

Title of Rule: Revision to the Medical Assistance Community Living Benefits Rule Concerning Consumer Directed Attendant Support Services, 10 CCR 2505-10 Section 8.510

Rule Number: MSB 14-07-15-A

Division / Contact / Phone: Long Term Services and Supports/Kelly Jepson/303-866-5365

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 current FMS contract will expire on December 31, 2014. This fact, in addition to the Affordable Care Act requirement to offer health insurance, prompted the Department to begin stakeholder engagement sessions on the FMS structure in Colorado. These sessions occurred over a four month process beginning in August 2013. Based on stakeholder feedback, the Department is amending the rules that reflect the choice of FMS vendors and the choice of FMS models. The two FMS models are allowed and defined by the Centers for Medicaid Services (CMS). The models allow clients who direct their own services to choose the level of employer responsibilities they want.

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:

25.5-1-301 through 25.5-1-303, C.R.S. (2013);

25.5-6-1101 et.Seq. CRS (2013)

Initial Review **10/10/2014**

Proposed Effective Date **12/30/2014**

Final Adoption

Emergency Adoption

11/14/2014



DOCUMENT #08

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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.

Clients enrolled in CDASS under an HCBS waiver and the existing FMS contractor will be affected by this rule because the State is moving from one FMS agency to a choice of three. The scope of the FMS contractor will no longer include the training and customer service functions, which will now be overseen by a separate Training and Operations contractor. CDASS clients will benefit from this rule change as it provides a choice of vendors as well as a choice of FMS models. CDASS clients and case managers will now receive CDASS training from the Training and Operations contractor.

Attendants who provide CDASS might be impacted by this change if the client for whom they work opts for the Agency with Choice (AwC) model. Under the AwC model, the FMS may be responsible to offer health insurance to attendants if it meets the criteria established under the Affordable Care Act (ACA).

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 revision enables the Department to offer the choice of employer model, which allows CDASS clients to choose how much employer responsibility they have. The client will also have a choice in FMS agency. The proposed rule has no direct quantitative impact on CDASS clients. Qualitative impacts include the addition of FMS agencies, a Training and Operations agency, and employer models for the client to choose from.

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.

These rules do not directly impact the cost to the Department or any other agency.

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

This rule revision enables the Department to implement changes recommended by stakeholders. Inaction or failure to implement these rules will prohibit the Department from offering multiple FMS agencies and models to CDASS clients.

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

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There are no less costly methods to the State aside from implementing this rule revision.

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.

The additional FMS agencies provides more choice to clients receiving CDASS under an HCBS waiver. Stakeholders recommended the Department to implement these changes. This rule revision enables the Department to achieve those objectives.

1 **8.510 CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES**

2 **8.510.1 DEFINITIONS**

3 Adaptive Equipment means a device(s) that is used to assist with completing activities of daily
4 living.

5 Agency with Choice (AwC) means an ~~Financial Management Services~~ (FMS) model where the
6 FMS and the client/authorized representative are co-employers of CDASS Attendants. Under the
7 AwC model, the FMS is the employer.

8 Allocation means the funds determined by the case manager and made available by the
9 Department to clients receiving Consumer Directed Attendant Support Services (CDASS) and
10 administered by the ~~Fiscal Management Services~~ Financial Management Services (FMS)
11 authorized for attendant support services and administrative fees paid to the FMS.

12 Attendant means the individual who meets qualifications in § 8.510.8 who provides CDASS as
13 determined by § 8.510.3 and is hired by the client and/ or by through the a contracted FMS
14 organization vendor.

15 Attendant Support Management Plan (ASMP) means the documented plan for clients to manage
16 their care as determined by § 8.510.4 which is reviewed and approved by the Case Manager.

17 Authorized Representative (AR) means an individual designated by the client or the legal
18 guardian, if appropriate, who has the judgment and ability to direct CDASS on a client's behalf
19 and meets the qualifications as defined at § 8.510.6 and § 8.510.7.

20 Benefits Utilization System (BUS) means the web based data system maintained by the
21 Department for recording case management activities associated with Long Term Services and
22 SupportsCare (LTSSC) ~~services.~~

23 Case Management Agency (CMA) means a Department approved agency within a designated
24 service area where an applicant or client can obtain Long Term Care Services and Supports case
25 management services.

26 Case Manager means an individual who meets the qualifications to perform case management
27 activities by contract with the Department.

28 Consumer Directed Attendant Support Services (CDASS) means the service delivery option for
29 services that assist an individual in accomplishing activities of daily living when included as a
30 waiver benefit that may include health maintenance, personal care, and homemaker activities.

31 CDASS Training means the required training, including a final, comprehensive assessment,
32 provided by the Department or its designee to a client/AR who is interested in directing CDASS.

