THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Benefit Rule Concerning Pediatric Personal Care Services Rule, 10 CCR 2505-10, Section 8.535
Rule Number:	MSB 15-07-29-A
Division / Contact / Phone:	HPBOD / Amanda Forsythe / x6459

SECRETARY OF STATE
RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB 15-07-29-A, Revision to the Medical Assistance Health Programs Benefit Rule Concerning Pediatric Personal Care Services Rule, 10 CCR 2505-10, Section 8.535
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.535.4.H.13, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 09/11/2015
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Delete the current text beginning at §8.535.4.H.13 through the end of §8.535.4.H.13.b.ii. There is no new text to insert this is intended to remove existing text regarding "Personal Oversight". All other text in this section of the rule should remain as is. This revision is effective 09/11/2015.

*to be completed by MSB Board Coordinator

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Title of Rule:	Revision to the Medical Assistance Health Programs Benefit Rule Concerning Pediatric Personal Care Services Rule, 10 CCR 2505-10, Section 8.535
Rule Number:	MSB 15-07-29-A
Division / Contact / Phone:	HPBOD / Amanda Forsythe / x6459

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 Centers for Medicare and Medicaid Services (CMS) informed the Department that it may not include protective oversight as a covered service under the Pediatric Personal Care Services benefit. In response, the Department removed the protective oversight provision from the EPSDT Personal Care Services State Plan Amendment, which was subsequently approved by CMS on June 18, 2015. This emergency rule change aligns the Pediatric Personal Care Services administrative rule with the State Plan by striking the protective oversight provision, thereby bringing the Department into compliance with CMS requirements.

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 Centers for Medicare and Medicaid Services (CMS) informed the Department that it may not include protective oversight as a covered service under the Pediatric Personal Care Services benefit. In response, the Department removed the protective oversight provision from the EPSDT Personal Care Services State Plan Amendment, which was subsequently approved by CMS on June 18, 2015. This emergency rule change aligns the Pediatric Personal Care Services administrative rule with the State Plan by striking the protective oversight provision, thereby bringing the Department into compliance with CMS requirements.

3. Federal authority for the Rule, if any:

   42 U.S.C. § 1396d and 42 C.F.R. § 441, Subpart B

4. State Authority for the Rule:

   C.R.S. § 25.5-1-301 through 25.5-1-303, C.R.S. (2014);
   C.R.S. § 25.5-5-102(1)(g); and C.R.S. § 25.5-4-105

Initial Review		Final Adoption	
Proposed Effective Date	**09/11/2015**	Emergency Adoption	**09/11/2015**

DOCUMENT #01

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Health Programs Benefit Rule Concerning Pediatric Personal Care Services Rule, 10 CCR 2505-10, Section 8.535
Rule Number:	MSB 15-07-29-A
Division / Contact / Phone:	HPBOD / Amanda Forsythe / x6459

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 rule change will impact Medicaid clients under 21 years of age, as well as providers of Pediatric Personal Care services.

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 rule change removes protective oversight services as a covered benefit under the Pediatric Personal Care Services rule.

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 implementation and enforcement of the proposed rule change will have no costs to the Department or any other agency. Thus, there is no anticipated effect on state revenues**.** The Department has notified providers and clients of this change in a series of public meetings, including the Children's Services Steering Committee and Personal Care Benefit update meetings. Based on external stakeholder feedback, the communications have been effective and seem to have addressed the concerns of providers and clients. The messaging was completed within pre-existing communications strategies and channels, with no impact on the Department budget. The Department does not foresee any additional impact.

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

   The benefit of the proposed rule change is that the Department will be in compliance with Federal requirements as enforced by CMS. The Department has removed protective oversight services from the personal care benefit section of the Colorado state plan. However, CMS can still make a finding of noncompliance based on the Department's failure to actually comply with a Federal requirement, regardless of whether the state plan itself complies with that requirement. If CMS finds that Department's administration of the state plan fails to comply substantially with any of the relevant Federal requirements, CMS may withhold payments to Colorado--in whole or in part--until satisfied regarding the Department's compliance. 42 C.F.R. § 430.35.

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

   There are no less costly or less intrusive methods for achieving the purpose of the proposed rule change.

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 of the proposed rule change, as the Department must comply with federal CMS requirements.

