Title of Rule: Revisions to Payment to Family Members

Rule Number: MSB 05-09-07-A

Division / Contact / Phone: Long Term Benefits / Viki Manley / 2991

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   To align payment to families with statutory language.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal regulation and/or

   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2005);
   26-4-609, C.R.S. (2005)

Initial Review	**12/09/05**	Final Adoption	**01/13/06**
Proposed Effective Date	**03/01/06**	Emergency Adoption	

DOCUMENT #2

Title of Rule: Revisions to Payment to Family Members

Rule Number: MSB 05-09-07-A

Division / Contact / Phone: Long Term Benefits / Viki Manley / 2991

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Client's and family members will be affected by the rule in that each family member may provide 444 units of personal care services individually. The rule currently states that family members, other than a client's spouse, may provide 444 units of personal care services cumulatively.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   A client will have more choice in providers.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There will be no cost for implementation as the services are already being provided. Personal care services are prior authorized by the case manager through the care plan. Provision of these personal care services whether by family members or unrelated individuals will not change the needs assessment or the prior authorization process.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   N/A

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   N/A

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   N/A

8.485.200 LIMITATIONS ON PAYMENT TO FAMILY

.201 In no case shall any person be reimbursed to provide HCBS-EBD services to his or her spouse.

.202 Family members other than spouses may be employed by certified personal care agencies to provide personal care services to relatives under the HCBS-EBD program subject to the conditions below. For purposes of this section, family shall be defined as all persons related to the client by virtue of blood, marriage, adoption or common law.

.203 The family member shall meet all requirements for employment by a certified personal care agency, and shall be employed and supervised by the personal care agency.

.204 The family member providing personal care shall be reimbursed, using an hourly rate, by the personal care agency which employs the family member, with the following restrictions:

A. The total number of Medicaid personal care units for a member~~s~~ of the client's family shall not exceed the equivalent of 444 personal care units per annual certification for HCBS-EBD and HCBS-PLWA.

1. The maximum number of Medicaid personal care units per annual certification for HCBS-EBD and HCBS-PLWA shall include any portions of the Medicaid reimbursement which are kept by the personal care agency for unemployment insurance, worker's compensation, FICA, cost of training and supervision, and all other administrative costs.

8.485.200 LIMITATIONS ON PAYMENT TO FAMILY

2. The maximum number of personal care units per annual certification for HCBS-EBD and HCBS-PLWA shall be 444. Family members must average at least 1.2164 hours of care per day (as indicated on the client's care plan) in order to receive the maximum reimbursement.

a. If the certification period for HCBS-EBD and HCBS-PLWA is less than one year, the maximum reimbursement for relative personal care shall be calculated by multiplying the number of days the client is receiving care by the average units per day for a full year (444/365=1.12164).

B. ~~If more than one family member provides personal care to the same client, the maximum reimbursement number of 444 personal care units per annual certification for HCBS-EBD and HCBS-PLWA shall be divided among all family members providing care. Each family member providing care and sharing in the reimbursement shall be employed by the personal care agency.~~

B.~~C.~~ If two or more HCBS-EBD clients reside in the same household, family members may be reimbursed up to the maximum for each client if the services are not duplicative and are appropriate to meet the client's needs.

~~D.~~C. When HCBS-EBD funds are utilized for reimbursement of personal care services provided by the client's family, the home care allowance cannot be used to reimburse the family.

~~E.~~D. Restrictions on allowable personal care units shall not apply to parents who provide Attendant services to their eligible children under In-Home Support Services (§8.552).

~~F.~~E. Services other than personal care shall not be reimbursed with HCBS-EBD funds when provided by the client's family, with the exception of Attendant services provided under In-Home Support Services (§8.552).

8.485.300 CLIENT RIGHTS

.301 The case manager shall inform persons eligible for HCBS-EBD, in writing, of their right to choose between HCBS-EBD services and nursing facility

8.509.18 STATE PRIOR AUTHORIZATION OF SERVICES (Continued)

C. Revisions received by the Department or its agent six months or more after the end date shall always be disapproved.

D. Approval of the PAR by the Department or its agent shall authorize providers of services under the case plan to submit claims to the fiscal agent and to receive payment for authorized services provided during the period of time covered by the PAR. Payment is also conditional upon the client's financial eligibility for long term care medical assistance (Medicaid) on the dates of service; and upon providers' use of correct billing procedures.

8.509.19 STATE CALCULATION OF COST-CONTAINMENT AMOUNT

A. The State shall annually compute the equivalent monthly cost of nursing facility care ACCORDING TO SECTION 8.485.100.

B. LIMITATIONS ON PAYMENT TO FAMILY

1. In no case shall any person be reimbursed to provide HCBS-MI services to his or her spouse.

2. Family members other than spouses may be employed by certified personal care agencies to provide personal care services to relatives under the HCBS-MI program subject to the conditions below. For purposes of this section, family shall be defined as all persons related to the client by virtue of blood, marriage, adoption or common law.

