Title of Rule:	Revision to the Medical Assistance Community Living Benefit Rule Concerning In-Home Support Services
Rule Number:	MSB 14-07-15-B
Division / Contact / Phone:	Long Term Services & Supports / Candie Dalton 303.866.2755 / Grace Herbison 303-866-2129

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 revised version of section 8.552 implements the six programmatic changes to In Home Support Services mandated by HB 14-1357. The programmatic changes include 1) allowing IHSS to be provided in the community; 2) adding spouses as an eligible family member who may act as an attendant providing IHSS; 3) clarifying that the eligible client or the eligible client's authorized representative is responsible for directing the provision of IHSS, including scheduling, managing, and supervising attendants; 4) allowing clients or the client's authorized representative to determine the amount of oversight needed in conjunction with the IHSS agency; 5) removing the 444 hour per year family member reimbursement limit and replacing it with a 40 hour per week limit for personal care for HCBS-EBD and HCBS-SCI clients; and 6) expanding IHSS to persons receiving services under the Spinal Cord Injury waiver pilot program. In addition to the mandated changes, the proposed revisions incorporate stakeholder feedback by allowing willing and able IHSS agencies to provide the support necessary for a client who does not have an AR to participate in IHSS. The proposed revisions also modify the definitions of health maintenance, homemaker, and personal care activities and specify that the daily allotted scope and duration of each IHSS service must be documented in the IHSS plan.

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 U.S.C Section 1396n

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2014);
   Sections 25.5-6-1201 through 25.5-6-1205 C.R.S. (2014)

Initial Review	**12/12/2014**	Final Adoption	**01/09/2015**
Proposed Effective Date	**03/02/0215**	Emergency Adoption	

DOCUMENT #04

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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.

   Persons enrolled in IHSS under the HCBS-EBD, the HCBS-SCI, and the Children's HCBS waivers, IHSS agencies, case managers, and CDPHE will be impacted by this rule change. These stakeholders were involved in the drafting of the legislation that led to these rule changes (HB 14-1357) and the subsequent stakeholder meetings to draft the rule revisions. The stakeholders will benefit from these rule changes because IHSS services will be more accessible and more person centered.

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 revisions to section 8.552 will not impact eligibility for services or the amount of services authorized. However, the revisions are forecasted to increase costs due to greater utilization of IHSS as a result of increased program flexibility and increased allowable family member reimbursement. The costs of expanding into the spinal cord injury (SCI) waiver pilot program were not factored into the cost projections because the Department has already expanded IHSS into the SCI pilot program. These rule revisions do not expand services; they simply align Department rules with Department practice.

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 proposed changes are forecasted to increase costs in HCPF by $297,986 in FY 2014-2015 and by $1.2 million in FY 2015-16. These costs are paid with 48.99 percent General Fund and 51.01 percent federal funds.

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

   By revising In Home Support Services rules, the Department will comply with mandates set forth by HB 14-1357 and will promote person-centered, client-directed service provision. The proposed revisions to section 8.552 will not impact eligibility for services or the amount of services authorized. However, the revisions are forecasted to increase costs by $297,986 in FY 2014-15 and $1.2 million in FY 2015-16. These increases are the result of greater utilization of IHSS due to increased program flexibility and increased allowable family

member reimbursement. The costs of inaction will be failure to comply with HB 14-1357 mandates.

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

   Other methods were not considered because the rule revisions to IHSS are mandated by the state legislature.

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.

   Other methods were not considered because the rule revisions to IHSS are mandated by the state legislature.

8.552 IN-HOME SUPPORT SERVICES

8.552.1 DEFINITIONS

Attendant means a person, or a family member including a spouse, who is directly employed by an In-Home Support Services (IHSS) agency to provide ~~or a family member, including a spouse, providing~~ IHSS to a client.

