

Title of Rule: MSB 21-06-08-A, A Revision to the Medical Assistance Long-term Services and Supports HCBS Benefit Rule Concerning Expanding Electronic Monitoring to include Remote Supports, to revise Section 8.488.
Rule Number: MSB 21-06-08-A
Division / Contact / Phone: BSMD/ Courtney Montes/ 5066

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 Office of Community Living (OCL), Benefits and Services Management Division is requesting to revise the current Electronic Monitoring regulations, already included in five HCBS adult waivers, to include the addition of a Remote Supports component that will increase efficiencies, improve quality of care, and achieve cost savings. When hands-on care is not required, Remote Supports makes it possible for direct care staff to provide supervision, prompting, or instruction from a remote location. Examples of Remote Supports include technology for cooking safely, overnight support, medication adherence, fall detection, and wandering. The Department must add a service definition and regulations for the operation of Remote Supports. The addition of regulations will give members and providers regulatory parameters for how Remote Supports can be utilized in HCBS to maintain service integrity and ensure member's health and safety.

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 CFR 441.300

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
Sections 25.5-6-303, through 25.5-6-307, C.R.S. (2021);

Initial Review
Proposed Effective Date

10/08/21
01/10/21

Final Adoption
Emergency Adoption

11/12/21

DOCUMENT #01

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REGULATORY ANALYSIS

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

Individuals to be affected are those that utilize Home and Community-Based Services under the Elderly Blind and Disabled (EBD), Community Mental Health Supports (CMHS), Spinal Cord Injury (SCI), Brain Injury (BI), and Supported Living Services (SLS) waivers. Those that choose to utilize Remote Supports are anticipated to benefit from this rule. The proposed rules will also affect Medicaid providers and Case Management Agencies (CMAs) by codifying the implementation of Remote Supports.

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

Quantitatively, offering a Remote Supports benefit has the potential to reduce HCBS expenditures by providing services at a lower cost than residential or in-person care. The Department anticipates a reduction in General Fund dollars by \$348,345 in FY 21-22 and \$1,045,040 in FY 22-23.

Qualitatively, using technology instead of residential services can increase independence for members while ensuring safety and support, address workforce shortages by increasing provider efficiency, and improve access to care in rural areas. Increased independence for members is one of the major benefits of a Remote Supports benefit, allowing a person to live in their own home, without staff or with a reduced staff presence, and with more control of their living companions.

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.

Through Long Bill SB 21 – 205 and SB 21-210, the Department received approval for the expansion of the Electronic Monitoring benefit, already authorized in select HCBS adult waivers (BI, SCI, SLS, CMHS, and EBD). Short term, the Department anticipates spending time developing training materials and providing technical assistance to the case management agencies. Long term the Department anticipates a reduction in General Fund dollars by \$348,345 in FY 21-22 and \$1,045,040 in FY 22-23.

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

The benefits of this action include: Using technology instead of residential services can increase independence for members while ensuring safety and support, address workforce shortages by increasing provider efficiency, improve access to care in rural areas, and reduce expenditures by providing services at a lower cost than residential care. Increased independence for members is one of the major benefits of a Remote Supports benefit, allowing a person to live in their own home, without staff or with a reduced staff presence, and with more control of their living companions. Offering a Remote Supports benefit has the potential to reduce HCBS expenditures by providing services at a lower cost than residential or in-person care. The Department anticipates a reduction in General Fund dollars by \$348,345 in FY 21-22 and \$1,045,040 in FY 22-23. HCBS services can be critical to preventing unnecessary hospitalizations or placement in a nursing facility however Remote Supports benefit offers the opportunity for members to receive high quality care and support without an in-person attendant.

There are no benefits of inaction as this approval to implement Remote Supports is included in the Department's Budget Request and is approved by the Long Bill, SB 21-205.

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

There do not appear to be any less costly methods or less intrusive methods for achieving the purpose of the proposed regulation changes. Remote Supports is a cost saving opportunity that allows members to have more choice and independence in their lives.

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.

There are no alternative methods for achieving the purpose for the proposed rule.

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8.488 ELECTRONIC MONITORING

8.488.10 DEFINITIONS

.11 **BACKUP SUPPORT PERSON** means the person who is responsible for responding in the event of an emergency or when a Client receiving Remote Supports otherwise needs assistance or the equipment used for delivery of Remote Supports stops working for any reason. Backup support may be provided on an unpaid basis by a family member, friend, or other person selected by the Client or on a paid basis by an agency provider.