- 1 Continued Stay Review (CSR) means a periodic face to face review of a client's condition and
2 service needs by a Case Manager to determine a client's continued eligibility for ~~LTC services~~
3 Long Term Services and Supports in the client's residence.
- 4 Cost Containment means the cost of providing care in the community is less than or equal to the
5 cost of providing care in an institutional setting based on the average aggregate amount. The cost
6 of providing care in the community shall include the cost of providing Home and Community
7 Based Services.
- 8 Department means the Department of Health Care Policy and Financing.
- 9 Eligibility means a client qualifies for Medicaid based on the applicable eligibility category and the
10 client's individual financial circumstances, including, but not limited to, income and resources.
- 11 ~~Fiscal/Financial~~ Management Services ~~organization~~ (FMS) means ~~the an~~ entity contracted with
12 the Department to complete employment related functions for CDASS attendants and track and
13 report on individual client allocations for CDASS. who may serve as the employer of record for
14 Attendants, to provide personnel management services, fiscal management services, and skills
15 training to a client/AR receiving CDASS.
- 16 Fiscal/Employer Agency (F/EA) is an FMS model where the FMS is an agent of the client as the
17 employer.
- 18 Functional Eligibility means an applicant or client meets the criteria for ~~LTC services~~Long Term
19 Services and Supports as determined by the Department's prescribed instrument as outlined
20 defined in § 8.401.
- 21 Functional Needs Assessment means a component of the Assessment process which includes a
22 comprehensive evaluation using the ULTC Instrument to determine if the client meets the
23 appropriate Level of Care (LOC).
- 24 Home and Community Based Services (HCBS) means a variety of supportive services delivered
25 in conjunction with Colorado Medicaid Waivers to clients in community settings. These services
26 are designed to help older persons and persons with disabilities remain living at home.
- 27 Inappropriate Behavior means offensive behavior which includes: documented verbal, sexual
28 and/or physical abuse. Verbal abuse may include threats, insults or offensive language over a
29 period of time.
- 30 Licensed Medical Professional means a person who has completed a 2-year or longer program
31 leading to an academic degree or certificate in a medically related profession. This is limited to
32 those who possess the following medical licenses: physician, physician assistant and nurse
33 governed by the Colorado Medical License Act, Colorado Medical Practice Act and the Colorado
34 Nurse Practice Act.
- 35 ~~Long Term Care (LTC) services~~Long Term Services and Supports (LTSS) means Nursing
36 Facilities, Intermediate Care Facilities for the ~~Mentally Retarded~~Intellectually/Developmentally
37 Disabled (ICF/IDDMR), Home and Community Based Services (HCBS), Long Term Home Health

1 or the Program of All-inclusive Care for the Elderly (PACE), Swing Bed and Hospital Back Up
2 Program (HBU).

3 Long Term Care Services and Supports Certification Period means the designated period of time
4 in which a client is functionally eligible to receive ~~LTC services~~ Long Term Services and Supports
5 not to exceed one year.

6 Prior Authorization Request (PAR) means the Department prescribed form that assures the
7 provider that the service is medically necessary and a Colorado Medical Assistance Program
8 benefit.

9 Notification means the routine methods in which the Department or its designee conveys
10 information about CDASS. Including but not limited to the CDASS web site, client statements,
11 Case Manager contact, or FMS contact.

12 Reassessment means a review of the Assessment, to determine and document a change in the
13 client's condition and/or client's service needs.

14 Stable Health means a medically predictable progression or variation of disability or illness.

15 Training and Operations Vendor means the organization contracted by the Department to provide
16 training to CDASS Clients/authorized representatives, provide training to case managers on
17 participant direction, and provide customer service related to participant direction.

18 **8.510.2 ELIGIBILITY**

19 8.510.2.A. To be eligible for CDASS, an individual shall meet all of the following:

- 20 1. Choose the CDASS service delivery option
- 21 2. Meet medical assistance Financial Eligibility requirements
- 22 3. Meet Long Term Services and Supports~~Care~~ Functional Eligibility requirements
- 23 4. Be eligible for an HCBS Waiver with the CDASS option
- 24 5. Demonstrate a current need for Attendant support
- 25 6. Document a pattern of stable health that necessitates a predictable pattern of
26 Attendant support and appropriateness of CDASS services
- 27 7. Provide a statement from the primary care physician attesting to the client's
28 ability to direct his or her care with sound judgment or a required AR with the
29 ability to direct the care on the Client's behalf
- 30 8. Complete all aspects of the ASMP and training and demonstrate the ability to
31 direct care or have care directed by an AR

1 **8.510.3 CDASS SERVICES**

2 8.510.3.A Covered services shall be for the benefit of only the Client and not for the benefit
3 of other persons living in the home.

