

Individual/entity included in the development of the proposed rule	Contact information	Date contacted	Comments Received? Y/N	Summarize stakeholder comments or attach	If comments required alterations to the proposed rule, what was the resolution?	If comments could not be incorporated into rule, why?
N	Erin Noah-Verser enoah-verser@s	4.23.21	Y	HHP should not have to reside in home 100% of time. Could use "primary residence" verbiage. Concerned about if we can limit the work of "contractors." Suggested that providers need to reside in their host home for the "majority" of calendar year. Concerned about what entity is the substantiated MANE allegation is logged by. Concerned about "conflict of interest language and worried it may be too limiting. Does not think that certification for HHP is the right move because there would be so much red tape and might reduce number of providers. Better to continue tracking through spreadsheets rather than certify.	Changed verbiage	NA
N	Jodi Walters jwalters@parkerpch.com	4.21.21	Y	Stakeholder thought initial rules for MANE were too strict and that you should be allowed more chances plus an appeal process. Stakeholder also thought participans in settings should receive surveys more often than every three years.	Created more specific criteria for MANE rule change. Removed language about conflict of interest restriction.	NA
N	Bob Lawhead - 720-941-0176	4.23.21	Y	Should not limit HHP ability to obtain other jobs outside of caregiving.	Added appeal verbiage for MANE proposal. Changed surveys to occur every two years instead of every three years. Rules do not limit HHP ability to hold other jobs, just limits number of host homes they can operate. Did not include language to mandate certification.	NA
N	Jessica Eppel jessica.eppel@mosaicinfo.org Ryan Grygiel - (303) 457-1001	5.6.21	Y	Subcontracting is the best way to handle respite. Concerned about HHP having multiple host homes. Certifying HHP would limit creative solutions.	The Department has added this to their list and will engage stakeholders on this issue once this set of rules are complete.	NA
N	Jodi Walters jwalters@parkerpch.com	4.23.21	Y	There needs to be updates to the FCG rules.	Will engage at later date.	
N	Katherine Waterman - (970) 208-5221	5.21.21	Y	HH should be primary residence of HHP. HHP can't operate other homes with intent of supporting individuals not living in that home. Limit of three individuals in homes.	Included.	NA
N	Laurel Rochester - (303) 665-7789	5.21.21	Y	Confusion about number of individuals that a provider can be back up to. Six seems to be arbitrary number. Think PASAs should determine bandwidth of provider not state rules. Again, nervous about restricting independent contractor.	Removed language specifying only providing back up to six members.	NA
N	Cindy Dutton - c.dutton@continuumcoloro.org Cindy Dutton - c.dutton@continuumcoloro.org	4.23.21	Y	Regarding MANE regulations, if decision is being appealed then provider should still continue to operate during appeals process.	Added to proposed language.	NA
N	Jessica Eppel jessica.eppel@mosaicinfo.org	9.10.21	Y	Thought the language around evaluating a providers bandwidth was too broad. Wanted more ride example. Did not like the idea of this added regulation because their PASA is already evaluating providers bandwidth. Also confirmed that HHP should only be allowed to operate one host home.	Editing language to incorporate feedback	NA
N	Kristie Braaten	7.30.21	Y	Confirmed that HHP should only be allowed to operate one host home. Wanted clarification on what exactly the Department means when they say that PASA is responsible for all actions of subcontracted providers. Made the point that there is a line.	Included in language.	NA
N	Kristie Braaten	9.10.21	Y	Voiced concerns over The Departments ability to regulate who can subcontract with which agencies and how many. Commentor cited specific federal regulations.	Department confirmed that there are obviously scenarios where the PASA would not be responsible for ALL actions of DSP.	NA
N	Kristie Braaten	7.30.21	Y	Offered approval for how the rules are written in relation to MANE regulations and restrictions.	The Department asked commentor to provide the specific federal regulations where this is referenced.	NA
N	Alyse Preston - apreston@dungarvin.com	7.30.21	Y	There is a significant increase in cost to change the surveys from every three years to every year.	NA	NA
N	Jennifer Risdall - jrisdall@stellarcare.org	6.25.21	Y	Good PASAs should already have rules in place that eliminate possibilities of DSP to subcontract work. If PASA does not have that specific rule in place then there is a problem with the PASA.	The Department asked commentor to provide details relating to the specific increase in cost.	NA
N	Ellen Jensby - ejensby@alliancecolorado.org	6.17.21	Y	HHP should be allowed to own multiple homes as long as they are not the DSP in more than one home and they are not conducting their own subcontracting to create a pseudo PASA.	Removed language.	NA