Case Manager means an individual who determines functional eligibility and provides case management services to individuals eligible under the ~~HCBS~~ Children's Home and Community Based Services (CHCBS) Waiver program at 10 C.C.R. 2505-10, Section 8.506~~.7~~, ~~or~~ the ~~HCBS-EBD~~ Home and Community Based Services for the Elderly, Blind, and Disabled (HCBS-EBD) Waiver program 10 C.C.R. 2505-10, Section 8.485 or the Home and Community Based Services for Persons with Spinal Cord Injury (HCBS-SCI) Waiver program 10 C.C.R. 2501-10, Section 8.517.

Health Maintenance Activities means those routine and repetitive health related tasks, which are necessary for health and normal bodily functioning, that an individual with a disability would carry out if he/she were physically able, or that would be carried out by family members or friends if they were available. These Activities include any excluded personal care tasks as defined in 10 CCR 2505-10 Section 8.489, as well as Certified Nursing Assistant (CNA) and nursing services in the absence of worsening condition or new symptoms.~~, but are not limited to, catheter irrigation, administration of medication, enemas and suppositories and wound care.~~

In-Home Support Services (IHSS) means services that are provided in the home and in the community by an A~~a~~ttendant under the direction of the client~~n~~ or client's authorized representative including~~and include~~ Health Maintenance Activities and support for activities of daily living which include homemaker and personal care services.

In-Home Support Services Agency means an agency that is certified by the state department and provides independent living core services as defined in section 26-8.1-102 (3), C.R.S. and In-Home Support Services.

IHSS Plan means a written plan of IHSS between the client ~~and/or the client's guardian~~ or the client's authorized representative and the IHSS agency. The IHSS Plan shall include a statement of allowable attendant and personal care service hours and ~~,~~ a detailed listing of amount, scope and duration of each service to be provided for each day and visit.~~services, to be provid~~ The IHSS Plan shall also include documentation of~~ed,~~ the level of nurse oversight determined by the client or the client's authorized representative and the IHSS agency, documentation that adequate staffing including backup staff will be available to provide necessary services, a dispute resolution process, and who will be providing each ~~services,~~ service. The IHSS Plan ~~and~~ shall be signed by the client or the client's authorized ~~representative, where appropriate, and~~representative and the IHSS agency.

8.552.2ELIGIBILITY

8.552.2.A. To be eligible for IHSS a client shall:

1. Be enrolled in ~~found eligible for either~~ the ~~Home or Community Based Services - Elderly Blind and Disabled (~~ HCBS-EBD~~)~~, HCBS-SCI, or CHCBS ~~Children's~~ Waiver programs~~-~~; and

2. Provide a statement from his/her primary physician stating that the client or client's guardian has sound judgment and the ability to self~~-~~-direct care,~~;~~ or

3. ~~or~~ T~~t~~he client has an authorized representative who has the judgment and ability to assist in acquiring and using services,~~;~~ or

4. ~~.~~ The IHSS agency ~~may~~is able and willing to support the client as necessary to participate in IHSS.

5. For a client with an unstable medical condition, the physician's statement shall include a recommendation regarding whether additional in-home monitoring is necessary and if so, the amount and scope of the in-home monitoring.

8.552.2.B. A client shall no longer be eligible when:

1. The client is no longer enrolled in~~eligible for either~~ the ~~Home or Community Based Services - Elderly Blind and Disabled~~ HCBS-EBD, HCBS-SCI or CHCBS ~~Children's~~ Waiver programs.

2. The client's medical condition deteriorates causing an unsafe situation as documented by the primary physician.

3. The client refuses to designate an authorized representative or receive assistance from~~of~~ an IHSS agency~~,~~ when~~if~~ the client is unable to direct his/her own care as documented by the primary physician~~.~~

8.552.3 IHSS SERVICES

8.552.3.A Covered services shall be for the benefit of only the client and not for the benefit of other persons living in the home.

8.552.3.B Services include:

1. Homemaker as defined at 10 C.C.R. 2505-10, Section 8.490

2. Personal care as defined at 10 C.C.R. 2505-10, Section 8.489

3. Health maintenance activities

8.552.4~~3~~ CLIENT RIGHTS AND RESPONSIBILITIES

8.552.4~~3~~.A. A client or client's authorized representative has the right to:

1. Present a person(s) of his/her own choosing to the IHSS agency as a potential attendant.

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2. Train and schedule attendant(s) to meet his/her needs.

