

Title of Rule: Revisions to the Direct Care Direct Care Services Calculator and Protective Oversight definitions, Sections 8.7502.K & 8.7538.C.1
Rule Number: MSB 25-10-23-A
Division / Contact / Phone: Community Options & Benefits Section / Danielle Krause / 6576

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).

Effective July 1, 2025, Homemaker and Personal Care Services became available to children receiving services through Community First Choice (CFC). As a part of Personal Care, Protective Oversight became a covered task for children. This was previously only available to adults served under Home and Community-Based Services (HCBS) waiver programs. The Department of Health Care Policy & Financing (HCPF) worked with stakeholders during the development of Age-Appropriate Norms for children in 2024. Operational instructions for age-appropriate service authorizations are in place. However, analysis of authorizations clearly shows that this operational guidance is insufficient in ensuring Homemaker, Personal Care, and Protective Oversight are appropriately authorized; especially for children. The need for regulatory language is imperative. Costs are significantly above what was projected and immediate action is necessary to ensure long-term sustainability of these benefits.

To address this, HCPF has revised the definition of Direct Care Services Calculator (DCSC) and Protective Oversight. The DCSC has always included task definitions and times (formerly called Norms, now called Standards); by including this specific language in regulation it improves HCPF's ability to enforce compliance. Clear guidelines ensure Homemaker and Personal Care services, including Protective Oversight, are authorized appropriately and only when clinically justified. Case Managers will be required to follow age-appropriate task standards established by the Department in the authorization of Personal Care and Homemaker services. However, without regulatory authority, these guidelines cannot be enforced. The absence of enforceable standards creates significant fiscal and compliance risks, including potential violations of federal assurances related to program oversight and cost containment.

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:

The State is currently experiencing severe budget constraints that require immediate action to ensure responsible administration of Medicaid-funded services. Existing regulations do not provide adequate guardrails for case managers to promote consistent and appropriate authorization of services. As a result, all Homemaker Services, and primarily Protective

Initial Review
Proposed Effective Date

11/14/25

Final Adoption
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Oversight available through Personal Care, are frequently over-authorized. This emergency rule is therefore necessary to clarify authorization standards for Homemaker Services and Protective Oversight, strengthen oversight, and promote consistent and fiscally responsible use of Medicaid resources in alignment with current budget limitations and Governor Polis's Executive Order D 25 020. Without this change, the ongoing over authorization will jeopardize the sustainability of the State's Medicaid budget and the entire population of members who receive Community First Choice are at risk of losing benefits.

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.;
§ 25.5-6-1901 — 25.5-6-1905, C.R.S. (2025).

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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.

The proposed rule will affect Medicaid members who have been inappropriately authorized for services that exceed their assessed needs. These members will experience adjustments to their authorized service levels to ensure alignment with regulatory standards.

The rule will benefit case managers by providing clear guardrails and definitions for authorizing services, resulting in greater consistency, compliance, and confidence in authorization decisions. Additionally, the State and its contractors will benefit from improved oversight, reduced overutilization, and more efficient use of Medicaid funds, which supports the long-term sustainability of the program for all members. This will benefit members who need a sustainable Medicaid program.

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

Preliminary data indicates that the proposed rule will save the Department approximately \$8.8 million annually by reducing over-authorization of Homemaker and Protective Oversight services for children. This estimation is conservative as State expenditures will continue to compound as CFC enrollment grows. Currently, 44% of all Homemaker authorizations for members under age 18 and 58% of Protective Oversight authorizations through Personal Care for members under age 18 exceed age-appropriate standards. This rule will establish clear, enforceable parameters for authorization, ensuring services are approved only when supervision needs go beyond typical parental responsibility. In addition to the fiscal savings, the rule will improve consistency, fairness, and accountability in service authorizations.

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 expected costs to the Department or to other agencies, including case management agencies, associated with the implementation of this regulation. The proposed rule primarily clarifies existing requirements and does not require system changes or additional administrative processes. The proposed rule will have a

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positive fiscal impact on State revenue by establishing clear authorization parameters, which will prevent inappropriate and excessive authorizations of services and ensure more efficient use of Medicaid funds.

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

Failure to promptly revise this rule will result in continued over-authorization of Homemaker and Protective Oversight services, projected to cost the State approximately \$8.8 million annually. Implementing this emergency rule will allow the Department to immediately enforce consistent standards, ensuring appropriate service delivery and protecting the financial sustainability of the Medicaid program.

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

The Department has determined that there are no less costly or less intrusive methods for achieving the purpose of the proposed rule. The existing operational guidance, which was developed with stakeholders, has proven insufficient given the current compliance trends. Clarifying service authorization standards through regulation is the most effective and efficient means to ensure appropriate and consistent authorizations. While additional non-regulatory guidance could be developed, it would not provide the enforceable authority needed to correct current authorization issues or prevent ongoing fiscal impact to the State.

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.

No alternative methods were identified that would achieve the purpose of this proposed rule. To ensure services are appropriately authorized, the Department must establish clear regulatory requirements. Guidance alone is insufficient, as rules without corresponding regulation cannot be enforced.

