Title of Rule: Consumer Directed Attendant Support (CDAS) Eligibility Requirements

Rule Number: MSB 05-12-22-A

Division / Contact / Phone: Long Term Benefits / Aggie Berens / (303) 866-3358

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).

   The purpose of the rule is to remove the requirement that a client must have received 12 months of Medicaid funded attendant support to be eligible for the CDAS program and add an option for a client or legal guardian to designate an authorized representative to direct care and manage the financial aspect of the program on the client's behalf.

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:

   The rule amendment is imperatively necessary to implement changes to the eligibility criteria required by Sections 26-4-902 through 26-4-903, C.R.S. (2005). This rule change will allow clients currently restricted from enrolling in the program due to cognitive impairment or insufficient utilization history to receive services through the CDAS program.

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);
   26-4-902 through 26-4-903, C.R.S. (2005)

Initial Review

Proposed Effective Date **02/10/06**

Final Adoption **03/10/06**

Emergency Adoption **02/10/06**

DOCUMENT # 16

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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.

Clients who are not able to direct their care and those who do not have a 12 month utilization history of Medicaid funded attendant support will be affected by the rule in that they will be able to enroll in the CDAS 1115 waiver program. The rule currently states that clients must demonstrate the ability to handle the financial aspects, health aspects, and the ability to supervise attendants as well as have received Medicaid funded attendant support for the past twelve months prior to CDAS application. The proposed rule change will allow for an authorized representative to handle the financial aspects and direct the care on behalf of a client with a cognitive disability. The proposed rule eliminates the requirement of a 12 month utilization history of Medicaid funded attendant support.

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

   Clients with cognitive limitations or insufficient utilization history of Medicaid funded attendant support will be given the opportunity to enroll in the CDAS 1115 waiver program and have more flexibility and control in managing their attendant support services.

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.

   The program is designed to be cost neutral. There will be no additional costs for implementation of the proposed rule changed.

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

   Inaction would result in failure to comply with state law.

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.

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N/A

8.551 CONSUMER DIRECTED ATTENDANT SUPPORT

8.551.1 DEFINITIONS

Authorized Representative means an individual designated by the consumer of attendant support or the legal guardian of the consumer of attendant support in acquiring and utilizing services under the Consumer Directed Attendant Support program.

Attendant means the individual who provides attendant support services as set forth at §8.551.2.

Attendant Support Management Training means the required training, including a final, comprehensive test, provided by the Department or its designee to program applicant~~s~~ who meet program eligibility and who have been selected for the program~~.~~ and/or Authorized Representatives.

Fund for Additional Services means the account that reflects a portion of accumulated savings by Program Participants resulting from their use of less than their full Individual Allocation, and which is available to Program Participants by application.

Individual Allocation means the funds made available by the Department to Program Participants and administered by an Intermediary Service Organization. These funds shall be available each month that a Program Participant meets program eligibility and shall be calculated based on the Program Participant's history of attendant support utilization or on the personal care, homemaker, home health aide, and nursing services defined in the client's care plan.

Intermediary Service Organization means the entity or entities under contract with the Department to provide financial and personnel administration for a Program Participant~~s~~.

Program Participant means an individual who meets all program eligibility criteria, who has completed Attendant Support Management Training, who has been notified by the Department of his or her enrollment in the program and who desires to continue participating in the program.

8.551.2 COVERED SERVICES

Covered services in the Consumer Directed Attendant Support Program (CDAS) shall be attendant support, which includes skilled nursing services and home health aide services, Long Term Home Health and Long Term with Acute Episode Home Health as defined under the Home Health Program at 10 C.C.R. 2505-10, §8.520 *et seq*. and Personal Care and Homemaker Services, as defined under the Long-Term Care Program at 10 C.C.R. 2505-10, §8.489 and §8.490.

8.551.3 ELIGIBILITY

8.551.3.A. REFERRAL/SCREENING/INTAKE

1. An individual wishing to apply for CDAS shall submit an application and supporting documentation to the Department.

2. The individual shall submit a statement from the individual's primary care physician or treating physician that indicates that the individual has sound judgment and the ability to direct his or her care or has an Authorized Representative and is in stable condition, both physically and emotionally.