3. Dismiss attendants who are not meeting his/her needs.

4. Directly schedule, manage, and supervise attendants.

5. Determine, in conjunction with the IHSS agency, the level of nurse oversight.

6. Document permanent and significant changes in scheduling of attendants.

8.552.54 PROVIDER ELIGIBILITY

8.552.54.A. The IHSS agency shall conform to all certification standards and procedures set forth at 10 C.C.R. 2505-10, Section 8.487 and shall meet additional requirements set forth in 8.552.65.

8.552.54.B. The IHSS agency may be terminated from participation in the program pursuant to 10 C.C.R. 2505-10, Sections 8.4087.70 and 768.487.80.

8.552.65 PROVIDER RESPONSIBILITIES

8.552.65.A. The IHSS agency shall assure and document that all clients were offered peer counseling including, but not limited to cross-disability peer counseling, information and referral services and individualservices, individual and systems advocacy. to all clients .

8.552.65.B. The IHSS agency shall provide 24-hour back-up service to clients at any time a scheduled attendant is not available., whether the attendant's absence is anticipated or unforeseen.

1. The IHSS agency shall, at the time the IHSS plan is developed, ensure that adequate staffing is available, including backup staff, to ensure necessary services will be provided.

8.552.65.C. The IHSS agency shall provide intake and orientation service to clients or authorized representatives who are new to IHSS. Orientation shall include instruction in the philosophy, policies and procedures of IHSS and information concerning client rights and responsibilities.

8.552.65.D. The IHSS agency shall assure and document that all clients were offered assistance in selecting an attendant., if needed.

8.552.65.E. The IHSS agency shall ensure that a current IHSS Plan is in the client's record and send the IHSS Plan to the appropriate single entry point agency case manager within five days after any change in the IHSS Plan.

8.552.65.F. The IHSS agency shall contract with or have on staff a licensed health care professional who is at the minimum a registered nurse, who will verify and document attendant skills and competency to perform IHSS and basic consumer safety procedures..

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8.552.6.G The IHSS agency shall collaborate with the client or client's authorized representative to determine the level of oversight and monitoring provided by the health care professional beyond the requirements set forth at 8.552.6.F. The decision about the level of oversight shall be documented by the IHSS agency in the IHSS plan.

8.552.6.H Oversight and monitoring by the health care professional may include the following activities:~~The health care professional may shall provide oversight and monitoring of the following activities:~~

~~1. Verification and documentation of attendant skills and competency to perform IHSS and basic consumer safety procedures.~~

1.~~2~~. Counsel attendant staff on difficult cases and potentially dangerous situations.

~~3~~2. Consult with the client, authorized representative or attendant in the event a medical issue arises.

~~4~~3. Investigate complaints and critical incidents within 10 working days.

~~5~~4. Assure that the attendant is following directives found in the IHSS Plan.

8.552.6~~5~~.~~G~~I. The IHSS agency shall assure and document that all attendants have received basic training in the provision of IHSS. In lieu of basic training, the IHSS agency's licensed professional may administer a skills validation test.

8.552.6~~5~~.~~H~~J. Attendant training shall include, but not be limited to:

1. Development of interpersonal skills focused on addressing the needs of persons with disabilities.

2. Overview of IHSS.

3. Instruction on basic first aid administration.

4. Instruction on safety and emergency procedures.

5. Instruction on infection control techniques, including universal precautions.

8.552.6~~5~~.~~I~~K. Training may be modified if an attendant demonstrates competence in a given area.

8.552.6~~5~~.~~J~~L. Training and skills validation shall be completed prior to service delivery unless waived by the client or authorized representative to prevent interruption in services. In no event shall the training or skills validation be postponed for more than 30 days after services begin.

8.552.6~~5~~.~~K~~M. The IHSS agency shall allow the client or authorized representative to provide individualized attendant training that is specific to his/her own needs and preferences.

