by the Department.

I. EMERGENCY FUND

1. Each CCB shall establish an emergency fund that may be accessed by any individual eligible for the FSSP when needed due to an unexpected event that has a significant impact on the individual or family’s health or safety and impacts the family’s daily activities.

2. Any individual with an IDD or Developmental Delay determined by the CCB and living with family shall be eligible to receive emergency funds regardless of the enrollment status of the family.

3. The CCB in conjunction with the Family Support Council shall develop written policies and procedures regarding the Emergency Fund. At a minimum the policies and procedures must:

a. Define the purpose of the emergency fund;

b. Define an unexpected event and significant impact;

c. Describe the process for accessing emergency funds;

d. Describe how funding determination is made;

e. Give a timeline of the determination of the request;

f. Define the maximum funding amount per family or per event; and

g. Describe how families will be notified of the decision in writing.

J. BILLING AND PAYMENT PROCEDURES

1. The CCB shall develop and implement policies, procedures, and practices for maintaining documentation for the FSSP and reporting information in the format and timeframe established by the Department.

2. Families shall maintain and provide either receipts or invoices to the CCB documenting how funds provided to the family through the FSSP were expended. The CCB shall maintain supporting documentation capable of substantiating all expenditures and reimbursements made to providers and/or families, which shall be made available to the Department upon request.

   a. When the CCB purchases services or items directly for families, the CCB shall maintain receipts or invoices from the service provider and documentation demonstrating that the provider was paid by the CCB. Receipts or invoices must contain, at a minimum, client and/or family name, provider name, first and/or last date of service, item(s) or service(s) purchased, item(s) or service(s) cost, amount due or paid.

   b. When the CCB reimburses families for services or items, the CCB shall ensure the family provides the CCB with receipts or invoices prior to reimbursement. The CCB shall maintain receipts or invoices from the families, and documentation demonstrating that the family was reimbursed by the CCB. The CCB must ensure all receipts or invoices provided by the families contain, at a minimum, client and/or family name, provider name, first and/or last date of service, item(s) or service(s) purchased, item(s) or service(s) cost, amount paid.

   c. When the CCB provides funding to the families for the purchase of services or items in advance, the CCB shall notify the families that they are required to submit invoices or receipts to the CCB of all purchases made prior to the close of the State Fiscal Year. The CCB must ensure that all receipts or invoices are collected and maintained from the family, as well as documentation demonstrating that the family received funding from the CCB. The CCB must ensure all receipts or invoices provided by the families contain, at a minimum, client and/or family name, provider name, first and/or last date of service, item(s) or service(s) purchased, item(s) or service(s) cost, amount paid.

3. The CCB shall submit to the Department, on a form and frequency prescribed by the Department, information which outlines individual family use of the FSSP.

4. The CCB shall report only FSSP expenditure data in the format and timeframe as designated by the Department.

K. PROGRAM EVALUATION

1. The CCB, in cooperation with the local Family Support Council, shall be responsible for evaluating the effectiveness of the FSSP within its designated service area on an annual basis.

2. The evaluation may be based upon a family satisfaction survey and shall address the following areas:

   a. Effectiveness of outreach/public awareness including:

i. The demographics of participants in comparison to demographics of the service area; and

ii. How well the program integrates with other community resources.

b. Satisfaction and program responsiveness to include:

i. Ease of access to the program;

ii. Timeliness of services;

iii. Effectiveness of services;

iv. Availability of services;

v. Responsiveness to family concerns;

vi. Overall family satisfaction with services; and

vii. Recommendations.

c. Effective coordination and utilization of funds to include:

i. Other local services and supports utilized in conjunction with the FSSP; and

ii. Efficiency of required documentation for receipt of the FSSP.

3. The CCB, and participating families as requested, shall cooperate with the Department regarding statewide evaluation and quality assurance activities, which includes, but is not limited to providing the following information:

a. The maximum amount any one family may receive through the FSSP during the fiscal year; and

b. The total number of families to be served during the year.

