

Title of Rule: Repeal 8.607.2 Determination of Developmental Disability and move to 8.7202.D with title: Determination of Developmental Delay and Intellectual and Developmental Disability  
Rule Number: MSB 25-07-02-B  
Division / Contact / Phone: Office of Community Living / QPD / Nicolette Cordova

## 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 proposed rule revises the Home and Community-Based Services (HCBS) case management rules to include updated supporting documentation and signature requirements and consolidates section 8.607 with the rest of the HCBS case management rules under 8.7202.D. The rule also updates language and citations for accuracy and clarity.

This change is necessary to improve accessibility, ensure consistency across HCBS case management rules, eliminate outdated language, and provide clear guidance to members, case management agencies, and Department staff. Consolidating the rules in a single location streamlines compliance, reduces confusion, and supports effective oversight of HCBS services.

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.

N/A

Explain:

N/A

3. Federal authority for the Rule, if any:

42 C.F.R. § 441.301 – § 441.310, HCBS Waiver 0007.R09.00

4. State Authority for the Rule:

Sections 25.5-6-1702 and 1704, C.R.S.

Sections 25.5-1-301 through 25.5-1-303, C.R.S.

Initial Review

**02/13/26**

Final Adoption

**03/13/26**

Proposed Effective Date

**05/15/26**

Emergency Adoption

**DOCUMENT #09**

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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.

All members receiving HCBS and all HCBS case management agencies (CMAs) will be affected. We do not anticipate additional costs associated with this rule change. The updates will benefit all stakeholders by consolidating rules, removing outdated language, clarifying requirements, and making HCBS case management guidance easier to access and apply.

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 proposed rule is not expected to have economic impact on members receiving HCBS or HCBS CMAs. No additional costs are anticipated. Qualitatively, the rule will improve clarity, consistency, and ease of access by consolidating HCBS case management rules, updating citations, and removing outdated language. Members and CMAs may benefit from reduced administrative confusion, clearer documentation requirements, and streamlined procedures. Overall, the impact is expected to be positive and primarily operational rather than financial.

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 Colorado Department of Health Care Policy and Financing (the Department) does not anticipate significant costs associated with the implementation or enforcement of this rule. The updates primarily involve consolidating existing HCBS case management rules, updating citations, and clarifying documentation requirements. Enforcement and oversight responsibilities remain consistent with current practice. No impact on state revenues is expected as a result of this rule change.

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

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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. Consolidating the HCBS case management rules, updating citations, and clarifying documentation requirements is the most efficient and effective approach to ensure consistency, accessibility, and compliance.

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 considered maintaining the rules in their current, separate locations without updating citations or signature requirements. This approach was rejected because it would perpetuate outdated language, create confusion, and make HCBS case management rules less accessible. Consolidating and updating the rules, as proposed, was determined to be the most effective method to achieve clarity, consistency, and ease of compliance.

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**8.607.2 DETERMINATION OF DEVELOPMENTAL DISABILITY**

A. ~~Any person, his/her legal guardian, parent(s) of a minor or such person(s) authorized by law may submit a written request for a determination of whether the applicant has a developmental disability.~~

B. ~~A determination of developmental disability does not constitute a determination of eligibility for services or supports. The Community Centered Boards Case Management Agencies shall determine whether a person has a developmental disability and therefore may be eligible to receive services and supports pursuant to Sections 25.5-10-202(2) and 211, C.R.S., in accordance with criteria as specified by the Department.~~

~~Eligibility for Medicaid funded programs specific to persons with developmental disabilities shall be determined pursuant to the Colorado Department of Health Care Policy and Financing's Medical Assistance rules (10 C.C.R. 2505-10).~~

C. ~~The developmental disability determination shall be made according to Department procedures, which shall identify the qualifications of person(s) making such a determination.~~

**8.7000 Home and Community-Based Services**

**8.7200 Case Management Agency Requirements**

**8.7202 Functions of A Case Management Agency**

**8.7202.D Determination of Developmental Delay and Determination of Intellectual and Developmental ~~for~~ Disability**

1. A determination of developmental delay or intellectual and developmental disability does not constitute a determination of eligibility for services or supports. The Community Centered Boards Cs Case Management Agencies shall determine whether a person has a developmental delay or intellectual and developmental disability and, therefore, may be eligible to receive services and supports pursuant to Sections 25.5-10-202(2)6-1702(3) and 2111704, C.R.S., in accordance with criteria as specified prescribed by the Department.

