Title of Rule: Revision to the Medical Assistance Home and Community Based Services for Elderly Blind and Disabled Rule Concerning Adult Day Section 8.491
Rule Number: MSB 15-10-29-A
Division / Contact / Phone: LTSS / Cassandra Keller / 866-5181

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 intention of this rule is to ensure providers meet both State and Federal guidelines for CIR requirements for adult day centers. Currently, it is not indicated within rule that adult day providers notify case managers (CM) at the Single Entry Point (SEP) of a critical incident within twenty-four hours. This change to the rule will make clear that a twenty-four hour reporting requirement exists for providers. This will mandate that CMs are notified of critical incidents in a timely manner and will in-turn notify the Department. With this process in place, the Department will align policies surrounding CIRs and have the ability to better collaborate with its sister agencies. That collaboration will lead to improved oversight of adult day centers as well as more comprehensive inspections by the Department of Public Health and Environment (DPHE).

Additionally, the Department has included requirements in the rule for the position of director to Adult Day Centers. These new requirements will help to ensure properly staffed ADCs at the director position. Moreover, the Department has made changes to the reimbursement section of the rule, to reflect the current reimbursement methods. The section of the rule was outdated and needed to be revised in order to inform all providers, etc. of how the Adult Day service is reimbursed.

The Department has worked closely with DPHE to develop the changes to this section of the rule, and has received buy-in on these changes. It will also alert the adult day centers trade group, LeadingAge, of these changes.

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:

4. State Authority for the Rule:

   25.5-6-303, C.R.S. (2015);

Title of Rule: Revision to the Medical Assistance Home and Community Based Services for Elderly Blind and Disabled Rule Concerning Adult Day Section 8.491
Rule Number: MSB 15-10-29-A
Division/Contact/Phone: LTSS / Cassandra Keller / 866-5181

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.

   Individuals who will be affected by this rule are individuals who attend Adult Day Centers on the LTSS Waivers. They will benefit from this rule change due the new clarified requirements on CIRs, but they will not bear any cost from this rule change. Adult Day Centers may have a slight additional administrative burden but the Department does not anticipate any that bearing any additional cost.

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

   All LTSS waiver clients who attend Adult Day Centers will benefit from the increased CIR reporting and additional oversight it will bring to the program.

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 not be a cost increase to the Department. There will also not be a cost to DPHE as in the course of their surveying they already review these type of records.

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

   The clarification to LTSS Adult Day clients significantly outweighs any additional administrative burdens on the part of the Centers.

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

   This method of CIRS reporting and oversight is the most cost effective approach, as it is required by CMS, approved by CDPHE, and requires minimal additional output from the Department.

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.

   No alternative methods were considered.

8.491 ADULT DAY SERVICES

.10 Adult Day Services (ADS) means health and social services, individual therapeutic and psychological activities furnished on a regularly scheduled basis in an adult day services center, as an alternative to long term nursing facility care.

.12 Basic Adult Day Services (ADS) Center means a community-based entity that conforms to all state established requirements as described in 10 CCR 2505-10 section 8.130 and 10 CCR 2505-10 section 8.491.14.

.13 Specialized Adult Day Services (SADS) Center means a community-based entity determined by the State to be providing ~~intensive~~ health supportive services for participants with a primary diagnosis of Alzheimer's and related disorders, Multiple Sclerosis, Brain Injury, Chronic Mental Illness, Developmental Disability or post-stroke participants who require extensive rehabilitative therapies. In order to be designated as~~To be determined~~ specialized, two-thirds of an ADS C~~c~~enter's population must be participants whose physician has verified one of the above diagnoses and ~~recommended the appropriate specialized services~~determined SADS is appropriate for the participant.

The participant's individual care plan must include documentation of their diagnosis and service goals. In addition, ~~verification and documentation of the participant's diagnosis and the recommended specialized services must be included in each participant's case record and~~ each participant's individual care plan must include the following:

A. For Medicaid participants, the case manager must forward the most recent copy of page 1 of the participant's ULTC-100.2 to the ADS C~~c~~enter as documentation of one of the above diagnoses. Documentation must be verified at the time of admission, reassessment by the case manager or whenever there~~n;~~ is a significant change in the participant's condition.

B. For participants from other payment sources, diagnosis, and recommended specialized services must be documented in an individual care plan, or other admission form, and verified by the participant's physician. This documentation must be verified at the time of admission, or whenever there is a significant change in the participant's condition.

C. The Department or its designee will review an A~~a~~dult D~~d~~ay S~~s~~ervices C~~c~~enter's designation as a specialized facility (SADS) on an annual basis.

