

Title of Rule: Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Adult Day Services, Section 8.491
Rule Number: MSB 18-05-25-A
Division / Contact / Phone: Benefits and Services Division / 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 critical incident reporting, care planning, and the HCBS Final Settings Rule. The new regulations will make clear the new requirements for the providers. This will help to ensure the Department is in compliance with federal regulations, as well as better align policies with our 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 revised criteria for specialized adult day services, food safety regulations, and updated language and clarification throughout will provide more comprehensive regulations and safer settings for the HCBS waiver participants and clarity for providers.

The Department has worked closely with DPHE, providers, participants and the trade groups to revise these regulations.

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:

25.5-1-301 through 25.5-1-303, C.R.S. (2017);
25.5-6-313, C.R.S.

Initial Review
Proposed Effective Date

07/13/18
09/30/18

Final Adoption
Emergency Adoption

08/10/18

DOCUMENT #06

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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.

Individuals who will be affected by this rule are individuals who attend Adult Day Centers on the Elderly Blind and Disabled (EBD), Community Mental Health Supports (CMHS), and Spinal Cord Injury (SCI) Waivers. They will benefit from this rule change due to improved critical incident reporting; revised criteria for specialized adult day services; care planning requirements; HCBS Final Settings Rule requirements; food safety regulations; and updated language and clarification throughout. 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 the providers bearing any additional costs.

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 EBD, CMHS, and SCI waiver clients who attend Adult Day Centers will benefit from the new requirements and additional oversight it will bring to the program, as described in paragraph one.

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.

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

The clarification to the Adult Day rule will significantly benefit participants, which outweighs any additional administrative burdens on the part of the Centers. There are no benefits of inaction in behalf of the Department.

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

The additional requirements in the proposed regulations are required by CMS and must be implemented. The additional regulations and clarifications will require

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minimal additional output from the Department. There are no less costly or less intrusive methods of achieving the purpose of this rule.

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.

1 **8.491 ADULT DAY SERVICES**

2 **8.491.1 Definitions**

3 ~~10~~ Adult Day Center is a certified center that provides Basic Adult Day Services and Specialized
4 Adult Day Services to participants.

5 Adult Day Services (ADS) are provided in an Adult Day Center on a regularly scheduled basis, as
6 specified in the Person Centered Care Plan, promoting social, recreational, physical, and emotional well-
7 being that encompasses the supportive services needed to ensure the optimal wellness of the participant.
8 ~~means health and social services, individual therapeutic and psychological activities furnished on a~~
9 ~~regularly scheduled basis in an adult day services center, as an alternative to long term nursing facility~~
10 ~~care.~~

11 ~~12~~ Basic Adult Day Services (ADS) Center means a community-based entity that provides basic
12 Adult Day Services in conformance with ~~conforms to~~ all state established requirements as described in 10
13 CCR 2505-10 section 8.130 and 10 CCR 2505-10 section 8.491.14.

14 ~~13~~ Specialized Adult Day Services (SADS) Center means a community-based entity
15 ~~determined by the State to be~~ providing Adult Day health supportive s ~~Services~~ for participants with a
16 primary diagnosis of Alzheimer's and dementia related disorders/diseases, Multiple Sclerosis, Brain
17 Injury, chronic mental illness, Intellectual and Developmental Disabilities, Huntington's Disease,
18 Parkinson's, or post-stroke participants, who require extensive rehabilitative therapies. In order to ~~To~~ be
19 designated as specialized, two-thirds of an ADS Center's population must have a diagnosis which is one
20 of any of the above diagnoses. Each diagnosis must be verified by a Licensed Medical Professional,
21 either directly or through Single Entry Point agency documentation, in accordance with Section
22 8.491.14.A. be participants whose physician has verified one of the above diagnoses and determined
23 SADS is appropriate for the participant.

24 Care Plan means the individualized goal-oriented plan of services, supports, and preferences developed
25 collaboratively with the participant and the service provider, as outlined in 10 CCR 2505-10 8.495.6.F.

26 Designated Representative means a representative who is designated by the participant to act on the
27 participant's behalf, as defined in 10 CCR 2505-10 Section 8.500.1.

