

Stakeholder Comment Summary

MSB 19-01-22-A

Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Supportive Living Programs, Section 8.515.85

ATTACH THE STAKEHOLDER LOG.

COMMENTS WERE RECEIVED FROM STAKEHOLDERS ON THE PROPOSED RULE:

YES

NO

IF YES, PLEASE SUMMARIZE.

Title of Rule: Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Supportive Living Programs, Section 8.515.85
Rule Number: MSB 19-01-22-A
Division / Contact / Phone: Benefits and Services Management Division / Diane Byrne / 303-866-4030

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).

Minor changes to the SLP regulations are being made. The intention of this rule change is to add a second allowed licensure type to ensure the sustainability of all current SLP providers while maintaining appropriate oversight of the health, safety, and welfare of people receiving SLP services. This rule change will allow all current SLP providers to continue providing high quality services under the oversight of CDPHE. The Department worked closely with CDPHE, the Division of Fire Prevention and Control (DFPC), and providers, and was requested to make these updates to the SLP rule. The Attorney General's office has reviewed and approved the revisions. The Department has informed providers and other stakeholders of these revisions.

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);
25.5-6-704, C.R.S

Initial Review
Proposed Effective Date

04/12/19
06/30/19

Final Adoption
Emergency Adoption

05/10/19

DOCUMENT #10

Title of Rule: Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Supportive Living Programs, Section 8.515.85
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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Persons who utilize Supportive Living Program (SLP) services and providers of SLP services through the Brain Injury (BI) waiver will benefit from additional licensure types that will allow the continuation of all SLP providers with appropriate oversight through the Department of Public Health and Environment (CDPHE). CDPHE and Department staff will benefit from increased clarity on regulatory administration. There will be no cost to any classes from this rule change.

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

Persons who utilize SLP services, providers, CDPHE, and the Department will benefit through increased clarity of regulatory compliance requirements through additional licensing and survey process conducted by CDPHE.

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 or any other agency.

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

This update is at the request of CDPHE, and benefits participants, providers, CDPHE, and the Department through allowing additional licensure that will allow the stability and sustainability of all SLP providers. There is no burden to the proposed rule as this will allow the all providers to continue services. Inaction has no benefit, and would lead to the inability of all providers to continue serving residential clients with appropriate oversight.

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

There is no cost or intrusion due to the proposed rule.

Title of Rule: Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule Concerning Supportive Living Programs, Section 8.515.85
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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 of regulatory oversight through only allowing the Assisted Living Residence (ALR) license type were considered but rejected at the recommendation of CDPHE due to difficulty with ensuring provider sustainability under that license type

1 **8.515.85 SUPPORTIVE LIVING PROGRAM**

2 8.515.85.A DEFINITIONS

3 Activities of Daily Living (ADLs) mean basic self-care activities, including mobility, bathing, toileting,
4 dressing, eating, transferring, support for memory and cognition, and behavioral supervision.

5 Assistance means the use of manual methods to guide ~~or~~ assist, with the initiation or completion of
6 voluntary movement or functioning of an individual's body through the use of physical contact by others,
7 except for the purpose of providing physical restraint.

8 Assistive Technology Devices means any item, piece of equipment, or product system that is used to
9 increase, maintain, or improve functional capabilities of individuals with disabilities.

10 Authorized Representative means an individual designated by the client or the legal guardian, if
11 appropriate, who has the judgment and ability to assist the client in acquiring and utilizing supports and
12 services.

13 Behavioral Management and Education means services as defined in ~~10 CCR 2505-10 §Section§~~
14 8.516.40.A, and ~~l~~i nclusions as defined at ~~§Section§~~ 8.516.40.B, ~~provided~~ as an individually developed
15 intervention designed to decrease/control the client's severe maladaptive behaviors which, if not modified,
16 will interfere with the client's ability to remain integrated in the community.

17 Case Management Agency (CMA) means an agency within a designated service area where an applicant
18 or client can obtain Case Management services. CMAs include Single Entry Points (SEPs), Community
19 Centered Boards (CCBs), and private case management agencies.

20 Case Manager means an individual employed by a CMA who is qualified to perform the following case
21 management activities: determination of an individual client's functional eligibility for the Home and
22 Community Based Services – Brain Injury (HCBS-BI) waiver, development and implementation of an
23 individualized and person-centered Service Plan for the client, coordination and monitoring of HCBS-BI
24 waiver services delivery, evaluation of service effectiveness, and the periodic reassessment of such
25 client's needs.

26 Critical Incident means an actual or alleged event or situation that creates a significant risk of substantial
27 or serious harm to the health or welfare of a client that could have, or has had, a negative impact on the
28 mental and/or physical well-being of a client in the short or long term. A critical incident includes
29 accidents, ~~a~~ suspicion of, ~~or actual~~ abuse, neglect, or exploitation, and criminal activity.

30 Department means the Department of Health Care Policy and Financing.

31 Health Maintenance Activities means those routine and repetitive health--related tasks, which are
32 necessary for health and normal bodily functioning, that an individual with a disability would carry out if
33 he/she were physically able, or that would be carried out by family members or friends if they were
34 available. These activities include, but are not limited to, catheter irrigation, administration of medication,
35 enemas, suppositories, and wound care.

