

Title of Rule: Revision to the Medical assistance Rule concerning the Exception to the Waiting List Protocol, Section 8.500.7
Rule Number: MSB 18-11-16-A
Division / Contact / Phone: Case Management and Quality Performance / Karli Cheatham / 4032

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).

House Bill 18-1407 requires the Department to promulgate rules regarding the criteria for reserve capacity waiver enrollments for individuals with intellectual and developmental disabilities (I/DD). The criteria must include but is not limited to the age of the custodial parent or caregiver, the loss of the custodial parent or caregiver, incapacitation of the custodial parent or caregiver, any life-threatening or serious persistent illness of the custodial parent or caregiver and a threat to the health or safety that the custodial parent or caregiver places on the person with I/DD. The Department has solicited feedback from persons with I/DD, family members, guardians, advocates, and other stakeholders through contract work completed by the LNUSS group in May of 2017 and Department facilitated meetings in January 2019 regarding the current reserve capacity criteria and proposed 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:

25.5-1-301 through 25.5-1-303, C.R.S. (2018);
25.5-10-207.5(6)(b)

Initial Review
Proposed Effective Date

03/08/19
05/31/19

Final Adoption
Emergency Adoption

04/12/19

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 are on the waiting list for the Home and Community Based Services for Persons with Developmental Disabilities waiver (HCBS-DD) who are at risk of experiencing a crisis due to the advanced age, reduced capacity and illness of their caregivers will benefit from the proposed rule as they will have access to entrance to the waiver.

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

This rule will improve quality of life for individuals with intellectual and developmental disabilities, they will no longer have to go through a crisis to access HCBS-DD waiver services. It will decrease the cost of emergency services used by individuals without the access to the waiver such as emergency room visits and crisis centers. It will provide services to individuals at the time they most need them. It will prevent unintentional neglect and consequences to the health and welfare of individuals and the involvement of other state departments and local agencies such as Adult Protective Services (APS) or the Department of Corrections (DOC).

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

This rule will increase the expenses for the HCBS-DD waiver as more individuals have the ability to gain access to the waiver. Case Management Agencies (CMA) will be required to enroll and provide case management to a higher number of individuals which could result in additional costs for staff. With increased enrollment into the waiver there will be an increased need for providers.

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

The proposed rule if approved may increase HCBS-DD waiver expenditures but without it more costly services, Medicaid and otherwise, could be used on a more frequent basis to meet the individual's needs. Without action, individuals are more

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likely to access services that do not actually meet their needs, are more costly and on a more frequent basis.

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

The Department believes this is the most cost-effective way to move into compliance with statute.

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.

Alternative methods were considered however the statute requires the department to promulgate rules regarding the criteria for reserve capacity enrollments.

1 **8.500 HOME AND COMMUNITY BASED SERVICES FOR THE DEVELOPMENTALLY DISABLED**
2 **(HCB-DD) WAIVER**

3 **8.500.7 WAITING LIST PROTOCOL**

4 8.500.7.F Persons whose name is on the waiting list shall be considered for enrollment to the
5 HCBS-DD Waiver in order of placement date on the waiting list. Exceptions to this requirement
6 shall be limited to:

- 7 1. An emergency situation where the health and safety of the person or others is
8 endangered and the emergency cannot be resolved in another way. Emergencies are
9 defined by the following criteria:
- 10 a. Homeless: ~~the person does not have a place to live or is in imminent danger of~~
11 ~~losing the person's place of abode.~~ the person will imminently lose their housing
12 as evidenced by an eviction notice; or whose primary residence during the night
13 is a supervised public or private facility that provides temporary living
14 accommodations or any other unstable or non-permanent situation; or is
15 discharging from prison; or is in the hospital and does not have a stable housing
16 situation to go upon discharge.
- 17 b. Abusive or neglectful situation: the person is experiencing ongoing physical,
18 sexual or emotional abuse or neglect in the person's present living situation and
19 the person's health, safety or well-being is in serious jeopardy.
- 20 c. Danger to others: the person's behavior or psychiatric condition is such that
21 others in the home are at risk of being hurt by him/her. Sufficient supervision
22 cannot be provided by the current caretaker to ensure safety of the person in the
23 community.
- 24 d. Danger to self: a person's medical, psychiatric or behavioral challenges are such
25 that the person is seriously injuring/harming self or is in imminent danger of doing
26 so.
- 27 e. Loss or Incapacitation of Primary Caregiver: a person's primary caregiver is no
28 longer in the person's primary residence to provide care; or the primary caregiver
29 is experiencing a chronic, long-term, or life-threatening physical or psychiatric
30 condition that significantly limits the ability to provide care or is otherwise
31 incapacitated; or the primary caregiver is age 65 years of age or older and
32 continuing to provide care poses and imminent risk to the health and welfare of
33 the person or primary caregiver; or the primary caregiver poses a threat to the
34 health or safety of the person; or, regardless of age and based on the
35 recommendation of a professional, the primary caregiver cannot provide
36 sufficient supervision to ensure the person's health and welfare.

37
38 8. 500.7.I. A person shall accept or decline the offer of enrollment within thirty (30)
39 calendar days from the date the enrollment was offered.

40 1. Upon a written request of the person, family, or legal guardian, an additional
41 thirty (30) calendar days may be granted to accept or decline an enrollment offer.

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2. If a person does not respond to the offer of enrollment within the allotted time, the offer is considered declined.

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