4 8.510.3.B Services include:

5 1. Homemaker. General household activities provided by an Attendant in a client's
6 home to maintain a healthy and safe environment for the client. Homemaker
7 activities shall be applied only to the permanent living space of the client and
8 multiple attendants may not be reimbursed for duplicating household tasks.
9 Tasks may include the following activities or teaching the following activities:

10 a. Routine light housekeeping such as: dusting, vacuuming, mopping, and
11 cleaning bathroom and kitchen areas

12 b. Meal preparation

13 c. Dishwashing

14 d. Bed making

15 e. Laundry

16 f. Shopping for necessary items to meet basic household needs

17 2. Personal care. Services furnished to an eligible client in the community or in the
18 client's home to meet the client's physical, maintenance, and supportive needs.
19 Including:

20 a. Eating/feeding which includes assistance with eating by mouth using
21 common eating utensils such as forks, knives, and straws

22 b. Respiratory assistance with cleaning or changing oxygen equipment
23 tubes, filling the distilled water reservoir, and moving the cannula or
24 mask from the client's face

25 c. Skin care preventative in nature when skin is unbroken; including the
26 application of non-medicated/non-prescription lotions and/or sprays and
27 solutions, rubbing of reddened areas, and routine foot checks for people
28 with diabetes

29 d. Bladder/Bowel Care:

30 i) Assisting client to and from the bathroom

31 ii) Assistance with bed pans, urinals, and commodes

- 1 iii) Changing of incontinence clothing or pads
- 2 iv) Emptying Foley or suprapubic catheter bags only if there is no
- 3 disruption of the closed system
- 4 v) Emptying ostomy bags
- 5 e. Personal hygiene:
- 6 i) Bathing including washing, shampooing, and shaving
- 7 ii) Grooming
- 8 iii) Combing and styling of hair
- 9 iv) Trimming, cutting, and soaking of nails
- 10 v) Basic oral hygiene and denture care
- 11 f. Dressing assistance with ordinary clothing and the application of non-
- 12 prescription support stockings and application of orthopedic devices such
- 13 as splints and braces or artificial limbs
- 14 g. Transferring a client when the client has sufficient balance and strength
- 15 to assist with and can direct the transfer
- 16 h. Assistance with mobility
- 17 i. Positioning when the client is able to verbally or non-verbally identify
- 18 when the position needs to be changed including simple alignment in a
- 19 bed, wheelchair or other furniture
- 20 j. Assistance with self administered medications when the medications
- 21 have been preselected by the client, a family member, a nurse or a
- 22 pharmacist and are stored in containers other than the prescription
- 23 bottles, such as medication minders and medication reminding:
- 24 i) Medication minders must be clearly marked as to the day and
- 25 time of dosage and must be kept in a way as to prevent
- 26 tampering
- 27 ii) Medication reminding includes only inquiries as to whether
- 28 medications were taken, verbal prompting to take medications,
- 29 handing the appropriately marked medication minder container
- 30 to the client and opening the appropriately marked medication
- 31 minder if the client is unable
- 32 k. Cleaning and basic maintenance of durable medical equipment

- 1 I. Protective oversight when the client requires supervision to prevent or
2 mitigate disability related behaviors that may result in imminent harm to
3 people or property
- 4 m. Accompanying includes going with the client, as necessary on the care
5 plan, to medical appointments, and errands such as banking and
6 household shopping. Accompanying the client to provide one or more
7 personal care services as needed during the trip. Companionship is not a
8 benefit of CDASS
- 9 3. Health Maintenance Activities. Routine and repetitive health related tasks
10 furnished to an eligible client in the community or in the client's home, which are
11 necessary for health and normal bodily functioning that a person with a disability
12 is unable to physically carry out. Services may include:
- 13 a. Skin care provided when the skin is broken or a chronic skin condition is
14 active and could potentially cause infection Skin care may include:
15 wound care, dressing changes, application of prescription medicine, and
16 foot care for people with diabetes when prescribed by a licensed medical
17 professional
- 18 b. Nail care in the presence of medical conditions that may involve
19 peripheral circulatory problems or loss of sensation
- 20 c. Mouth care performed when:
- 21 i) there is injury or disease of the face, mouth, head or neck
22 ii) in the presence of communicable disease
23 iii) the client is unconscious
24 iv) oral suctioning is required
- 25 d. Dressing including the application of anti-embolic or other prescription
26 pressure stockings and orthopedic devices such as splints, braces, or
27 artificial limbs if considerable manipulation is necessary
- 28 e. Feeding:
- 29 i) When oral suctioning is needed on a stand-by or other basis
30 ii) When there is high risk of choking that could result in the need
31 for emergency measures such as CPR or the Heimlich
32 maneuver as demonstrated by a swallow study
33 iii) Syringe feeding

