

Title of Rule: Revision to the Medical Assistance Home and Community Based Services Rule Concerning Supportive Living Program, Section 8.515.85
Rule Number: MSB 16-03-22-B
Division / Contact / Phone: Long Term Services and Supports / Diane Byrne / 303-866-4030

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 rules set forth at 10 CCR 2505-10 8.515.85 are being revised to include language requiring Post-Eligibility Treatment of Income (PETI) calculations to be done for eligible clients receiving Supportive Living Program (SLP) services through the Brain Injury (BI) waiver. PETI is a mandatory process set forth in federal rule at 42 C.F.R. §435.726: Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care.

PETI calculations are done for each client receiving residential services who has income between 100% and 300% of SSI. If a client has income below that amount, a PETI is not done for them. PETI calculations are done by Case Management with a spreadsheet created by the Department. PETI protects part of the client's income, called the personal needs allowance, for federally-specified purposes, including spousal maintenance. PETI also requires clients to contribute to the cost of their residential services based on their income, and the Medicaid payment for services is correspondingly reduced. Clients with higher incomes will usually contribute more towards the cost of their services than clients with lower incomes. PETI calculations are already used for other residential services offered through the HCBS waivers.

2. An emergency rule-making is imperatively necessary

- to comply with state or federal law or federal regulation and/or
- for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

42 C.F.R. §1396n(c), 42 C.F.R. §435.726

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2015);
C.R.S. 25.5-6-704(6)

Initial Review

07/08/16

Final Adoption

08/12/16

Proposed Effective Date

09/30/16

Emergency Adoption

DOCUMENT #01

Title of Rule: Revision to the Medical Assistance Home and Community Based Services Rule Concerning Supportive Living Program, Section 8.515.85
Rule Number: MSB 16-03-22-B
Division / Contact / Phone: Long Term Services and Supports / Diane Byrne / 303-866-4030

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.

Persons who receive residential SLP services through the BI waiver and have income between 100% and 300% of SSI will have part of their income protected for federally-specified purposes, such as spousal maintenance, child support, and non-covered medical costs, and will also be responsible for contributing to the cost of their services.

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

Without this rule change, the Department will not be compliant with a federal mandate found at 42 C.F.R. §435.726: Post-eligibility treatment of income of individuals receiving home and community-based services furnished under a waiver: Application of patient income to the cost of care. The Department would be in danger of losing federal funding for this service if it continues to be out of compliance. All people receiving SLP services would be in danger of losing their residential placement and 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.

This rule should result in a minor cost savings to the Department, CDPHE, or DFPC. There is no anticipated effect on state revenues. The number of people that receive SLP services is currently between 150 and 170 per year, and the number of people that would be subject to PETI calculations fluctuates between 40% and 60% of that group.

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

The probable costs of inaction would be that the Department would not be in compliance with a federal mandate, and at danger of losing federal funding for this service. The people receiving this service would be at high risk of institutionalization.

Title of Rule: Revision to the Medical Assistance Home and Community Based Services Rule Concerning Supportive Living Program, Section 8.515.85
Rule Number: MSB 16-03-22-B
Division / Contact / Phone: Long Term Services and Supports / Diane Byrne / 303-866-4030

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

There are no less costly methods of achieving this rule's purpose, which is to comply with a federal mandate. This rule change is the least intrusive method of complying with the federal mandate.

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.

There are no alternative methods than this rule change for complying with the federal requirement found at 42 C.F.R. §435.726.

1 **8.515.85 SUPPORTIVE LIVING PROGRAM**

2 8.515.85.J ENVIRONMENTAL AND MAINTENANCE REQUIREMENTS

3 1. A Supportive Living Program residence shall be designed, constructed,
4 equipped, and maintained to ensure the physical safety of clients, personnel, and
5 visitors as required by 6 CCR 1011-1, Ch. 7, § 1.111, regarding the interior and
6 exterior environment:

7 a. Interior Environment: All interior areas including attics, basements, and
8 garages shall be safely maintained. The facility shall provide a clean,
9 sanitary environment, free of hazards to health and safety.