3. The family member shall meet all requirements for employment by a certified personal care agency, and shall be employed and supervised by the personal care agency.

4. The family member providing personal care shall be reimbursed, using an hourly rate, by the personal care agency which employs the family member, with the following restrictions:

a. The total number of Medicaid personal care units for a member~~s~~ of the client's family shall not exceed the equivalent of 444 personal care units per annual certification for HCBS-MI.

8.509.19 STATE CALCULATION OF COST-CONTAINMENT AMOUNT (Cont.)

b. The maximum shall include any portions of the Medicaid reimbursement which are kept by the personal care agency for unemployment insurance, worker's compensation, FICA, cost of training and supervision and all other administrative costs.

c. The maximum number of personal care units per annual certification for HCBS-MI shall be 444 units. Family members must average at least 1.2164 hours of care per day (as indicated on the client's care plan) in order to receive the maximum reimbursement.

d. If the certification period for HCBS-MI is less than one year, the maximum reimbursement for relative personal care shall be calculated by multiplying the number of days the client is receiving care by the average units per day for a full year (444/365=1.2164).

~~5.If more than one family member provides personal care to the same client, the maximum reimbursement of 444 personal care units per annual certification for HCBS-MI shall be divided among all family members providing care. Each family member providing care and sharing in the reimbursement shall be employed by the personal care agency.~~

~~6.~~5. If two or more HCBS-MI clients reside in the same household, family members may be reimbursed up to the maximum for each client if the services are not duplicative and are appropriate to meet the client's needs.

~~7.~~6. When HCBS-MI funds are utilized for reimbursement of personal care services provided by the client's family, the home care allowance cannot be used to reimburse the family.

~~8.~~7. Services other than personal care shall not be reimbursed with the HCBS-MI funds when provided by the client's family.

8.515.19 DEPARTMENT CALCULATION OF COST-CONTAINMENT AMOUNT

The Department shall compute the equivalent average daily cost of hospital care for the person with a brain injury by averaging the reimbursement paid for the prior fiscal year for the eight (8) Diagnostic Related Groups pertinent to brain injury. The average expense of providing home and community based services, plus the average daily per capita expenditures for all other Medicaid services provided to these patients, must be equal to or less than the average cost of hospital level of care plus the average per capita expenditures of all other Medicaid services provided to these patients while residing in a hospital.

8.515.20 LIMITATIONS ON PAYMENT TO FAMILY

A. In no case shall any person be reimbursed to provide HCBS-BI services to his or her spouse.

B. Family members other than spouse or parent of a minor child may be employed by certified personal care agencies to provide personal care services to relatives under the HCBS-BI program subject to the conditions below. For purposes of this section, family is defined as all persons related to the client by virtue of blood, marriage, adoption or common law.

C. The family member must meet all requirements for employment by a certified personal care agency, and must be employed and supervised by the personal care agency.

D. The family member providing personal care shall be reimbursed, using an hourly rate, by the personal care agency which employs the family member, with the following restrictions:

1. The total number of Medicaid personal care units for ~~the~~ a ~~client's~~ family member~~s~~, shall not exceed an average of 222 personal care units per six-month certification or the equivalent of 444 personal care units for a one-year certification for HCBS-BI. The relative personal care units shall be calculated by multiplying the number of days covered for the certification period by 1.2164 units, to determine the total amount of reimbursement to a family member~~s~~, and dividing by the number of days covered by the care plan, to determine the average Medicaid cost per day. Family members must average at least 1.2164 hours of care per day (as indicated on the client's care plan) in order to receive the maximum reimbursement.

~~a.The total number of Medicaid personal care units for members of the client's family shall not exceed the equivalent of 444 personal care units per annual certification for HCBS-CDCE.~~

~~b.~~a. The maximum number of Medicaid personal care units per annual certification for HCBS-CDCE shall include any portions of the Medicaid reimbursement which are kept by the personal care agency and/or FMS for unemployment insurance, worker's compensation, FICA, cost of training and supervision and all other administrative costs.

~~c.Family members must average at least 1.2164 hours of care per day to receive the maximum reimbursement. If the certification period for HCBS-CDCE is less than one year, the maximum reimbursement for relative personal care shall be calculated by multiplying the number of days the client is receiving care by the average units per day for a full year (444/365=1.2164).~~

~~3.If more than one family member provides personal care to the same client, the maximum reimbursement number of 444 personal care units per annual certification for HCBS-CDCE shall be divided among all family members providing care. Each family member providing care and sharing in the reimbursement shall be employed by the personal care agency and/or FMS.~~

~~4.~~3. If two or more HCBS-CDCE clients reside in the same household, family members may be reimbursed up to the maximum for each client if the services are not duplicative and are appropriate to meet the client's needs.