

RE: MSB 6/14/19

- **Initial Approval Agenda:** Document 06, MSB 19-04-16-A Revision to the Medical Assistance Rules concerning Case Management and Quality Performance, Sections 8.393, 8.500, 8.600 & 8.700 (Heather Fladmark, Conflict Free Case Management Specialist)
- **Emergency Adoption Agenda:** Document 08, MSB 19-02-05-A Revision to the Medical Assistance Rule concerning Children's Habilitation Residential Program, Section 8.508 (Michelle Craig, Benefits and Services Division)

Our agency has been working with Heather Fladmark and her team at HCPF to address concerns/input/feedback with draft rule (primarily related to Document 06, MSB 19-04-16-A); Heather and her team have been incredibly responsive and we believe rule is being updated in various places to address some of the items outlined below and that Heather and her team have coordinated with other sections within OCL/HCPF to address some of the broader concerns (definitions, etc.) in rule.

We wanted to send this information over to you / the MSB as well in terms of ensuring the MSB also had a sense of the general areas of concern/input/feedback from our perspective.

Our comments are based on Document 06, MSB 19-04-16-A, but if the issue exists in Document 08, MSB 19-02-05-A (CHRP) –such as definitions and the like—we recommend updates be made if and as possible before adoption, or, if not before adoption, in a reasonable timeline thereafter if/when the changes would result in operational issues. We are reviewing Document 08, MSB 19-02-05 (CHRP) in more detail and may have additional feedback on the content of that rule and will email separately.

Here is a list of recommended edits to rule for clarity, operational support, etc.

| Page                  | Line Number              | Rule Reference                            | Item / Recommended updates  |
|-----------------------|--------------------------|---|---|
| 4 / Multiple          | 19-20 / Multiple         |   | In multiple parts of rule, "Guardian" has been redefined to mean "a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely as a Guardian Ad Litem."; we are not certain testamentary appointment in will without court order is good enough for guardianship. |
| 20 And multiple other | 22-24 And multiple other | CES /8.503 DEFINITIONS And multiple other | Currently, under CES definitions, there is a portion of rule which reads "AUTHORIZED REPRESENTATIVE (AR) means an individual designated by the client, parent or legal guardian of a minor, if appropriate, who has the judgment and ability to direct  |

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|          |          |          | <p>CDASS on the client’s behalf and meets the qualifications as defined at <a href="#">10-CCR-2505-10</a> Sections 8.510.6”</p> <p>However: CDASS is <b>not</b> a service deliver option under CES; this definition is missing from the SLS section for which it is an option—we suggest moving it from CES definitions to SLS definitions</p> <p>Additionally, the definition of “Authorized Representative” appears to be inconsistently used through these draft rules:</p> <ul style="list-style-type: none"> <li>• Sometimes it appears to have been replaced under waiver program definitions only as “client representative” (such as under the DD definitions)</li> <li>• Then, in other portions, it is more fully defined as “Authorized Representative means an individual designated by the person receiving services, or by the parent or guardian of the person receiving services, if appropriate, to assist the client receiving service in acquiring or utilizing services and supports, to exclude the duties assigned to and Authorized Representative for individuals receiving services through the Consumer Directed Attendant Support Services (CDASS) service deliver option.” [see section 8.519.1 Definitions].</li> <li>• Other sections that refer to “Authorized representative(s)” do not appear to have been expanded to include “client representative” but perhaps should have been if both definitions / uses would apply in those rule references</li> </ul> <p>We believe clarity is needed on the two definitions and consistency of use throughout both the draft sections of rule and 8.500 and 8.600 would be helpful and ensure there is less confusion for all parties</p> |
| Multiple | Multiple | Multiple | <p>The definitions of SEPs and CCBs feel incomplete and/or inaccurate or even misleading; The CCB definition in particular feels too truncated to really direct all end readers to the purpose and function of CCBs in the current system.</p> <p>CCBs are defined as “COMMUNITY CENTERED BOARD (CCB) 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 conducting level of care evaluation and determination for waivers specific to individuals with intellectual and developmental disabilities.”</p> <p>SEPs are defined as “Single Entry Point (SEP) Agency means the organization selected to provide intake, screening, referral, eligibility determination, and case management functions for persons in need of</p>   |