36 Independent Living Skills Training means services designed and directed ~~toward~~at the development and
37 maintenance of the client's ability to independently sustain himself/herself physically, emotionally, and
38 economically in the community.

- 1 Instrumental Activities of Daily Living (IADLs) means activities related to independent living, including
 2 preparing meals, managing money, shopping for groceries or personal items, performing light or heavy
 3 housework and communication.
- 4 Interdisciplinary Team means a group of people responsible for the implementation of a client's
 5 individualized care plan, ~~which including includes~~ the client receiving services, the parent or guardian of a
 6 minor, a guardian or an authorized representative, as appropriate, the person who coordinates the
 7 provision of services and supports, and others as determined by the client's needs and preferences, who
 8 are assembled in a cooperative manner to develop or review the person-centered care plan.
- 9 Personal Care Services includes providing assistance with eating, bathing, dressing, personal hygiene or
 10 other activities of daily living. When specified in the service plan, Personal Care Services may also
 11 include housekeeping chores such as bed making, dusting, and vacuuming. Housekeeping assistance
 12 must be incidental to the care furnished or essential to the health and welfare of the individual rather than
 13 for the benefit of the individual's family.
- 14 Person-Centered Care Plan is a service plan created by a process that is driven by the individual and can
 15 also include people chosen by the individual pursuant to 42 C.F.R. § 441.540. It provides necessary
 16 information and support to the individual to ensure that the individual directs the process to the maximum
 17 extent possible. It documents client choice, establishes goals, identifies potential risks, assures health
 18 and safety, and identifies the services and supports the client needs to function safely in the community.
- 19 Protective Oversight is defined as monitoring and guidance of a client to assure his/her health, safety,
 20 and well-being. Protective oversight includes, but is not limited to: monitoring the client while on the
 21 premises, monitoring ingestion and reactions to prescribed medications, if appropriate, reminding the
 22 client to carry out activities of daily living, and facilitating medical and other health appointments.
 23 Protective oversight includes the client's choice and ability to travel and engage independently in the
 24 wider community, and providing guidance on safe behavior while outside the Supportive Living Program.
- 25 Room and Board is defined as a comprehensive set of services that include lodging, routine or basic
 26 supplies for comfortable living, and nutritional and healthy meals and food for the client, all of which are
 27 provided by the Supportive Living Program provider, and are not included in the per diem.
- 28 Supportive Living Program (SLP) certification means documentation from the Colorado Department of
 29 Public Health and Environment (CDPHE) recommending certification to ~~HCPF~~ the Department after the
 30 Supportive Living Program (SLP) provider has met all licensing requirements ~~as an Assisted Living~~
 31 Residence (ALR), found in 6 C.C.R. 1011-1; Chapter 2, and either Chapter 7 or 26, in addition to all
 32 requirements in these regulations at 10 CCR 2505-10, §§ 8.515.85.
- 33 8.515.85.B CLIENT ELIGIBILITY
- 34 1. ~~Supportive Living Program~~ SLP services are available to individuals who meet all of the
 35 following requirements:
- 36 a. Clients are determined functionally eligible for ~~Home and Community Based~~
 37 ~~Services-Brain Injury~~ HCBS-BI waiver by a certified case management agency;
- 38 b. Clients are enrolled in the ~~Home and Community Based Services-Brain~~
 39 ~~Injury~~ HCBS-BI waiver; and
- 40 c. Clients require the specialized services provided under the ~~Supportive Living~~
 41 ~~Program~~ SLP as determined by assessed need.
- 42 8.515.85.C SUPPORTIVE LIVING PROGRAM INCLUSIONS

1. ~~Supportive Living Program~~SLP services consist of structured services designed to provide:
 - a. Assessment;
 - b. Protective Oversight and supervision;
 - c. Behavioral Management and Education;
 - d. Independent Living Skills Training in a group or individualized setting to support:
 - i. Interpersonal and social skill development;
 - ii. Improved household management skills; and
 - iii. Other skills necessary to support maximum independence, such as financial management, household maintenance, recreational activities and outings, and other skills related to fostering independence;
 - e. Community Participation;
 - f. Transportation between therapeutic activities in the community;
 - g. Activities of Daily Living (ADLs);
 - h. Personal Care and Homemaker services; and
 - i. Health Maintenance Activities.

2. Person-Centered Care Planning

~~Supportive Living Program~~SLP providers must ~~abide by~~comply with the Person-Centered Care Planning process. Providers ~~will~~must work with ~~Case Management Agencies~~CMAAs to ensure coordination of a client's Person-Centered Care Plan. Additionally, ~~Supportive Living Program~~ providers must provide the following actionable plans for all HCBS-BI waiver clients, updated every six (6) months:

- a. Transition Planning; and
- b. Goal Planning.

These elements of a Person-Centered Care Plan are intended to ensure the client actively engages in his or her care and activities, as ~~well as ensure he or she~~ is able to transition to any other type of setting or service at any given time.

3. Exclusions

The following are not included as components of the ~~Supportive Living Program~~:

- a. Room and board; and
- b. Additional services which are available as a State Plan benefit or other HCBS-BI waiver service. Examples include, but are not limited to: physician visits, mental health counseling, substance abuse counseling, specialized medical equipment

1 and supplies, physical therapy, occupational therapy, long term home health, and
 2 private duty nursing.