3. All applicants shall receive written notification as to whether they have been determined eligible.

4. Applicants denied admission to the program shall receive written notification within ~~15~~ 20 calendar days of that denial. The written notification shall explain the reasons for denial and provide information on rights to a fair hearing and appeal procedures, described at 10 C.C.R. §8.057 *et seq*.

8.551.3.B. ELIGIBILITY CRITERIA

To be eligible for CDAS, an individual shall:

1. Be willing to participate in the pilot program.

2. Be eligible for Medicaid. Individuals who receive Home and Community-Based Services (HCBS) personal care as the only HCBS service, and who are eligible for Medicaid only because of eligibility for an HCBS waiver, shall be considered to be enrolled in the HCBS waiver when they substitute CDAS services for HCBS personal care.

3. Demonstrate a current need for attendant support. ~~and have received Medicaid-funded attendant support for the twelve months prior to application~~.

4. Document a pattern of stable health, which is a condition of health that necessitates a predictable pattern of attendant support, allowing for variation that is consistent with a medically predictable progression or variation of disability or illness. The documentation may include the individual's history of utilization of Medicaid-funded attendant support.

5. Demonstrate the ability to handle the financial aspects of self-directed attendant support, either through prior experience or through completion of Attendant Support Management Training or have an Authorized Representative who is able to handle the financial aspects of self directed

attendant support. Ability to handle the financial aspects of self-directed attendant support means:

a. The ability to determine how the Individual Allocation should be spent to ensure that the individual receives necessary attendant support, both in quantity and quality, and to ensure that Attendants receive appropriate compensation; and

b. The ability to verify the accuracy of financial and personnel records as provided by the Intermediary Service Organization.

6. Demonstrate the ability to manage the health aspects of his or her life, either through prior experience or through completion of Attendant Support Management Training or have an Authorized Representative to manage the health aspects of his or her life. Managing the health aspects of one's life includes the ability to understand principles and monitor conditions of basic health and the knowledge of how, when and where to seek medical help of an appropriate nature.

7. Demonstrate the ability to supervise Attendants, either through prior experience or through completion of Attendant Support Management Training~~.~~ or have an Authorized Representative supervise Attendants. Ability to supervise Attendants means the knowledge and ability:

a. To recruit and hire Attendants;

b. To communicate expectations;

c. To provide training, guidance and review for Attendants in the accomplishment of attendant tasks;

d. To manage necessary paperwork; and

e. To dismiss Attendants when necessary.

8.551.3.C. CONTINUING ELIGIBILITY REVIEW

A Program Participant whose continuing eligibility for CDAS has been questioned by a Single Entry Point (SEP) case manager or by the Department, shall receive a continuing eligibility review by the Department, with input from the Program Participant. The review shall assess whether the Program Participant may take any actions to establish continuing program eligibility. The Program Participant shall be provided with the results of the review and the recommended actions.

8.551.4 PARTICIPANT SELECTION

8.551.4.A. The number of Program Participants is limited by the enrollment ceiling established in the federal waiver. The Department shall select eligible individuals according to the following process.

8.551.4.B. APPLICANT POOLS

The Department shall assign all eligible applicants to either of two applicant pools:

1. The "Metro Pool" which consists of applicants from counties the Census Bureau has designated as metropolitan (a city of at least 50,000 in population); and

2. The "Rural Pool" which consists of applicants from all other counties.

8.551.4.C. RANDOM DRAWING

The Department shall fill open program slots through a random drawing, held twice a year, of qualified applicants from the two applicant pools. The Department shall determine the number of applicants selected from each pool so as to maintain an appropriate rural/metro ratio as described below. Applicants who are selected shall participate in Attendant Support Management Training.