28
29
30 Director means any person who owns and operates an ADS Center or SADS Center, or is a managing
31 employee with delegated authority by ownership to manage, control, or perform the day-to-day tasks of
32 operating the Center as described in 10 CCR 2505-10 Section 8.491.

33 Licensed Medical Professional (LMP) means a medical professional that possesses one or more of the
34 following Colorado licenses, which must be active and in good standing: Physician, Physician Assistant,
35 Registered Nurse (RN) or Licensed Practical Nurse (LPN) governed by the Colorado Medical License Act,
36 and as defined in 10 CCR 2505-10 Section 8.503.

37 Participant means any individual found to be eligible for and enrolled in Adult Day Services regardless of
38 payment source.

39 Qualified Medication Administration Personnel (QMAP) means an individual that has completed training,
40 passed a competency evaluation, and is included in the Colorado Department of Public Health and

1 Environment's (CDPHE) public list of individuals who have passed the requisite competency evaluation,
2 as outlined in 6 CCR 1011-1 Chapter 24.

3 Restraint means any physical or chemical device, application of force, or medication, which is designed or
4 used for restricting freedom of movement, and/or modifying, altering, or controlling behavior, excluding
5 medication prescribed by a physician as part of an ongoing treatment plan or pursuant to a diagnosis.

6 Staff means a paid or voluntary employee of the **ADS** Center or SADS Center.

7 Universal Precautions refers to a system of infection control that **prevents** the transmission of
8 communicable diseases. Precautions include, but are not limited to, disinfecting of instruments, isolation
9 and disinfection of environment, use of personal protective equipment, hand washing, and proper
10 disposal of contaminated waste.

11 **8.491.2 PARTICIPANT BENEFITS**

12 **8.491.2.A. Adult Day Services**

13 1. Only participants whose needs can be met by the ~~Adult Day Services~~ **ADS** Center within
14 its certification category and populations served may be admitted to the **ADS** Center.

15 2. ~~Adult Day Services~~ **ADS** shall include, but are not limited to, the following:

16 a. Daily **monitoring** to ensure participants are maintaining activity levels and goals
17 **set forth** in the Care Plan, pursuant to Section 8.491.4.E; and assistance with
18 activities of daily living (ADL) **as needed**. (ADLs include but are not limited to
19 eating, ambulation, positioning, transferring, toileting, and **incontinence care**).

20 b. Daily services provided to monitor the participant's health status, monitor or
21 administer medications, and carry out physicians' orders **as set forth in**
22 participant's individual Care Plan.

23 c. **Services to be provided in an integrated, community based setting, which,**
24 **supports participation and engagement in community life and gaining access to**
25 **the greater community; participants may **engage** in meaningful activities in**
26 **integrated and community settings.**

27 d. Emergency services including written procedures to meet medical crises.

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

30 f. Nutrition services including therapeutic diets and snacks **in accordance with the**
31 participant's individual Care Plan and hours **of attendance**.

32 g. Social and recreational supportive services as appropriate for each participant
33 and their needs, as documented in the participant's Care Plan. Activities shall
34 take into consideration individual differences in age, health status, sensory
35 deficits, religious affiliation, interests, abilities, and skills by providing
36 opportunities for a variety of types and levels of involvement.

37 h. Participants have the right to choose not to participate in social and recreational
38 activities.

39 **8.491.2.B. Adult Day Service Requirements**

1 1. The participant's individual eCare Pplan must include documentation of their
 2 diagnosis(es) and service goals. ~~In addition, each participant's individual Ccare pPlan~~
 3 ~~must include the following:~~

4 A.

5 2. ~~For Medicaid participants, the case manager The ADS Center must forward the most~~
 6 ~~recent copy of page 1 of the participant's ULTC-100.2 verify all Medicaid participant's~~
 7 ~~diagnosis(es) using the Professional Medical Information Page (PMIP) supplied by the~~
 8 ~~case manager, or documentation from the participant's Licensed Medical Professional~~
 9 ~~(LMP). to the ADS Center as documentation of one of the above diagnoses.~~
 10 Documentation must be verified at the time of admission, on reassessment by the case
 11 manager, or whenever there is a significant change in the participant's condition. Any
 12 significant change must be recorded in the participant's record or Care Plan.