N	Matt Payne - matt@cci-colorado.org	10.18.21	Y	Not clear on what concerns CDPHE has that have been the cause for proposed rule changes. Do not want to define PCA further because it creates a flexible category that allows for creative options that aren't a HHP, FCG, or Group Homes. Recommend moving HHP to its own separate location to further define.	Did not further define PCA in rules.	NA
N	Karl Easterly - keasterly@arcadams.org	3.10.22	Y	Disappointed to see increased regulations for PASAs during Covid when its already challenging to make ends meet. Believes these new regulations will encourage more members to switch to CDASS where there are already fewer regulations.	The Department has an obligation to ensure members are safe and receive appropriate services, no matter the delivery option. CDASS has regulations that are appropriate for that service and is not currently an option for residential services.	NA
N	DaAnn Major - dmajor@arcadams.org	3.10.22	Y	Supportive of the rule changes. Also thinks there is more work to be done and HCFP should continue to implement more oversight. Thoughts for future changes include , stronger language to keep DSP from continuing while under investigation, and stricter language around married couples who are both host home providers	The Department is thankful for the support and will consider these suggestions for future rule changes.	Will consider suggestions for next rule revision.
N	Jadie Carson - charleguy56@outlook.com Ellen Jensby - ejensby@alliancecolorado.org	3.9.22	Y	There has been a deterioration in the quality of host homes. Clients in host homes are often afraid to file complaints or speak about the abuse and neglect. The State is liable for the underregulated state of host homes. Additionally reporting of MANE to IRSS is not working.	No specific alterations to the rule were proposed.	NA
N	Christiano Sosa - Csoa@hearcofco.org	3.11.22	Y	Jadie had a brother that moved into a host home in the last couple years. The family was asked by the host home to pay for tens of thousands of dollars' worth of upgrades. The member had regular hospital visits and was not receiving his PNA allowance. The family was not allowed to visit due to COVID.	No specific alterations to the rule were proposed.	NA
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	This person submitted a letter of support for the rule revisions.	NA	NA
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	Do new rules mean that under IRSS if a PASA has employees vs. contractors they must create a contract and the usual HR requirements? This would create an administrative burden.	The Department notified the provider that the intent is to ensure non-employees have a written contract. Will adjust language in the rule.	NA
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	The rule requires PASAs to do a customer satisfaction review every two years instead of every three years. What does this do? Where are the results published? How do clients even know this happens?	Revised the rule to require that PASAs produce survey results to interested stakeholders	NA
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	We are glad that HCFP says the PASA is responsible for verifying that any direct care provider they employ or contract with has the capacity to serve individuals in their care as outlined in the support plan. This has been a problem. What is HCFP going to do if that is not happening other than forcing clients to keep moving between host homes? Why is more upfront work not done to make sure there is capacity? PASAs generally will not invest in assessing this until a client agrees to go with them or a specific host home. Then they are stuck together even if the provider is not capable.	The new regulation states that capacity of the direct care provider must be assessed prior to accepting a member. The expectation is that with this rule, the PASA will be addressing any capacity concerns upfront. The Department believes that any changes to this portion of the regulation requires additional stakeholder engagement with the larger group.	This suggestion will be discussed at the next IRSS Stakeholder Meeting as a potential change.
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	8,609.7 adds a requirement that says the HHP may not contract to provide services to more than 3 individuals, inside or outside of the host home, at any given time. This language needs to be stronger. It should say the HHP may not provide ANY services including respite to more than three people. This limit should include childcare and elder care. If the provider is caring for a family member, even without IDO that should count as a person as care requires time and attention. This should specifically say inclusive of all PASAs so they cannot get three from one PASA for IRSS and three from another for respite or only allow a contract with one PASA. Without a registry this might be hard to enforce.	The larger stakeholder group had extensive conversations about this portion of the regulations. Concerns were raised by the group of limiting an individuals ability to work or provide care to others. Since each member has individualized needs, it is possible that the direct care provider is serving three members with very little needs and therefore has capacity to care for a loved one as well. The Department believes that any changes to this portion of the regulation requires additional stakeholder engagement with the larger group.	This suggestion will be discussed at the next IRSS Stakeholder Meeting as a potential change.