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|         |       |                      | <p>LTSS within a Single- Entry Point district. SEP agencies do not provide case management for HCBS waivers for individuals with intellectual and developmental disabilities”</p> <p>However, our understanding is under future and immediate future state: CCBs determine intake, screening, referral, <b>waitlist management</b>, and eligibility for folks pursuing IDD services; SEPs complete those activities for non-IDD services. [“waitlist management” ‘bolded as it is not a component of SEP functions at this time]</p> <p>Also, for clarity, under immediate future state, couldn’t SEPs qualify as IDD CMAs under these rules? If that is the case, then exclusion of CM for IDD seems weird in the SEP definition.</p> <p>We recommend further refining these definitions in all sections</p> |
| Page 60 | 32-35 | 8.600.4              | <p>Under the IDD rules (8.600), Client is defined as “Client” means an individual who has met Long Term Services and Supports (LTSS) Care (LTC) 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 Persons with Developmental Disabilities (HCBS-DD) or the Supported Living Services (HCBS-SLS) waiver.”</p> <p>Our understanding is that these definitions apply to all of 8.600—and we believe that includes FSSP; the definition does not seem appropriately inclusive of those supports</p> <p>In addition, would these rules also apply (in part) to CHRP and should CHRP be including in the above definition?</p>   |
| 93      | 11-24 | 8.761.2              | <p>Our understanding is that CHRP will be paid via TCM beginning 7/1/19; should the rules be updated to include CHRP as a program for which I/DD TCM is paid?</p>   |
| 21      | 3-6   | 8.503<br>Definitions | <p>The Definition for “client representative” under CES (a program for those ages 17 and under), should likely not include the option for the child in services to designate a representative—we believe only a parent or guardian should be able to do such on behalf of the individual in service.</p>  |
| 43      | 31-35 | 8.519.10.A.          | <p>The rule around failure to prepare the SP/PAR currently reads “...shall result” and we would like to recommend the word “may” be substituted for “shall” as it gives more flexibility to all parties (including the Dept) for unforeseen circumstances in which it would be equitable to pay for the CMA work in the discretion of the state</p>   |

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| 38 | 18-19       | 8.519.5                        | <p>Part of this rule currently reads “Be a provider for the client, have an interest in, or be employed by a provider for the same client.”</p> <p>We support the general goal of rule but this gives us pause at the moment because there is no exception for rural CMs or CMs currently working at CCBs who may be in conflict. It would seem this requirement would technically go into effect with the effective date of the rule and it could raise questions about the implementation timeline for CFCM.</p> <p>We suggest possibly mirroring language in 8.519.3.D by adding “This requirement does not apply to case managers working for case management agencies that are operating under an exception approved by the Centers for Medicare and Medicaid Services. Case Management Agencies providing HCBS case management services prior to August 30, 2019 shall comply with the timelines set forth in sections 25.5-10-211.5(3)(f) and 25.5-10-211.5(3)(g).”</p> <p>Also: *Note that 8.519.3.D cites sections (2)(f) and (2)(g) but we don’t believe those citations are incorrect and that they should be 3(f) and 3(g)17-1</p> |
| 39 | 17-19       | 8.519.5.H                      | <p>Requirements for supervisors for case managers: Is it possible to have a similar exemption process for supervisors as outlined for CMs on page 38?</p>  |
| 68 | Safety Risk | Lines 16-19<br>And lines 25-28 | <p>In both sections of public safety risk convicted and public safety risk non-convicted, there are references to rights suspensions as well as a call out of parole/probation/court order (separate from rights restrictions).</p> <p>We believe this section may possibly need to be updated to better clarify what is required to meet these definitions and what, if any intersection there is with rights modifications. Perhaps rule is not the right place to provide this clarity and there is an upcoming focus group designed to noodle through some related items—perhaps an operational memo might provide the clarity and guidance needed if rule cannot be updated between here and MSB 2nd reading.</p>   |

Here is a list of items that require further clarity); we are unsure if rule does or does not need to be updated but we do (strongly) believe the

system needs operational guidance and collaboration with OCL/HCPF on the below items

