

Title of Rule: Revision to the Medical Assistance Office of Community Living Rule Concerning Consumer Directed Care for the Elderly Section 8.518  
Rule Number: MSB 16-04-13-A  
Division / Contact / Phone: Long Term Services and Supports / Rhyann Lubitz / 303-866-3641

## 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The purpose of repealing the Consumer Directed Care for the Elderly (CDCE) rule is to remove an outdated rule that no longer applies to a current Medicaid program. The Colorado General Assembly expanded the CDCE pilot program in 2005 to include additional populations. At that time the CDCE regulation was not repealed. The Department completed a mandatory rule review in 2016 and identified this rule is no longer needed. The Consumer Directed Care regulations at section 8.510 now encompass the elderly, making section 8.518 duplicative and unnecessary. There are no Medicaid waiver members who utilize the CDCE program and the Department does not expend any funding on this program annually. Medicaid waiver members are able to receive consumer directed services through the Consumer Directed Attendant Support Services Program.

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:

N/A

3. Federal authority for the Rule, if any:

N/A

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2015);  
25.5-6-1102(6)  
HB 05-1243

Initial Review  
Proposed Effective Date

**07/08/16**  
**09/30/16**

Final Adoption  
Emergency Adoption

**08/12/16**

**DOCUMENT #02**

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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.

There are no classes of persons who will be affected by the repeal of this rule. The program that it regulated was discontinued in 2009.

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

The proposed rule repeal will not have a quantitative or qualitative impact as the program that it regulated was discontinued in 2009. The Department currently allocates no funding to the program regulated by the rule.

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 are no probable costs to the department as a result of repealing the rule.

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

There are no probable costs to the repeal of the rule. The benefit to the rule repeal is that it will remove obsolete unnecessary regulation.

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

There are not less costly methods for repealing the rule, since the rule repeal does not have a cost associated with it.

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 not alternative methods for achieving the purpose of the proposed rule.

1 ~~8.518—CONSUMER DIRECTED CARE FOR THE ELDERLY~~ **REPEALED EFFECTIVE**  
2 **SEPTEMBER 30, 2016**

3 ~~8.518.1—~~ **DEFINITIONS**

4 ~~Authorized Representative means an individual designated by the eligible person, or by the~~  
5 ~~guardian of the eligible person, if appropriate, who has the judgment and ability to assist the~~  
6 ~~eligible person in acquiring and utilizing services under the Home and Community Based~~  
7 ~~Services-Consumer Directed Care for the Elderly program (HCBS-CDCE).~~

8 ~~Care Plan shall be as defined at 10 C.C.R. 2505-10, Section 8.390.1(C), including the funding~~  
9 ~~source, frequency, amount and provider of each service. This Care Plan shall be written on a~~  
10 ~~Department-prescribed Long Term Care Plan form.~~

11 ~~Case Management shall be as defined at 10 C.C.R. 2505-10, Section 8.390.1(D).~~

12 ~~Case Manager means an individual employed by the Single Entry Point (SEP) agency who~~  
13 ~~determines functional eligibility and provides Case Management services to clients eligible under~~  
14 ~~HCBS-CDCE.~~

15 ~~Financial Management Services organization (FMS) means the entity or entities under contract~~  
16 ~~with the Department to provide personnel, fiscal management services and skills training to a~~  
17 ~~client receiving Personal Support Services and/or his or her Authorized Representative.~~

18 ~~Individual Allocation means the funds made available by the Department to clients receiving~~  
19 ~~Personal Support Services and administered by the FMS. These funds shall be available each~~  
20 ~~month that a client meets program eligibility, and they shall be calculated based on the client's~~  
21 ~~utilization history of personal care and homemaker services or the personal care and homemaker~~  
22 ~~services defined in the client's Care Plan.~~

23 ~~Personal Support Attendant means the individual who provides Personal Support Services.~~

24 ~~Personal Support Management Training means the required training, including a final,~~  
25 ~~comprehensive test provided by the Department or its designee to a HCBS-CDCE client and/or~~  
26 ~~his or her Authorized Representative who is interested in directing Personal Support Services.~~

27 ~~Personal Support Services means supportive services which are essential to the health and~~  
28 ~~welfare of the client and include personal care services as defined at 10 C.C.R. 2505-10, Section~~  
29 ~~8.489 and homemaker services as defined at 10 C.C.R. 2505-10, Section 8.490 and are directed~~  
30 ~~by the client and/or his or her Authorized Representative.~~