3
 4
 5
 6 8.515.85.D PROVIDER LICENSING AND CERTIFICATION REQUIREMENTS

7 1. ~~Supportive Living Program~~ To be certified as an SLP provider, the entity seeking
 8 certifications shall must be licensed by CDPHE as an Assisted Living Residence (ALR)
 9 pursuant to 6 CCR 1011-1, Ch. 7, except as provided below.

10 a. ~~Any Pproviders that provided furnished and submitted claims for billed SLP~~
 11 ~~services prior to December 31, 2014, while either licensed by CDPHE as an ALR~~
 12 ~~pursuant to 6 CCR 1011-1, Ch. 7, as a Home Care Agency Class A (HCA)~~
 13 ~~pursuant to 6 CCR 1011-1, Ch. 26, or under another certification approved by the~~
 14 ~~Department, shall be considered an existing providers.~~

15 b. ~~The Department may authorize Eexisting providers not fully in compliance with~~
 16 ~~the requirements of §Sections 8.515.85.D or § 8.515.85.I may continue to~~
 17 ~~provide SLP services. To obtain such authorization, the provider must submit~~
 18 ~~under a request for exception and plan for compliance, approved by the~~
 19 ~~Department until they become fully compliant. Authorization is valid for no more~~
 20 ~~than one year from the date of _____ . Any existing provider operating~~
 21 ~~under an exception must submit, annually, a request for exception and plan for~~
 22 ~~compliance and obtain Department approval to continue providing SLP~~
 23 ~~services. Existing providers shall submit a renewal request for exception and plan~~
 24 ~~of compliance to the Department each year for review and approval.~~

25 i. ~~Existing providers must show coordination with demonstrate cooperation with~~
 26 ~~both CDPHE and the Colorado Division of Fire Prevention & Control (DFPC), and~~
 27 ~~obtain their approval of progress with a plan of compliance with this request. The~~
 28 ~~Department shall coordinate with CDPHE and DFPC in the application~~
 29 ~~enforcement of regulatory requirements of for both licensinge and certification,~~
 30 ~~requirements. a. Subject to Department approval, Eproviders that have been in~~
 31 ~~continuous operation at the same address prior to 1987 may continue to~~
 32 ~~use furnish SLP services under a Home Care Agency (HCA) license pursuant to 6~~
 33 ~~CCR 1011-1, Ch. 26 instead of the ALR license.~~

34 i. ~~Providers licensed through this method furnishing SLP services under a~~
 35 ~~Department-approved exception are required to comply with portions of 6~~
 36 ~~CCR 1011-1, Ch. 7 as indicated in this § 8.515.85, regardless of~~
 37 ~~licensure type.~~

38 ii. ~~Providers furnishing SLP services under a Department-approved~~
 39 ~~exception are required to comply with the medication administration~~
 40 ~~requirements pursuant to both the HCA licensure requirements found at~~
 41 ~~6 CCR 1011-1, Ch. 26, C.R.S. § 25-1.5-301 through 304, and 6 CCR~~
 42 ~~1011-1, Ch. 24.~~

1 2. In addition to the requirements of §§ 8.515.85.D.1, ~~Supportive Living Program~~ providers
2 must also receive SLP Certification ~~from~~by CDPHE. CDPHE issues or renews a
3 Certification when the provider is in full compliance with the requirements set out in these
4 regulations. Certification is valid for three years from the date of issuance unless
5 ~~voluntarily relinquished by the provider, CDPHE~~ revokes, suspends, or takes other
6 disciplinary action against the licensee, or the certification is voluntarily relinquished
7 by the provider. otherwise sanctioned pursuant to these regulations.

8 3. No Certification shall be issued or renewed by CDPHE if the owner, applicant, or
9 administrator of the ~~Supportive Living Program~~ has been convicted of a felony or of a
10 misdemeanor, which felony or misdemeanor involves moral turpitude or involves conduct
11 that the Department determines could pose a risk to the health, safety, or welfare of
12 residents of the assisted living residence.~~has been convicted of a felony or of a~~
13 ~~misdemeanor involving moral turpitude as defined by law or involving conduct that~~
14 ~~CDPHE determines could pose a risk to the health, safety, and welfare of clients.~~

15 4. ~~In addition to meeting the requirements of this section, Supportive Living Program~~
16 ~~providers shall be licensed in accordance with C.R.S. §§ 25-1.5-103 (2013) and 25-3-~~
17 ~~101, et seq. (2013). Supportive Living Program providers who are Assisted Living~~
18 ~~Residences shall be licensed in accordance with C.R.S. § 25-27-101, et seq. (Jul. 1,~~
19 ~~2013). These statutes are hereby incorporated by reference. The incorporation of these~~
20 ~~statutes excludes later amendments to, or editions of the referenced material. Pursuant~~
21 ~~to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in~~
22 ~~its entirety, available for public inspection during regular business hours at 1570 Grant~~
23 ~~Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at~~
24 ~~cost upon request.~~

25 5. ~~CDPHE may deny, suspend, revoke, or not renew the Certification of any Supportive~~
26 ~~Living Program provider who is out of compliance with the requirements of these~~
27 ~~regulations. Providers may appeal this process pursuant to the State Administrative~~
28 ~~Procedure Act, C.R.S. § 24-4-101, et seq. (2013).~~

29 8.515.85.E PROVIDER RESPONSIBILITIES

30 ~~Supportive Living Program~~ providers must follow all person-centered planning initiatives undertaken by
31 the State to ensure client choice.