L. PERFORMANCE AND QUALITY REVIEW

1. The Department shall conduct a Performance and Quality Review of the FSSP to ensure that it complies with the requirements set forth in these rules.

2. A CCB found to be out of compliance with these rules through the results of the Performance and Quality Review, shall be required to develop a corrective action plan, upon written notification from the Department. A corrective action plan must be submitted to the Department within ten (10) business days of the receipt of the written request from the Department. A corrective action plan shall include, but not limited to:

a. A detailed description of the action to be taken, including any supporting documentation;

b. A detailed time frame specifying the actions to be taken;

c. Employee(s) responsible for implementing the actions; and

d. The implementation timeframes and a date for completion.

3. The CCB shall notify the Department in writing, within three (3) business days if it will not be able to present the Corrective Action Plan by the due date. The agency shall explain the rationale for the delay and the Department may grant an extension, in writing, of the deadline for the agency's compliance.

a. Upon receipt of the corrective action plan, the Department will accept, modify or reject the proposed corrective action plan. Modifications and rejections shall be accompanied by a written explanation.

b. In the event that the corrective action plan is rejected, the agency shall re-write the corrective action plan and resubmit along with the requested documentation to the Department for review within five (5) business days.

c. The agency shall implement the corrective action plan upon acceptance by the Department.

d. If corrections are not made within the requested timeline and quality specified by the Department, funds may be withheld or suspended.

M. FAMILY SUPPORT SERVICES PROGRAM (FSSP) ANNUAL REPORT

1. Each CCB shall submit an annual FSSP report to the Department by October 1 of each year. The report will contain two sections.

a. The first section must describe how the CCB plans to spend the FSSP funds in the current fiscal year and will include:

i. Description of the outreach/public awareness efforts for the coming year;

ii. Description of anticipated special projects or activities under the Program Expense service category; and

iii. Goals with measurable outcomes for any changes to the FSSP.

b. The second section of the annual report will describe how the FSSP funds were spent in the previous year and must contain:

i. The program evaluation outcomes for the previous year as described in this section;

ii. The total amount of funds expended by service category;

iii. The total number of families served and the total number of families placed on the waiting list;

iv. Detailed information for the Program Expense service category to include:

1) The total number of families that utilized services under the Program Expense category;

2) The specific services provided; resource library, special projects, training events, social events, or group respite;

3) How these services enhanced the lives of families in the community and the total number of families who participated in each project; and

4) The report shall include the total number of staff, total of staff cost, and other costs associated with the Program Expense service category.

iv. A description of how the annual FSSP report was distributed to eligible families; and

v. The signature of Family Support Council (FSC) members, the FSSP Coordinator, and the CCB Executive Director.

8.614 GASTROSTOMY SERVICES

Gastrostomy services shall not be provided by any person who is not otherwise authorized by law to administer gastrostomy services except under the supervision of a licensed nurse or physician pursuant to the requirements of these rules.

A. An individual who is not authorized by law to administer gastrostomy services may administer gastrostomy services to an individual requiring gastrostomy services only if a licensed nurse or physician first:

1. Develops a written individualized protocol for the individual receiving gastrostomy services which is based on the individual's physician orders, meets the requirements of section 8.614.E, and is updated each time that the physician's orders change for that individual's gastrostomy services;

2. Oversees training given to the unlicensed person and documents such training, as provided in section 8.614.G, and directly observes the unlicensed person performing the gastrostomy services until such time as the unlicensed person reaches proficiency, which is defined as such person performing all aspects of the individualized protocol referred to above, at least three consecutive observations without error, and,

3. Performs gastrostomy services for each individual receiving such services at least once prior to the time that the unlicensed person provides any such services for that individual.

B. For staff who are performing gastrostomy services for several individuals with similar protocols, the licensed nurse or physician overseeing their training may document their proficiency with less than three (3) observations for each individual receiving services. The alternative method for establishing proficiency of each staff shall be documented.