13 Ba. ~~_____~~ For participants from other payment sources, diagnosis(es) and
 14 ~~recommended specialized services~~ must be documented in a care plan, or other
 15 admission form, and verified by the participant's physician or LMP. This
 16 documentation must be verified at the time of admission, and whenever there is a
 17 significant change in the participant's condition.

18
 19 ~~C. _____ The Department or its designee will review an Adult Day Services Center's designation as a~~
 20 ~~specialized facility (SADS) on an annual basis.~~

21 ~~.14 _____ Only participants whose needs can be met by the Adult Day Services Center within its~~
 22 ~~certification category and populations served shall be admitted to the Center.~~
 23 ~~Adult Day Services shall include, but are not limited to, the following:~~

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

26 B. ~~_____ Emergency services including written procedures to meet medical crises.~~

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

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

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

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

36 G. ~~_____ Adult Day Services Centers certified on or after July 1, 1996, or upon change of ownership, shall~~
 37 ~~provide basic personal care services including bathing in emergency situations.~~

38 **8.491.15 DEFINITIONS**

39 A. ~~_____ Director means any person who owns and operates an ADS Center, or is a managing employee~~
 40 ~~with delegated authority by ownership to manage, control, or perform the day-to-~~

day tasks of operating the center as described in 10 CCR 2505-10 section 8.491. 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, mucous membrane or contact with blood-tinged body fluids, or other potentially infectious material.~~

8.491.320 CERTIFICATION STANDARDS PROVIDER REQUIREMENTS

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

A1. ~~General~~

1a. ~~ADS Center providers shall conform to all established State standards in the section on general provider participation requirements, as defined in 10 CCR 2505-10 Section 8.130. ADS Centers shall have in effect all necessary required licenses, certifications, and insurance, as applicable. ADS Center providers shall comply with ADS Center regulations and is be in compliance with ADS regulations as and Life Safety Code (LCS) regulations, as determined by the Colorado Division of Fire Protection and Control determined by the an annual on-site survey conducted by the Colorado Department of Public Health and Environment (CDPHE).~~

b2. ~~ADS Center providers shall be Medicaid certified by the Department as an ADS provider, in accordance with 10 CCR, 2505-10 Section 8.487.20. Proof of Medicaid certification consists of a completed Provider Agreement approved by the Department and the Department's fiscal agent, and recommendation for certification by a letter from CDPHE, stating that based on the results of the survey, the provider has been certified and/or recertified.~~

a. ~~Certification shall be denied, revoked, suspended, or terminated when a Provider is unable to meet, or adequately correct deficiencies relating to, certification standards as defined at 10 CCR 2505-10 section 8.491.~~

1 3. The Department or its designee will review an ADS Center's designation as a Specialized
 2 Adult Day Services (SADS) Center at the time of initial approval and during the
 3 recertification survey.

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

6 5. All providers of ADS shall operate in full compliance with all applicable federal, State and
 7 local laws, ordinances and regulations related to fire, health, safety, zoning, sanitation
 8 and other standards prescribed in law or regulations. This includes certification of building
 9 use occupancy.

10
 11 **8.491.4 PROVIDER ROLES AND RESPONSIBILITIES**

12
 13 ~~2. Using the State approved Critical Incident Reporting Form, Adult Day Service Center~~
 14 ~~providers shall notify the participant's Single Entry Point (SEP) case manager within 24 hours of any~~
 15 ~~incident or situation including:~~

16 ~~a. Death;~~

17 ~~b. Abuse/neglect/exploitation;~~

18 ~~c. Serious injury to participant or illness of participant;~~

19 ~~e. Damage to participant's property/theft;~~

20 ~~d. Medication management;~~

21 ~~e. Other high risk issues.~~

22 ~~BA. Environment~~

23 1. All ADS Centers must comply with the Centers for Medicare and Medicaid Services
 24 (CMS) Home and Community Based Settings Final Rule requirements, 42 C.F.R. §
 25 441.301(c)(4). This includes:

26
 27 a. ADS Center is integrated in and supports full access of individuals to the greater
 28 community;

29
 30 b. ADS Center is selected by the individual from among setting options including
 31 non-disability specific settings;

32
 33 c. ADS Center ensures an individual's rights of privacy, dignity and respect, and
 34 freedom from coercion and restraint;

35
 36 d. ADS Center optimizes individual initiative, autonomy, and independence in
 37 making life choices, including, but not limited to, daily activities, physical
 38 environment, and with whom to interact; and

39
 40 e. ADS Center facilitates individual choice regarding services and supports, and
 41 who provides them.