34 8.515.85.F HCBS PROGRAM CRITERIA

35 1. ~~All HCBS Program Criteria must be fully implemented in accordance with the final~~
36 ~~Department transition plan for compliance with federal Home and Community-Based~~
37 ~~Settings requirements. The federal regulations can be found at 42 C.F.R., Chapter IV,~~
38 ~~Parts 430, 431, 435, 436, 440, 441, and 447 (Mar. 17, 2014), which are hereby~~
39 ~~incorporated by reference. The incorporation of these regulations excludes later~~
40 ~~amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-~~
41 ~~103(12.5), the Department maintains copies of this incorporated text in its entirety,~~
42 ~~available for public inspection during regular business hours at 1570 Grant Street,~~
43 ~~Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon~~
44 ~~request.~~

~~The following will be used to establish program criteria for Supportive Living Program providers in establishing a home-like environment pursuant to 42 C.F.R. § 440.180. In accordance with 42 C.F.R. § 441.530304, Home and Community Based settings must:~~

- a. Be integrated in and support full access to the greater community;
- b. Be selected by the client from among setting options;
- c. Ensure client rights of privacy, dignity, and respect, and freedom from coercion and restraint;
- d. Optimize individual initiative, autonomy, and independence in making life choices;
- e. Facilitate client choice regarding services and supports, and who provides them;
- f. ~~Be a specific, physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the State, county, city or other designated entity. Put in place a lease or other written agreement providing similar protections for the client that addresses eviction processes and appeals;~~
- g. Ensure privacy in the client's unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit;
- h. Ensure that clients have the freedom and support to control their own schedules and activities, and have access to food at any time;
- i. ~~Ensure~~ each client ~~shall have~~has the right to receive and send packages. No client's outgoing packages shall be opened, delayed, held, or censored by any person;
- j. ~~Ensure~~ each client has the right to receive and send sealed, unopened correspondence. No client's incoming or outgoing correspondence shall be opened, delayed, held, or censored by any person;
- ~~jk.~~ Enable clients to have visitors of their choosing at any time; and
- ~~jl.~~ Be physically accessible.

2. ~~The provider must ensure adherence to all state assurances set forth at 42 C.F.R. § 441.302 (Jan. 16, 2014), which is hereby incorporated by reference. The incorporation of these regulations excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business~~

hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.

~~3.~~ Exceptions

~~The Department may grant E~~exceptions exist to the aforementioned HCBS Program Criteria listed in ~~Section~~§ 8.515.85.F.1, ~~a through h~~, of this rule when ~~clear rationale and reasoning exist and is supported by appropriate documentation reasonable, as follows: These exceptions are for the corresponding sections in Section 8.515.85.F.1 of this rule, and are as follows:~~

a. ~~HCBS Program Criteria under 8.515.85.F.1, a through k:~~

Requirements of program criteria may be modified if supported by a specific assessed need and justified ~~and agreed to~~ in the person-centered care plan ~~pursuant to 42 C.F.R. § 441.302 (Jan. 16, 2014)~~. The following requirements must be documented in the person-centered care plan:

- i. Identify a specific and individualized assessed need.
- ii. Document the positive interventions and supports used prior to any modifications to the person-centered care plan.
- iii. Document less intrusive methods of meeting the need that have been tried but did not work.
- iv. Include a clear description of the modification that is directly proportionate to the specific assessed need.
- v. Include regular collection and review of data to measure the ongoing effectiveness of the modification.
- vi. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
- vii. Include the informed consent of the individual.
- viii. Include an assurance that interventions and supports will cause no harm to the individual.

b. HCBS Program Criteria under 8.515.85.F.1.b and e:

- i. When a client chooses to receive ~~Home and Community-Based Services~~HCBS in a provider-owned or controlled setting where the provider is paid a single rate to provide a bundle of services, the client cannot choose an alternative provider to deliver services that are included in the bundled rate.
- ii. For any services that are not included in the bundled rate, the client may choose any qualified provider, including the provider who controls or owns the setting, if the provider offers the service separate from the bundle.

~~iii. To illustrate these HCBS Program Criteria b and e requirements by way of eExample; if a program provides habilitation connected with daily living and on-site supervision under a bundled rate, an individual is choosing the residential provider for those two services when he or she chooses the residence. The individual has free choice of providers for any other services in his or her service plan, such as therapies, home health or counseling.~~

c. HCBS Program Criteria under 8.515.85.F.1.c:

When a client needs assistance with challenging behavior, including a client whose behavior is dangerous to himself, herself, or others, or when the client engages in behavior that results in significant property destruction, the ~~Supportive Living Program~~ must ~~properly~~ create detailed service and support plans ~~detailing plans that describe how~~ to appropriately address these behaviors.

d. HCBS Program Criteria under 8.515.85.F.1.g:

Requirements for a lockable entrance door may be modified if supported by a specific assessed need and justified ~~and agreed to~~ in the person-centered service plan, ~~pursuant to 42 C.F.R. § 441.302 (Jan. 16, 2014), which is hereby incorporated by reference. The incorporation of this regulation excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request.~~

8.515.85.G STAFFING

1. The ~~Supportive Living Program~~ provider shall ensure sufficient staffing levels to meet the needs of clients.

~~In addition to these regulations, staff should be trained in how to work with an individual or individuals in difficult situations that may arise in the course of their work.~~

2. The operator, staff, and volunteers who provide direct client care or protective oversight must be trained in relevant precautions and emergency procedures, including first aid, to ensure the safety of the clientele.