- 1 iv) Feeding using apparatus
- 2 f. Exercise prescribed by a licensed medical professional including passive
- 3 range of motion
- 4 g. Transferring a client when he/she is unable to assist or the use of a lift
- 5 such as a Hoyer is needed
- 6 h. Bowel care provided to a client including digital stimulation, enemas,
- 7 care of ostomies, and insertion of a suppository if the client is unable to
- 8 assist
- 9 i. Bladder care when it involves disruption of the closed system for a Foley
- 10 or suprapubic catheter, such as changing from a leg bag to a night bag
- 11 and care of external catheters
- 12 j. Medical management required by a medical professional to monitor:
- 13 blood pressures, pulses, respiratory assessment, blood sugars, oxygen
- 14 saturation, pain management, intravenous, or intramuscular injections
- 15 k. Respiratory care:
 - 16 i) Postural drainage
 - 17 ii) Cupping
 - 18 iii) Adjusting oxygen flow within established parameters
 - 19 iv) Suctioning of mouth and nose
 - 20 v) Nebulizers
 - 21 vi) Ventilator and tracheostomy care
 - 22 vii) Prescribed respiratory equipment

23 **8.510.4 ATTENDANT SUPPORT MANAGEMENT PLAN**

24 8.510.4.A The client/AR shall develop a written ASMP which shall be reviewed by the **FMS**
25 **Training and Operations Vendor** and approved by the Case Manager. CDASS shall not
26 begin until the Case Manager approves the plan and provides a start date **to the FMS**.
27 The ASMP is required by the FMS ~~upon~~ **following** initial training and shall be modified
28 when there is a change in the client's needs. The plan shall describe the individual's:

- 29 1. Current health status
- 30 2. Needs and requirements for CDASS

- 1 3. Plans for securing CDASS
- 2 4. Plans for handling emergencies
- 3 5. Assurances and plans regarding direction of CDASS Services, as described at
- 4 10 CCR 2505 -10, § 8.510.3 and § 8.510.6 if applicable
- 5 6. Plans for management of the budget within the client's Individual Allocation
- 6 7. Designation of an Authorized Representative
- 7 8. Designation of regular and back-up employees approved for hire

8 8.510.4.B. If ASMP is disapproved by the Case Manager, the client has the right to review
9 that disapproval. The client shall submit a written request to the CMA stating the reason
10 for the review and justification of the proposed ASMP. The client's most recently
11 approved ASMP shall remain in effect while the review is in process.

12 **8.510.5 TRAINING ACTIVITIES**

13 8.510.5.A. When necessary to obtain the goals of the ASMP, the client/AR shall verify that
14 each attendant has been or will be trained in all necessary health maintenance activities
15 prior to performance by the attendant.

16 8.510.5.B The verification requirement of 8.510.5.A above will be on a form provided by the
17 FMS and returned to the FMS with the client/AR completed employment packet.

18 **8.510.6 CLIENT/AR RESPONSIBILITES**

19 8.510.6.A. Client/AR responsibilities for CDASS Management:

- 20 1. Attend ~~FMS~~ training provided by the Training and Operations Vendor; clients who
21 cannot attend training shall designate an AR
- 22 2. Develop an ASMP
- 23 3. Determine wages for each Attendant not to exceed the rate established by the
24 Department. Wages shall be established in accordance with Colorado
25 Department of Labor and Employment standards including, but not limited to,
26 minimum wage and overtime requirements.
- 27 4. Determine the required credentials for Attendants
- 28 ~~5. Establish hiring agreements, as required by the FMS with each Attendant,~~
29 ~~outlining wages, services to be provided (limited to Personal Care, Homemaker~~
30 ~~or Health Maintenance Activities), schedules and working conditions~~
- 31 ~~6. Ensure FMS receives hiring agreements prior to Attendants providing services~~