8.551.4.D. RURAL/METRO RATIO

Participation in CDAS shall reflect a rural/metro ratio, as determined each year by the CDAS advisory committee. The rural/metro ratio shall be not less than 5%/95% and not greater than 20%/80%.

8.551.4.E. WAITING LIST

If the number of qualified applicants exceeds the number of open slots for a given applicant pool at the time of the selection process, the Department shall use the random drawing described above and shall place applicants not selected on a waiting list for the appropriate applicant pool. The Department shall assign a date-received code to applicants placed on waiting lists. During the next selection process, the Department shall fill open slots in a given pool first from that pool's waiting list and then by selection of new applicants. Selection from waiting lists shall be based on chronological order of the date-received codes. The Department shall use a random selection process for all applicants having the same code. The Department shall continue the process until all slots are filled or all applicants have been selected.

8.551.5 SERVICES REQUIREMENTS

8.551.5.A. CONDITIONS FOR SERVICES

An individual may receive CDAS services only after:

1. The individual meets all program eligibility criteria;

2. The individual is selected for the program;

3. The individual and/or Authorized Representative completes the Attendant Support Management Training and develops an attendant support management plan, as described at §8.551.5(C);

4. The Department approves the attendant support management plan;

5. The Department and the individual and/or Authorized Representative determine an appropriate start date for services;

6. The Department notifies the appropriate Case Manager and Intermediary Service Organization of the effective date that the individual will be participating in CDAS;

7. The individual and/or Authorized Representative completes and signs a contract for services with the Intermediary Service Organization;

8. The individual and/or Authorized Representative signs a Program Participant responsibilities form;

9. The individual and/or Authorized Representative has completed and submitted provider notification forms informing his or her existing Medicaid-funded attendant support provider(s) of the date on which attendant support shall cease; and

10. The individual's services start date has occurred.

8.551.5.B. TRAINING REQUIREMENT

To receive CDAS services, eligible applicants and/or Authorized Representatives must complete the Attendant Support Management Training and pass the comprehensive test offered by the Department.

8.551.5.C. ATTENDANT SUPPORT MANAGEMENT PLAN

To receive services, each eligible applicant and/or Authorized Representative shall develop an attendant support management plan. The plan shall describe the individual's:

1. Current status;

2. Needs and requirements for attendant support;

3. Plans for securing attendant support;

4. Assurances and plans regarding direction of health maintenance activities, as described below, if applicable;

5. Plans for handling emergencies;

6. Plans for using the Individual Allocation; and

7. Plans for using the Fund for Additional Services.

8.551.5.D. DIRECTION OF HEALTH MAINTENANCE ACTIVITIES

1. Health maintenance activities are those routine and repetitive activities of daily living which are necessary for health and normal bodily functioning and which would be carried out by an individual with a disability if he or she were physically able, or by family members or friends if they were available. These activities include, but are not limited to, catheter care, administration of medication and ventilator monitoring.

2. A Program Participant who needs attendant support for health maintenance activities, shall direct or have an Authorized Representative direct Attendants in such activities under the following conditions:

   a. The Program Participant and/or Authorized Representative indicates on the attendant support management plan that he or she has received adequate instruction from health professionals, and is therefore qualified and able to train ~~his or her~~ Attendants in specified health maintenance activities.

   b. The Program Participant and/or Authorized Representative lists the specific health maintenance activities on his or her attendant support management plan for which he or she will be providing training.

   c. The Program Participant and/or Authorized Representative verifies on the attendant support management plan that Attendants who will perform health maintenance activities have had or will receive necessary training, either from the Program Participant or from appropriate health professionals.

8.551.5.E. PLANS FOR USE OF THE FUND FOR ADDITIONAL SERVICES

As part of the attendant support management plan approved by the Department, a Program Participant and/or Authorized Representative shall identify goals for use of the Fund for Additional Services. Program Participants and/or Authorized Representatives may apply for grants from the Fund for Additional Services to cover costs for other services and equipment that promote the person's independence or that ameliorate conditions related to the Program Participant's

disability, as long as the costs for such services and equipment are not covered through other available Medicaid programs.

