

Title of Rule: Revision to the Medical Assistance Rule Concerning the Children's Habilitation Residential Program Waiver Eligibility Expansion, Section 8.7101  
Rule Number: MSB 24-08-22-A  
Division / Contact / Phone: Office of Community Living / Nancy Harris / 303-866-5076

## 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).

HB 24-1038, High-Acuity Crisis for Children and Youth, was developed through a collaboration between the Department of Health Care Policy and Financing (HCPF), the Colorado Department of Human Services rules (CDHS), and the Behavioral Health Administration (BHA), which addresses the need for residential care for children and youth with complex behavioral and mental health needs.

HB 24-1038 specifies that "No later than January 1, 2025, the State Department shall seek federal authorization to expand the residential child health-care program established pursuant to Section 25.5-6-903 to include children and youth who have a serious emotional disturbance that puts the child or youth at risk or in need of out-of-home placement."

The intention of this change to the CHRP waiver is to include Serious Emotional Disturbance (SED) within the CHRP targeting criteria for waiver eligibility. Children/youth must meet the nursing facility or an inpatient psychiatric hospital level of care. There will be no changes to the CHRP waiver benefits or providers through this change. This change will create alignment between BHA, CDHS and HCPF and create additional options in serving high-acuity youth.

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 U.S.C. 1396n(b)(4) waiver request submitted to CMS. Approval expected 1/1/25. Rule will be effective after CMS approval is obtained.

4. State Authority for the Rule:

Sections 25.5-1-301-303, 25.5-6-903, C.R.S. (2024);

Initial Review  
Proposed Effective Date

**11/08/24**  
**01/30/25**

Final Adoption  
Emergency Adoption

**12/13/24**

**DOCUMENT #08**

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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 class of persons impacted by the proposed rule change to expand eligibility are those children with Serious Emotional Disturbances (SED) 0-21 years old, who have very high needs, putting them at risk of, or in need of, out of home placement. Prior to the rule change, children with SED, with high-acuity needs, had few options for out of home placement within the Medicaid system.

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

The qualitative impact of the proposed rule change to expand eligibility will positively affect the quality of life of our members by increasing access to the CHRP Waiver for members who have a diagnosis of Serious Emotional Disturbance. The probable quantitative impact of the proposed rule change to expand eligibility is the potential to achieve cost savings for the Department when members can receive supportive interventions in community settings and prevent institutional placement.

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.

The costs associated with implementation of this expanded eligibility have been factored into the appropriations given to the Department with the approval to implement this waiver change.

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

The Department anticipates this eligibility expansion to increase overall CHRP enrollments by 22 members in FY 2024-25, with an increased cost of \$1,500,000. It is estimated that these newly eligible users will see a decrease in State Plan services utilized, creating a savings of \$91,000 in FY 2024-25. Because of the identified gap in services for these children, the CHRP expansion is anticipated to help close that gap.

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Because of the identified gap in services for these children, eligibility expansion is an effort to help close that gap. Inaction would result in decreased access for these children in need.

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

The Department has not identified any less costly methods or less intrusive methods for achieving the purpose of the proposed regulation changes. These rule changes are required in order to implement the legislative mandate.

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 eligibility expansion for this waiver. The only method of allowing the eligibility expansion as proposed is to amend existing rules and making other necessary changes, such as a change to the waiver application.

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2 **8.7100.A Definitions**  
3

4 45-B. Licensed Mental Health Professional means a mental health provider who possesses one or  
5 more of the following Colorado licenses: Psychologist, Psychiatrist, or other licensed mental  
6 health professional. All licenses shall be active and in good standing.  
7

8 59-B. Serious Emotional Disturbances (SED) means a mental, behavioral or emotional disorder that  
9 meets these criteria:  
10

11 a. Has been diagnosed by a Licensed Mental Health Professional according to criteria set  
12 forth in the current Diagnostic and Statistical Manual of Mental Disorders; the DC:0-5  
13 Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and  
14 Early Childhood; or the International Classification of Diseases.  
15

16 b. Has functional impairments, which interferes with the Member's functioning in family,  
17 social relationships, school or community, and  
18