C. A licensed nurse or physician shall monitor each unlicensed person who is performing gastrostomy services for an individual requiring such services pursuant to section 8.614.A, to ensure that such unlicensed person is properly implementing the orders of the physician and the individualized protocol referred to in section 8.614.A, on a quarterly basis during the first year and semi-annually thereafter, unless more frequent monitoring is required by the individualized protocol. Such monitoring shall be documented in the record of the individual receiving gastrostomy services.

D. When changes are made in the physician's order for gastrostomy services and/or in the individual's protocol, the licensed nurse or physician overseeing the training shall determine the extent of training required to ensure that the unlicensed person(s) authorized to provide such services pursuant to section 8.614.A, continues to be proficient in performing all aspects of gastrostomy services.

E. An individualized protocol shall be maintained in the record of the individual receiving gastrostomy services for whom it is prepared and shall include at least the following:

1. The proper procedures for preparing, storing and administering gastrostomy services;

2. The proper care and maintenance of the gastrostomy site, needed materials and equipment;

3. The identification of possible problems associated with gastrostomy services; and,

4. A list of health professionals to contact in case of problems, including the physician of the individual receiving gastrostomy services and the licensed nurse(s) and/or physician(s) who are responsible for monitoring the unlicensed person(s) performing gastrostomy services pursuant to section 8.614.C.

F. A licensed physician shall review and approve the individualized protocol for each individual receiving gastrostomy services through a nasogastric tube.

G. The licensed nurse or physician who oversees the training given to an unlicensed person to perform gastrostomy services for the individual pursuant to section 8.614.A shall document in the record of such individual the following:

1. The date or dates on which the training occurred;

2. The fact that, in the opinion of such licensed nurse or physician, the unlicensed individual has reached proficiency in performing all aspects of the individualized protocol referred to in section 8.614.A.1; and,

3. The legible signature and title of such licensed nurse or physician.

H. Notwithstanding anything contained in these regulations to the contrary, any person administering medication(s) through gastrostomy tubes shall be subject to the requirements of section 25-1.5-303, C.R.S.

I. The program approved service agency shall assure that there is documentation in the record of each individual receiving gastrostomy services for each gastrostomy service provided to him or her, the following, at a minimum:

1. A written record of each nutrient or fluid administered;

2. The beginning and ending time of the nutrient or fluid intake;

3. The amount of nutrient or fluid intake;

4. The condition of the skin surrounding the gastrostomy site;

5. Any problem(s) encountered and action(s) taken; and,

6. The date and signature of the person performing the procedure.

8.615 TELEHEALTH DELIVERY OF HOME AND COMMUNITY-BASED SERVICES

8.615.1 DEFINITIONS

A. Assessment shall be as defined at Section 8.390.1.DEFINITIONS.

B. Case Management means as defined in Section 8.390.1 DEFINITIONS.

C. Case Management Agency (CMA) means a public or private not-for-profit or for-profit agency that meets all applicable state and federal requirements and is certified by the Department to provide case management services for Home and Community-Based Services waivers pursuant to Section 25.5-10-209.5, C.R.S. and pursuant to a provider participation agreement with the state department.

D. Community Centered Board (CCB) means a private corporation, for profit or not for profit, which when designated pursuant to Section 25.5-10-209, C.R.S., provides case management services to Members with developmental disabilities, is authorized to determine eligibility of such Members within a specified geographical area, serves as the single point of entry for Members to receive services and supports under Section 25.5-10-201, C.R.S. et seq , and provides authorized services and supports to such Members either directly or by purchasing such services and supports from service agencies.

E. Department means the Department of Health Care Policy and Financing.

F. Home and Community-Based Services (HCBS) means services and supports authorized through a 1915(c) waiver of the Social Security Act and provided in community settings to a Member who requires a level of institutional care that would otherwise be provided in an institutional setting.

G. Home and Community-Based Services Telehealth (HCBS Telehealth) is a method of service delivery of those HCBS services listed at Section 8.615.2.

H. 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.

I. Member means as defined in Section 8.390.1.

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

K. Person-Centered Support Plan means as defined in Section 8.390.1 DEFINITIONS.

L. Person-Centered Support Planning means as defined in Section 8.390.1 DEFINITIONS.

M. Telehealth means the broad use of technologies to provide services and supports through HCBS waivers, when the Member is in a different location from the provider.