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	There should also be a provision that prevents a HHP from taking on a new client if the existing client(s) are not stable or the provider is not meeting their needs. For example, if the provider does not have time or energy to take the client to activities or engage with the client. An independent assessment as to if the new client would be disruptive to the existing client(s) should take place. Moreover, if a HHP says he or she cannot handle a client and forces the client to move, that provider should have a wait period before taking new clients. This will stop the practice of getting rid of one client to replace them with a more profitable client.	The Department believes that any changes to this portion of the regulation requires additional stakeholder engagement with the larger group.	This suggestion will be discussed at the next IRSS Stakeholder Meeting as a potential change.
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	The PASA is required to assess their ability to meet the needs of any potential members. This would include moving additional members into a host home. The Department believes that any changes to this portion of the regulation requires additional stakeholder engagement with the larger group.	The PASA must have a contract with each direct care provider. If a HHP is working with more than one PASA, they are required to have a contract with each PASA they are working with. The larger stakeholder group had extensive conversations about direct care providers working with more than one PASA and concerns were raised by the group of limiting an individuals ability to work or provide care to others. With these new regulations, CDPHE will now have the ability to cite deficient practice if a PASA does not have each element of the regulations, including a contract with each direct care provider. The Department believes that any changes to this portion of the regulation requires additional stakeholder engagement with the larger group and more information about how bartering is used within the IRSS benefit.	This suggestion will be discussed at the next IRSS Stakeholder Meeting as a potential change.
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	Section B has many good parts already in rule that are not enforced such as requiring that people are supported to engage in their communities, available backup providers, and coordination of care with case management and the client. We need enforcement of these provisions. The addition of #8 which is that the PASA must have a written contract with each service provider under PASA authority is lacking because nothing stops them from working for more than one PASA.	The Department believes that any changes to this portion of the regulation requires additional stakeholder engagement with the larger group.	This suggestion will be discussed at the next IRSS Stakeholder Meeting as a potential change.
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	We very much appreciate that a section was added that says the IRSS provider shall not subcontract with any entity, but it should also say with any person and that this includes bartering.	This suggestion will be discussed at the next IRSS Stakeholder Meeting as a potential change.	
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	There also must be enforcement for lack of emergency relocation.	This suggestion will be discussed at the next IRSS Stakeholder Meeting as a potential change.	
N	Julie Reiskin - jreiskin@cccdonline.org	3.9.22	Y	We appreciate the reporting of all people that live in the home, we should include frequent visitors and this information must be provided to participants, advocates and guardians upon request and at least annually. This sentence makes it sound like the allegations apply to the participant rather than the worker."C. Direct Service and backup providers will be prohibited from providing IRSS to any participant with any of the following substantiated allegations: "You could clarify it by slightly adjusting the sentence to read: "Direct Service and backup providers with any of the following are prohibited from providing IRSS to any participant."	The Department edited the rule language to incorporate this feedback	NA
N	Ellen Jensby - ejensby@alliancecolorado.org	3.29.22	Y		The Department edited the rule language to incorporate this feedback	NA