3. The SLP provider shall adhere to ~~all other~~ regulations pursuant to 6 CCR 1011-1, Ch. 7, §§ ~~3.3~~, 6, 7, and 8, (2018) which are hereby incorporated by reference. The incorporation of this regulation excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon request. Copies are also available from CDPHE at 4300 Cherry Creek Drive South, Denver, CO 80246.

43. Within one month of the date of hire, the ~~Supportive Living Program~~ provider shall provide adequate training for staff on each of the following topics:

- a. Crisis prevention;
- b. Identifying and dealing with difficult situations;

- 1 c. Cultural competency;
- 2 d. Infection control; and
- 3 e. Grievance and complaint procedures.

4 54. Prior to providing direct care, the ~~Supportive Living Program~~ provider shall provide to the
5 operator, staff, and volunteers an orientation ~~to~~of the location in which the program
6 operates, and adequate training on person-centered care planning.

7 65. All staff training shall be documented. Copies of person-centered care plan training and
8 related documentation must be submitted to the Department upon request. ~~Prior to any~~
9 ~~subsequent change in the training curriculum, the provider must submit~~ copies must
10 ~~also be submitted to the Department for inspection review~~ and approval ~~upon changing~~
11 ~~the training curriculum.~~

12 76. In addition to the ~~relevant~~ requirements ~~of imposed by CDPHE in~~ 6 CCR 1011-1 Ch. 7
13 ~~on Assisted Living Residence~~, the Department requires that the program director shall
14 have an advanced degree in a health or human service related profession plus two years
15 of experience providing direct services to persons with a brain injury. A bachelor's or
16 nursing degree with three years of similar experience, or a combination of education and
17 experience shall be an acceptable substitute.

18 87. The provider shall employ or contract for behavioral services and skill training services
19 according to client needs.

20 98. ~~The Supportive Living Program provider shall employ staff qualified by education,~~
21 ~~training, and experience according to orientation and training requirements indicated~~
22 ~~within 10 CCR 2505-10, § 8.525.85.G. The Supportive Living Program SLP shall have~~
23 ~~ensure sufficient staff are on duty as necessary to meet the needs of clients at all times,~~
24 ~~so~~ that provision of services is not dependent upon the use of clients to perform staff
25 functions. Volunteers may be utilized in the home, but shall not be included in the
26 provider's staffing plan in lieu of employees.

27 109. The ~~Supportive Living Program SLP~~ provider shall ~~have maintain~~ written personnel
28 policies, ~~and shall provide a copy of these policies to~~ ~~Each staff member shall be~~
29 ~~provided a copy~~ upon employment, ~~and t~~he administrator or designee shall explain such
30 policies during the initial staff orientation period.

31 110. ~~All~~The ~~Supportive Living Program SLP~~ provider ~~staff, prospective staff, and volunteers~~
32 shall ~~undergo conduct~~ a criminal background check through the Colorado Bureau of
33 Investigation ~~for all staff, prospective staff, and volunteers. The provider shall not employ~~
34 ~~Any~~ person convicted of an offense that could pose a risk to the health, safety, and
35 welfare of clients, ~~shall not be employed by the provider. If the provider or prospective~~
36 ~~staff disagree with assessment of risk they are allowed to appeal the decision to the~~
37 ~~Department. The provider shall bear A~~ll costs related to obtaining a criminal background
38 check ~~shall be borne by the provider.~~

39 8.515.85.H CLIENT RIGHTS AND PROPERTY

40 1. Clients shall have all rights stated in ~~10 CCR 2505-10 §Section~~§ 8.515.85.F.1.

41 ~~,(HCBS Program Criteria) and in accordance with 42 C.F.R. § 441.301 (Jan. 16, 2014), which is~~
42 ~~hereby incorporated by reference. The incorporation of this regulation excludes later~~

1 ~~amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-~~
 2 ~~103(12.5), the Department maintains copies of this incorporated text in its entirety,~~
 3 ~~available for public inspection during regular business hours at 1570 Grant Street,~~
 4 ~~Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon~~
 5 ~~request.~~

6 2. ~~_____TheAny~~ provider shall have that chooses to handle client funds and property
 7 ~~must maintain~~ policies ~~and practices for~~ management of client funds and property that
 8 ~~are~~ consistent with those at 6 CCR 1011-1, Ch. 7, §§ ~~11.9 and~~ 11.10.

9 3. Upon client request, a client shall be entitled to receive, ~~and the provider shall promptly~~
 10 ~~deliver,~~ available money or funds held in trust.