.14 Only participants whose needs can be met by the Adult Day Services Center within its certification category and populations served shall be admitted to the Center. Adult D~~d~~ay S~~s~~ervices shall include, but are not limited to, the following:

A. Daily monitoring to assure that participants are maintaining activities prescribed~~;~~ and assisting with activities of daily living (e.g., eating, dressing, bathing).

B. Emergency services including written procedures to meet medical crises.

C. Activities that assist in the development of self-care capabilities, personal hygiene, and social support services.

D. Nutrition services including therapeutic diets and snacks appropriate to the participant's individual care plan ~~care plan~~ and hours in which the participant is served.

DRAFT

E. Daily services provided to monitor the participant's health status, supervise medications, and carry out physicians' orders in participant's individual care plan ~~care plan~~ as needed.

F. Social and recreational services as prescribed to meet the participant's needs and as documented in the participant's individual care~~care~~ plan. Participants have the right to choose not to participate in social and recreational activities.

G. Adult D~~d~~ay S~~s~~ervices C~~c~~enters certified on or after July 1, 1996, or upon change of ownership, shall provide basic personal care services including bathing in emergency situations.

~~Any additional services such as physical therapy, occupational therapy and speech therapy, if such services are prescribed by the participant's physician, documented in the participant's care plan and if such services are not being provided in the participant's home. Such services must be included in the budget submitted to the State in accordance with 10 CCR 2505-10 section 8.491.30, and determined by the State to be necessary for adult day services.~~

~~H. participant's ;NE; Participant orParticipant;Participant's ;;.~~

8.491.15 DEFINITIONS

A. Director means any person who owns and operates an ADS C~~c~~enter, or is a managing employee with delegated authority by ownership to manage, control, or perform the day-to-day tasks of operating the center~~facility~~ as described in 10 CCR 2505-10 section 8.491~~5.C.22~~. All Directors hired or designated after January 1, 2016, shall meet the following qualifications:

1. At least a bachelor's degree from an accredited college or university and a minimum of two years of social services or health services experience; or

2. A high school diploma or GED equivalent, a minimum of four years of experience in a social services or health services setting, skills to work with aging adults or adults with functional impairment, and skills to supervise ADS Center staff persons.

B. Participant means any individual found to be eligible for adult day services regardless of payment source.

C. Restraint means any physical or chemical device, application of force, or medication, which is designed or used for the purpose of modifying, altering, or controlling behavior for the convenience of the facility, excluding medication prescribed by a physician as part of an ongoing treatment plan or pursuant to a diagnosis.

D. Staff means a paid or voluntary employee of the facility.

E. Universal Precautions refers to a system of infection control which assumes that every direct contact with body fluids is potentially infectious. This includes any reasonably anticipated skin, eye, or mucous membrane contact with blood-tinged body fluids or other potentially infectious material.

8.491.20 CERTIFICATION STANDARDS

DRAFT

A. All ADS Centers shall conform to all of the following State established standards:

1. General

a. Conforms to all established State standards in the section on general provider participation requirements, as defined in 10 CCR 2505-10 section 8.130, has in effect all necessary licenses and insurance, and is in compliance with ADS regulations as determined by an annual on-site survey conducted by the Colorado Department of Public Health and Environment (CDPHE).

b. Proof of Medicaid certification consists of a completed Provider Agreement approved by the Department and the Department's fiscal agent, and a letter from CDPHE stating that based on the results of the survey, the provider has been certified and/or recertified.

c. Denial, termination, or non-renewal of the Provider Agreement shall be for "Good Cause" as defined in 10 CCR 2505-10 section 8.076.

2. Using the State approved Critical Incident Reporting Form, Adult Day Service Center providers shall notify the participant's Single Entry Point (SEP) case manager within 24 hours of any incident or situation including:

a. Death;

b. Abuse/neglect/exploitation;

c. Serious injury to participant or illness of participant;

c. Damage to participant's property/theft;

d. Medication management;

e. Other high risk issues.

B. Environment

1. ADS Centers shall provide a clean environment, free of obstacles that could pose a hazard to participant health and safety.

2. ADS Centers shall provide lockers or a safe place for participants' personal items.

3. ADS Centers shall provide recreational areas and activities appropriate to the number and needs of the participants.

4. Drinking facilities shall be located within easy access to participants.

DRAFT

5. To accommodate all ADS Center activities and program needs, ADS C~~c~~enters shall provide a minimum of 40 sq. feet per participant. ADS Centers shall provide eating and resting areas consistent with the number and needs of the participants being served. Centers certified on or after July 1, 1996~~%~~, shall provide a minimum of 40 sq. feet per participant.~~s~~

6. ADS C~~c~~enters shall provide easily accessible toilet facilities, h~~H~~and-washing facilities and paper towel dispensers. Centers must provide a facility for bathing in emergency situations.