1 4-2. ADS Centers presumed to have institutional qualities will be subject to heightened
 2 scrutiny and reviewed by the Department and CMS, per 42 C.F.R. § 441.301(a)(2)(v).
 3 Settings in which this may apply include but are not limited to those where:

4 a. The provision of inpatient institutional treatment within a publicly or privately-
 5 operated facility happens within the same building.

6 b. Located on the grounds of, or adjacent to, a public institution.

7 c. The effect of isolating participants receiving Medicaid Home and Community
 8 Based Services (HCBS) from the broader community.

9 2. If an ADS Center is subject to heightened scrutiny, Medicaid reimbursement by the
 10 Department may not be issued if the center fails CMS's heightened scrutiny review or
 11 until CMS approves the center.

12 3. ADS Centers shall provide a clean and sanitary environment that is, free of obstacles that
 13 could pose a hazard to participant health and safety, allowing individuals the freedom to
 14 safely move about inside and outside the ADS Center.

15 42. ADS Centers shall provide lockers or a safe and secure place for participants' personal
 16 items.

17 53. ADS Centers shall provide recreational areas and recreational activities appropriate to
 18 the number and needs of the participants, at the times desired by the participants.-

19 6. ADS Centers shall ensure the following are physically accessible to the participants at all
 20 times during hours of operation:

21 a4. Access to drinking water and other beverages; Drinking facilities; shall be located
 22 within easy access to participants.-

23 b. Bathrooms, sinks, and paper towel dispensers or hand dryers;

24 c. Appliances and equipment used by or in the delivery of activities offered by the
 25 ADS Center, such as, tables/desks and chairs at a convenient height and
 26 location; and

27 d. Free from obstructions such as steps, lips in doorways, narrow hallways, limiting
 28 individuals' mobility in the ADS Center. If obstructions are present, environmental
 29 adaptations are to be made to allow for participant access.

30 7. ADS Centers must provide for a private shower and/or bathing area located on
 31 site to address the emergency hygiene needs of participants as needed.

32
 33
 34 58. To accommodate the activities and program needs of the ADS Center, the center must
 35 provide eating and activity areas that are consistent with the number and needs of the
 36 participants being served, which is at a minimum of 40 square feet per participantperson.
 37 To accommodate all ADS Center activities and program needs, ADS Centers shall
 38 provide a minimum of 40 sq. feet per participant. ADS Centers shall provide eating and
 39 resting areas consistent with the number and needs of the participants being served.

1 Centers certified on or after July 1, 1996, shall provide a minimum of 40 sq. feet per
2 participant

3 6. ~~ADS Centers shall provide easily accessible toilet facilities, hand-washing~~
4 ~~facilities and paper towel dispensers. Centers must provide a facility for bathing~~
5 ~~in emergency situations.~~

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

8 _____
9 9. ~~All medications shall be stored in a secured area.~~

10 940. ~~ADS Centers shall maintain a comfortable temperature throughout the center. At no time~~
11 ~~shall the temperature fall outside the range of 68 degrees to 76 degrees Fahrenheit. ADS~~
12 ~~Centers shall be heated to at least seventy (70) degrees during hours of operation and no~~
13 ~~more than 76 degrees in the summer months.~~

14 104. ~~ADS Centers must provide an environment free from restraints as defined at 10 CCR~~
15 ~~2505-10 section 8.491.15.C of these rules.~~

