

Title of Rule: Revision to the Medical Assistance Home and Community Based Services for Elderly, Blind and Disabled Rule Concerning Respite Care, Section 8.492

Rule Number: MSB 15-01-26-A

Division / Contact / Phone: Long Term Services and Supports / Colin Laughlin / 866-2549

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).

Revision of Respite rule to allow for the targeted rate increase to be implemented and remove unintended limitations on services for the In-Home Respite service.

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. (2014);

Initial Review **04/10/2015**

Proposed Effective Date **07/01/2015**

Final Adoption

Emergency Adoption

05/08/2015

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DOCUMENT #09

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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 in the EBD, SCI and BI waiver will all benefit from the proposed rule change by removing unintended limitations to the service and that will accommodate the targeted rate increase. The cost of the proposed rule change is not projected to have any impact and will be covered by the current appropriation for HCBS-EBD, SCI and BI waiver services.

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

There is not a quantitative nor a qualitative impact on clients.

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 be no additional cost to the Department outside of the appropriation of waived services allowed by the targeted rate increase.

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

In order to comply with the legislative appropriation of funds for the targeted rate increase, it will be necessary to change the rule in order to accommodate said rate increase.

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

There are no less costly or less intrusive methods for achieving the purpose of the proposed 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.

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There are no alternative methods for achieving the purpose of the proposed rule and of simplifying waived services.

1 **8.492 RESPITE CARE**

2 **8.492.10 DEFINITIONS**

3 .11 Respite care means services provided to an eligible client on a short-term basis because
4 of the absence or need for relief of those persons normally providing the care.

5 .12 Respite care provider means a Class I nursing facility, an alternative care facility, or
6 respite care provided in a residence by an employee of a certified personal care agency
7 which meets the certification standards for respite care specified below.

8 **8.492.20 INCLUSIONS**

9 .21 A nursing facility shall provide all the skilled and maintenance services ordinarily provided
10 by a nursing facility which are required by the individual respite client, as ordered by the
11 physician.

12 .22 An alternative care facility shall provide all the alternative care facility services as listed at
13 Section 8.495, ALTERNATIVE CARE FACILITIES, which are required by the individual
14 respite client.

15 **8.492.30 RESTRICTIONS**

16 .31 An individual client shall be authorized for no more than thirty (30) days of respite care in
17 each ~~calendar year~~ certification period unless otherwise authorized by the Department.

18 .32 Alternative care facilities shall not admit individuals for respite care who are not
19 appropriate for alternative care facility placement, as specified at Section 8.495,
20 ALTERNATIVE CARE FACILITIES.

21 .33 Only those portions of the facility that are Medicaid certified for nursing facility or
22 alternative care facility services may be utilized for respite clients.

23 **8.492.40 CERTIFICATION STANDARDS AND PROCEDURES**

24 .41 Respite care standards and procedures for nursing facilities are as follows:

25 A. The nursing facility must have a valid contract with the State as a Medicaid
26 certified nursing facility. Such contract shall constitute automatic certification for
27 respite care. A respite care provider billing number shall automatically be issued
28 to all certified nursing facilities.

29 B. The nursing facility does not have to maintain or hold open separately designated
30 beds for respite clients, but may accept respite clients on a bed available basis.

31 C. For each HCBS-EBD respite client, the nursing facility must provide an initial
32 nursing assessment, which will serve as the plan of care, must obtain physician

1 treatment orders and diet orders; and must have a chart for the client. The chart
2 must identify the client as a respite client. If the respite stay is for fourteen (14)
3 days or longer, the MDS must be completed.

4 D. An admission to a nursing facility under HCBS-EBD respite does not require a
5 new ULTC-100.2, a PASARR review, an AP-5615 form, a physical, a dietitian
6 assessment, a therapy assessment, or lab work as required on an ordinary
7 nursing facility admission. The MDS does not have to be completed if the respite
8 stay is shorter than fourteen (14) days.

9 E. The nursing facility shall have written policies and procedures available to staff
10 regarding respite care clients. Such policies could include copies of these respite
11 rules, the facility's policy regarding self-administration of medication, and any
12 other policies and procedures which may be useful to the staff in handling respite
13 care clients.

14 F. The nursing facility should obtain a copy of the ULTC-100.2 and the approved
15 Prior Authorization Request (PAR) form from the case manager prior to the
16 respite client's entry into the facility.

17 .42 Respite care standards and procedures for alternative care facilities are as follows:

18 A. The alternative care facility shall have a valid contract with the Department as a
19 Medicaid certified HCBS-EBD alternative care facility provider. Such contract
20 shall constitute automatic certification for HCBS-EBD respite care.

21 B. For each respite care client, the alternative care facility shall follow normal
22 procedures for care planning and documentation of services rendered.

23 .43 Individual respite care providers shall be employees of certified personal care agencies.
24 Family members providing respite services shall meet the same competency standards
25 as all other providers and be employed by the certified provider agency.

26 **8.492.50 REIMBURSEMENT**

27 .51 Respite care reimbursement to nursing facilities shall be as follows:

28 A. The nursing facility shall bill using the facility's assigned respite provider number,
29 and on the HCBS-EBD claim form according to fiscal agent instructions.

30 B. The unit of reimbursement shall be a unit of one day. The day of admission and
31 the day of discharge may both be reimbursed as full days, provided that there
32 was at least one full twenty-four hour day of respite provided by the nursing
33 facility between the date of admission and the date of discharge. There shall be
34 no other payment for partial days.

1 C. Reimbursement shall be the lower of billed charges or the average weighted rate
2 for administrative and health care for Class I nursing facilities in effect on July 1
3 of each year.

4 .52 Respite care reimbursement to alternative care facilities shall be as follows:

5 A. The alternative care facility shall bill using the alternative care facility provider
6 number, on the HCBS-EBD claim form according to fiscal agent instructions.

7 B. The unit of reimbursement shall be a unit of one day. The day of admission and
8 the day of discharge may both be reimbursed as full days, provided that there
9 was at least one full twenty-four hour day of respite provided by the alternative
10 care facility between the date of admission and the date of discharge. There shall
11 be no other payment for partial days.

12 C. Reimbursement shall be the lower of billed charges; or the maximum Medicaid
13 rate for alternative care services, plus the standard alternative care facility room
14 and board amount prorated for the number of days of respite.

15 .53 Individual respite providers shall bill according to an hourly-unit rate or daily institutional
16 Nursing Facility rate, whichever is less.

17 ~~.54~~ The respite care provider shall provide all the respite care that is needed, and other
18 HCBS-EBD services shall not be reimbursed during the respite stay.

19 .55 Effective 2/1/99, tThere shall be no reimbursement provided under this section for respite
20 care in uncertified congregate facilities.

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