.12 **ELECTRONIC MONITORING SERVICES** means electronic equipment or adaptations or other remote supports that are related to an eligible person's disability and/or that enable the person to remain at home, and includes the installation, purchase or rental of electronic monitoring devices which:

- A. Enable the individual Client to secure help in the event of an emergency;
- B. May be used to provide reminders to the individual Client of medical appointments, treatments, or medication schedules;
- C. Are required because of the individual Client's illness, impairment or disability, as documented on in the department prescribed LOC Screen, e-ULTC-100 form and the Assessment, and Service Plan;
- D. Are essential to prevent institutionalization of the individual Client; and,
- E. May allow an off-site direct service provider to monitor and respond to a Client's health, safety, and other needs using live communication.

.13 ~~Electronic monitoring provider~~ **ELECTRONIC MONITORING PROVIDER** means a provider agency as defined at ~~10 CCR 2505-10-5~~ Section 8.484.50-Q-8.487 and Section 25.5-6-303, C.R.S., which that has met all the certification standards for electronic monitoring services specified ~~below in Section 8.488.40.~~

.14 **MONITORING BASE** means the off-site location from which the Remote Supports Provider monitors the Client.

.15 **REMOTE SUPPORTS** mean the provision of support by staff at a Monitoring Base who are engaged with a Client to monitor and respond to the Client's health, safety, and other needs through technology/devices with the capability of live two-way communication.

.16 **REMOTE SUPPORTS PROVIDER** means the agency provider selected by the Client as the provider of Remote Supports.

.17 **SENSOR** means equipment used to notify the Remote Supports Provider of a situation that requires attention or activity which may indicate deviations from routine activity and/or future needs. Examples include, but are not limited to, seizure mats, door sensors, floor sensors, motion detectors, heat detectors, and smoke detectors.

1 **8.488.20 INCLUSIONS**

2 .21 Electronic ~~M~~onitoring ~~S~~ervices shall include personal emergency response systems,
3 medication reminder systems, Remote Supports, or other devices which comply with the
4 definition above and are not included in the non-benefit items below at 10 CCR 2505-10 section
5 8.488.304.

6 A. Remote Supports services shall include but are not limited to the following technology
7 options:

8 1. Motion sensing system;

9 2. Radio frequency identification;

10 3. Live audio feed;

11 4. Web-based ~~monitoring~~ system; or,

12 5. Another device that facilitates two-way communication.

13 B. Remote Supports includes the following general provisions:

14 1. Remote Supports shall only be approved when it is the Client's preference and will
15 reduce the need for in-person care.

16 21. AThe Client, their case manager, and the selected Remote Supports provider shall
17 determine whether Remote Supports is sufficient to ensure the Client's health and
18 welfare.

19 32. Remote Supports shall be provided in real time, not via a recording, by awake staff at
20 a Monitoring Base using the appropriate technology. While Remote Support is being
21 provided, the Remote Support staff shall not have duties other than the provision of
22 Remote Supports provision.

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25 **8.488.30 EXCLUSIONS, RESTRICTIONS AND NON-BENEFIT ITEMS**

26 .31 Electronic ~~M~~onitoring ~~S~~ervices shall be authorized only for individualClients who live alone, or
27 who are alone for significant parts of the day, ~~or whose only companion for significant parts of the~~
28 ~~day is too impaired to assist in an emergency,~~ and who would otherwise require extensive
29 supervision.

30 A. Remote Supports shall not be utilized for Clients who reside in any congregate or HCBS
31 provider owned setting.

32 .32 Electronic ~~M~~onitoring ~~S~~ervices shall be authorized only for individualClients who have the
33 physical and mental capacity to utilize the particular system requested for that individualClient.

34 .33 Electronic ~~M~~onitoring ~~S~~ervices shall not be authorized under HCBS if the service or device is
35 available as a state plan Medicaid benefit.