16 112. ~~ADS Centers, in accordance with 10 CCR 2505-10 section 8.491.4.A14 above, must~~
17 ~~provide a safe environment for all participants, including participants exhibiting behavioral~~
18 ~~problems, wandering behavior, or limitations in mental/cognitive functioning.~~

19 B. Food Safety Requirements

20 1. ~~ADS Centers shall comply with all applicable local food safety regulations. In addition, all~~
21 ~~ADS Centers must ensure:~~

22 a. ~~Ensure a~~ Access to a handwashing sink, soap and disposable paper towels;

23 b. ~~Food handlers, cooks and servers, including participants engaged in food~~
24 ~~preparation, must properly wash their hands using proper hand-washing~~
25 ~~guidelines;~~

26 c. ~~The ADS Centers do~~ shall not allow any staff or participants who are not in good
27 health and free of communicable disease to handle, prepare or serve food or
28 handle utensils who are;

29 d. ~~Refrigerated foods opened or prepared and not used within 24 hours must be~~
30 ~~marked with a "use by" or "discard by" date. The "use by" or "discard by" date~~
31 ~~may not exceed 7 days following opening or preparation, or exceed or surpass~~
32 ~~the manufacturer's expiration date for the product or its ingredients;~~

33 _____
34 _____
35 e. ~~For food service, foods must be~~ maintained at the proper temperatures at all
36 times. Foods that are stored cold must be held at or below 41 degrees
37 Fahrenheit and foods that are stored hot must be held at or above 135 degrees
38 Fahrenheit in order to control the growth of harmful bacteria;

1 f. Kitchen and food preparation equipment ~~must be~~ maintained in working order
2 and cleanable; and

3
4
5
6 g. Any equipment or surfaces used in the preparation and service of food ~~must~~
7 ~~be~~ washed, rinsed and sanitized before use or at least every 4 hours of
8 continual use. Dish detergent must be labeled for its intended purpose. Sanitizer
9 must be approved for use as a no-rinse food contact sanitizer. Sanitizers must be
10 registered with the Environmental Protection Agency (EPA) and used in
11 accordance with labeled instructions.

12 C. Medication Administration and Monitoring

13 1. All medications shall be administered by Qualified Medication Administration Personnel
14 (QMAP) staff, LMP staff or self-administered.

15
16 2. ADS Centers shall require each staff person who administers medication, that is not a
17 LMP, to have completed training, passed a competency evaluation and be included in the
18 Colorado Department of Public Health and Environment's (CDPHE) public list of
19 individuals who have passed the QMAP competency evaluation, as outlined in 6 CCR
20 1011-1 Chapter 24.

21 3. All medication shall be stored in a locked cabinet when unattended by QMAP or LMP
22 staff.

23 4. Non-prescription medications shall be labeled with the recipient's name, and shall not be
24 taken by any other participants.

25 5. A QMAP shall not conduct feeding or administer medication through a gastrostomy tube
26 or administer intravenous, intramuscular or subcutaneous injections.

27 D. Records and Information

28 1. ADS Center providers shall keep ~~such~~ records and information necessary to document
29 the services provided to participants receiving Adult Day Services. Records shall include
30 but not be limited to:

31 a. Name, address, gendersex, and date of birth-age of each participant;

32 b. Name, address and telephone number of designated representative and/or
33 emergency contactresponsible party;

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

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

36 e. Documentation that all participants ~~or~~ and their designated representatives (if
37 any) responsible parties were oriented to the ADS Center, the policies, and
38 procedures relevant to the ADS Center facility and the services provided;

- 1 f. A service agreement signed by the participant and/or ~~his or her~~the designated
2 representative and appropriate center staff;
- 3 ~~g. A copy of the PMIP, or diagnosis documentation from the participant's Licensed~~
4 ~~Medical Professional (LMP); and~~
- 5 ~~g. For participants from other payment sources, receiving supportive services in a~~
6 ~~specialized ADS Center, individual care plans must include a primary diagnosis~~
7 ~~and a physician's signature.~~

8 E. Care Plan

9 1. The following information must be documented in the Care Plan and used to direct the
10 participant's care and **must be** reviewed annually.