7. ~~The Ccenter~~ADS Centers shall be accessible to participants with supportive devices for ambulation or in wheelchairs.

8. There shall be adequate means by which food shall be maintained at the foll~~M~~owing temperatures: Hot 140° F, Cold: 45° F.

9. All medications shall be stored in a secured area.

10. ADS Centers shall be heated to at least seventy (70) degrees during hours of operation and no more than 76 degrees in the summer months.

11. ADS C~~c~~enters must provide an environment free from restraints as defined at 10 CCR 2505-10 section 8.491.15.C of these rules.

12. ADS Centers, in accordance with 10 CCR 2505-10 section 8.491.14 above, must provide a safe environment for all participants, including participants exhibiting behavioral problems, wandering behavior, or limitations in mental/cognitive functioning.

C. Records and Information

1. ADS Center providers shall keep such records and information necessary to document the services provided to participants receiving A~~a~~dult D~~d~~ay S~~s~~ervices. Records shall include but not be limited to:

~~1.~~

a. Name, address, sex, and age of each participant;

b. Name, address and telephone number of responsible party;~~,~~

c. Name, address and telephone number of primary physician;

d. Documentation of the supervision and monitoring of the services provided~~,~~;

e. Documentation that all participants or responsible parties were oriented to the center, the policies, and procedures relevant to the facility and the services provided;~~,~~

f. A service~~s~~ agreement signed by the participant and/or his or her designated representative and appropriate center staff;~~,~~

DRAFT

g. ~~An individual care plan of careP of care~~ ~~F~~for participants from other payment sources, receiving supportive services in a specialized ADS C~~c~~enter, individual care plans must include a primary diagnosis and a physician's signature.

2. Medical Information included in the care plan~~plan of care~~:

a. Medications the ~~client~~ participant is taking and whether they are being self-administered;~~.~~

b. Special dietary needs, if any;~~.~~

c. Any restrictions on social and/or recreational activities identified by physician in the care plan;~~.~~

d. Documentation of any nursing or medical interventions; physical, speech, and/or occupational therapy administered to participant~~s~~ whose physician has prescribed such services to be included in the participant's individual care plan ~~of care~~;~~.~~

e. Any other special health or behavioral management needs.

3. Documentation that the participant and/or other responsible party was provided with written information about his/her rights under state law regarding advance directives in accordance with regulations at 10 CCR 2505-10 section 8.130.3~~65.~~ Documentation as to whether the participant has executed any advance directives or declarations shall be kept in his/her case record.

4. All entries into the record shall be legible, written in ink, dated, and signed with name and title designation.

5. Records shall be maintained in such a manner as to ensure safety and confidentiality.

D. Staffing Requirements

1. All ADS C~~c~~enters must maintain a staff to participant ratio of 1:8 or lower to provide for the needs of the population served, as described above at 10 CCR 2505-10 section 8.491.12 and .13, and shall provide the following:

a. Supervision of participants at all tim~~un~~es during the operating hours of the program;

b. Immediate response to emergency situations to assure the welfare of participants;

c. Prescribed recreational and social activities;

d. Nursing services for regular monitoring of the on-going medical needs of participants and the supervision of medications. These services must be available a minimum of two hours daily and must be provided by an RN or LPN. CNAs may provide these services under the direction of a RN or an LPN. Supervision of

DRAFT

CNAs must include consultation and oversight on a weekly basis or more according to the participant's needs.

e. Administrative, recreational, social, and supportive functions of the ADS Ccenter.

2. In addition to the above services, Sspecialized Aadult Dday care Sservices (SADS) Ccenters providing a restorative model of care shall have sufficient staff to provide the following:

a. Nursing services during all hours of operation. Nursing services must be provided by a licensed RN or LPN or by a CNA under the supervision of an RN or LPN, as per 10 CCR 2505-10 section 8.491.20.D.1.d, above.;

b. Therapies, if included in the center's budget and as prescribed by the participant's physician, to meet the restorative needs of the client participant

E. Training Requirements

1. ADS Ccenters providing medication administration as a service must have qualified persons on their staff who have been trained in accordance with C.R.S. section 25-1.5-302.