- 1 57. Compleing previous employment reference checks on Attendants
- 2 68. Follow all relevant laws and regulations applicable to client's supervision of
- 3 Attendants
- 4 79. Explain the role of the FMS; to the Attendant
- 5 840. Budget for Attendant care within the established monthly and CDASS
- 6 Certification Period Allocation
- 7 944. Review all Attendant timesheets and statements for accuracy of time worked,
- 8 completeness, and client/AR and Attendant signatures. Timesheets shall reflect
- 9 actual time spent providing CDASS services
- 10 102. Review and submit approved Attendant timesheets to the FMS by the
- 11 established timelines for Attendant reimbursement
- 12 113. Authorize the FMS to make any changes in the Attendant wages
- 13 12. Understand that misrepresentation or false statements may result in
- 14 administrative penalties, criminal prosecution, and/or termination from CDASS.
- 15 Client/AR is responsible for assuring timesheets submitted are not altered in any
- 16 way and that any misrepresentations are immediately reported to the FMS
- 17 135. Completing and managing all paperwork and maintaining employment records
- 18 14. Select an FMS vendor upon enrollment into CDASS.
- 19 8.510.6.B. Client/AR responsibilities for CDASS Services when using the F/EA FMS model:
- 20 1. Recruit, hire, fire and manage Attendants
- 21 2. Train Attendants to meet client needs
- 22 3. Terminate Attendants who are not meeting client needs
- 23 4. Operate as the sole employer of the attendant
- 24 5. Complete necessary employment related functions through the FMS agent,
- 25 including hiring and termination of Attendants and employer related paperwork
- 26 necessary to obtain an employer tax ID
- 27 8.510.6.C Client/AR responsibilities for CDASS when using the AwC FMS model
- 28 1. Select and discharge Attendants
- 29 2. Serve as the manager for CDASS Attendants

1 3. Establish hiring agreements, as required by the FMS with each Attendant,
2 outlining wages, services to be provided (limited to Personal Care, Homemaker
3 or Health Maintenance Activities), schedules and working conditions

4 4. Ensure FMS receives hiring agreements prior to Attendants providing services

5 8.510.6.~~C-D~~. Client/AR responsibilities for Verification:

6 1. Sign and return a responsibilities acknowledgement form for activities listed in
7 8.510.6 ~~and~~ to the Case Manager.

8 8.510.6.~~E-D~~. Clients receiving CDASS services have the following Rights:

9 1. Right to receive instruction on managing CDASS.

10 2. Right to receive program materials in accessible format.

11 3. Right to receive notification of changes to CDASS.

12 4. Right to participate in Department sponsored opportunities for input.

13 5. CDASS clients have the right to transition back to Personal Care, Homemaker,
14 and Home Health Aide and Nursing services provided by an agency at any time.
15 A client who wishes to transition back to an agency-provided services shall
16 contact the Case Manager. The Case Manager shall coordinate arrangements
17 for the services.

18 6. A client/AR may request a re-assessment, as described at § 8.390.1 (N), if his or
19 her level of service needs have changed.

20 7. A client/AR may revise the ASMP at any time with CM approval. CM shall notify
21 FMS of changes.

22 **8.510.7 AUTHORIZED REPRESENTATIVES**

23 8.510.7.A. CDASS clients who require an AR may not serve as an AR for another CDASS
24 client.

25 8.510.7.B. Authorized Representatives shall not receive reimbursement for AR services and
26 shall not be reimbursed for CDASS services as an Attendant for the client they represent.

27 **8.510.8 ATTENDANTS**

28 8.510.8.A. Attendants shall be at least 18 years of age and demonstrate competency in
29 caring for the client to the satisfaction of the client/AR.

30 8.510.8.B. Attendants may not be reimbursed for more than 24 hours of CDASS service in
31 one day for one or more clients collectively.

1 8.510.8.C. Authorized Representatives shall not be employed as an Attendant for the client.

2 8.510.8.D. Attendants must be able to perform the tasks on the Service Plan they are being
3 reimbursed for and the client must have adequate Attendants to assure compliance with
4 all tasks on the service plan.

5 8.510.8.E. Attendants shall not represent themselves to the public as a licensed nurse, a
6 certified nurse's aide, a licensed practical or professional nurse, a registered nurse or a
7 registered professional nurse.

8 8.510.8.F. Attendants shall not have had his or her license as a nurse or certification as a
9 nurse aide suspended or revoked or his application for such license or certification
10 denied.

11 ~~8.510.8.G. The FMS shall be the employer of record for all Attendants under the AwC~~
12 ~~model. The FMS shall comply with all laws including those regarding health insurance,~~
13 ~~worker's compensation insurance, unemployment compensation insurance, withholding~~
14 ~~of all federal and state taxes, compliance with federal and state laws regarding overtime~~
15 ~~pay and minimum wage requirements. The FMS shall comply with Department~~
16 ~~regulations at 10 CCR 2505 and the contract with the Department.~~

17 8.510.8.HG. Attendants shall receive an hourly wage based on the rate negotiated between
18 the Attendant and the client/AR not to exceed the amount established by the Department.
19 The FMS shall make all payments from the client's Individual Allocation under the
20 direction of the client/AR within the limits established by the Department.

21 8.510.8.IH. Attendants may not attend FMS training provided by the Training and Operations
22 Vendor training during instruction.

23 **8.510.85 FINANCIAL MANAGEMENT SERVICES**

24 8.510.85. A The FMS vendor shall be responsible for the following tasks without regard to the
25 FMS model selected by the client/AR

26 1. Collect and process timesheets submitted by attendants.