10 i. Potential Safety Hazards include:

11 1) Cooking shall not be allowed in bedrooms. Residents
12 may have access to an alternative area where minimal
13 food preparation such as heating or reheating food or
14 making hot beverages is allowed. In those facilities
15 which make housing available to residents through
16 apartments rather than resident bedrooms, cooking may
17 be allowed in accordance with house rules. Only
18 residents who are capable of cooking safely shall be
19 allowed to do so. The facility shall document such
20 assessment.

21 2) Extension cords and multiple use electrical sockets in
22 resident rooms shall be limited to one per resident.

23 3) Power strips are permitted throughout the facility with the
24 following limitations:

25 a) The power strip must be provided with
26 overcurrent protection in the form of a circuit
27 breaker or fuse.

28 b) The power strip must have a UL (underwriters
29 laboratories) label.

30 c) The power strips cannot be linked together when
31 used.

32 d) Extension cords cannot be plugged into the
33 power strip.

34 e) Power strips can have no more than six
35 receptacles.

36 f) The use will be restricted to one power strip per
37 resident per bedroom.

38 4) Personal Appliances shall be allowed in resident
39 bedrooms only under the following circumstances:

- 1 a) Such appliances are not used for cooking;
- 2 b) Such appliances do not require use of an
3 extension cord or multiple use electrical sockets;
- 4 c) Such appliance is in good repair as evaluated by
5 the administrator;
- 6 d) Such appliance is used by a resident who the
7 administrator believes to be capable of
8 appropriate and safe use. The facility shall
9 document such assessment.
- 10 5) Electric blanket/Heating pad. In no event shall a heating
11 pad or electric blanket be used in a resident room
12 without either staff supervision or documentation that the
13 administrator believes the resident to be capable of
14 appropriate and safe use.
- 15 6) All interior areas including attics, basements, and
16 garages shall be free from accumulations of extraneous
17 materials such as refuse, discarded furniture, and old
18 newspapers.
- 19 7) Combustibles such as cleaning rags and compounds
20 shall be kept in closed metal containers.
- 21 8) Kerosene (fuel fired) heaters shall not be permitted
22 within the facility. Electric or space heaters shall not be
23 permitted within resident bedrooms and may only be
24 used in common areas of the facility if owned, provided,
25 and maintained by the facility.
- 26 9) Fire resistant wastebaskets. Enclosed areas on the
27 premises where smoking is allowed shall be equipped
28 with fire resistant wastebaskets. In addition, resident
29 rooms occupied by smokers, even when house rules
30 prohibit smoking in resident rooms, shall have fire
31 resistant wastebaskets.
- 32 ii. Potential Infection/Injury Hazards
- 33 1) Insect/rodent infestations. The facility shall be
34 maintained free of infestations of insects and rodents
35 and all openings to the outside shall be screened.
- 36 2) Storage of hazardous substances. Solutions, cleaning
37 compounds and hazardous substances shall be labeled
38 and stored in a safe manner.
- 39 iii. Heating, Lighting, and Ventilation
- 40 1) Each room in the facility shall be installed with heat,
41 lighting and ventilation sufficient to accommodate its use
42 and the needs of the residents.