8.551.5.F. CONTINUATION OF EXISTING IN-HOME SERVICES

Individuals applying for CDAS shall continue with their existing Medicaid-funded attendant support arrangements until the conditions for services have been met and the start date for CDAS services occurs.

8.551.5.G. START DATE FOR SERVICES

Once an eligible applicant and/or Authorized Representative completes the Attendant Support Management Training and has received notification of that completion from the Department, the individual, in conjunction with the Department, shall establish a services start date. The eligible applicant shall have a 30-day window of time in which to finalize attendant support arrangements and to contact the Department to set the start date.

8.551.5.H. SERVICE SUBSTITUTION

1. Once an individual is enrolled in CDAS, the case manager shall disenroll him or her from any other Medicaid-funded attendant support.

2. The case manager shall notify the state fiscal agent to cease payments for all existing Medicaid-funded attendant support for the eligible applicant as of that person's services start date.

3. Case managers shall not authorize payments for CDAS attendant support and non-CDAS attendant support for the same individual.

4. To minimize the instance of accidental duplicate services, an eligible applicant shall notify his or her existing attendant support provider(s) on a provider notification form that attendant support from that provider shall cease and the date of cessation. The eligible applicant shall provide the Department with a copy of each form.

8.551.6 CALCULATION OF INDIVIDUAL ALLOCATIONS

8.551.6.A. INITIAL CALCULATION

The Department shall calculate the initial Individual Allocation for each eligible applicant as follows:

1. Identify the service categories in which payments have been made for the eligible applicant ~~during the previous twelve months,~~ for those service categories that constitute Medicaid-funded attendant support.

2. Add the payments made ~~during the twelve-month period~~ on behalf of the eligible applicant for Medicaid-funded attendant support.

3. Determine the number of months of service for each eligible applicant.

4. Divide the total payments ~~for the twelve months~~ by total service months, yielding a preliminary Individual Allocation and an average monthly payment for the eligible applicant.

5. Adjust the allocation to the fiscal year of the Program Participant's services start date, incorporating the effect of non-CDAS attendant support rate changes ~~occurring in the prior twelve months~~ for those service categories that constitute attendant support and considering the cost neutrality guidelines set forth in the terms and conditions from the Centers for Medicare and Medicaid Services.

6. Calculate the number of personal care, homemaker, home health aide and nursing hours needed on a monthly basis as defined in the care plan and Prior Authorization Request completed by the case manager and multiply by the Department's established rates for these services to derive a monthly allocation for applicants who have insufficient utilization history.

8.551.6.B. ADJUSTMENTS TO INDIVIDUAL ALLOCATIONS

1. A Program Participant who believes that he or she needs more attendant support than the existing Individual Allocation will cover, may request the SEP case manager to perform a reassessment, as described at §8.551.10(D). If the reassessment indicates that more attendant support is justified, the Program Participant and case manager shall recommend adjustments to the attendant support management plan with a concomitant increase in the Individual Allocation.

2. In recommending an increase in the Individual Allocation, case managers shall consider:

   a. Any change in the Program Participant's condition that would necessitate more attendant support;

   b. Discrepancies between the Program Participant's utilization history and current needs for attendant support;

   c. The appropriateness of attendant wages paid by the Program Participant for services received;

   d. The quality and quantity of services provided by Attendants for the wages they receive; and

e. Revisions in the Program Participant's budgeting of the current Individual Allocation to more effectively pay for needed services.

8.551.7 PAYMENTS

8.551.7.A ATTENDANT REIMBURSEMENT

Attendants shall receive an hourly wage based on the rate negotiated between the Attendant and the Program Participant and/or Authorized Representative hiring the Attendant. The Intermediary Service Organization shall make all payments from the Program Participant's Individual Allocation under the direction of the Program Participant~~.~~ and/or Authorized Representative.