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8.552.65.~~L~~N. The IHSS agency shall provide functional skills training to assist clients ~~and/~~or authorized representatives in developing skills and resources to maximize their independent living and personal management of health care.

8.552.65.~~M~~O. The IHSS agency may discontinue IHSS to a client when:

1. Equivalent care in the community has been secured,~~;~~ or

2. The client has exhibited inappropriate behavior toward the attendant and the Department has determined that the IHSS agency has made adequate attempts at dispute resolution and dispute resolution has failed. Inappropriate behavior includes, but is not limited to, documented verbal, sexual ~~and/~~or physical abuse.

8.552.65.~~N~~P. The IHSS agency shall provide 30 days advance written notice to the client detailing the inappropriate behavior prior to discontinuing services. Upon provider discretion, the provider may allow the client ~~and/~~or client representative to use the 30-day notice period to correct the problem.

8.552.65.~~O~~Q. The IHSS agency shall send a copy of the 30-~~-~~day written discontinuation notice to the single entry point case manager the same day the notice is sent to the client.

8.552.6 ~~P~~R. The IHSS agency shall allow the client or the client's authorized representative to directly schedule, manage, and supervise attendants.

8.552.76 SINGLE ENTRY POINT RESPONSIBILITIES

8.552.76.A. The single entry point case manager shall ensure cost-~~-~~effectiveness and non-duplication of services by:

1. Documenting the discontinuation of previously authorized long-term home health services that shall be replaced by IHSS.

~~2. Documenting for new clients the long-term home health services that are available in lieu of IHSS.~~

2.~~3.~~ Documenting and justifying any need for both long-term home health services and IHSS.

34. Ensuring all required information is in the client's IHSS Plan.

45. Authorizing cost-~~-~~effective and non-duplicative services via the prior authorization request (PAR). A client may receive services from multiple attendants if they are not reimbursed for providing the same service at the same time.

56. Reviewing the IHSS PAR and giving approval prior to services rendered. ~~The PAR shall include the IHSS Plan delineating the services to be provided, the physician's statement, the authorized representative's signed statement when appropriate. The PAR shall include a dispute resolution process in the form of~~

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~~either a discharge policy or a client rights and responsibilities policy signed by the client.~~

6. Ensuring that the IHSS plan delineates services to be provided and the physician's statement or authorized representative's signed statement are completed prior to PAR approval.

7. Documenting the amount of heath care provider oversight determined by the client in conjunction with the IHSS agency.

8.552.8~~7~~ REIMBURSEMENT

8.552.8~~7~~.A. Reimbursement for IHSS shall occur only upon approval of the IHSS Care Plan and after the PAR has been submitted and approval received by the single entry point case manager.

8.552.8~~7~~.B. For IHSS personal care and homemaker services, the reimbursement rate shall be the same as for personal care and homemaker services under the HCBS-EBD Waiver set forth at 10 C.C.R. 2505-10 Section 8.489.50 and at 10 C.C.R. 2505-10 Section 8.490.50.

8.552.8~~7~~.C. For IHSS Health Maintenance Activities the reimbursement rate shall be a blended average equal to 1/8th of a two-hour home health ~~aid~~aide visit. The unit of service shall be 15 minutes.

8.552.8 D. A member of the client's household may only be paid to furnish extraordinary care as determined by the Case Manager. Extraordinary care is determined by assessing whether the care to be provided exceeds the range of care a family member would ordinarily perform in the household on behalf of a person without a disability or chronic illness of the same age, and which is necessary to assure the health and welfare of the client and avoid institutionalization.

8.552.8 E. For clients enrolled in HCBS-EBD and HCBS-SCI Waivers, a family member shall not be reimbursed for more than forty (40) hours of personal care in a seven day period.

8.552.8 F. The agency shall not submit billing for excessive hours that are not justified by the documentation of services provided, or by the client's medical or functional condition. This includes billing all units prior authorized when the allowed and needed services do not require as m~~s~~uch time as that authorized.

8.552.8 G. Health maintenance activities may include related personal care and homemaker services if such tasks are completed during the health maintenance visit and are secondary and contiguous to the health maintenance activity.

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