- 1 2) All interior and exterior steps and interior hallways and
2 corridors shall be adequately illuminated.
- 3 iv. Water
- 4 1) There shall be an adequate supply of safe, potable water
5 available for domestic purposes.
- 6 2) There shall be a sufficient supply of hot water during
7 peak usage demands.
- 8 3) Hot water shall not measure more than 120 degrees
9 Fahrenheit at taps which are accessible by resident.
- 10 v. There shall be a telephone available for regular telephone usage
11 by residents and staff.
- 12 b. Exterior Environment
- 13 i. Potential Safety Hazards
- 14 1) Exterior premises shall be kept free of high weeds and
15 grass, garbage and rubbish. Grounds shall be
16 maintained to prevent hazardous slopes, holes, or other
17 potential hazards.
- 18 2) Exterior staircases of three (3) or more steps and
19 porches shall have handrails. Staircases and porches
20 shall be kept in good repair.
- 21 2. The Supportive Living Program provider shall comply with all State and Local
22 Laws/Codes regarding furnishings, equipment and supplies pursuant to 6 CCR
23 1011-1, Ch. 7, § 1.112 (Aug. 14, 2013), which is hereby incorporated by
24 reference. The incorporation of these regulations excludes later amendments to,
25 or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the
26 Department maintains copies of this incorporated text in its entirety, available for
27 public inspection during regular business hours at 1570 Grant Street, Denver,
28 CO, 80203. Certified copies of incorporated materials are provided at cost upon
29 request.
- 30 3. Clients shall be allowed free use of all common living areas within the residence,
31 with due regard for privacy, personal possessions, and safety of clients.
- 32 4. Supportive Living Program providers shall develop and implement procedures for
33 the following:
 - 34 a. Handling of soiled linen and clothing;
 - 35 b. Storing personal care items;
 - 36 c. General cleaning to minimize the spread of pathogenic organisms; and
 - 37 d. Keeping the home free from offensive odors and accumulations of dirt
38 and garbage.

- 1 5. The Supportive Living Program provider shall ensure that each client is furnished
2 with his or her own personal hygiene and care items. These items are to be
3 considered basic in meeting an individual's needs for hygiene and remaining
4 healthy. Any additional items may be selected and purchased by the client at his
5 or her discretion.

- 6 6. There shall be adequate bathroom facilities for individuals to access without
7 undue waiting or burden.

- 8 7. The Supportive Living Program provider shall comply with all bathroom
9 requirements regarding handrails, handholds, and other needs of clients
10 pursuant to 6 CCR 1101-1 Ch. 7, § 1.112(4)
 - 11 a. A full bathroom shall consist of at least the following fixtures: toilet, hand
12 washing sink, toilet paper dispenser, mirror, tub or shower, and towel
13 rack. ~~However, any facility licensed to provide services specifically for~~
14 ~~the mentally ill prior to January 1, 1992 may have one bathroom for~~
15 ~~every eight (8) residents until either a substantial remodeling or a change~~
16 ~~of ownership occurs.~~

 - 17 b. There shall be a bathroom on each floor having resident bedrooms which
18 is accessible without requiring access through an adjacent bedroom.

 - 19 c. In any facility which is occupied by one or more residents utilizing an
20 auxiliary aid, the facility shall provide at least one full bathroom as
21 defined herein with fixtures positioned so as to be fully accessible to any
22 resident utilizing an auxiliary aid.

 - 23 d. Bathtubs and shower floors shall have non-skid surfaces.

 - 24 e. Grab bars shall be properly installed at each tub and shower, and
25 adjacent to each toilet in any facility which is occupied by one or more
26 residents utilizing an auxiliary aid or as otherwise indicated by the needs
27 of the resident population.

 - 28 f. Toilet seats shall be constructed of non-absorbent material and free of
29 cracks.

 - 30 g. The use of common personal care articles, including soap and towels, is
31 prohibited.

 - 32 h. Toilet paper in a dispenser shall be available at all times in each
33 bathroom of the facility.

 - 34 i. Liquid soap and paper towels shall be available at all times in the
35 common bathrooms of the facility.

- 36 8. Each client shall have access to telephones, both to make and to receive calls in
37 privacy.

- 38 9. The Supportive Living Staff shall maintain a clean, safe, and healthy
39 environment, including appropriate cleaning techniques and sanitary meal
40 preparation and delivery according to 6 CCR 1011-1, Ch. 7, § 1.109, which
41 requires the following:

- 1 a. For facilities with less than twenty (20) beds, food shall be prepared,
2 handled and stored in a sanitary manner, so that it is free from spoilage,
3 filth, or other contamination, and shall be safe for human consumption.