- 1 .34 The following are not benefits of electronic monitoring services:
- 2 A. Augmentative communication devices and communication boards;
- 3 B. Hearing aids and accessories;
- 4 C. Phonic ears;
- 5 D. Environmental control units, unless required for the medical safety of a client living alone
6 unattended; or as part of Remote Supports;
- 7 E. Computers and computer software when not unrelated to the provision of Remote
8 Supports;
- 9 F. Wheelchair lifts for automobiles or vans;
- 10 G. Exercise equipment, such as exercise cycles;
- 11 H. Hot tubs, Jacuzzis, or similar items.

12 **8.488.40 CERTIFICATION STANDARDS FOR ELECTRONIC MONITORING SERVICES**

13 .41 Electronic monitoring providers shall conform to all general certification standards and procedures
14 at ~~10-CCR-2505-10-s~~Section 8.487, HCBS-EBD WAIVER PROVIDER AGENCIES.

15 .42 In addition, electronic monitoring providers shall conform to the following standards for electronic
16 monitoring services:

- 17 A. All equipment, materials or appliances used as part of the electronic monitoring service
18 shall carry a UL (Underwriter's Laboratory) number or an equivalent standard. All
19 telecommunications equipment shall be FCC registered.
- 20 B. All equipment, materials or appliances shall be installed by properly trained individuals
21 individuals, and the installer and/or provider of electronic monitoring shall train the Client
22 in the use of the device.
- 23 C. All equipment, materials or appliances shall be tested for proper ~~for~~ functioning at the
24 time of installation, and at periodic intervals thereafter, and be maintained based on the
25 manufacturer's recommendations. ~~Any malfunction shall be promptly repaired~~repaired,
26 and equipment shall be replaced when necessary, including buttons and batteries.
- 27 D. All telephone calls generated by electronic monitoring equipment shall be toll-free and all
28 Clients shall be allowed to run unrestricted tests on their equipment.
- 29 E. Electronic monitoring providers shall send written information to each Client's case
30 manager about the system, how it works, and how it will be maintained.

31 .43 In addition, Remote Supports Providers shall conform to the following additional standards for
32 provision of Remote Supports services:

- 33 A. When Remote Supports includes the use of live audio and/or video equipment that permits a
34 Remote Supports Provider to view activities and/or listen to conversations in the residence,
35 the Client who receives the service and each person who lives with the Client shall consent in
36 writing after being fully informed of what Remote Support entails including, but not limited to:

1. The Remote Supports Provider will observe their activities and/or listen to their conversations in the residence;
2. Where The location in the residence where the Remote Supports service will take place; and,
3. Whether or not recordings will be made the Remote Supports provider will record audio and/or video;
4. If the Client or a person who lives with the Client has a guardian, the guardian shall consent in writing. The Client's Case Manager and Remote Supports Provider shall keep a copy of each signed consent form.

B. The Remote Support Provider shall provide a Client who receives Remote Supports with initial and ongoing training on how to use the Remote Supports system(s) including regular assurance that the Client is able to turn on/off systems.

C. The Remote Supports Provider shall provide initial and ongoing training to its staff to ensure they know how to use the Monitoring Base System.

D. The Remote Supports provider shall have a backup power system (such as battery power and/or generator) in place at the Monitoring Base in the event of electrical outages. The Remote Supports Provider shall have ~~other~~additional backup systems and additional safeguards in place which shall include, but are not limited to, contacting the Backup Support Person in the event the Monitoring Base System stops working for any reason.

E. The Remote Support Provider shall have an effective system for notifying emergency personnel in the event of an emergency.

F. If a known or reported emergency involving a Client arises, the Remote Supports Provider shall immediately assess the situation and call emergency personnel first, if that is deemed necessary, and then contact the Backup Support Person. The Remote Supports Provider shall ~~maintain contact~~stay engaged with the Client during an emergency until emergency personnel or the Backup Support Person arrives.

G. The Backup Support Person shall verbally acknowledge receipt of a request for assistance from the Remote Supports Provider. Text messages, email, or voicemail messages will not be accepted as verbal acknowledgment.

H. When a Client requests in-person assistance, ~~if~~the Backup Support Person shall arrive at the Client's location within a reasonable amount of time (to be specified in documentation maintained by the Remote Support Provider ~~when a request for in-person assistance is made.~~

I. When a Client needs assistance, but the situation is not an emergency, the Remote Supports provider shall:

1. Address the situation- from the Monitoring Base, or, -

2. Contact the Client's Backup Support Person ~~for a Client~~if necessary.

1 J. The Remote Support Provider shall maintain detailed and current written protocols for
2 responding to a Client's needs, including contact information for the Backup Support Person
3 to provide assistance when necessary.