Title of Rule: Revision to the Medical Assistance Act Rule concerning Services for Individuals with Intellectual and Developmental Disabilities Sections 8.609.5 and 8.609.7
Rule Number: MSB 21-02-05-A
Division / Contact / Phone: OCL / Cassandra Keller / 5181

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 Department is proposing several revisions to the Residential Habilitation Service and Supports (RHSS) and Individual Residential Services and Supports (IRSS) regulations. These proposed regulations build off stakeholder engagement and rule revisions that were completed in 2019. Since the implementation of the revised regulations, the Department has worked with the Colorado Department of Public Health and Environment (CDPHE) and the Division of Housing (DOH) on gaps in the regulations. The sister agencies have expressed concerns for the health, safety and welfare of participants receiving residential services due to a lack of oversight of the residential settings and an inability to cite organizations for improper care or oversight. The proposed changes will help to close the identified gaps in the regulations and enhance the Department's oversight of our residential settings.

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:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021); Sections 25.5-10 C.R.S.

Initial Review
Proposed Effective Date

03/11/22
05/30/22

Final Adoption
Emergency Adoption

04/08/22

DOCUMENT #04

Title of Rule: Revision to the Medical Assistance Act Rule concerning Services for Individuals with Intellectual and Developmental Disabilities Sections 8.609.5 and 8.609.7

Rule Number: MSB 21-02-05-A

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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.

This proposed rule will directly affect Program Approved Service Agencies (PASA) and the direct care providers that they contract with. The Department does not anticipate increased costs from these regulations. Program participants will benefit from increased oversight and regulatory requirements proposed in the rule. The anticipated benefits include increased provider accountability and credentialing of direct care providers.

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 proposed rule will have a positive impact by enhancing the health, safety and welfare of participants receiving residential services by improving the oversight of the residential settings and thus creating the ability to cite organizations for improper care or oversight. Quantitatively, providers will be required to complete member satisfaction surveys more frequently, ensuring members are receiving services in the manner they prefer.

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 are no costs to the Department or to any other agency as a product of the implementation and enforcement of these proposed rules.

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

There are no costs to the Department as a product of the proposed rules. The proposed changes will help to close the identified gaps in the regulations and enhance the Department's oversight of our residential settings and thus improve member health and safety in their residential setting.

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

Title of Rule: Revision to the Medical Assistance Act Rule concerning Services for
Individuals with Intellectual and Developmental Disabilities Sections
8.609.5 and 8.609.7

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The Department held five stakeholder meetings to collaborate on the changes to the regulations and present subsequent drafts to the group. It was determined that the proposed rules were the least intrusive while still achieving improved oversight of these residential settings.

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 Department held five stakeholder meetings to collaborate on the changes to the regulations and present subsequent drafts to the group. The proposed regulations are the best method for creating standards for services and oversight, as well as providing the Department of Public Health and Environment a regulatory framework with which they can ensure compliance.

8.609 PROGRAM SERVICES AND SUPPORTS

8.609.5 RESIDENTIAL HABILITATION SERVICES AND SUPPORTS DESCRIPTION AND GENERAL PROVISIONS

Residential Habilitation Services and Supports provide a full day (24 hours) of services and supports to ensure the health, safety and welfare of the individual, and to provide training and habilitation services or a combination of training (i.e., instruction, skill acquisition) and supports in the areas of personal, physical, mental and social development and to promote interdependence, self-sufficiency and community inclusion. Services and supports are designed to meet the unique needs of each person determined by the assessed needs, personal goals, and other input provided by the Interdisciplinary Team, defined at ~~40 CCR 2505-10~~, Section 8.519.1, and to provide access to and participation in typical activities and functions of community life.

A. Program Approved Service Agency Policies, Procedures and Service Provisions

1. Each Program Approved Service Agency (PASA) providing residential services must establish and implement written policies and procedures concerning the use, ~~and~~ handling and timely disbursement of personal needs funds and include a record of personal possessions, including clothing, of the participant.
2. PASA's must conduct an evaluation of consumer satisfaction with services and supports no less than every ~~three~~ two years. The PASA must review and analyze this data and address any complaints or problematic practices requiring corrective action. PASAs must make the results of the survey available to interested stakeholders upon request. PASA
3. The PASA must maintain a record for each participant which includes the information required by these rules and as prescribed by the Department.
4. Participants receiving Residential Habilitation Services and Supports must have 24-hour supervision. Supervision may be on-site (direct service provider or caregiver is present) or accessible (direct service provider or caregiver is not on site but available to respond when needed). Staffing arrangements must be adequate to meet the health, safety and welfare of participants and the needs of the individual as determined by the Service Plan. The PASA is responsible for verifying that any direct care provider they employ or contract with has the capacity to serve the individuals in their care, as outlined in the Support Plan.
5. Physical facilities utilized as residential settings must meet all applicable fire, building, licensing and health regulations.
6. Services and supports must be provided pursuant to the person's Service Plan, in accordance with Department guidelines and service descriptions, and the HCBS Settings Final Rule at 79 Fed. Reg. 2948 (Jan. 16, 2014) (codified in relevant part at 42 C.F.R. § 441.301).