31 ~~8.518.2—~~ **PARTICIPATION/AVAILABILITY**

32 ~~8.518.2.A.—~~ ~~During the first year of implementation, HCBS-CDCE shall be available to clients~~  
33 ~~residing in the counties that are served by the Longterm Care Options, Mesa County~~  
34 ~~Department of Human Services and San Juan Basin Health Department Single Entry~~  
35 ~~Point Agencies (SEPs).~~

36 ~~8.518.2.B.—~~ ~~In subsequent years, HCBS-CDCE shall be available to clients residing in the~~  
37 ~~counties served by the remaining SEPs.~~

38 ~~8.518.3—~~ **CLIENT ELIGIBILITY**

39 ~~8.518.3.A.—~~ ~~To be eligible for HCBS-CDCE, a client shall:~~

1 ~~1. Be 55 years or older.~~

2 ~~2. Be willing to participate in the program.~~

3 ~~3. Be eligible for HCBS-EBD as defined at 10 C.C.R. 2505-10, 8.485.60 et seq.~~

4 ~~8.518.3.B. A client who wants to direct Personal Support Services shall:~~

5 ~~1. Provide a statement from his or her primary care physician that indicates the~~  
6 ~~client has sound judgment and the ability to direct his or her care or has an~~  
7 ~~Authorized Representative who has the ability to direct the care on the client's~~  
8 ~~behalf.~~

9 ~~2. Demonstrate the ability to handle the financial aspects of self-directed care or~~  
10 ~~has an Authorized Representative who is able to handle the financial aspects of~~  
11 ~~the client's care.~~

12 ~~3. Complete the Personal Support Management Training and pass the post-training~~  
13 ~~test.~~

14 ~~**8.518.4 WAITING LIST PROTOCOL**~~

15 ~~8.518.4.A. Clients shall be enrolled in HCBS-CDCE within the capacity limits of the federal~~  
16 ~~waiver based in ranking order on the following priorities:~~

17 ~~1. Clients who receive long term home health benefits who could be served at a~~  
18 ~~lesser cost to Medicaid.~~

19 ~~2. Clients being deinstitutionalized from nursing facilities.~~

20 ~~3. Clients being discharged from a hospital who, absent HCBS-CDCE services,~~  
21 ~~would be discharged to a nursing facility at greater cost to Medicaid.~~

22 ~~4. Clients with high Universal Long Term Care (ULTC) 100.2 assessment scores as~~  
23 ~~defined at 10 C.C.R. 2505-10, Section 8.458.60, who are at risk of immediate~~  
24 ~~nursing facility placement.~~

25 ~~**8.518.5 BENEFITS/SERVICES**~~

26 ~~8.518.5.A. The following benefits are available to HCBS-CDCE clients:~~

27 ~~1. Adult day services as defined under HCBS-Elderly Blind and Disabled (EBD) at~~  
28 ~~10 C.C.R. 2505-10, Section 8.491.~~

29 ~~2. Alternative care facility services as defined under HCBS-EBD at 10 C.C.R. 2505-~~  
30 ~~10, Section 8.495.~~

31 ~~3. Electronic monitoring as defined under HCBS-EBD at 10 C.C.R. 2505-10,~~  
32 ~~Section 8.488.~~

33 ~~4. Home modification as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section~~  
34 ~~8.493.~~

1 ~~5. Homemaker services as defined under HCBS-EBD at 10 C.C.R. 2505-10,~~  
2 ~~Section 8.490.~~

3 ~~6. Personal care as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.489~~

4 ~~7. Personal Support Services.~~

5 ~~8. Respite as defined under HCBS-EBD at 10 C.C.R. 2505-10, Section 8.492.~~

6 ~~9. Non-medical transportation as defined under HCBS-EBD at 10 C.C.R. 2505-10,~~  
7 ~~Section 8.494.~~

8 ~~10. A client enrolled in HCBC CDCE shall not receive Home Care Allowance.~~

9 ~~11. Personal care and homemaker services are not benefits if a client is receiving~~  
10 ~~Personal Support Services.~~

11 ~~**8.518.6 PERSONAL SUPPORT MANAGEMENT PLAN**~~

12 ~~8.518.6.A. The HCBS-CDCE client and/or his or her Authorized Representative shall~~  
13 ~~develop a written personal support management plan which shall be reviewed and~~  
14 ~~approved by the case manager. The plan shall describe the following:~~