- 4 b. Hazardous materials shall not be stored with food supplies.

- 5 c. Facilities with twenty (20) beds or more shall comply with CDPHE's
6 March 1, 2013 regulations on Colorado Retail Food Establishments at 6
7 CCR 1010-2, which are hereby incorporated by reference. The
8 incorporation of these regulations excludes later amendments to, or
9 editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5),
10 the Department maintains copies of this incorporated text in its entirety,
11 available for public inspection during regular business hours at 1570
12 Grant Street, Denver, CO, 80203. Certified copies of incorporated
13 materials are provided at cost upon request.

14 8.515.85.K COMPLAINTS AND GRIEVANCES

15 Each client will have the right to voice grievances and recommend changes in policies
16 and services to both the Department and/or the Supportive Living Program provider.
17 Complaints and grievances made to the Department shall be made in accordance with
18 the grievance and appeal process in 10 CCR 2505-10 § 8.209.

19 8.515.85.M RECORDS

- 20 1. Supportive Living Providers shall develop policies and procedures to secure
21 client information against potential identity theft. Confidentiality of medical
22 records shall be maintained in compliance with 45 C.F.R. §§ 160.101, et seq.
23 and 164.102, et seq. (2014), which are hereby incorporated by reference. The
24 incorporation of these regulations excludes later amendments to, or editions of
25 the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department
26 maintains copies of this incorporated text in its entirety, available for public
27 inspection during regular business hours at 1570 Grant Street, Denver, CO,
28 80203. Certified copies of incorporated materials are provided at cost upon
29 request.

- 30 2. All medical records for adults (persons eighteen (18) years of age or older) shall
31 be retained for no less than six (6) years after the last date of service or
32 discharge from the Supportive Living Program. All medical records for minors
33 shall be retained after the last date of service or discharge from the Supportive
34 Living Program for the period of minority plus six (6) years.

35 8.515.85.N REIMBURSEMENT

- 36 1. Supportive Living Program services shall be reimbursed according to a per diem
37 rate, using a methodology determined by the Department. Authority for the
38 Department to define and limit covered services is found at C.R.S. § 25.5-1-202
39 (2013).

- 40 2. The methodology for calculating the per diem rate shall be based on a weighted
41 average of client acuity scores.

- 42 3. The Department shall establish a maximum allowable room and board charge for
43 clients in the Supportive Living Program. Increases in payment shall be permitted
44 in a dollar-for-dollar relationship to any increase in the Supplemental Security

1 Income grant standard ~~inasmuch as if~~ the Colorado Department of Human
2 Services also raises ~~its~~ grant amounts.

3 a. Room and board shall not be a benefit of HCBS-BI residential services.
4 Clients shall be responsible for room and board in an amount not to
5 exceed the Department established rate.

6 8.515.85.O CALCULATION OF CLIENT PAYMENT (PETI)

7 1. When a client has been determined eligible for Home and Community Based
8 Services (HCBS) under the 300% income standard, according to Section 8.100,
9 the State may reduce Medicaid payment for SLP residential services. The case
10 manager shall calculate the client payment (PETI) for 300% eligible HCBS-BI
11 clients according to the following procedures:

12 a. For 300% eligible clients who receive residential services, the case
13 manager shall complete a State-prescribed form which calculates the
14 client payment according to the following procedures:

15 i. An amount equal to the current Old Age Pension standard,
16 including any applicable income disregards, shall be deducted
17 from the client's gross income to be used as the client
18 maintenance allowance, from which the state-prescribed HCBS
19 residential services room and board amount shall be paid; and

20 ii. For an individual with financial responsibility for others:

21 1) If the individual is financially responsible for only a
22 spouse, an amount equal to the state Aid to the Needy
23 Disabled (AND) standard, less the amount of any
24 spouse's income, shall be deducted from the client's
25 gross income; or

26 2) If the individual is financially responsible for a spouse
27 plus other dependents, or with financial responsibility for
28 other dependents only, an amount equal to the
29 appropriate Temporary Assistance to Needy Families
30 (TANF) grant level less any income of the spouse and/or
31 dependents (excluding income from part-time
32 employment earnings of a dependent child who is either
33 a full-time student or a part-time student as defined at
34 Section 8.100.1) shall be deducted from the client's
35 gross income; and

36 iii. Amounts for incurred expenses for medical or remedial care for
37 the individual that are not subject to payment by Medicare,
38 Medicaid, or other third party shall be deducted from the client's
39 gross income as follows:

40 1) Health insurance premiums if health insurance coverage
41 is documented in the eligibility system: deductible or co-
42 insurance charges, and

43 2) Necessary dental care not to exceed amounts equal to
44 actual expenses incurred, and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

- 3) Vision and auditory care expenses not to exceed amounts equal to actual expenses incurred, and

- 4) Medications, with the following limitations:
 - a) The need for such medications shall be documented in writing by the attending physician. The documentation shall list the medication; state why it is medically necessary; be signed by the physician; and shall be renewed at least annually or whenever there is a change.

 - b) Medications which may be purchased with the client's Medicaid ~~Identification~~ Identification Card shall not be allowed as deductions.

 - c) Medications which may be purchased through regular Medicaid prior authorization procedures shall not be allowed.

 - d) The full cost of brand-name medications shall not be allowed if a generic form is available at a lower price.

 - e) Only the amount spent for medications which exceeds the current Old Age Pension Standard allowance for medicine chest expense shall be allowed as a deduction.

- 5) Other necessary medical or remedial care shall be deducted from the client's gross income, with the following limitations:
 - a) The need for such care shall be documented in writing by the attending physician. For this purpose, documentation on the URC certification form shall be considered adequate. The documentation shall list the service, supply, or equipment; state why it is medically necessary; be signed by the physician; and, shall be renewed at least annually or whenever there is a change.

 - b) Any service, supply or equipment that is available under regular Medicaid, with or without prior authorization, shall not be allowed as a deduction.

- 6) Deductions for medical and remedial care may be allowed up to the end of the next full month while the physician's prescription is being obtained. If the physician's prescription cannot be obtained by the end of the next full month, the deduction shall be discontinued.

1 7) When the case manager cannot immediately determine
2 whether a particular medical or remedial service, supply,
3 equipment or medication is a benefit of Medicaid, the
4 deduction may be allowed up to the end of the next full
5 month while the case manager determines whether such
6 deduction is a benefit of the Medicaid program. If it is
7 determined that the service, supply, equipment or
8 medication is a benefit of Medicaid, the deduction shall
9 be discontinued.

10 iv. Any remaining income shall be applied to the cost of the SLP
11 residential services, as defined at Section 8.515.85 and shall be
12 paid by the client directly to the facility; and

13 vi. If there is still income remaining after the entire cost of residential
14 services are paid from the client's income, the remaining income
15 shall be kept by the client and may be used as additional
16 personal needs or for any other use that the client desires,
17 except that the residential service provider shall not charge more
18 than the Medicaid rate for that service.

19 b. Case managers shall inform HCBS-BI clients receiving residential
20 services of their client payment obligation on a form prescribed by the
21 state at the time of the first assessment visit by the end of each plan
22 period; or within ten (10) working days whenever there is a significant
23 change in the client payment amount.

24 i. Significant change is defined as fifty dollars (\$50) or more.

25 ii. Copies of client payment forms shall be kept in the client files at
26 the case management agency, and shall not be mailed to the
27 State or its agent, except as required for a prior authorization
28 request, according to Section 8.515.7, or if requested by the
29 state for monitoring purposes.