- 1 7. The PASA is responsible for providing services, supplies and equipment as prescribed by
2 the Department.
- 3 8. Caregivers, providers and other support personnel must have ready access to records
4 and all necessary, detailed protocols about the participant required to carry out their
5 responsibilities.
- 6 9. PASA's must comply with the Colorado Adult Protection Services (CAPS) requirements,
7 outlined in §26-3.1-111, C.R.S. and 12 CCR 2518-1, Volume 30.960. The PASA must
8 maintain accurate records and make records available to the Department upon request.
- 9 a. Direct service provider means any person providing direct services and supports,
10 including case management services, protective services, physical care, mental
11 health services, or any other service necessary for the at-risk adult's health,
12 safety, or welfare, pursuant to C.R.S. 26-3.1-101 (3.5). Direct service provider
13 includes PASA applicants and owners, as they are ultimately responsible for the
14 members they serve.
- 15 b. -During the enrollment process the PASA may be granted provisional approval to
16 render Medicaid services. Final PASA approval is contingent on submission of
17 documentation of a completed CAPS check on the PASA applicant and owner
18 within 90 days from the receipt of the provisional approval.
- 19 i. Failure to submit the required documentation within 90 days of the
20 provisional approval period may result in rescindment of the provisional
21 approval.
- 22 ii. For the purposes of C.R.S. 26-3.1-111 (6)(a)(III), the Department of
23 Health Care Policy and Financing is the oversight agency for PASAs and
24 must be informed of CAPS check results for employers who run them on
25 themselves.
- 26 c. Direct Service and backup providers with any of the following are prohibited from
27 providing IRSS to any participant ~~Direct service and backup providers will be~~
28 prohibited from providing IRSS to any participant with any of the following
29 substantiated allegations:
- 30 i. A substantiated allegation of abuse, neglect, exploitation, or harmful act,
31 as defined in Section 26-3.1-101, C.R.S., within the last 10 years, by
32 APS at a severity level of "Moderate" or "Severe" as defined in 12 CCR
33 2518-1 Section 30.100;
- 34 ii. Three or more substantiated allegations of abuse, neglect,
35 exploitation, or harmful act, as defined in Section 26-3.1-101,
36 C.R.S., within the last five years, by APS at the minor severity level as
37 defined in 12 CCR 2518 Section 30.100; or
- 38 iii. A criminal conviction of abuse, neglect, or exploitation against an at-risk
39 adult with IDD as defined in Section 18-6.5-102, C.R.S.

1 iv. Only substantiated allegations that have exhausted the appeal period
2 and come to a final disposition, as defined as 12 CCR 2518-1 Section
3 30.920, shall be included in the above exclusions list.

4
5 10. Incident Reporting

- 6 a. The PASA must comply with all incident reporting requirements, as outlined in
7 ~~10 CCR 2505-10~~, Section 8.608.6.
- 8 b. The PASA must notify guardians and/or representatives of Incident Reports (IR).
- 9 c. The PASA must have policies and procedures in place for handling cases of
10 alleged or suspected abuse, mistreatment, neglect, or exploitation of any
11 participant, pursuant to ~~10 CCR 2505-10~~, Section 8.608.8.
- 12 d. The PASA must notify the waiver participant and guardians and/or participants'
13 representatives of investigations, including summary information pertaining to the
14 outcome of the investigation, victim supports accessed, and recommendations to
15 prevent recurrence.

16 11. The PASA is responsible for the monitoring of conditions at the property and must
17 provide oversight and guidance to safeguard the health, safety, and welfare of the
18 participant.

19 12. The PASA must provide for and document the regular on-site monitoring of Residential
20 Habilitation Services and Supports. PASA's must conduct an on-site visit of each
21 Individual Residential Support Services (IRSS) or Group Residential Support Services
22 (GRSS) setting before a participant moves in, and at a minimum once every quarter, with
23 at least one visit annually that is unscheduled. On-site monitoring of IRSS and GRSS
24 settings must include, but not be limited to:

- 25 a. Inspection of all smoke alarms and carbon monoxide detectors;
- 26 b. Ensuring all exits are free from blockages to egress;
- 27 c. Review of each participant's emergency and disaster assessment; and
- 28 d. Medication administration records and physician orders.