11 a2. Medical Information ~~included in the care plan:~~

- 12 ia. All ~~M~~medications the participant is taking, including those while at the
13 Adult Day Services Center, and whether they are being self-
14 administered;
- 15 ib. Special dietary considerations, instructions, or restrictionsneeds, if any;
- 16 ij. Services that are administered to the participant while at the ADS Center
17 (**may include** nursing or medical interventions, speech therapy, physical
18 therapy, or occupational therapy);
- 19 iv. Any restrictions on social and/or recreational activities identified by
20 participant's LMP; and physician in the care plan;
- 21 ~~d. Documentation of any nursing or medical interventions; physical, speech,~~
22 ~~and/or occupational therapy administered to participant whose physician~~
23 ~~has prescribed such services to be included in the participant's individual~~
24 ~~care plan;~~
- 25 ve. Any other special health or behavioral management services or supports
26 recommended to assist the participant by the participant's LMP.

27 b. Care Planning Documentation:

- 28 i. Documentation that the Center was selected by the individual and/or
29 designated representative or legal representative;
- 30 ii. Individual choices, preferences, and needs shall be incorporated into the
31 goals and **services** outlined in the Care Plan;
- 32 iii. All participant information and the Care Plan are considered protected
33 health information and shall be kept confidential; and
- 34 iv. Participant and/or designated representative or legal representative must
35 review and sign the Care Plan.

36 c. Modifications to the Care Plan **must be** supported by a specific and assessed
37 need. Informed consent and proper documentation in the Care Plan is required
38 for any changes including but not limited to:

1 i. Identification of the specific and individualized assessed need; and

2 ii. Documentation of any intervention and/or additional supports offered to
 3 support the participant appropriately.

4
 5 3d. Documentation that the participant and/or other responsible party designated
 6 representative was provided with written information about the his/her
 7 participant's right to establish an advanced directive. – under state law regarding
 8 advance directives in accordance with regulations at 10-CCR-2505-10 section
 9 8.130.3

10
 11 e. Documentation as to whether the participant has executed an advance directives
 12 or other declaration regarding medical decisions. Such documentation shall be
 13 kept maintained in the participant's /her case record.

14 4f. All entries into the record shall be legible, written in ink, dated, and signed with
 15 name and title designation, or records shall be maintained electronically with
 16 electronic signatures in accordance with standards for electronic medical record
 17 keeping practices.–

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

20 F. Critical Incident Reporting

21 1. A Critical Incident means an actual or alleged event that creates the risk of serious harm
 22 to the health or welfare of a participant. A Critical Incident may endanger or negatively
 23 impact the mental and/or physical well-being of a participant. Critical Incidents include,
 24 but are not limited to:

25 a. Death;

26 b. Abuse/neglect/exploitation;

27 c. Serious injury to participant or illness of participant;

28 c. Damage or theft of participant's property;

29 d. Medication mismanagement;

30 e. Lost or missing person; and

31 f. Criminal activity.

32 2. A provider must submit a report of a Critical Incident to the HCBS participant's Case
 33 Management Agency (CMA) case manager within 24 hours of the actual or alleged
 34 incident. The report must include:

35 a. Participant name;

36 b. Participant Medicaid identification number;

- 1 c. Waiver;
 2 d. Incident type;
 3 e. Date and time of incident;
 4 f. Location of incident;
 5 g. Persons involved;
 6 h. Description of incident; and
 7 i. Resolution, if applicable.

- 8
 9
 10
 11 3. If any of the above information is not available within 24 hours of incident and not
 12 reported to the CMA case manager, a follow-up to the initial report must be completed.