| Page    | Thing  | Comment   |
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| Page 39 | CMs must demonstrate competencies in 4 main area   | This does not need to be clarified in rule, but we are curious on how HCPF envisions this might be measured   |
| Page 39 | Requirements for supervisors for case managers:  | Cited above in public comment for other reasons, but adding:<br>Theoretically, what exemptions for current managers employed in roles prior to certain date might exist?<br>Above comment for reference is: it possible to have a similar exemption process for supervisors as outlined for CMs on page 38?   |
| Page 40 | Transitions from CMA to CMA and from CCB to CCB (presumably for catchment area transitions = both) | <p>Rule outlines parameters for choice in CMA and indicates that CMAs must transfer folks more or less on demand. In current state and immediate future state, transfers feel complicated and probably require best practice dialog to support the spirit of regulation outlined in rule.</p> <p>Types of transfers that likely need discussion include</p> <ol style="list-style-type: none"> <li>1) De-institutionalizations (and their overall timing / flow)               <ol style="list-style-type: none"> <li>a. Resulting in only a new CMA</li> <li>b. Resulting in both a new CCB and a new CMA</li> </ol> </li> </ol> <p>Additionally, what if any criteria must be reviewed by either the CMA and/or CCB to ensure the person can be appropriately served / supported? We know that provider selection rules are changing under guidance from HCBS Settings Final Rule and really just want to make sure CMAs and CCBs are set up to successfully transition folks with high support needs to the community</p> <ol style="list-style-type: none"> <li>2) CCB only changes               <ol style="list-style-type: none"> <li>a. For example: I like my CMA and/or will remain within my CMA's catchment and want to change CCBs</li> </ol> </li> <li>3) CMA only changes               <ol style="list-style-type: none"> <li>a. For example: I like my CCB and/or will remain within my CCB's catchment area (or can continue to be served by them) and want to change CMAs</li> </ol> </li> <li>4) CCB and CMA changes concurrently               <ol style="list-style-type: none"> <li>a. For example: For whatever reason (Move out of catchment?), I need to change both</li> </ol> </li> </ol> |

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|                    |   | <p>Questions on transfers include (but are not limited to)</p> <ul style="list-style-type: none"> <li>• CCBs are required to have, on file, all applications/DD Determinations and testing for those served... how/where/which agency holds the DD determination for folks served in any given catchment area?</li> <li>• Will either CCBs and/or CMAs be held accountable for accepting transfers without full file contents? This has been problematic for CCBs who have undergone recent CCB performance reviews / retrospective reviews.</li> <li>• Also: if someone chooses to change CMAs due to a catchment area change, we assume 2 transfers may be needed? For example: if I am the CCB for someone who moves to Fort Collins, then Foothills Gateway may be better positioned to provide CCB supports (LOC, SIS, HRC, etc.) and the person may also need a new CMA. Who is responsible for coordinating this?</li> </ul> <p>We strongly recommend this get more deeply explored including which agency is required to have the application/DD determination/testing on file and if CMAs can accept transfers without verification of such file contents at the designated and appropriate agency and we believe there is a need to have system-wide collaboration on clear operational guidance for all versions of transfers and clarity on what paperwork must be on file with which entities before official transfer can occur.</p> |
| Page 49            | Choice in providers (page 48-49) ends with “the CM must document choice in both SP and notes” | Why both—this feels very much like a duplication of effort and unnecessary additional administrative burden. Only one location should be necessary? Or can the Department give context on why both are required?   |
| Page 51 / Multiple | Client responsibilities in rule 8.519.17 and in DD and SLS sections                           | <p>Client responsibilities in rule 8.519.17 and in DD and SLS sections do not include any cooperation components such as in the CES waiver, which has a line that reads “Cooperate with providers and case management agency requirements for the HCBS CES waiver enrollment process, continued stay review process and provision of services;”</p> <p>This seems problematic on some level (many levels?); while the programs are choice-based, they also require engagement and participation therein.</p>   |

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|         |  | <p>But, of note, the CMA rule section (pages 54-55) on appeal rights has content related to cooperation around scheduling appointments.</p> <p>So, our question is, does the requirement for these things to be true have to be elsewhere in rule or is it sufficient to have them only listed in the appeal section as a reason for notice for it to be cited as a reason to term? <b><i>We are strongly advocating for client responsibilities to be called out/expanded elsewhere</i></b> in rule as just having it in the appeals section seems odd</p> <p>And, also, while that section mentions failure to schedule SPs, it may also need to mention cooperation with required on-site monitoring activities</p> |
| 68      | 8.600.4  | As mentioned in previous comments, this definition feels somewhat problematic as CCBs no longer receive or approve service agency applications for IDD PASA vendors; rule citations that use this phrase appear to ask CCBs to provide information on prospective agencies to individuals and families (and vice versa); this is problematic as CCBs cannot feasibly meet those requirements (per se). I realize if it is used in sections of rules not open for comment that it probably can't be deleted but perhaps the definition should be clarified?   |
| Page 39 | Requirements for supervisors for case managers | Theoretically, what exemptions for current managers employed in roles prior to certain date might exist? Is it possible to have a similar exemption process for supervisors as outlined for CMs on page 38?  |
| 53-43   | Appeal rights                                  | <p>It appears to be inconsistent that the term "adverse" is removed in some sections related to appeal but kept in others; is there a reason for this?</p> <p>Also, with the removal of the word "adverse" is there an expectation that a notice will go out from CMAs anytime there is a change to the waiver services (such as adding new services where there is no "adverse" outcome for the individual)</p>   |