29 ~~13. The PASA must have a protocol in place for the emergency placement of the participant~~
30 ~~if a home is deemed not safe by the Division of Housing (DOH).~~

31 ~~14. The PASA must have a written contract with each direct service provider providing IRSS~~
32 ~~under the PASA's authority, such as a Host Home provider or family caregivers not~~
33 ~~directly employed by the PASA.~~

- 34 ~~a. A current list of the above-mentioned contracted IRSS providers and their~~
35 ~~accompanying contracts must be on file with the program approved service~~
36 ~~agency and a copy must be provided to the Department or its agent upon~~
37 ~~request.~~

1 b. Each contract must be in writing and contain the following information:

- 2 i. Name of contracted IRSS provider;
- 3 ii. Responsibilities of each party to the contract, including, but not limited to,
4 responsibility for the safety and accessibility of the physical environment
5 of the home;
- 6 iii. process for correcting non-compliance;
- 7 iv. process for termination of the contract;
- 8 v. process for modification or revision of the contract;
- 9 vi. process for relocation of the participant if they are in immediate jeopardy;
- 10 vii. process for coordinating the care of the participant;
- 11 viii. Payment rate and method; and
- 12 ix. Beginning and ending dates.

13 c. If a contract is terminated with a contracted IRSS provider due to health, safety
14 or welfare concerns, the PASA must report to the following parties:

- 15 i. Within 430 days to the Department or its agent regarding the cited
16 reason for termination of a contracted IRSS provider.
- 17 ii. Within 410 days to the guardian or authorized representative and case
18 manager of the participant from the terminated contracted IRSS provider.

19 ~~15. The PASA must require each contracted direct service provider providing IRSS to
20 document each approved caregiver(s) and report to the agency the names of all persons
21 that reside in the home. No backup provider may be hired without PASA approval. The
22 agency must ensure criminal background checks are completed for any non-participant
23 over the age of 18 who lives in the home.~~

- 24 ~~i. mistreatment, abuse, neglect, or exploitationIRSS.~~

25 ~~16. The Host Home must be the primary residence of the Host Home provider. A Host Home
26 provider is not permitted to to any not living in their Host Home.~~

27 ~~17. Each PASA must provide quarterly housing and participant updates to the Department or
28 its agent through a specified data collection platform. Failure to provide these quarterly
29 updates result in payment suspension.~~

30 B. Rights of Participants

- 31 1. A participant must be presumed able to manage his/her own funds and possessions
32 unless otherwise documented in the Service Plan.

1 c. their own home; or -

2 d. a Host Home.

3 i. The Host Home is the primary residence of the provider, which means
 4 that the Host Home provider occupies the residence seventy-five (75)
 5 percent of the time. The Host Home provider may not contract to provide
 6 services to more than three (3) individuals, inside or outside of the Host
 7 Home, at any given time.

8 AB. Program Approved Service Agency Policies, Procedures and Service Provisions

- 9 1. The ~~Program Approved Service Agency~~ (PASA) has the responsibility for the living
 10 environment, regardless of the setting type.
- 11 2. IRSS may be provided to no more than three participants in a single setting. For each
 12 participant in a setting, the PASA must ensure the following criteria are met and
 13 documented:
- 14 a. The participants involved elect to live in the setting;
- 15 b. Each participant must have their own bedroom, unless they elect to share a
 16 bedroom with a roommate of their choice, which must be documented in the
 17 Service Plan;
- 18 c. Back-up providers are identified, available and agreed upon by the participant
 19 and PASA. When a back-up provider is not available, the PASA assumes
 20 responsibility for identifying a provider;
- 21 d. The PASA and case management agency of each participant in the setting must
 22 be involved in the coordination of placement of each participant;
- 23 e. Participants are afforded regular opportunities for community inclusion of their
 24 choice;
- 25 f. Participants are afforded individual choice, including preference to live near
 26 family;
- 27 g. Distance from other homes (e.g., apartments, houses) of participants is
 28 examined so that persons with developmental disabilities are not grouped in a
 29 conspicuous manner;
- 30 h. For the placement of an individual into a three-person setting, the following
 31 factors must be examined to determine reasonableness of the placement:
- 32 i. Level of care and needs of each participant in the home;
- 33 ii. Availability to support and provide supervision to participants;
- 34 iii. Compliance with HCBS Settings Final Rule at 79 Fed. Reg. 2948 (Jan.
 35 16, 2014) (codified in relevant part at 42 C.F.R. § 441.301); and
- 36 iv. Each participant's ability to evacuate.