2. All staff must be trained in the use of universal precautions as defined at 10 CCR 2505-10 section 8.491.15.E. Facilities certified prior to the effective date of these rules shall have sixty (60) days to satisfy this training requirement.

3. The ADS Center operator and staff must have training specific to the needs of the populations served, e.g., elderly, blind and disabled, and as defined in 10 CCR 2505-10 section 8.491.13 of these rules.

4. All ADS Center staff and volunteers must be trained in the handling of emergencies including written procedures to meet medical crises.

5. All required training must be documented in employees' personnel files.

F. Written Policies

1. The ADS Ccenter shall have a written policy relevant to its operation. Such policy shall include, but not be limited to, statements describing:

a.1. Admission criteria that qualify participants to be appropriately served in the center;

b. 2. Interview procedures conducted for qualified participants and/or family member prior to admission to the center;,

c. 3. The meals and nourishments including special diets that will be provided;

DRAFT

d. ~~4.~~ The hours and days of the week that the participants will be served in the center and days of the week services will be available;

e~~5~~. Medication administration;

f~~6~~. The personal items that the participants may bring with them to the center;~~,~~ and

g.~~7~~. A written, signed agreement ~~drawn up~~ between the participant or responsible party and the center outlining rules and responsibilities of the center and ~~o~~ the participant. E~~e~~ach party to the agreement shall be provided a copy.

8.491.30 REIMBURSEMENT METHOD FOR ADULT DAY SERVICES

A. Reimbursement for ADS services shall be based upon a single all-inclusive payment rate per unit of service for each participating provider which shall be prospectively determined. Units to be billed in accordance to the current rate schedule.

1. A unit is defined as:

one (1) unit = a partial day = three (3) to five (5) hours of service

two (2) units = a full day = more than five (5) hours of service

~~8.491.32 The ADS Ccenter's rate of reimbursement shall be the lower of:~~

~~A. The maximum allowable applicable Medicaid rate for either~~

~~1. Basic ADS Centers the maximum rate shall not exceed $18.00 per unit of service, as defined above, except that the Department may adjust the maximum rate based upon future appropriations; or~~

~~2. Specialized ADS Centers the maximum rate shall not exceed $23.00 per unit, as defined above, except that the Department may adjust the maximum rate based upon future appropriations.~~

~~B. The ADS Ccenter's private-pay charges to the general public for similar services.~~

~~C. The projected cost of ADS, as determined by the Department of Health Care Policy and Financing, after review of a cost report/budget to be submitted by the ADS center annually by such date and in a format as prescribed by the Department, with copies of any and all audit reports prepared within the previous twelve-month period.~~

~~Failure to timely submit the required cost report to the Department shall result in the Department assigning the Ccenter's costs have not changed and assigning a cost figure at 100% of the prior year's reported cost per unit. Failure to submit the cost report a second consecutive year shall result in the Department assigning a cost figure at 00% of the most recently reported met information. Cost reports submitted late shall not be considered until the next year's review.~~

DRAFT

~~Cost reports shall be reviewed by the Department for appropriateness, with consideration given to: changes in type and intensity of services being provided, the previous year's reported costs adjusted forward by increases in the annual Consumer Price Index (CPI-W as of the beginning of the State fiscal year), and costs of comparable ADS centers in the State.~~

~~The Department shall notify the provider by September 1 of each year of any costs determined to be inappropriate. The provider must submit any additional documentation supporting the costs in question within thirty (30) days of notification. Ssupporting documentation received after that thirty-day period will not be considered until the next rate-setting period.~~

~~D. The amount billed.~~

~~8.491.33 Upon completion of its review, the Department of Health Care Policy and Financing shall notify each ADS Ccenter provider of its approved cost per unit and its rate to be effective October 1. Adjustments in the approved cost per unit shall not be made until the next year's cost reporting and rate-setting period.~~

~~8.491.34 For new ADS centers the Department shall determine a rate per unit, taking into consideration the following criteria: anticipated costs reported by the provider, costs and rates of comparable ADS centers, any prior owner's reported costs, and proposed private pay charges to the general public for similar services. The determined rate per unit shall remain in effect until the next year's cost reporting and rate-setting period.~~

~~**8.491.35 EXCLUSIONS:**~~

~~A. Transportation to and from adult day services centers shall be reimbursed as non-medical transportation, and these costs shall not be included as part of the adult day services rate.~~

~~B. There shall be no reimbursement for ADS provided to any participant who is a resident of any residential care facility, except for services as defined at 10 CCR 2505-10 section 8.491.14.H.~~

~~C. There shall be no reimbursement for overnight services in an AD~~

DRAFT