27 2. Conduct payroll functions including withholding employment related taxes such
28 as worker's compensation insurance, unemployment compensation insurance,
29 withholding of all federal and state taxes, compliance with federal and state laws
30 regarding overtime pay and minimum wage requirements.

31 3. Distribute paychecks in accordance with timelines established by the Colorado
32 Department of Labor and Employment.

33 4. Submit authorized claims for CDASS provided to eligible client.

34 5. Verify Attendants' citizenship status and maintain copies of the I-9
35 documents.

1 6. Track and report utilization of client allocations.

2 7. Comply with Department regulations at 10 CCR 2505 and the contract with the
3 Department.

4 8.510.85.B The FMS vendor operating under the AwC model shall be responsible for the
5 following in addition to the requirements set forth at 8.510.9.A:

6 1. Operate as the primary employer of Attendants

7 2. Ensuring execution of the hiring agreement between the FMS, the client, and
8 the attendant

9 3. Comply with all requirements set forth by the Affordable Care Act, including,
10 but not limited to the provision of health insurance.

11 8.510.85.C. The FMS vendor operating under the F/EA model shall be responsible for
12 obtaining designation as a Fiscal/Employer Agent per Section 3504 of the IRS
13 Code in addition to the requirements set forth at 8.510.9.A.

14 8.510.86 SELECTION OF FMS VENDORS

15 8.510.86.A The cClient/AR shall select an FMS vendor at the time of enrollment into CDASS
16 from the up to three vendors contracted with the Department.

17 8.510.86.B The cClient/AR shall remain with the selected FMS vendor until the selection of
18 FMS is changed during the yearly designated open enrollment period.

19 8.510.86.C The cClient/AR shall select either the AwC or F/EA FMS model at the time of
20 enrollment into CDASS. The cClient shall provide the FMS and attendants at
21 least thirty days' notice of changing FMS models.

22 **8.510.9 START OF SERVICES**

23 8.510.9.A. The start date shall not occur until all of the requirements defined at 10 C.C.R.
24 2505-10, § 8.510.2, 8.510.4, 8.510.5, 8.510.6 and 8.510.8 have been met.

25 8.510.9.B. The Case Manager shall approve the ASMP, establish a certification period,
26 submit a PAR and receive a PAR approval before a client is given the start date and can
27 begin CDASS.

28 8.510.9.C. The FMS shall process the Attendant's employment packet within the
29 Department's prescribed timeframe and ensure the client has a minimum of two
30 approved Attendants prior to starting CDASS.

31 8.510.9.D. The FMS will not reimburse Attendants for services provided prior to the CDASS
32 start date. Attendants are not approved until the FMS provides the client/AR with an
33 employee number and confirms employment status.

1 8.510.9.E. If a client is transitioning from a Hospital, Nursing Facility, or HCBS agency
2 services the CM shall coordinate with the Discharge Coordinator to ensure the discharge
3 date and CDASS start date correspond.

4 **8.510.10 SERVICE SUBSTITUTION**

5 8.510.10.A. Once a start date has been established for CDASS, the Case Manager shall
6 establish an end date and disenroll the individual from any other Medicaid-funded
7 Attendant support including home health effective as of the start date of CDASS.

8 8.510.10.B. Case Managers shall not authorize, on the PAR, concurrent payments for
9 CDASS and other waiver service delivery options for Personal Care services,
10 Homemaker services, and Health Maintenance Activities for the same individual.

11 8.510.10.C. Clients may receive up to sixty days of Medicaid acute home health agency
12 based services directly following acute episodes as defined by 8.523.11. Client
13 allocations shall not be changed for sixty days in response to an acute episode unless
14 acute home health services are unavailable. If acute home health is unavailable, a
15 client's allocation may be temporarily adjusted to meet a client's need.

16 8.510.10.D. Clients may receive Hospice services in conjunction with CDASS services.
17 CDASS service plans shall be modified to ensure no duplication of services.

18 **8.510.11 ENDING CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES**

19 8.510.11.A. If an individual chooses to use an alternate care option, an institutional setting, or
20 is terminated involuntarily, a client will be terminated from CDASS when the Case
21 Manager has secured an adequate alternative to CDASS in the community.

22 8.510.11.B. Prior to a client being terminated for reasons other than those listed in section
23 8.510.13, the following steps may be taken:

- 24 1. Mandatory re-training conducted by the [contracted Training and Operations](#)
25 [Vendor-FMS](#)
- 26 2. Required designation of an AR if one is not in place, or mandatory re-designation
27 of an AR if one has already been assigned
- 28 3. Discontinuation according to the following:
 - 29 i) The notice shall provide the client/AR with the reasons for termination
30 and with information about the client's rights to fair hearing and appeal
31 procedures, in accordance with 10 C.C.R. 2505-10, § 8.057. Once notice
32 has been given for termination, the client/AR shall contact the Case
33 Manager for assistance in obtaining other home care services. The Case
34 Manager has thirty (30) calendar days prior to the date of termination to
35 discontinue CDASS services and begin alternate care services.
36 Exceptions may be made to the thirty (30) day advance notice

1 requirement when the Department has documented that there is danger
2 to the client or to the Attendant(s). The Case Manager shall notify the
3 FMS of the date on which the client is being terminated from CDASS.