4 K. The Remote Support Provider shall maintain documentation of the protocol to be followed
5 should the Client request that the equipment used for delivery of Remote Supports be turned
6 off.

7 L. The Remote Supports Provider shall maintain daily service provision documentation that shall
8 include the following:

9 1. Type of Service,

10 2. Date of Service,

11 3. Place of Service,

12 4. Name of Client receiving service,

13 5. Medicaid identification number of Client receiving service,

14 6. Name of Remote Supports Provider,

15 7. Identify the Backup Support Person and their contact information, if/when utilized.

16 8. -Begin and end time of the Remote Supports service,

17 9. Begin and end time of the Remote Supports service when a Backup Support Person is
18 needed on site,

19 10. Begin and end time of the Backup Support Person when on site, whether paid or unpaid,

20 11. Number of units of the delivered Remote Supports service delivered per calendar day,

21 12.-Description and details of the outcome of providing Remote Supports, and any new or
22 identified needs that are outside of the individual's current Service PlanSupport Plan, which
23 shall be communicated to the individual's case manager.

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26 **8.488.50 REIMBURSEMENT METHOD FOR ELECTRONIC MONITORING**

27 .51 Payment for Eelectronic Mmonitoring Sservices shall be the lower of the billed charges or the
28 prior authorized amount.

29 .52 For Electronic Monitoring, excluding Remote Supports, tThe unit of reimbursement shall be one
30 unit per service for non-recurring services, or one unit per month for services recurring monthly.

31 .53 For Remote Supports, the unit of reimbursement shall be include one unit per
32 installation/equipment purchase and/or the units as designated on the Department's fee schedule
33 and/or billing manuals for ongoing Remote Supports service.

34 .542 Effective 2/1/99, there shall be no reimbursement under this section for Eelectronic Mmonitoring
35 Sservices provided in uncertified congregate facilities.

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8.500.94 HCBS-SLS WAIVER SERVICES

8.500.94.A. SERVICES PROVIDED

1. Assistive Technology
2. Behavioral Services
3. Day Habilitation services and supports
4. Dental Services
5. Health Maintenance
6. Home Accessibility Adaptations
7. Home Delivered Meals
8. Homemaker Services
9. Life Skills Training (LST)
10. Mentorship
11. Non-Medical Transportation
12. Peer Mentorship
13. Personal Care
14. Personal Emergency Response System (PERS)
15. Professional Services, defined below in 8.500.94.B.14
16. Respite
17. Remote Supports
18. Specialized Medical Equipment and Supplies
19. Supported Employment

1 ~~4920.~~ Transition Setup

2 ~~2021.~~ Vehicle Modifications

3 ~~2422.~~ Vision Services

4 8.500.94.B The following services are available through the HCBS-SLS waiver within the specific
5 limitations as set forth in the federally approved HCBS-SLS waiver.

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7 17. ~~Remote Supports means services as defined at Section 8.488 within Electronic~~
8 ~~Monitoring.~~

9 ~~18.~~ Specialized Medical Equipment and Supplies include: devices, controls, or appliances
10 that are required due to the Client's disability and that enable the Client to increase the
11 Client's ability to perform activities of daily living or to safely remain in the home and
12 community. Specialized medical equipment and supplies include:

13 a. Kitchen equipment required for the preparation of special diets if this results in a
14 cost savings over prepared foods;

15 b. Specially designed clothing for a Client if the cost is over and above the costs
16 generally incurred for a Client's clothing;

17 c. Maintenance and upkeep of specialized medical equipment purchased through
18 the HCBS-SLS waiver.

19 d. The following items are specifically excluded under the HCBS-SLS waiver and
20 not eligible for reimbursement:

21 i) Items that are not of direct medical or remedial benefit to the Client are
22 specifically excluded under the HCBS-SLS waiver and not eligible for
23 reimbursement. These include but are not limited to; vitamins, food
24 supplements, any food items, prescription or over the counter
25 medications, topical ointments, exercise equipment, hot tubs, water
26 walkers, resistance water therapy pools, experimental items or wipes for
27 any purpose other incontinence.