- 1 2. Eligibility for Medicaid funded programs specific to persons with developmental delays or  
2 intellectual and developmental disabilities shall be determined pursuant to the Colorado  
3 Department of Health Care Policy and Financing's Medical Assistance rules (10 C.C.R.  
4 2505-10 Section 8.100).
- 5 3. The developmental delay or intellectual and developmental disability determination shall be  
6 made ~~according to Department procedures, which shall identify the qualifications of~~  
7 ~~person(s) making such a determination by case management agency staff having the~~  
8 ~~minimum qualifications outlined in 10 CCR 2505-10 Section 8.7203.A(1)-(5).~~
- 9 4. A ~~request for determination~~ Request for Developmental Disability Determination of ~~a~~  
10 developmental delay or intellectual and developmental disability shall be submitted to the  
11 Community Centered Board Case Management Agency in the ~~designated~~ defined service  
12 area where the person resides, including temporary residences, such as incarceration, ~~or~~  
13 hospitalization, or foster care placement within the state, in the form and manner prescribed  
14 by the Department.
- 15 5. At the time of request, the Community Centered Board Case Management Agency shall:  
16 a. Provide the applicant ~~with any all~~ required forms and a list of the minimum required  
17 documents and information necessary for the determination of intellectual or  
18 developmental disability or developmental delay determination; and,  
19 b. Provide the applicant with information on where to obtain testing for the level of  
20 intellectual functioning and adaptive behavior, if requested. The responsibility for  
21 obtaining such assessments shall be with the applicant, parent(s) of a minor and/or  
22 legal guardian legally authorized representative.
- 23 6. The applicant, parent(s) of a minor and/or legal guardian legally authorized representative  
24 shall provide all documentation and information necessary for the determination of  
25 developmental delay or intellectual and developmental disability within ninety (90) calendar  
26 days of the request.  
27 a. The Community Centered Board Case Management Agency may request additional  
28 documentation and/or information, as needed, to complete the determination of  
29 developmental delay or intellectual and developmental disability.  
30 b. The applicant, parent(s) of a minor and/or legal guardian legally authorized  
31 representative may have additional assessments completed and submitted to the  
32 Community Centered Board Case Management Agency for consideration.
- 33 7. If the applicant, parent(s) of a minor and/or legal guardian legally authorized representative  
34 has not provided the documentation and information necessary for the determination within  
35 ninety (90) calendar days of the request, the Community Centered Board Case  
36 Management Agency shall:  
37 a. Close the request and notify the applicant in writing according to the procedures  
38 established at Section 8-607.2-L.48.7202.D(13); or,  
39 b. The Community Centered Board Case Management Agency may, at the request of  
40 the applicant, parent of a minor and/or legal guardian legally authorized  
41 representative extend the deadline for providing the necessary documentation and  
42 information by up to an additional ninety (90) calendar days.  
43 i. In no case shall the deadline for providing the necessary documentation and  
44 information exceed one hundred eighty (180) calendar days.  
45 ii. The Community Centered Board Case Management Agency shall provide a  
46 written update to the applicant no less than every ninety (90) calendar days  
47 until a determination of developmental delay or intellectual and  
48 developmental disability is completed or the request is closed.  
49 iii. If the extended deadline for providing the necessary documentation and  
50 information has expired and there is still insufficient information to make a

determination of developmental delay or intellectual and developmental disability, the Community Centered Board Case Management Agency shall close the request and notify the applicant and/or ~~legal guardian~~ legally authorized representative in writing according to the procedures established at Section ~~8.607.2.L.4.8.7202.D~~(13).