4 **8.510.12 TERMINATION**

5 8.510.12.A. Clients may be terminated for the following reasons:

- 6 1. The client/AR fails to comply with CDASS program requirements
- 7 2. The client/AR demonstrates an inability to manage Attendant support
- 8 3. A client/AR no longer meets program criteria due to deterioration in physical or
9 cognitive health
- 10 4. The client/AR spends the monthly Allocation in a manner indicating premature
11 depletion of funds
- 12 5. The client's medical condition causes an unsafe situation for the client, as
13 determined by the treating physician
- 14 6. The client provides false information or false records as determined by the
15 Department

16 8.510.12.B Clients who are terminated according to § 8.510.12 may be re-enrolled for future
17 CDASS service delivery

18 **8.510.13 INVOLUNTARY TERMINATION**

19 8.510.13.A. Clients may be involuntarily terminated for the following reasons:

- 20 1. A client/AR no longer meets program criteria due to deterioration in physical or
21 cognitive health AND refuses to designate an AR to direct services
- 22 2. The client/AR demonstrates a consistent pattern of overspending their monthly
23 Allocation leading to the premature depletion of funds AND the Department has
24 determined that adequate attempts to assist the client/AR to resolve the
25 overspending have failed
- 26 3. The client/AR exhibits Inappropriate Behavior toward Attendants, Case
27 Managers, [the Training and Operations Vendor](#) or the FMS, and the Department
28 has determined that the [FMS-Training and Operations Vendor](#) has made
29 adequate attempts to assist the client/AR to resolve the Inappropriate Behavior,
30 and those attempts have failed
- 31 4. Documented misuse of the monthly Allocation by client/AR has occurred

1 5. Intentional submission of fraudulent CDASS documents to Case Managers, [the](#)
2 [Training and Operations Vendor](#), the Department or the FMS

3 6. Instances of convicted fraud and/or abuse

4 8.510.13.B. Termination may be initiated immediately for clients being involuntarily
5 terminated

6 8.510.13.C. Clients who are involuntarily terminated according to § 8.510.13 may not be re-
7 enrolled in CDASS as a service delivery option.

8 **8.510.14 CASE MANAGEMENT FUNCTIONS**

9 8.510.14.A. The Case Manager shall review and approve the ASMP completed by the
10 client/AR. The Case Manager shall notify the client/AR of the approval and establish a
11 certification period and Allocation.

12 8.510.14.B. If the Case Manager determines that the ASMP is inadequate to meet the client's
13 CDASS needs, the Case Manager shall assist the client/AR with further development of
14 the ASMP.

15 8.510.14.C. The Case Manager shall calculate the Individual Allocation for each client who
16 chooses CDASS as follows:

17 1. Calculate the number of Personal Care, Homemaker, and Health Maintenance
18 Activities hours needed on a monthly basis using the Department prescribed
19 method. The needs determined for the Allocation should reflect the needs in the
20 ULTC assessment tool and the service plan. The Case Manager shall use the
21 Departments established rate for Personal Care, Homemaker, and Health
22 Maintenance Activities to determine the client's Allocation.

23 2. The Allocation should be determined using the Department prescribed method at
24 the initial enrollment and at CSR, and should always match the client's need for
25 services.

26 8.510.14.D. Prior to ~~FMS~~ training or when an allocation changes, the Case Manager shall
27 provide written notification of the Individual Allocation to each client.

28 8.510.14.E. A client/AR who believes he or she needs a change in Attendant support, may
29 request the Case Manager to perform a reassessment. If the reassessment indicates that
30 a change in Attendant support is justified, the client/AR shall amend ASMP and the Case
31 Manager shall complete a PAR revision indicating the increase and submit it to the
32 Department's fiscal agent. The Case Manager shall provide notice of the change to
33 client/AR and make changes in the BUS.