15 ~~1. Client's current status.~~

16 ~~2. Client's Personal Support Attendant needs.~~

17 ~~3. Client's plans for securing Personal Support Services.~~

18 ~~4. Client's plans for budgeting the Individual Allocation.~~

19 ~~5. Client's plans for handling emergencies.~~

20 ~~**8.518.7 START DATE FOR SERVICES**~~

21 ~~8.518.7.A. The start date of eligibility for HCBS-CDCE services shall not occur until all of the~~  
22 ~~requirements defined at 10 C.C.R. 2505-10, Section 8.485.60 have been met.~~

23 ~~8.518.7.B. The Department or its designee shall approve the personal support management~~  
24 ~~plan and establish a start date before a client can begin receiving Personal Support~~  
25 ~~Services.~~

26 ~~**8.518.8 CLIENT AND AUTHORIZED REPRESENTATIVE RIGHTS AND**~~  
27 ~~**RESPONSIBILITIES**~~

28 ~~8.518.8.A. A client receiving or requesting Personal Support Services whose personal~~  
29 ~~support management plan is disapproved by the Case Manager has the right to review~~  
30 ~~that disapproval. The client shall submit a written request to the SEP stating the reasons~~  
31 ~~for requesting the review and justifying the proposed management plan. The client's most~~  
32 ~~recently approved personal support management plan shall remain in effect while the~~  
33 ~~review is in process.~~

34 ~~8.518.8.B. Clients receiving Personal Support Services have the right to transition back to~~  
35 ~~personal care and homemaker services provided by an agency at any time. A client who~~

1 wishes to transition back to agency-provided services shall contact the Case Manager,  
2 who shall coordinate arrangements for the services.

3 8.518.8.C. — A client and/or his or her Authorized Representative is responsible for  
4 cooperating in the determination of financial eligibility, including prompt reporting of  
5 changes in income or resources and cooperating with the SEP and services providers as  
6 agreed to in the client's Care Plan.

7 8.518.8.D. — To receive Personal Support Services, each client and/or Authorized  
8 Representative shall sign a Participant/Authorized Representative Responsibilities Form  
9 acknowledging full responsibility for:

10 1. — Completing training.

11 2. — Developing a personal support management plan.

12 3. — Budgeting for Personal Support Services within the established monthly  
13 allocation.

14 4. — Recruiting, hiring, firing and managing Personal Support Attendants.

15 5. — Completing reference checks on Personal Support Attendants.

16 6. — Reviewing background checks on Personal Support Attendants.

17 7. — Determining wages for Personal Support Attendants, within the range  
18 established by the FMS.

19 8. — Establishing work schedules.

20 9. — Training and supervising Personal Support Attendants.

21 10. — Following all applicable laws and rules on employing Personal Support  
22 Attendants, with the exception of those set out at 10 C.C.R. 2505-10, Section  
23 8.518.12(B), which are the responsibility of the FMS.

24 11. — Completing and managing all paperwork.

25 **8.518.9 — CASE MANAGEMENT FUNCTIONS**

26 8.518.9.A. — SEP agencies shall comply with SEP rules governing Case Management  
27 functions as set forth at 10 C.C.R. 2505-10, 8.390 et seq. and shall comply with the  
28 following HCBS-CDCE specific requirements.

29 1. — The Case Manager shall provide new and current clients with information on  
30 HCBS-CDCE.

31 2. — The Case Manager shall complete screening and intake functions as defined at  
32 10 C.C.R. 2505-10, 8.393.21 et seq.

33 3. — The Case Manager shall complete the ULTC 100.2 assessment to determine  
34 nursing facility level of care as defined at 10 C.C.R. 2505-10, 8.390.22 et seq.

- 1           4. ~~If a client is determined to be ineligible for HCBS-CDCE, the SEP shall notify the~~  
2           ~~client and/or his or her Authorized Representative of the denial and the client's~~  
3           ~~appeal rights as defined at 10 C.C.R. 2505-10, Section 8.057.~~
  
- 4           5. ~~The Case Manager shall develop the Care Plan after completing the client~~  
5           ~~assessment and prior to the arrangement for services as defined at 10 C.C.R.~~  
6           ~~2505-10, Sections 8.390.1(C) and 8.486.51.~~
  
- 7           6. ~~The Case Manager shall revise the Care Plan whenever a change in the client's~~  
8           ~~needs results in an increase, decrease or other change in services. The Case~~  
9           ~~Manager shall describe in detail reasons for the revision. When additional~~  
10          ~~services include a service requiring a prior authorization request (PAR), the Case~~  
11          ~~Manager shall submit the PAR to the Department's fiscal agent.~~
  