11 8.515.85.1 FIRE SAFETY AND EMERGENCY PROCEDURES

12 1. Applicants for initial provider Certification shall meet the applicable standards of the rules
 13 for building, fire, and life safety code enforcement as adopted by DFPC, ~~in accordance~~
 14 ~~with 8 CCR 1507-31 (Aug. 26, 2013), which is hereby incorporated by reference. The~~
 15 ~~incorporation of these regulations excludes later amendments to, or editions of the~~
 16 ~~referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department maintains~~
 17 ~~copies of this incorporated text in its entirety, available for public inspection during regular~~
 18 ~~business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of~~
 19 ~~incorporated materials are provided at cost upon request.~~

20 a. ~~The Department may grant an exception to this provision for a provider qualified~~
 21 ~~under § 8.515.85.D.1.c, if the provider holds a current certificate of compliance~~
 22 ~~from the local fire authority.~~

23 2. ~~Existing SLP providers as defined at 10 CCR 2505-10, § 8.515.85.D.1 may continue,~~
 24 ~~through the use of a Department-approved exception as defined in 10 CCR 2505-10, §~~
 25 ~~8.515.85.D.1.b, to utilize existing fire safety systems approved by the local fire authority~~
 26 ~~having jurisdiction until they demonstrate compliance with 8 CCR 1507-31 provided they~~
 27 ~~remain in compliance with the following:~~

28 a. ~~There is no change in evacuation status of a client,~~

29 b. ~~nor a client admission or discharge that alters the residence overall fire safety~~
 30 ~~rating, and~~

31 c. ~~no renovation of 25 percent or greater to the total interior of the physical plant is~~
 32 ~~performed.~~

33 d. ~~If such a change, admission, discharge or renovation occurs, the home shall be~~
 34 ~~required to meet the applicable standards referenced in 10 CCR 2505-10 §~~
 35 ~~8.515.85.1.1.~~

36 3. Providers shall develop written emergency plans and procedures for fire, serious illness,
 37 severe weather, disruption of essential utility services, and missing persons for each
 38 client. Emergency and evacuation procedures shall be consistent with any relevant local
 39 and state fire and life safety codes and the provisions set forth in 6 CCR 1011-1 Ch. 7,
 40 ~~§Section§~~ 10.

- 1 4. Within three (3) days of scheduled work or commencement of volunteer service, the
2 program shall provide adequate training for staff in emergency and fire escape plan
3 procedures.
- 4 5. ~~SLP providers must train all Sstaff and clients shall have training on, and practices of, on~~
5 emergency plans and procedures; ~~in addition to fire drills,~~ at intervals throughout the
6 year. ~~There shall be at least~~ Providers shall also conduct at least two fire drills ~~conducted~~
7 annually at least once every six (6) months, during the evening and overnight hours while
8 clients are sleeping. All such practices and training shall be documented and reviewed
9 every six (6) months. Such documentation shall include any difficulties encountered and
10 any needed adaptations to the plan. Such adaptations shall be implemented immediately
11 upon identification.

12

13 8.515.85.J ENVIRONMENTAL AND MAINTENANCE REQUIREMENTS

- 14 ~~1. A Supportive Living Program residence shall be designed, constructed, equipped, and~~
15 ~~maintained to ensure the physical safety of clients, personnel, and visitors as required by~~
16 ~~6 CCR 1011-1, Ch. 7, §§ 20, 21, 22, 23, and 24, regarding the interior and exterior~~
17 ~~environment.~~
- 18 ~~2. The Supportive Living Program provider shall comply with all State and Local Laws/Codes~~
19 ~~regarding furnishings, equipment and supplies pursuant to 6 CCR 1011-1, Ch. 7, § 20.1, which is~~
20 ~~hereby incorporated by reference. The incorporation of these regulations excludes later~~
21 ~~amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the~~
22 ~~Department maintains copies of this incorporated text in its entirety, available for public inspection~~
23 ~~during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies of~~
24 ~~incorporated materials are provided at cost upon request.~~
- 25 13. The SLP provider shall adhere to regulations at 6 CCR 1011-1, Ch. 7, §§ 15, 16, 17, and
26 19, (2018) which are hereby incorporated by reference. The incorporation of this
27 regulation excludes later amendments to, or editions of the referenced material. Pursuant
28 to C.R.S. § 24-4-103(12.5), the Department maintains copies of this incorporated text in
29 its entirety, available for public inspection during regular business hours at 1570 Grant
30 Street, Denver, CO, 80203. Certified copies of incorporated materials are provided at
31 cost upon request. Copies are also available from CDPHE at 4300 Cherry Creek Drive
32 South, Denver, CO 80246.
- 33 2. The interior and exterior environment of the SLP residence shall adhere to regulations at
34 6 CCR 1011-1, Ch. 7, §§ 20, 21, 22, 23, and 24, (2018) which are hereby incorporated by
35 reference. The incorporation of this regulation excludes later amendments to, or editions
36 of the referenced material. Pursuant to C.R.S. § 24-4-103(12.5), the Department
37 maintains copies of this incorporated text in its entirety, available for public inspection
38 during regular business hours at 1570 Grant Street, Denver, CO, 80203. Certified copies
39 of incorporated materials are provided at cost upon request. Copies are also available
40 from CDPHE at 4300 Cherry Creek Drive South, Denver, CO 80246.
- 41 3. Clients shall be allowed free use of all common living areas within the residence, with due
42 regard for privacy, personal possessions, and safety of clients.
- 43 424. Supportive Living Program SLP providers shall develop and implement procedures for the
44 following:

- 1 a. Handling of soiled linen and clothing;
- 2 b. Storing personal care items;
- 3 c. General cleaning to minimize the spread of pathogenic organisms; and
- 4 d. Keeping the home free from offensive odors and accumulations of dirt and
- 5 garbage.