28 ~~4819.~~ Supported Employment services includes intensive, ongoing supports that enable a
29 Client, for whom competitive employment at or above the minimum wage is unlikely
30 absent the provision of supports, and who because of the Client's disabilities needs
31 supports to perform in a regular work setting.

32 a. Supported employment may include assessment and identification of vocational
33 interests and capabilities in preparation for job development and assisting the
34 Client to locate a job or job development on behalf of the Client.

35 b. Supported employment may be delivered in a variety of settings in which Clients
36 interact with individuals without disabilities, other than those individuals who are
37 providing services to the Client, to the same extent that individuals without
38 disabilities employed in comparable positions would interact.

- 1 c. Supported employment is work outside of a facility-based site, that is owned or
2 operated by an agency whose primary focus is service provision to persons with
3 developmental disabilities,
- 4 d. Supported employment is provided in community jobs, enclaves or mobile crews.
- 5 e. Group employment including mobile crews or enclaves shall not exceed eight
6 Clients.
- 7 f. Supported employment includes activities needed to sustain paid work by Clients
8 including supervision and training.
- 9 g. When supported employment services are provided at a work site where
10 individuals without disabilities are employed, service is available only for the
11 adaptations, supervision and training required by a Client as a result of the
12 Client's disabilities.
- 13 h. Documentation of the Client's application for services through the Colorado
14 Department of Labor and Employment Division for Vocational Rehabilitation shall
15 be maintained in the file of each Client receiving this service. Supported
16 employment is not available under a program funded under Section 110 of the
17 Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20
18 U.S.C. Section 1400, et seq.).
- 19 i. Supported employment does not include reimbursement for the supervisory
20 activities rendered as a normal part of the business setting.
- 21 j. Supported employment shall not take the place of nor shall it duplicate services
22 received through the Division for Vocational Rehabilitation.
- 23 k. The limitation for supported employment services is seven thousand one
24 hundred and twelve (7,112) units per service plan year. One (1) unit equals
25 fifteen (15) minutes of service.
- 26 l. The following are not a benefit of supported employment and shall not be
27 reimbursed:
- 28 i) Incentive payments, subsidies or unrelated vocational training expenses,
29 such as incentive payments made to an employer to encourage or
30 subsidize the employer's participation in a supported employment,
- 31 ii) Payments that are distributed to users of supported employment, and
- 32 iii) Payments for training that are not directly related to a Client's supported
33 employment.
- 34 [1920](#). Transition Setup as defined at Section 8.553.1.
- 35 [2021](#). Vehicle modifications are adaptations or alterations to an automobile or van that is the
36 Client's primary means of transportation; to accommodate the special needs of the Client;
37 are necessary to enable the Client to integrate more fully into the community; and to
38 ensure the health and safety of the Client.
- 39 a. Upkeep and maintenance of the modifications are allowable services.

- 1 b. Items and services specifically excluded from reimbursement under the HCBS
2 Waiver include:
 - 3 i) Adaptations or improvements to the vehicle that are not of direct medical
4 or remedial benefit to the Client,
 - 5 ii) Purchase or lease of a vehicle, and
 - 6 iii) Typical and regularly scheduled upkeep and maintenance of a vehicle.
- 7 c. The total cost of home accessibility adaptations, vehicle modifications, and
8 assistive technology shall not exceed \$10,000 over the five (5) year life of the
9 HCBS Waiver except that on a case by case basis the Operating Agency may
10 approve a higher amount. Such requests shall ensure the health and safety of
11 the Client, enable the Client to function with greater independence in the home,
12 or decrease the need for paid assistance in another HCBS-SLS Waiver service
13 on a long-term basis. Approval for a higher amount will include a thorough review
14 of the current request as well as past expenditures to ensure cost-efficiency,
15 prudent purchases and no duplication.
- 16 2422. Vision services include eye exams or diagnosis, glasses, contacts or other medically
17 necessary methods used to improve specific dysfunctions of the vision system when
18 delivered by a licensed optometrist or physician for a Client who is at least 21 years of
19 age
 - 20 a. Lasik and other similar types of procedures are only allowable when:
 - 21 b. The procedure is necessary due to the Client's documented specific behavioral
22 complexities that result in other more traditional remedies being impractical or not
23 cost effective, and
 - 24 c. Prior authorized in accordance with Operating Agency procedures.