- 1 i. When three participants reside in a single setting, the PASA must conduct
2 monthly monitoring of the setting.
- 3 3. Participants must live safely in environments common to other citizens with reasonable
4 and appropriate supports provided to protect their health and safety while simultaneously
5 promoting community inclusion. Providers and caregivers must have the appropriate
6 knowledge, skills, and training to meet the individual needs of the participant before
7 providing care and services. The PASA must have policies and procedures in place
8 outlining the required trainings for providers and caregivers. The policy and procedure
9 shall include, but not be limited to, the following:
- 10 a. Training specific to the participants' needs shall be completed by all providers
11 and caregivers. Such training shall include, at a minimum, medical protocols and
12 activities of daily living needs.
- 13 b. Providers and caregivers shall receive training in resident rights, abuse and
14 neglect prevention, and reporting abuse, neglect, mistreatment and exploitation.
- 15 4. Upon enrollment in services, the PASA must assess each participant's ability to care for
16 their safety needs and take appropriate action in case of an emergency. The assessment
17 must be kept up to date and, at a minimum, address the following emergencies and
18 disasters:
- 19 a. Fire;
- 20 b. Severe weather and other natural disasters;
- 21 c. Serious accidents and illness;
- 22 d. Assaults; and,
- 23 e. Intruders.
- 24 5. There must be a written plan for each person addressing how the emergencies specified
25 above will be handled. The plans must be based on an assessment, maintained current
26 and shall, at minimum, address:
- 27 a. Specific responsibilities/actions to be taken by the participant, approved
28 caregivers or other providers of supports and services in case of an emergency;
- 29 b. How the participant will evacuate in case of fire by specifying, at minimum, two
30 exit routes from floors used for sleeping and the level of assistance needed; and
- 31 c. Telephone access (by the participant or with assistance) to the nearest poison
32 control center, police, fire and medical services.
- 33 6. Safety plans and evacuation procedures must be reviewed and practiced at sufficient
34 frequency and varying times of the day, but no less than once a quarter, to ensure all
35 persons with responsibilities for carrying out the plan are knowledgeable about the plan
36 and capable of performing it. All safety plans must be on site at the home and be
37 reviewed by the PASA agency during each on-site monitoring visit.

- 1 7. The PASA must provide sufficient oversight and guidance and have established
2 procedures to ensure that the health and medical needs of the participant are addressed.
3 This includes:
- 4 a. Each participant must have a primary physician;
- 5 b. Each participant must receive a medical evaluation at least annually unless a
6 greater or lesser frequency is specified by his/her primary physician. If the
7 physician specifies an annual evaluation is not needed, a medical evaluation
8 must be conducted no less frequently than every two years;
- 9 c. Each participant must be encouraged and assisted in getting a dental evaluation
10 annually;
- 11 d. Other medical and dental assessments and services must be completed as the
12 need for these is identified by the physician, dentist, other medical support
13 personnel or the Interdisciplinary Team; and
- 14 e. Records must contain documentation of:
- 15 i. medical services provided;
- 16 ii. results of medical evaluations/ assessments and of follow-up services
17 required, if any;
- 18 iii. acute illness and chronic medical problems; and,
- 19 iv. weight taken annually or more frequently, as needed.
- 20 8. [The PASA must have a written contract with each direct service provider providing IRSS
21 under the PASA's authority, regardless of the setting type. This includes but is not limited
22 to Host Home providers and family caregivers not directly employed by the PASA.](#)
- 23 a. [A current list of the above-mentioned contracted IRSS providers and their
24 accompanying contracts must be on file with the program approved service
25 agency and a copy must be provided to the Department or its agent upon
26 request.](#)
- 27 b. [Each contract must be in writing and contain the following information:](#)
- 28 i. [Name of contracted IRSS provider;](#)
- 29 ii. [Responsibilities of each party to the contract, including, but not limited to,
30 responsibility for the safety and accessibility of the physical environment
31 of the home;](#)
- 32 iii. [An agreement outlining the living arrangements, monitoring of the Host
33 Home, Host Home provider's duties, and any limitations on the Host
34 Home providers duties;](#)
- 35 iv. [Expectations that participants be provided opportunities for informed
36 choice over a variety of daily choices similar to those exercised by non-
37 participants;](#)