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

8.615.2 INCLUSIONS

A. HCBS Telehealth may be used to deliver support through the following authorized HCBS waiver services:

1. Adult Day Services - Basic, Tier 1; defined at Section 8.491.1;

2. Adult Day Services - Brain Injury, Tier 1; defined at Sections 8.515.3 and 8.515.70;

3. Behavioral Management and Education; defined at Section 8.516.40;

4. Behavioral Services - Behavioral Consultation; defined in Sections 8.500.5.B.1. and, 8.500.94.B.2, ;

5. Behavioral Services - Behavioral Counseling, Group, defined in Sections 8.500.5.B.1, and 8.500.94.B.2, ;

6. Behavioral Services - Behavioral Counseling, Individual, defined in Sections 8.500.5.B.1, and 8.500.94.B.2,;

7. Behavioral Services - Behavioral Plan Assessment; defined in Sections 8.500.5.B.1 and , 8.500.94.B.2,;

8. Benefits Planning; defined in Sections 8.500.5.B.2 and 8.500.94.B.3

9. Bereavement Counseling; defined at Section 8.504.1;

10. Community Connector; defined at Section 8.503.40.A.3;

11. Day Habilitation; defined at Section 8.500.5.B.2;

12. Expressive Therapy - Art and Play Therapy, Group; defined at Sections 8.504.1 and 8.504.2.D;

13. Expressive Therapy - Art and Play Therapy, Individual; defined at Sections 8.504.1 and 8.504.2.D;

14. Expressive Therapy - Music Therapy, Group; defined at Sections 8.504.1 and 8.504.2.D;

15. Expressive Therapy - Music Therapy, Individual; defined at Sections 8.504.1 and 8.504.2.D;

16. Independent Living Skills Training; defined at Section 8.516.10;

17. Mental Health Counseling, Family; defined at Section 8.516.50;

18. Mental Health Counseling, Group; defined at Section 8.516.50;

19. Mental Health Counseling, Individual; defined at Section 8.516.50;

20. Mentorship; defined at Section 8.500.94B.10;

21. Movement Therapy; defined in Sections 8.500.94B.15 and 8.503.40.A.8;

22. Palliative Supportive Care - Care Coordination; defined at Section 8.504.1;

23. Substance Abuse Counseling, Family; defined at Section 8.516.60;

24. Substance Abuse Counseling, Individual; defined at Section 8.516.60;

25. Supported Employment - Job Coaching, Individual, defined in Sections 8.500.5.B.9 and 8.500.98.C;

26. Supported Employment - Job Development, Levels 1-6, Individual, defined in Sections 8.500.5.B.9 and 8.500.98.C;

27. Transition Services - Life Skills Training; defined at Section 8.553.1;

28. Transition Services - Peer Mentorship; defined at Section 8.553.1;

29. Therapeutic Life Limiting Illness Support, Family; defined at Sections 8.504.1 and 8.504.2.B;

30. Therapeutic Life Limiting Illness Support, Group; defined at Sections 8.504.1 and 8.504.2.B;

31. Therapeutic Life Limiting Illness Support, Individual; defined at Sections 8.504.1 and 8.504.2.B;

32. Wrap Around Service - Intensive Support; defined at Section 8.508.100.H; and,

33. Wrap Around Service - Transition Support; defined at Section 8.508.100.M;

B. HCBS Telehealth may only be used to deliver consultation for the following services:

1. Adaptive Therapeutic Recreational Fees and Equipment, defined at Section 8.503.40.A.1;

2. Assistive Technology; defined in Sections 8.500.94.B.1 and, 8.503.40.A.2;

3. Home Modification and Adaptation; defined in Sections 8.493.1, 8.500.94.B.6, and 8.503.40.A.5; and

4. Vehicle Modifications, defined in Sections 8.500.94.B.20 and 8.503.40.A.12.

5. Providers shall follow all billing policies and procedures as outlined in the Department's current waiver billing manuals and rates/fees schedules and may not bill separately for consultation.