6 ~~535.~~ The ~~Supportive Living Program~~SLP provider shall ensure that each client is furnished
7 with his or her own personal hygiene and care items. These items are to be considered
8 basic in meeting an individual's needs for hygiene and remaining healthy. Any additional
9 items may be selected and purchased by the client at his or her discretion.

10 ~~646.~~ There shall be adequate bathroom facilities for individuals to access without undue
11 waiting or burden.

12 ~~757.~~ ~~The Supportive Living Program provider shall comply with all bathroom requirements~~
13 ~~regarding handrails, handholds, and other needs of clients pursuant to 6 CCR 1101-1 Ch.~~
14 ~~7, § 22.~~

15 ~~8.~~ Each client shall have access to telephones, both to make and to receive calls in privacy.

16 ~~9.~~ ~~The Supportive Living Staff shall maintain a clean, safe, and healthy environment,~~
17 ~~including appropriate cleaning techniques and sanitary meal preparation and delivery~~
18 ~~according to 6 CCR 1011-1, Ch. 7, § 17.~~

19 8.515.85.K COMPLAINTS AND GRIEVANCES

20 Each client will have the right to voice grievances and recommend changes in policies and
21 services to both the Department and/or the ~~Supportive Living Program~~SLP provider. Complaints
22 and grievances made to the Department shall be made in accordance with the grievance and
23 appeal process in ~~10 CCR 2505-10 § Section~~§ 8.209.

24 8.515.85.M RECORDS

25 1. The SLP provider shall adhere to regulations at 6 CCR 1011-1, Ch. 7, § 18, (2018) which
26 are hereby incorporated by reference. The incorporation of this regulation excludes later
27 amendments to, or editions of the referenced material. Pursuant to C.R.S. § 24-4-
28 103(12.5), the Department maintains copies of this incorporated text in its entirety,
29 available for public inspection during regular business hours at 1570 Grant Street,
30 Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon
31 request. Copies are also available from CDPHE at 4300 Cherry Creek Drive South,
32 Denver, CO 80246.

33 2. ~~Supportive Living Providers shall develop policies and procedures to secure client~~
34 ~~information against potential identity theft. Confidentiality of medical records shall be~~
35 ~~maintained in compliance with 45 C.F.R. §§ 160.101, et seq. and 164.102, et seq. (2014),~~
36 ~~which are hereby incorporated by reference. The incorporation of these regulations~~
37 ~~excludes later amendments to, or editions of the referenced material. Pursuant to C.R.S.~~
38 ~~§ 24-4-103(12.5), the Department maintains copies of this incorporated text in its entirety,~~
39 ~~available for public inspection during regular business hours at 1570 Grant Street,~~
40 ~~Denver, CO, 80203. Certified copies of incorporated materials are provided at cost upon~~
41 ~~request.~~

1 32. All medical records for adults (persons eighteen (18) years of age or older) shall be
 2 retained for no less than six (6) years after the last date of service or discharge from the
 3 ~~Supportive Living Program SLP~~. All medical records for minors shall be retained after the
 4 last date of service or discharge from the ~~Supportive Living Program SLP~~ for the period of
 5 minority plus six (6) years.

6 8.515.85.N REIMBURSEMENT

7 1. ~~Supportive Living Program SLP~~ services shall be reimbursed according to a per diem
 8 rate, using a methodology determined by the Department.

9 ~~Authority for the Department to define and limit covered services is found at C.R.S. § 25.5-1-202~~
 10 ~~(2013).~~

11 2. The methodology for calculating the per diem rate shall be based on a weighted average
 12 of client acuity scores.

13 3. The Department shall establish a maximum allowable room and board charge for clients
 14 in the ~~Supportive Living Program SLP~~. Increases in payment shall be permitted in a dollar-
 15 for-dollar relationship to any increase in the Supplemental Security Income grant
 16 standard if the Colorado Department of Human Services also raises grant amounts.

17 a. Room and board shall not be a benefit of HCBS-BI residential services. Clients
 18 shall be responsible for room and board in an amount not to exceed the
 19 Department-established rate.