- 1 v. Process for correcting non-compliance;
- 2 vi. Process for termination of the contract;
- 3 vii. Process for modification or revision of the contract;
- 4 viii. Process for relocation of the participant if they are in immediate jeopardy
5 of actual or potential for serious injury or harm;
- 6 ix. Process for coordinating the care of the participant;
- 7 x. Payment rate and method; and
- 8 xi. Beginning and ending dates; and
- 9 xii. A clause that states the contracted IRSS provider shall not sub-contract
10 with any entity to perform in whole the work or services required under
11 the IRSS benefit.
- 12 c. PASAs who utilizes the services of subcontractors are responsible for the
13 following, which includes but is not limited to:
- 14 i. Vetting, training, monitoring, and taking corrective action with employees
15 and subcontractors.
- 16 ii. Nothing in these regulations shall create any contractual relationship
17 between any subcontractor of the PASA and the Department.
- 18 d. If a contract is terminated with a contracted IRSS provider due to health, safety
19 or welfare concerns, the PASA must report to the following parties:
- 20 i. Within 4 days to the Department or its agent regarding the cited reason
21 for termination of a contracted IRSS provider.
- 22 ii. Within 4 days to the guardian or authorized representative and case
23 manager of the participant from the terminated contracted IRSS provider.
- 24 9. The PASA must require each contracted direct service provider providing IRSS to
25 document each approved caregiver(s) and report to the agency the names of all persons
26 that reside in the home. Participants and/or guardians have a right to request and receive
27 from the rendering PASA a list of all direct service and backup providers that are
28 approved to provide them services. No backup provider may be hired without PASA
29 approval. The agency must ensure criminal background checks are completed for any
30 non-participant over the age of 18 who lives in the home.
- 31 10. The IRSS direct service provider is prohibited from conduct that would reasonably and
32 objectively be offensive to the member or pose a risk to the health, safety and welfare of
33 the member including the members mental health.
- 34 11. Each PASA must provide quarterly housing and participant updates to the Department or
35 its agent through a specified data collection platform. Failure to provide these quarterly
36 updates may result in payment suspension.

1 12. The PASA must ensure nutritionally balanced meals are available to participants. Based
 2 on an assessment of the person's capabilities, preferences and nutritional needs, the
 3 PASA may provide guidance and support to monitor nutritional adequacy.

4 a. Therapeutic diets must be prescribed by a licensed physician or dietician.

5 b. Participants must have access to food at all times, choose when and what to eat,
 6 the opportunity to provide input into menu planning, comfortable seating for
 7 meals where they can choose their own seat, and shall have access to food
 8 preparation areas as documented in the Service Plan.

9 BC. Living Environment

10 1. Homes of participants must, at minimum, meet standards set forth in the Colorado
 11 Division of Housing (DOH) IRSS Inspection Protocol. The following setting types must
 12 pass the DOH IRSS Inspection Protocol every two years:

13 a. All Host Homes; and

14 b. All IRSS settings that are owned or leased by a PASA.

15 Settings must request an inspection prior to placement of a participant and must pass an
 16 inspection within 90 days of becoming an approved setting and providing services.
 17 Existing settings have until January 1, 2022 to pass an inspection.

18 2. The PASA must have a protocol in place for the emergency placement of the participant
 19 if a home is deemed not safe by the Division of Housing (DOH).

20 3. The home (exterior and interior) and grounds must:

21 a. Be maintained in good repair;

22 b. Protect the health, comfort and safety of the participant; and

23 c. Be free of offensive odors, accumulation of dirt, rubbish and dust.

24 43. There must be two means of exit from floors with rooms used for sleeping. Exits must
 25 remain clear and unobstructed.

26 54. The PASA must ensure entry to the home and an emergency exit is accessible to
 27 participants, including participants utilizing a wheelchair or other mobility device.

28 65. The PASA must ensure that participants who utilize a wheelchair or other mobility device
 29 have access to all common areas of the home

30 76. Bedrooms must meet minimum space requirements (single 80 square feet, double 120
 31 square feet). (Not applicable for studio apartments.)

32 87. Adequate and comfortable furnishings and supplies must be provided and maintained in
 33 good condition.

34 98. Participants have the right to furnish and decorate their sleeping and/or living units in the
 35 way that suits them, while maintaining a safe and sanitary environment.