19 c. Which have caused the Member to experience an emotional disturbance within the past  
20 12 months for children aged 6 and older or the past 3 months for children aged 5 and  
21 younger, prior to application on a continuous or intermittent basis, as determined and  
22 documented by a Licensed Mental Health Professional.  
23

24 d. SED shall not include substance-related disorders, or primary conditions or problems  
25 classified in the DSM as other conditions that may be a focus of clinical attention.  
26  
27  
28  
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30 **8.7101 HCBS Waiver Program-Specific Member Eligibility**  
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33  
34 **8.7101.C Children's Habilitation Residential Program Waiver (HCBS-CHRP)**  
35

36 1. Target Group Criteria  
37

38 2. To be eligible for the HCBS-CHRP waiver, an individual shall meet the Target Group Criteria as  
39 follows:  
40

41 a. Is under 21 years of age.  
42

43 ~~b. Has a Developmental Disability (which includes Developmental Delay if under five years~~  
44 ~~of age).~~

45 ~~eb.~~ Has Extraordinary Needs that put the individual at risk or in need of out-of-home  
46 placement as identified in one of the two following manners:-  
47

48 ~~d. Meets Intermediate Care Facilities for Individuals with Intellectual Disabilities Level of~~  
49 ~~Care as determined by the Level of Care Screen.~~  
50

51 i. Meets Intermediate Care Facilities for Individuals with Intellectual Disabilities  
52 Level of Care as determined by the Level of Care Screen, and  
53

54 1) has been determined to have a Developmental Disability as determined  
55 pursuant to Section 8.607 or if under five years of age, a Developmental  
56 Delay, or

1  
2 ii. Has a Serious Emotional Disturbance (SED) as defined in Section 8.7100.A as  
3 documented in a format prescribed by the Department, and the individual under  
4 21 years old either

5  
6 1) meets Nursing Facility Level of Care as determined by the Level of Care  
7 Screen or,

8  
9 2) as documented in a format prescribed by the Department, the individual  
10 experienced inpatient psychiatric care, was at risk of inpatient psychiatric  
11 care, or was determined to require inpatient psychiatric care.  
12

13  
14 3. Medicaid Eligibility Groups Served in the Waiver

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16 4. HCBS-CHRP Waiver Services are available to eligible Members in the following State Plan  
17 eligibility groups:

18  
19 a. Children for whom foster care maintenance payments are being made by the County  
20 Departments of Human/Social Services and who otherwise meet eligibility criteria.

21  
22 b. Individuals who meet the criteria set forth at 42 CFR §435.217.  
23

24 5. Other

25  
26 a. An Assessment of the level of support needed shall be completed upon determination of  
27 eligibility and shall determine the level of reimbursement for Habilitation and per diem  
28 Respite services.  
29

30 b. Individuals determined eligible for benefits under the HCBS-CHRP waiver, who cannot be  
31 served within the capacity limits of the federally approved waiver, shall be eligible for  
32 placement on a waiting list maintained by the Department.  
33  
34  
35  
36

37 **8.7500 HCBS Benefits and Services Requirements**

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39 **8.7522 CHRP Habilitation**

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42 **8.7522.D CHRP Habilitation Provider Agency Requirements**

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44  
45 1. The ~~Service~~-Provider Agency or child placement Agency shall ensure choice is provided to all  
46 Members in their living arrangement.  
47

48 2. The Foster Care Home or Kinship Foster Care Home provider must ensure a safe environment  
49 and safely meet the needs of all Members living in the home.  
50

51 3. The ~~Service~~-Provider Agency shall provide the Case Management Agency a copy of the Foster  
52 Care Home or Kinship Foster Care Home certification before any child or youth may be placed in  
53 that home. If emergency placement is needed outside of business hours, the Provider Agency or  
54 child placement Agency shall provide the Case Management Agency a copy of the Foster Care  
55 Home or Kinship Foster Care Home certification the next business day.  
56

1 4. Provider Agencies for habilitation services and services provided outside the Family home shall  
2 meet all of the certification, licensing, waiver, and quality assurance regulations related to their  
3 provider type.

4  
5 5. Service in a foster care home may be provided by a provider that is licensed by the State  
6 Department of Human Services or certified by the county or Child Placement Agency. For youth  
7 aged 18-20, service may be provided in a host home.  
8