8.551.7.B EMPLOYER OF RECORD

The Intermediary Service Organization shall be the employer of record for all CDAS Attendants and shall be responsible for worker's compensation insurance, unemployment compensation insurance, withholding of all federal and state taxes, compliance with federal and state laws regarding overtime pay and minimum wage requirements, and compliance with any other relevant federal, state or local laws.

8.551.7.C UNSPENT PORTION OF AN ALLOCATION

Any unspent portion of a Program Participant's monthly Individual Allocation shall be divided equally between the Department and the Fund for Additional Services. Requests for a grant from the Fund for Additional Services shall be consistent with the Program Participant's current attendant support management plan. The cost of the services and equipment being requested shall not exceed the total amount contributed to the Fund for Additional Services by the Program Participant up to that point. In no circumstance shall the Department make cash grants to Program Participants.

8.551.8 PROGRAM PARTICIPANT AND AUTHORIZED REPRESENTATIVE ROLE AND RESPONSIBILITIES

8.551.8.A HEALTH AND ATTENDANT MANAGEMENT

To receive CDAS services, an individual and/or Authorized Representative shall sign a Program Participant responsibilities form acknowledging full responsibility for:

1. The individual's own health management; and

2. The individual's own attendant support management, which includes arranging for replacement of an absent Attendant, whether or not such an absence was anticipated.

8.551.8.B PROGRAM PARTICIPANT'S/AUTHORIZED REPRESENTATIVE'S RESPONSIBILITIES AS SUPERVISOR

As the supervisor of Attendants, a Program Participant and/or Authorized Representative shall:

1. Determine wages and benefits for each Attendant;

2. Establish hiring agreements with each Attendant, outlining wages, benefits, services to be provided, schedules and working conditions;

3. Follow all relevant laws and regulations regarding the employment of Attendants;

4. Explain the role of the Intermediary Service Organization to the Attendant;

5 Communicate with the Intermediary Service Organization regarding the hiring of Attendants, including wage and benefit information for each Attendant;

6. Review all Attendant time sheets for accuracy and completeness;

7. Ensure that time sheets are signed by the Program Participant and the Attendant in order for the Intermediary Service Organization to issue a paycheck to the Attendant; and

8. Authorize the Intermediary Service Organization to make any changes in Attendant wages or benefits.

8.551.8.C QUALITY ASSURANCE ACTIVITIES

Participants and/or Authorized Representatives in CDAS shall take part in assuring the quality of program services. To assess quality of care on an ongoing basis, Program Participants shall:

1. Devise and utilize an attendant support management plan, as described at §8.551.5(C). Program Participants and/or Authorized Representatives shall review their plans at least annually and modify or develop new plans as needed.

2. Submit timesheets for all Attendants to the Intermediary Service Organization.

3. Complete a self-assessment form every six months.

8.551.8.D. FINANCIAL RECONCILIATION

Program Participants, or their Authorized Representatives ~~designated support persons,~~ shall review the monthly reports from the Intermediary Service Organization for the purpose of financial reconciliation. Program Participants shall bring discrepancies and inaccuracies to the attention of the Intermediary Service Organization.

8.551.9 CDAS-SPECIFIC PARTICIPANT RIGHTS

8.551.9.A DISAPPROVAL OF MANAGEMENT PLAN REVIEW

A Program Participant and/or Authorized Representative whose attendant support management plan is disapproved by the Department has the right to review that disapproval. The Program Participant shall submit a written request to the Department stating the reasons for requesting the review and justifying the proposed management plan. The Program Participant's most recently approved management plan shall remain in effect while the review is in process.

8.551.9.B. ATTENDANT SUPPORT MANAGEMENT

A Program Participant and/or Authorized Representative in CDAS has the right:

1. To hire persons of his or her choice to provide attendant support;

2. To determine what credentials, if any, individuals must have to be employed as Attendants;

3. To train Attendants to meet his or her own particular needs;

4. To dismiss Attendants who are not meeting his or her needs;

5. To request a reassessment, as described at §8.551.10(D), if he or she believes that his or her level of service needs to be adjusted; and

6. To revise his or her attendant support management plan at any time, as long as the Department approves the revised plan.