8.615.3 LIMITATIONS

A. HCBS Telehealth is subject to the limitations of the respective service it supports as referenced in this rule at Section 8.615.2.

B. HCBS Telehealth is not a duplication of Health First Colorado Telehealth or Telemedicine services.

C. HCBS Telehealth is not permitted to be used for any service not listed in this rule at Section 8.615.2.

8.615.4 PROVIDER REQUIREMENTS

A. HCBS waiver providers that choose to use HCBS Telehealth shall develop and make available a written HCBS Telehealth Policy which at a minimum shall include the following:

1. The Member may refuse telehealth delivery at any time without affecting the Member's right to any future services and without risking the loss or withdrawal of any service to which the Member would otherwise be entitled;

2. All required and applicable confidentiality protections that apply to the services;

3. The Member shall have access to all collected information resulting from the services utilized as required by state law;

4. How utilization of HCBS Telehealth will be made available to those Members who require assistance with accessibility, translation, or have limited visual and/or auditory capabilities;

5. A contingency plan for service delivery if technology options fail; and,

6. HCBS waiver providers shall maintain a copy of the HCBS Telehealth Policy signed by the Member in their records.

B. HCBS waiver providers shall ensure the use of HCBS Telehealth is the choice of the Member. The HCBS waiver provider shall maintain a consent form for the use of HCBS Telehealth in the Member's record.

C. The HCBS waiver provider shall complete a provider developed evaluation of the Member and caregiver prior to using HCBS telehealth services that identifies a Member's ability to participate and outlines any accommodations needed while utilizing HCBS Telehealth.

D. HCBS waiver providers must comply with all HIPAA and confidentiality procedures. HCBS waiver providers must be able to use a technology solution that allows real-time interaction with the Member which may include audio, visual and/or tactile technologies.

E. HCBS waiver providers shall not use HCBS Telehealth to address a Member's emergency needs.

F. HCBS waiver providers shall use a HIPAA compliant technology solution meeting all privacy requirements.

8.615.5 CASE MANAGEMENT REQUIREMENTS

A. Members eligible to use HCBS Telehealth are those enrolled in the waivers and services as defined in this rule at Section 8.615.2.

B. The CMA shall ensure the use of HCBS Telehealth is the choice of the Member through the Support Planning process by indicating the Member's choice to receive HCBS Telehealth in the Department prescribed IT system.

C. Through the Support Planning process, the CMA shall identify and address the benefits and possible detriments to Members choosing to use HCBS Telehealth for service delivery.

D. HCBS Telehealth delivery must be prior authorized and documented in the Member's Support Plan.

E. Telehealth as a service delivery method for authorized HCBS waiver services, shall not interfere with any client rights or be used as any part of a Rights Modification or Suspension plan.

8.615.6 REIMBURSEMENT

A. HCBS Telehealth does not include reimbursement for the purchase or installation of telehealth equipment or technologies.

B. HCBS waiver service providers utilizing Telehealth shall follow all billing policies and procedures as outlined in the Department's current waiver billing manuals and rates/fees schedules. This includes the prohibition on collecting copayments or charging Members for missing set times for services.

8.660 LABORATORY AND X-RAY

8.660.1 DEFINITIONS

Independent Certified Laboratory means a certified laboratory that performs diagnostic tests and is independent both of the attending or consulting physician's office and of a hospital except where a hospital laboratory has obtained Medicare certification as an independent laboratory and is billing for recipients who are not admitted as patients in the hospital.

Clinical Laboratory Services mean microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examinations of fluids derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or the assessment of a medical condition.

Anatomical Laboratory Services mean examinations of tissues derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or the assessment of a medical condition.

Certified Clinical Laboratory means a provider who possesses a certificate of waiver or a certificate of registration from the Centers for Medicare and Medicaid Services or its designated agency as meeting Centers for Medicare and Medicaid Services guidelines and whose personnel and director are qualified to perform laboratory services.