13 GD. Staffing Requirements

- 14
 15 1. All ADS Centers must maintain at a minimum, a staff to participant ratio of at least 1:8. In
 16 addition to minimum staffing ratios, the ADS center must maintain ,or lower to always
 17 maintain in the appropriate staffing levels to meet the provide for the needs of the
 18 participants population served. Staff to participant ratios are calculated using only staff
 19 providing direct care to participants; it does they do not include auxiliary staff. -staff are
 20 not considered when determining ratios. Auxiliary staff includes but is not limited to
 21 volunteers and student interns, maintenance, custodial, clerical, or food service
 22 staff participant, as described above at 10 CCR 2505-10 section 8.491.12 and .13, and
 23 Staff shall provide the following:
- 24 a. Continuous supervision of participants during program operation
 25 hours; Supervision of participants at all times during the operating hours of the
 26 program;
- 27 b. Immediate response to emergency situations to assure the safety, health and
 28 welfare of participants;
- 29 c. Activities that are planned to support the plans of care for the
 30 participants Prescribed recreational and social activities;
- 31 d. Administrative, recreational, social, and supportive functions and duties; and
- 32 e. Nursing services for regular monitoring of the on-going medical needs of
 33 participants and the supervision of medications. These services must be
 34 available a minimum of two hours daily and must be provided by an Registered
 35 Nurse (RN) or Licensed Practical Nurse (LPN). Certified Nursing Assistant's
 36 (CNA)s may provide these nursing services under the direction of a RN or an
 37 LPN, in conformance with nurse delegation provisions outlined in CRS 12-38-
 38 132.- Supervision of CNAs must include documented consultation and oversight
 39 on a weekly basis or more according to the participant's needs.

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

2 2. In addition to the above services, Specialized Adult Day Services (SADS) Centers ~~which~~
 3 ~~providing a restorative model of care~~ shall have sufficient staff to provide nursing
 4 ~~services during all hours of operation.~~ ;

5 a. Nursing services must be provided by a licensed RN or LPN or by a CNA under
 6 the supervision of an RN or LPN, as per 10 CCR 2505-10 section
 7 8.491.20.D.1.d,4.G.1.e above and employed by the SADS Center.

8 3. The ADS Center shall require any individual seeking employment with the Center to
 9 submit to a criminal history record check to ascertain whether the individual seeking
 10 employment has been convicted of a felony or misdemeanor ~~that which felony or~~
 11 ~~misdemeanor~~ involves conduct that the Center determines could pose a risk to the
 12 health, safety or welfare of participants.

13 4. The criminal history record check shall, at a minimum, include a search of criminal history
 14 in the State of Colorado and be conducted not more than 90 days prior to employment of
 15 the individual.

16 5. In assessing whether to employ an applicant with a felony or misdemeanor conviction,
 17 the ADS Center shall consider the following factors:

18 a. The history of convictions, pleas of guilty or no contest,

19 b. The nature and seriousness of the crimes;

20 c. The time that has elapsed since the conviction(s);

21 d. Whether there are any mitigating circumstances; and

22 e. The nature of the position for which the applicant would be employed.

23 6. The ADS Center shall develop and implement policies and procedures regarding the
 24 employment of any individual who is convicted of a felony or misdemeanor to ensure that
 25 the individual does not pose a risk to the health, safety and welfare of the consumer.

26
 27 H. Director Qualifications

28 1. All Directors hired or designated after January 1, 2019, shall meet one of the following
 29 qualifications:

30 a. At least a bachelor's degree from an accredited college or university and a
 31 minimum of two years of social services or health services experience and shall
 32 have demonstrated ability to perform all aspects of the position; or

33 b. A licensure by the state of Colorado as a Licensed Practical Nurse or Registered
 34 Nurse and completion of two years of paid or volunteer experience in planning or
 35 delivering health or social services including experience in supervision and
 36 administration; or

37 c. A high school diploma or GED equivalent, a minimum of four years of experience
 38 in a social services or health services setting, skills to work with aging adults or

1 adults with functional impairment, and skills to supervise ADS Center staff
 2 persons.

3 I.E. Training Requirements

4 1. All ADS Center staff and volunteers must be trained in the ADS Centers' programmatic
 5 policies and procedures.