- 12          7. ~~The Case Manager shall review and approve the personal support management~~  
13          ~~plan completed by the client and/or his or her Authorized Representative. The~~  
14          ~~Case Manager shall notify the client and/or his or her Authorized Representative~~  
15          ~~of the approval and establish a start date.~~
  
- 16          8. ~~If the Case Manager determines that the personal support management plan is~~  
17          ~~inadequate to meet the client's personal support needs, the Case Manager shall~~  
18          ~~assist the client and/or his or her Authorized Representative with further~~  
19          ~~development of the personal support management plan.~~
  
- 20          9. ~~The Case Manager shall calculate the initial Individual Allocation for each HCBS-~~  
21          ~~CDCE client who chooses Personal Support Services as follows:~~
  - 22               a. ~~Calculate an average monthly payment using prior utilization~~  
23               ~~expenditures for personal care and homemaker services provided by the~~  
24               ~~Department, or~~
  - 25               b. ~~Calculate the number of personal care and homemaker hours needed on~~  
26               ~~a monthly basis as defined on the Care Plan and multiply by the~~  
27               ~~Department's established rate for personal care and homemaker~~  
28               ~~services.~~
  
- 29          10. ~~The Case Manager shall provide written notification of the Individual Allocation to~~  
30          ~~each client.~~
  
- 31          11. ~~A client and/or his or her Authorized Representative who believes that he or she~~  
32          ~~needs more Personal Support Service than the existing Individual Allocation will~~  
33          ~~cover, may request the Case Manager to perform a reassessment. If the~~  
34          ~~reassessment indicates that more personal support is justified, the client and/or~~  
35          ~~his Authorized Representative shall amend the personal support management~~  
36          ~~plan and the Case Manager shall complete a Prior Authorization Request (PAR)~~  
37          ~~revision indicating the increase and submit it to the Department's fiscal agent.~~
  - 38               a. ~~In approving an increase in the Individual Allocation, the Case Manager~~  
39               ~~shall consider:~~
    - 40                   i) ~~Any change in the client's condition.~~
    - 41                   ii) ~~Discrepancies between the client's utilization history and current~~  
42                   ~~needs for personal support.~~

1                                   iii) ~~— The appropriateness of Personal Support Attendant wages.~~

2                                   iv) ~~— The quality and quantity of services provided by Personal~~  
3   ~~Support Attendants for the wages they receive.~~

4                                   v) ~~— Revisions in the client's budgeting of the current Individual~~  
5   ~~Allocation to more effectively pay for needed services.~~

6                   b. ~~— In reducing the Individual Allocation, the Case Manager shall consider:~~

7                                   i) ~~— Improvement or change in the condition.~~

8                                   ii) ~~— Reasons for unspent allocated funds.~~

9           12. ~~— The Case Manager shall notify the state fiscal agent to cease payment for all~~  
10                                   ~~existing personal care and homemaker services as of the client's Personal~~  
11   ~~Support Services start date.~~

12           13. ~~— The Case Manager shall monitor the services provided, as defined at 10 C.C.R.~~  
13   ~~2505-10, 8.393.43 et seq., to ensure that they are appropriate and effective,~~  
14   ~~timely, safe and meet with the client's satisfaction.~~

15           14. ~~— For effective coordination, monitoring and evaluation of clients receiving Personal~~  
16   ~~Support Services, the Case Manager shall:~~

17                                   a. ~~— Contact the client receiving Personal Support Services and/or the~~  
18   ~~Authorized Representative twice a month during the first three months to~~  
19   ~~assess their personal support management, their satisfaction with care~~  
20   ~~providers and the quality of services received.~~

21                                   b. ~~— Contact the client quarterly, after the first three months to assess their~~  
22   ~~implementation of service plans, personal support management issues,~~  
23   ~~quality of care, personal support expenditures and general satisfaction.~~

24                                   c. ~~— Conduct a face-to-face visit with the client and/or his or her Authorized~~  
25   ~~Representative when a change in the Authorized Representative occurs~~  
26   ~~and contact the client and/or his or Authorized Representative twice a~~  
27   ~~month for three months after this change takes place.~~

28                                   d. ~~— Review monthly reports to monitor client spending patterns and service~~  
29   ~~utilization to ensure appropriate budgeting and follow up with the client~~  
30   ~~and/or his or her Authorized Representative when discrepancies occur.~~

31                                   e. ~~— Contact the FMS quarterly to determine the status of each client's~~  
32   ~~financial management activities.~~

33           15. ~~— Reassessment~~

34                                   a. ~~— The case manager shall complete a Reassessment of each client using~~  
35   ~~the UTLC 100.2 assessment form before the end of the length of stay~~  
36   ~~assigned at the last level of care determination for a continued stay~~  
37   ~~review.~~

38                                   b. ~~— For clients receiving Personal Support Services, the Case Manager shall~~  
39   ~~conduct a comprehensive face-to-face interview with each client and/or~~

1 his or her Authorized Representative every six months. The interview  
2 shall include review of the personal support management plan and  
3 documentation from the physician that the client and/or his Authorized  
4 Representative has the ability to direct the care.