8.7500 HCBS Benefits and Services Requirements

8.7502 Definitions: Unless otherwise specified, the following definitions apply throughout Sections 8.7000-8.7500

- K. Direct Care Services Calculator means a tool used by a Case Manager or vendor to indicate the number of hours of Attendant services a Member needs for each covered personal care services, homemaker services, and health maintenance activities. ~~For children,~~ Case Managers must utilize the Task Standards for Adults and the Age-Appropriate Guidelines Task Standards for Children provided by the Department to establish appropriate service authorization for members.

8.7538 Personal Care

8.7538.C Personal Care Inclusions

1. Tasks included in Personal Care:
 - a. Eating/feeding which includes assistance with eating by mouth using common eating utensils such as spoons, forks, knives, and straws;
 - b. Respiratory assistance with cleaning or changing oxygen equipment tubes, filling distilled water reservoirs, and moving a cannula or mask to or from the Member's face;
 - c. Preventative skin care when skin is unbroken, including the application of non-medicated/non-prescription lotions, sprays and/or solutions, and monitoring for skin changes.

- 1 d. Bladder/Bowel Care:
- 2 i. Assisting Member to and from the bathroom;
- 3 ii. Assistance with bed pans, urinals, and commodes;
- 4 iii. Changing incontinence clothing or pads;
- 5 iv. Emptying Foley or suprapubic catheter bags, but only if there is no disruption of
- 6 the closed system;
- 7 v. Emptying ostomy bags; and
- 8 vi. Perineal care.
- 9 e. Personal hygiene:
- 10 i. Bathing including washing, shampooing;
- 11 ii. Grooming;
- 12 iii. Shaving with an electric or safety razor;
- 13 iv. Combing and styling hair;
- 14 v. Filing and soaking nails; and
- 15 vi. Basic oral hygiene and denture care.
- 16 f. Dressing assistance with ordinary clothing and the application of non-prescription support
- 17 stockings, braces and splints, and the application of artificial limbs when the Member is
- 18 able to assist or direct.
- 19 g. Transferring a Member when the Member has sufficient balance and strength to reliably
- 20 stand and pivot and assist with the transfer. Adaptive and safety equipment may be used
- 21 in transfers, provided that the Member and Direct Care Worker are fully trained in the use
- 22 of the equipment and the Member can direct and assist with the transfer.
- 23 h. Mobility assistance when the Member has the ability to reliably balance and bear weight
- 24 or when the Member is independent with an assistive device.
- 25 i. Positioning when the Member is able to verbally or nonverbally identify when their
- 26 position needs to be changed including simple alignment in a bed, wheelchair, or other
- 27 furniture.
- 28 j. Medication Reminders when medications have been preselected by the Member, a
- 29 Family Member, a nurse or a pharmacist, and the medications are stored in containers
- 30 other than the prescription bottles, such as medication minders, and:
- 31 i. Medication reminders are clearly marked with the day, time, and dosage and
- 32 kept in a way as to prevent tampering;
- 33 ii. Medication reminding includes only inquiries as to whether medications were
- 34 taken, verbal prompting to take medications, handing the appropriately marked

medication minder container to the Member and opening the appropriately marked medication minder if the Member is unable to do so independently.

k. Accompanying includes the following:

- i. Going with the Member to medical appointments, as indicated on the support plan, to provide one or more personal care tasks, or assist with communication, documentation, verbal prompting, and/or hands-on assistance when the task cannot be completed without the support of the Direct Care Worker; and/or
- ii. Going with the Member to run errands such as grocery shopping or banking and providing one or more personal care tasks as needed during the trip.

l. Homemaker Services, as described at Section 8.7527, may be provided by personal care staff, if provided during the same visit as personal care.

m. Cleaning and basic maintenance of durable medical equipment.

n. Protective Oversight ~~is means providing allowed when the Member requires line of sight supervision requiring intervention~~ to prevent ~~harm when a member's or mitigate~~ disability, memory, or cognitive functioning-related behaviors or impairment ~~place the member, others, or property at risk, that may result in imminent harm to self, people, or property.~~ Protective Oversight shall not be authorized for purposes of companionship, childcare, general supervision, reassurance, emergency or crisis intervention, or routine monitoring that is not necessary to address a disability-related safety risk. Protective Oversight shall not include and restrictive practices unless a documented Rights Modification per 8.7001.A.17. is in place prior to the provision of services. Protective Oversight shall only be approved when there is documented evidence of risks requiring regular and predictable intervention within the last year. The members' service plan must include the frequency, scope and duration of intervention required. Protective Oversight alone cannot be the sole reason for the visit/services.

a. For children under age 18, Protective Oversight may be authorized only when the level of supervision requiring intervention is substantially greater than what is typical for a child of the same age without disabilities. Protective Oversight cannot be authorized for routine childcare, typical parental monitoring or supervision that is age-appropriate and expected for children of the same age.

o. Personal Care Services includes the option for the Acquisition, Maintenance, and Enhancement of Skills (AME) task when the support is related to functional skills training and is desired by the member to accomplish Personal Care tasks to increase their independence and reduce supports needed in the home and community.

- i. Detailed, task-related goals shall be documented by case manager in the Person-Centered Support Plan, including documentation monitoring progress and any decrease in human assistance previously authorized.
- ii. AME services shall include direct training and instruction to the Member in performing Personal Care tasks.
- iii. The provider or attendant shall be physically present to provide step-by-step verbal or physical instructions throughout the entire task.