6 2. ADS Centers providing medication administration as a service must have ~~qualified~~
 7 ~~persons on their QMAP staff who have been qualified-trained~~ in accordance with C.R.S. ~~6~~
 8 ~~CCR 1011-1 Chapter 24, unless medications are administered only by LMPs.~~ ~~section 25-~~
 9 ~~4.5-302.~~

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

13 34. The ADS Center ~~operator-Director~~ and staff must ~~receive have~~ training specific to the
 14 ~~needs and diagnoses of the participants populations served, in the Center, e.g., elderly,~~
 15 ~~blind and disabled, and as defined in 10 CCR 2505-10 section 8.491.13 of these~~
 16 ~~rules. Training may include, but is not limited to: behavioral expression and management~~
 17 ~~techniques, effective communication techniques, redirection, cardiopulmonary~~
 18 ~~resuscitation, validation theory and communication, seizure response, and brain injuries.~~

19 a. Documentation of staff member and Director trainings must include, but is not
 20 limited to: training provided, who completed trainings, who conducted trainings,
 21 and completion date.

22 54. All ADS Center staff ~~and volunteers~~ must be trained in the handling ~~of of emergencies~~
 23 ~~including written procedures to meet medical crises, emergency services including written~~
 24 ~~procedures to meet medical crises, and natural and manmade disasters.~~

26 65. All required training must be documented, ~~and documentation must be maintained in~~
 27 ~~employees' individual staff's~~ personnel files. ~~Each staff person's training must be up-to-~~
 28 ~~date.~~

29 J.F. Written Policies

30 1. The ADS Center shall have ~~a-~~written policies and procedures relevant to its operation.
 31 Such policies and procedures shall include, but not be limited to, statements describing:

32 a. Admission criteria ~~for that qualify~~ participants ~~to who can~~ be appropriately served
 33 in the ~~ADS e~~Center;

34 b. ~~Interview-Intake~~ procedures conducted for ~~qualified participants~~ participants
 35 ~~and/or designated representatives~~ family member prior to admission to the ~~e~~ADS
 36 ~~Center;~~

37 c. The meals and nourishments including special diets that ~~will are~~ provided;

38 d. The hours and days ~~of the~~ ADS Center is open and services ~~are available to~~
 39 ~~participants, including the availability of nursing services;~~ week that the

participants will be served in the center and days of the week services will be available;

e. Medication administration and storage;

f. The personal items that the participants may bring with them to the ADS eCenter; and

g. Emergency services including written procedures to meet medical crises, and natural and manmade disasters.

2g.. ~~There shall be a A~~ written, signed agreement between the participant and/or designated representative responsible party and the ADS Cecenter outlining the rules and responsibilities of the ADS Cecenter and the participant. Each party into the agreement shall be provided a copy.

8.491.530 REIMBURSEMENT METHOD FOR ADULT DAY SERVICES

A. Reimbursement for ADS for participants in the HCBS Elderly, Blind and Disabled (EBD) waiver, Community Mental Health Supports waiver (CMHS), and the Spinal Cord Injury (SCI) waiver, shall be based upon a single all-inclusive payment rate per unit of service for each participating provider which shall be prospectively determined. Units are 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

B. For persons in the HCBS waiver for Persons with a Brain Injury (BI), reimbursement for BI-ADS shall be based upon a single all-inclusive payment rate per unit of service for each participating provider.

1. A unit is defined as:

one (1) unit = two or more hours per day.

C. ~~---~~ ADS Centers are permitted to utilize funding from other Federal sources, such as the Child and Adult Care Food Program (CACFP) in addition to the Medicaid per diem. If such funding is utilized, a Center must acknowledge the use of multiple funding sources and demonstrate that Federal funds are not used in a duplicative manner to Medicaid-funded services.

D. Only providers certified as a Specialized Adult Day Services Center are permitted to receive the SADS reimbursement rate, for participants needing SADS.

E. Providers shall not bill for services on the same day of service for a participant in an HCBS residential program, unless the following criteria have been met:

1. ADS and residential services have been authorized by the Department and are included on the prior authorization request (PAR);

4.2. Participant's diagnoses must meet the criteria for a SADS Center;

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2.3. Documentation from the participant's physician demonstrating the required specialized services in the SADS Center are necessary because of the qualifying diagnosis(es), are essential to the care of the participant, and are not included in the residential per diem;

3.4. Documentation that the extensive rehabilitative therapies and therapeutic needs of the participant are not being met by the residential program and are not included in the residential per diem; and

4.5. Documentation from the participant's physician recommending SADS and how it will meet the previously mentioned needs.

DRAFT