5 **8.518.10 — PRIOR AUTHORIZATION REQUEST**

6 8.518.10.A. — The Case Manager shall submit PARs to the Department according to the  
7 instructions given in the Medicaid Provider Bulletin published by the Department's fiscal  
8 agent.

9 8.518.10.B. — The start date for a PAR shall not precede the HCBS-CDCE start date and shall  
10 not cover a period of time longer than the length of stay assigned by the SEP.

11 **8.518.11 — PROVIDER ENROLLMENT**

12 8.518.11.A. — Provider agencies shall meet requirements as defined under the HCBS-EBD  
13 program at 10 C.C.R. 2505-10, Sections 8.487.10 through 8.487.100.

14 **8.518.12 — PERSONAL SUPPORT ATTENDANTS**

15 8.518.12.A. — Personal Support Attendants shall be at least 16 years of age and demonstrate  
16 competency in caring for the client to the satisfaction of the client and/or his or her  
17 Authorized Representative.

18 8.518.12.B. — The FMS shall be the employer of record for all Personal Support Attendants.  
19 The FMS shall be responsible for worker's compensation insurance, unemployment  
20 compensation insurance, withholding of all federal and state taxes, compliance with  
21 federal and state laws regarding overtime pay and minimum wage requirements and  
22 compliance with any other relevant federal, state or local laws.

23 **8.518.13 — REIMBURSEMENT**

24 8.518.13.A. — Provider agencies shall be reimbursed for services provided to eligible clients  
25 when claims are submitted in accordance with the following procedures:

26 1. — Provider agencies shall submit claims to the fiscal agent on Department  
27 prescribed forms provided by the fiscal agent according to 10 C.C.R. 2505-10,  
28 Sections 8.040 and 8.043.

29 2. — Provider agencies shall fill out claim forms adequately and correctly.

30 8.518.13.B. — Provider agencies shall maintain adequate financial records for all claims,  
31 including documentation of services as specified at 10 C.C.R. 2505-10, Sections  
32 8.040.02, 8.130 and 8.487.10.

33 8.518.13.C. — When a client has been determined eligible for HCBS services under the 300%  
34 income standard, according to 10 C.C.R. 2505-10, Section 8.100, the Department may  
35 reduce Medicaid payment for Alternative Care Facility services according to the  
36 procedures at 10 C.C.R. 2505-10, Section 8.486.60.

37 8.518.13.D. — Personal Support Attendants shall receive an hourly wage based on the rate  
38 negotiated between the Personal Support Attendant and the client and/or his or her  
39 Authorized Representative. The FMS shall make all payments from the client's Individual  
40 Allocation under the direction of the client and/or his or her Authorized Representative.

1 ~~8.518.14 — LIMITATIONS ON PAYMENT TO FAMILY [Perm Rule Change eff. 4/2/2007]~~

2 ~~8.518.14.A. — In no case shall any person be reimbursed to provide HCBS CDCE services to~~  
3 ~~his or her spouse.~~

4 ~~8.518.14.B. — Family members other than spouses may be employed by certified personal care~~  
5 ~~agencies to provide personal care services to relatives under HCBS CDCE, and/or be~~  
6 ~~employed by the FMS to provide Personal Support Services, subject to the conditions~~  
7 ~~below. For purposes of this section, family shall be defined as all persons related to the~~  
8 ~~client by virtue of blood, marriage, adoption or common law.~~

9 ~~1. — The family member shall meet all requirements for employment by the following:~~

10 ~~a. — A certified personal care agency and be employed and supervised by the~~  
11 ~~personal care agency; and/or~~

12 ~~b. — The FMS and be supervised by the client and/or his or her Authorized~~  
13 ~~Representative if providing Personal Support Services.~~

14 ~~2. — The family member providing personal care shall be reimbursed at an hourly rate~~  
15 ~~by the personal care agency and/or FMS which employs the family member, with~~  
16 ~~the following restrictions:~~

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

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

25