8.551.9.C ASSISTANCE WITH FINANCIAL MANAGEMENT

A Program Participant who, because of a cognitive disability, lacks the ability to handle the financial aspects of self-directed attendant support, has the right to designate a family member, friend or other support person to be responsible for financial management. A designated support person ~~shall not direct the attendant support, nor~~ shall ~~he or she~~ not receive reimbursement for financial management assistance.

8.551.9.D WITHDRAWAL FROM PROGRAM

Program Participants and/or Authorized Representatives have the right to withdraw from CDAS at any time. A Program Participant who wishes to withdraw shall contact the SEP case manager or the Department to be disenrolled from CDAS.

8.551.9.E PREVIOUS PROGRAM

A Program Participant who leaves the CDAS program, whether by choice, because the program ends, or because the Program Participant is no longer eligible for CDAS, has the right to return to his or her previous Medicaid-funded attendant support program. The Program Participant must continue to need attendant support, continue to qualify for the previous program and continue to be otherwise eligible for Medicaid.

8.551.10 CASE MANAGEMENT FUNCTIONS

SEP agencies shall provide CDAS case management and shall comply with single entry point rules governing case management functions as set forth at 10 C.C.R. 2505-10, §8.390 *et seq.,* except that they shall comply with the following requirements when providing case management under CDAS.

8.551.10.A REFERRAL/SCREENING/INTAKE

Case managers shall provide their clients with information on CDAS and refer interested individuals to the Department for screening and intake.

8.551.10.B PLANNING

1. Case managers shall be available to assist Program Participants in planning attendant support; however, the Program Participants and/or Authorized Representatives are ultimately responsible for devising and implementing their own attendant support management plans.

2. Case managers shall not represent Program Participants in negotiations regarding attendant wages or intermediary services.

8.551.10.C. COORDINATION, MONITORING, AND EVALUATION OF SERVICES

As part of the process of coordination, monitoring and evaluation of services, case managers shall:

1. Contact Program Participants and/or Authorized Representatives twice a month during the first three months of participation in the program to assess their attendant management, their satisfaction with care providers and the quality of services received.

2. Contact Program Participants and/or Authorized Representatives quarterly, after the first three months, to assess their implementation of

service plans, attendant support management issues, quality of care, attendant support expenditures and general satisfaction.

3. Contact the Intermediary Service Organization at least at the time of reassessment, and more often as needed, to determine the status of the Program Participant's activities.

4. Assist Program Participants in securing related services as needed.

5. Refer cases to the Department to determine whether a Program Participant continues to meet program eligibility.

8.551.10.D. REASSESSMENT

Case managers shall conduct a reassessment with each Program Participant and/or Authorized Representative every six months. A reassessment under CDAS is a comprehensive face-to-face interview conducted with the Program Participant and/or Authorized Representative and appropriate collateral contacts to determine the Program Participant's level of functioning and service needs. Such a reassessment includes an evaluation by the case manager, collection of supporting information from the Program Participant's physician and the Program Participant's self-assessment of his or her needs. Case managers shall conduct additional reassessments if requested by the Program Participant or the Department. In addition to the issues monitored during the quarterly contacts, case managers shall use the six-month reassessments to review any need for adjusting Individual Allocations, as described at §8.551.6(B).

8.551.11 TERMINATION FROM CDAS

The Department shall notify the Program Participant in writing at least ~~15~~ 20 calendar days prior to termination, that he or she is no longer eligible for CDAS, and that the Program Participant should contact his or her case manager for assistance in obtaining other home care services. The notice shall provide the Program Participant with the reasons for termination and with information about the Program Participant's rights to fair hearing and appeal procedures, in accordance with 10 C.C.R. 2505-10, §8.057. Exceptions will be made to the ~~15~~ 20 day advance notice requirement when the Department has documented that there is danger to the Program Participant or to the Attendants. The Department shall notify the Program Participant's case manager and the Intermediary Service Organization of the date on which the Program Participant is being terminated from CDAS.