8. For all applicants, the Community Centered Board Case Management Agency shall enter into the Department's ~~designated data system~~ prescribed Information Management System and shall permanently maintain a written and/or electronic record of the developmental delay or intellectual and developmental disability determination in a form and manner prescribed by the ~~on a~~ Department. The record, at a minimum, shall include:
- a. The name of the applicant;
  - b. The applicant's date of birth;
  - c. The date of the determination of developmental delay or intellectual and developmental disability; and
  - d. A description of the rationale for the developmental delay or intellectual and developmental disability determination including, at minimum, assessment scores and diagnoses;  
The name(s) and title(s) of the person(s) involved in making the determination.
9. All information and assessments used to determine a developmental delay or intellectual and developmental disability shall be current so as to accurately represent the applicant's abilities at the time of determination.
- a. Assessments of adaptive behavior shall have been completed within three (3) years of the request.
  - b. Assessments of intellectual functioning shall have been completed as follows:
    - i. If an individual is between five (5) and eighteen (18) years of age, at least one intellectual assessment shall have been completed to determine the individual's impairment of general intellectual functioning; or,
    - ii. If an individual is eighteen (18) years of age or older and there is only one intellectual assessment available to determine the individual's impairment of general intellectual functioning, the assessment shall have been completed when the individual was at least eighteen (18) years of age and shall have been completed within ten (10) years of the request; or,
    - iii. If there is historical pattern of consistent scores, based on two (2) or more intellectual assessments, that demonstrates an impairment of general intellectual functioning, the assessments may be used regardless of the individual's age at the time of determination.
  - c. An established neurological condition shall be documented as follows:
    - i. A diagnosed neurological condition shall be determined by a MD, DO, PA, APN, psychologist, neuropsychologist, or other medical professional ~~licensed medical professional~~ practicing within the scope of their license; or,
    - ii. If a specific diagnosis is not possible, a written statement from a MD, DO, PA, APN, psychologist, neuropsychologist, or other medical professional ~~Licensed Medical Professional~~, practicing within the scope of their license, ~~or a Licensed Psychologist~~, may be used as long as there is a documented effort to determine a diagnosis and the available assessment information reasonably supports a conclusion that a neurological impairment is present.
    - iii. The effects of mental illness or physical or sensory impairment must be considered to determine the extent to which such impairments are the sole contributing factor to the impairment of general intellectual functioning or limitations to adaptive behavior.

~~iii.~~ iv. The established neurological condition documentation must be signed by the Licensed Medical Professional MD, DO, PA, APN, psychologist, neuropsychologist, or other medical professional practicing within the scope of their his/her license.

10. ~~Community Centered Board shall make the determination of developmental disability within ninety (90) calendar days of the receipt of all necessary information. On or after July 1, 2015, t~~ The Community Centered Board Case Management Agency shall make the determination of developmental delay or intellectual and developmental disability within thirty (30) calendar days of the receipt of all ~~necessary required~~ information and documentation required to make a determination.
11. The date of the developmental delay or intellectual and developmental disability determination shall be the date that ~~the Department prescribed form and~~ all documentation and information necessary required for the determination of a developmental or intellectual and developmental disability was received by the Community Centered Board Case Management Agency.
12. If a delay to the determination of a developmental delay or intellectual and developmental disability is due to the actions or inactions of the Community Centered Board Case Management Agency, the original date of request shall be used.
13. The Community Centered Board Case Management Agency making the developmental delay or intellectual and developmental disability determination shall, in writing, notify the applicant, parent(s) of a minor and/ or their legal guardian legally authorized representative, and the authorized person requesting the determination, if other than the applicant or legal guardian, and other such persons as designated by the applicant, of the decision. Such notification shall:
  - a. Be mailed to the person within seven (7) calendar days of the date of determination decision;
  - b. Be provided in such alternative means of communication as to reasonably ensure that the information has been communicated in an understandable form; and,
  - c. For persons determined to have a developmental delay or intellectual and developmental disability, contain an explanation of the process that will occur ~~and~~ notice that, at a minimum, a ~~n Individualized Plan Person-Centered Support Plan~~ shall be developed upon enrollment into a developmental disability program service;
  - d. For persons determined not to have a developmental delay or intellectual and developmental disability or persons whose request is closed without the determination of a developmental delay or intellectual and developmental disability, state the reasons for the determination or closure, and provide a written Long-Term Care Notice of Action form in accordance with the provisions of Section 8.057 regarding the applicant's right to appeal the decision to the Office of Administrative Courts.
14. Applicants determined not to have a developmental delay or intellectual and developmental disability may request a new determination ~~of developmental disability~~ at any time upon receipt of new or missing required information, and a new request date shall be established.
15. A determination of developmental delay or intellectual and developmental disability shall be accepted by other Community Centered Boards Case Management Agencies, service agencies and regional centers.
16. A determination of developmental delay or intellectual and developmental disability shall be permanent and shall not require renewal or review unless:
  - a. The interdisciplinary Member Identified Team determines that developmental disability services are no longer needed due to improvement in a person's condition

1 and recommends a redetermination; or,  
2 b. Information from a new evaluation becomes available which demonstrates sufficient  
3 improvement in a person's condition such that the determination should be reviewed.

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