34 8.510.14.F. In approving an increase in the individual Allocation, the Case Manager shall
35 consider all of the following:

- 1 1. Any deterioration in the client's functioning or change in the natural support
2 condition
- 3 2. The appropriateness of Attendant wages as determined by Department's
4 established rate for equivalent services
- 5 3. The appropriate use and application of funds to CDASS services
- 6 8.510.14.G. In reducing an Individual Allocation, the Case Manager shall consider:
 - 7 1. Improvement of functional condition or changes in the available natural supports
 - 8 2. Inaccuracies or misrepresentation in previously reported condition or need for
9 service
 - 10 3. The appropriate use and application of funds to CDASS services
- 11 8.510.14.H. Case Managers shall notify the state fiscal agent to cease payments for all
12 existing Medicaid-funded Personal Care, Homemaker, Health Maintenance Activities
13 and/or Long Term Home Health as defined under the Home Health Program at 10 C.C.R.
14 2505-10, § 8.520 et seq. as of the client's CDASS start date.
- 15 8.510.14.I. For effective coordination, monitoring and evaluation of clients receiving CDASS,
16 the Case Manager shall:
 - 17 1. Contact the CDASS client/AR once a month during the first three months to
18 assess their CDASS management, their satisfaction with care providers and the
19 quality of services received. Case Managers may refer clients to the FMS for
20 assistance with payroll and budgeting and to the Training and Operations Vendor
21 for training needs and supports
 - 22 2. Contact the client quarterly, after the first three months to assess their
23 implementation of service plans, CDASS management issues, and quality of
24 care, CDASS expenditures and general satisfaction
 - 25 3. Contact the client/AR when a change in AR occurs and contact the client/AR
26 once a month for three months after the change takes place
 - 27 4. Review monthly FMS reports to monitor client spending patterns and service
28 utilization to ensure appropriate budgeting and follow up with the client/AR when
29 discrepancies occur
 - 30 5. Utilize Department overspending protocol when needed to assist clients
- 31 8.510.14.J. Reassessment: For clients receiving CDASS, the Case Manager shall conduct
32 an interview with each client/AR every six months and at least every 12 months, the
33 Interview shall be conducted face to face. The interview shall include review of the ASMP
34 and documentation from the physician stating the client/AR's ability to direct care.

1 **8.510.15 ATTENDANT REIMBURSEMENT**

2 8.510.15.A. Attendants shall receive an hourly wage not to exceed the rate established by the
3 Department and negotiated between the Attendant and the client/AR hiring the Attendant.
4 The FMS shall make all payments from the client's Individual Allocation under the
5 direction of the client/AR. Attendant wages shall be commensurate with the level of skill
6 required for the task and wages shall be justified on the ASMP.

7 8.510.15.B. Once the client's yearly Allocation is used, further payment will not be made by
8 the FMS, even if timesheets are submitted. Reimbursement to Attendants for services
9 provided when a client is no longer eligible for CDASS or when the client's Allocation has
10 been depleted are the responsibility of the client.

11 8.510.15.C. Allocations shall not exceed the monthly cost containment cap. The Department
12 may approve an over cost containment Allocation if it meets prescribed Department
13 criteria.

14 **8.510.16 REIMBURSEMENT TO FAMILY MEMBERS**

15 8.510.16.A. Family members/legal guardians may be employed by the client or FMS to
16 provide CDASS, subject to the conditions below. For the purposes of this section, family
17 shall be defined as all persons related to the client by virtue of blood, marriage, adoption,
18 or common law.

19 8.510.16.B. The family member and/or legal guardian shall be employed by the client or
20 FMS and be supervised by the client/AR if providing CDASS.

21 8.510.16.C. The family member and/ or legal guardian being reimbursed as a Personal Care,
22 Homemaker, and/or Health Maintenance Activities Attendant shall be reimbursed at an
23 hourly rate ~~by the FMS which employs the family member and/or legal guardian,~~ with the
24 following restrictions:

- 25 1. A family member and/or legal guardian shall not be reimbursed for more than
26 forty (40) hours of CDASS in a seven day period from 12:00am on Sunday to
27 11:59pm on Saturday.
- 28 2. Family member wages shall be commensurate with the level of skill required for
29 the task and should not deviate greatly from that of a non-family member
30 Attendant unless there is evidence of a higher level of skill.
- 31 3. A member of the client's household may only be paid to furnish extraordinary
32 care as determined by the Case Manager. Extraordinary care is determined by
33 assessing whether the care to be provided exceeds the range of care that a
34 family member would ordinarily perform in the household on behalf of a person
35 without a disability or chronic illness of the same age, and which are necessary
36 to assure the health and welfare of the client and avoid institutionalization.
37 Extraordinary care shall be documented on the service plan.

1 ~~8.510.16.D. — A client/AR must provide a planned work schedule to the client and/ or FMS a~~
2 ~~minimum of two weeks in advance of beginning CDASS, and variations to the schedule~~
3 ~~shall be supplied to the client and/ or FMS when billing as submitted on the FMS~~
4 ~~timesheets.~~

5 8.510.16.DE. A client/AR who choose a family member as a care provider, shall document the
6 choice on the Attendant Support Services management plan.

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