X-Ray Services mean services performed by a provider whose x-ray equipment has been certified by the Colorado Department of Public Health and Environment as meeting Medicare guidelines and whose personnel and director are qualified to operate said equipment.

8.660.2 CONDITIONS OF PARTICIPATION

8.660.2. A Certified Clinical Laboratories and providers of X-Ray Services shall enroll as providers in the Medical Assistance Program.

8.660.2.B. All participating laboratories, including out-of-state independent clinical laboratories, shall be certified by the state agency to participate under Medicaid. All laboratories shall provide proof of certification status through the provision of the CLIA (Clinical Laboratory Improvement Amendments of 1988) number to the Department.

8.660.2.C. Providers of X-Ray Services shall be certified by the Colorado Department of Public Health and Environment and shall provide proof of Medicare certification on the Medicaid provider enrollment forms.

8.660.3 LIMITATIONS AND BENEFITS

8.660.3.A. Laboratory and X-Ray Services are a benefit under all of the following conditions:

1. The services have been authorized by a licensed physician.

2. The services are performed to diagnose conditions and illnesses with specific symptoms.

3. The services are performed to prevent or treat conditions that are benefits under the Medical Assistance Program.

4. The services are not routine diagnostic tests performed without apparent relationship to treatment or diagnosis for a specific illness, symptom, complaint or injury.

5. The laboratory services are performed by a certified laboratory in accordance with the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

6. The X-Ray Services are performed by a provider certified by the Colorado Department of Public Health and Environment and enrolled as a Medicaid provider.

8.660.3.B. Collection, handling and/or conveyance of specimens for transfer from physicians' offices to a Certified Clinical Laboratory is reimbursable to the physician.

8.660.3.C. Transfer of a specimen from one Certified Clinical Laboratory to another is a benefit and is reimbursable to the first certified laboratory if the laboratory's equipment is not functioning or the laboratory is not certified to perform the tests ordered by the physician.

8.660.4 BILLING PROCEDURES

8.660.4.A. Certified providers of clinical laboratory and X-Ray Services shall bill the Department directly using the designated billing method, the correct Current Procedural Terminology and Healthcare Common Procedure Coding System procedure codes and modifiers as required. Providers shall bill the amount of their usual and customary charges to the general public.

8.660.4.B. Laboratory tests and x-rays performed under the personal supervision of the authorizing physician must be billed directly on the physician's services claim form.

8.660.4.C. Laboratory tests and x-rays not performed by the authorizing physician or under his/her direct personal supervision cannot be billed by the physician except for physicians in a Certified Clinical Laboratory group practice. A Certified Clinical Laboratory group practice may only bill for those laboratory and X-Ray Services actually performed or supervised by a physician member of the group or performed by a qualified employee of the group. Payment shall be made to the authorizing physician or the group practice.

8.660.4.D. Laboratory and X-Ray Services performed by a hospital-based or independent laboratory or x-ray provider and submitted to an unrelated physician for interpretation may only be billed by the laboratory or x-ray provider for the technical component.

8.660.4.E. Practitioner and clinic providers rendering professional interpretation and not direct laboratory or X-Ray Services may only bill the professional component.

8.660.5 REIMBURSEMENT

8.660.5.A. Reimbursement for certified laboratory and X-Ray Services shall be the lowest of the following:

1. Submitted charges.

2. Fee schedule as determined by the Department.

8.660.5.B. Services rendered by a hospital-based laboratory during an inpatient stay are included in the hospital Diagnosis Related Group or inpatient rate and shall not be billed or reimbursed separately.

8.660.5.C. Each certified laboratory provider shall be reimbursed for only those tests performed in the specialties or sub-specialties for which it is certified.

8.660.5.D. Reimbursement for out-of-state certified independent clinical laboratory or X-Ray Services shall be subject to Department reimbursement rates.

8.660.5.E. The reimbursement methodology at 8.660.5.A - 8.660.5.D does not apply to payments for those services/procedures that are reimbursed under a capitated or contracted agreement accomplished through competitive bid or other arrangement.

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 History link that appears above the text in 10 CCR 2505-10. 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]