20 8.515.85.O CALCULATION OF CLIENT PAYMENT (PETI)

21 1. When a client has been determined eligible for ~~Home and Community Based Services~~
 22 ~~HCBS-BI (HCBS)~~ under the 300% income standard, ~~according to Section § 8.100~~, the
 23 State may reduce Medicaid payment for SLP residential services. The case manager
 24 shall calculate the client payment (PETI) for 300% eligible HCBS-BI clients according to
 25 the following procedures:

26 a. For 300% eligible clients who receive residential services, the case manager
 27 shall complete a State-prescribed form which calculates the client payment
 28 according to the following procedures:

29 i. An amount equal to the current Old Age Pension standard, including any
 30 applicable income disregards, shall be deducted from the client's gross
 31 income to be used as the client maintenance allowance, from which the
 32 state-prescribed HCBS residential services room and board amount shall
 33 be paid; and

34 ii. For an individual with financial responsibility for others:

35 1) If the individual is financially responsible for only a spouse, an
 36 amount equal to the state Aid to the Needy Disabled (AND)
 37 standard, less the amount of any spouse's income, shall be
 38 deducted from the client's gross income; or

39 2) If the individual is financially responsible for a spouse plus other
 40 dependents, or with financial responsibility for other dependents
 41 only, an amount equal to the appropriate Temporary Assistance

1 to Needy Families (TANF) grant level less any income of the
2 spouse and/or dependents (excluding income from part-time
3 employment earnings of a dependent child, as defined at
4 Section§ 8.100.1, who is either a full-time student or a part-time
5 student as defined at Section§ 8.100.4) shall be deducted from
6 the client's gross income, ~~and~~

7 iii. ~~Amounts for incurred e~~Expenses incurred for medical or remedial care
8 for the individual that are not subject to payment by Medicare, Medicaid,
9 or other third party shall be deducted from the client's gross income as
10 follows:

- 11 1) ~~If health insurance coverage is documented in the eligibility~~
12 ~~system, H~~health insurance premiums, ~~if health insurance~~
13 ~~coverage is documented in the eligibility system:~~ deductible ~~or~~
14 and co-insurance charges, and
- 15 2) Necessary dental care not to exceed amounts equal to actual
16 expenses incurred, and
- 17 3) Vision and auditory care expenses not to exceed amounts equal
18 to actual expenses incurred, and
- 19 4) Medications, with the following limitations:
- 20 a) The need for such medications shall be documented in
21 writing by the attending physician. The documentation
22 shall list the medication; state why it is medically
23 necessary; be signed by the physician; and shall be
24 renewed at least annually or whenever there is a change
25 in medications.
- 26 b) ~~The cost for M~~medications which may be purchased with
27 the client's Medicaid Identification Card shall not be
28 allowed as deductions.
- 29 c) ~~The cost for M~~medications which may be purchased
30 through regular Medicaid prior authorization procedures
31 shall not be allowed.
- 32 d) The full cost of brand-name medications shall not be
33 allowed if a generic form is available at a lower price.
- 34 e) Only the amount spent for medications which exceeds
35 the current Old Age Pension Standard allowance for
36 medicine chest expense shall be allowed as a deduction.
- 37
- 38 5) ~~The cost for O~~ther necessary medical or remedial care shall be
39 deducted from the client's gross income, with the following
40 limitations:

- 1 a) The need for such care shall be documented in writing
2 by the attending physician. For this purpose,
3 documentation on the URC certification form shall be
4 considered adequate. The documentation shall list the
5 service, supply, or equipment; state why it is medically
6 necessary; be signed by the physician; and, shall be
7 renewed at least annually or whenever there is a
8 change.
- 9 b) ~~The cost for A~~any service, supply or equipment that is
10 available under regular Medicaid, with or without prior
11 authorization, shall not be allowed as a deduction.
- 12 6) Deductions for medical and remedial care may be allowed up to
13 the end of the next full month while the physician's prescription is
14 being obtained. If the physician's prescription cannot be obtained
15 by the end of the next full month, the deduction shall be
16 discontinued.
- 17 7) When the case manager cannot immediately determine whether
18 a particular medical or remedial service, supply, equipment or
19 medication is a benefit of Medicaid, the deduction may be
20 allowed up to the end of the next full month while the case
21 manager determines whether such deduction is a benefit of the
22 Medicaid program. If it is determined that the service, supply,
23 equipment or medication is a benefit of Medicaid, the deduction
24 shall be discontinued.
- 25 iv. Any remaining income- shall be applied to the cost of the SLP residential
26 services, as described~~ined~~ at ~~Section~~§ 8.515.85.C, and shall be paid by
27 the client directly to the facility; and
- 28 v. If there is still income remaining after the entire cost of residential
29 services are paid from the client's income, the remaining income shall be
30 kept by the client and may be used as additional personal needs or for
31 any other use that the client desires, except that the residential service
32 provider shall not charge more than the Medicaid rate for that service.
- 33 b. Case managers shall inform HCBS-BI clients receiving residential services of
34 their client payment obligation on a form prescribed by the state at the time of the
35 first assessment visit, by the end of each plan period; ~~Whenever there is a~~
36 ~~significant change in the client payment amount that affects the client's payment~~
37 ~~obligation, the case manager must inform the client of the change in payment~~
38 ~~within ten (10) working days, whenever there is a significant change in the client~~
39 ~~payment amount.~~
- 40 i. Significant change is defined as fifty dollars (\$50) or more.
- 41 ii. Copies of client payment forms shall be kept in the client files at the case
42 management agency, and shall not be mailed to the State or its agent,
43 except as required for a prior authorization request ~~under, according to~~
44 ~~Section~~§ 8.515.7, or if requested by the state for monitoring purposes.