8.535.4.H. Covered Personal Care Services

Covered Personal Care Services include assistance with the following tasks:

~~13. Protective Oversight~~

~~a. Includes monitoring a client to reduce or minimize the likelihood of injury or harm due to the nature of the client's injury, illness or disability. A Personal Care Worker may provide this task only when:~~

~~i) Providing protective oversight as stand-by assistance with any other Personal Care Task;~~

~~ii) Trained in appropriate intervention and redirection techniques if the client requires protective oversight to prevent wandering or dangerous or destructive behaviors.~~

~~b. Special Considerations:~~

~~i) Protective Oversight may only be provided during the completion of other Personal Care Tasks listed in this rule.~~

~~ii) The need for Protective Oversight is indicated by significant impairment in behavior, memory, or cognition.~~

THIS PAGE IS NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Home and Community Based Services for Community Mental Health Supports, §8.509.15, Home and Community Based Services for Persons with Brain Injury, § 8.515.3, and Home and Community Based Services for Persons with a Spinal Cord Injury, § 8.517.2
Rule Number:	MSB 15-06-16-A
Division / Contact / Phone:	Long Term Services and Supports / Colin Laughlin and Cassandra Keller / 866-2549

SECRETARY OF STATE
RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board
2. Title of Rule: MSB MSB 15-06-16-A, Revision to the Medical Assistance Home and Community Based Services for Community Mental Health Supports, Section 8.509.15, Home and Community Based Services for Persons with Brain Injury, Section 8.515.3, and Home and Community Based Services for Persons with a Spinal Cord Injury, Section 8.517.2
3. This action is an adoption of: an amendment
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.509.15, 8.517.2, and 8.515.3, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).
5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 9/11/15
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace current text at §8.509.15.A.2.a. with new text provided. Replace current text beginning at §8.509.15.A.2.a.i. through the end of §8.509.15.A.2.d with new text provided beginning at §8.509.A.2.a.i through the end of §8.509.15.A.2.c.

Replace current text provided beginning at the first unnumbered paragraph at §8.515.3 through the end of §8.515.3.18 with the new text provided.

Return to: Office of State Planning and Budgeting (OSPB)
State Capitol, Room 111

THIS PAGE IS NOT FOR PUBLICATION

Add new text provided beginning at §8.517.2.1 through the end of §8.517.2.1.31 with the new text provided. Replace current text at §8.517.5.A.2 with the new text provided.

All text indicated in blue is for clarification purposes only and should not be changed. All text not included in this document should remain as is with no changes.

This revision is effective 09/11/2015.

THIS PAGE IS NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Home and Community Based Services for Community Mental Health Supports, §8.509.15, Home and Community Based Services for Persons with Brain Injury, § 8.515.3, and Home and Community Based Services for Persons with a Spinal Cord Injury, § 8.517.2
Rule Number:	MSB 15-06-16-A
Division / Contact / Phone:	Long Term Services and Supports / Colin Laughlin and Cassandra Keller / 866-2549

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 BI, CMHS and SCI rules for targeting waiver eligibility are being updated in order to come into compliance with the Federal Mandate to migrate from ICD-9 to ICD-10 codes by October 1, 2015.

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 must come into compliance with the Federal Mandate to update the ICD-9 codes by October 1, 2015. Those ICD-9 codes are outlined in the waiver targeting criteria rules and must be updated in order to be compliant.

3. Federal authority for the Rule, if any:

   45 CFR §§ 162.1000 & 162.1002

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2014);
   CRS §§ 25.5-6-606; 25.5-6-704; 25.5-6-1304.

Initial Review	**09/11/2015**	Final Adoption	**10/09/2015**
Proposed Effective Date	**11/30/2015**	Emergency Adoption	

DOCUMENT #05

THIS PAGE IS NOT FOR PUBLICATION

.Title of Rule:	Revision to the Medical Assistance Home and Community Based Services for Community Mental Health Supports, §8.509.15, Home and Community Based Services for Persons with Brain Injury, § 8.515.3, and Home and Community Based Services for Persons with a Spinal Cord Injury, § 8.517.2
Rule Number:	MSB 15-06-16-A
Division / Contact / Phone:	Long Term Services and Supports / Colin Laughlin and Cassandra Keller / 866-2549

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.

Clients on the BI and CMHS waivers will benefit from the proposed rule change by removing the ICD-9 codes listed in the targeting criteria of the rules and coming into compliance with the Federal Mandate. The cost of the proposed rule change is not projected to have any impact and will be covered by the current appropriation for HCBS BI, SCI, and CMHS waiver services.

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

There is not a quantitative nor a qualitative impact on clients.

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 will be no additional cost to the Department

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

In order to comply with the Federal Mandate, it will be necessary to change the rules in order to come into compliance.

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

There are no less costly or less intrusive methods for achieving the purpose of the proposed rule.

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 of the proposed rule and of simplifying waivered services.

8.509.15 ELIGIBLE PERSONS

A.

2. Level of Care AND Target Group.

Clients who have been determined to meet the level of care AND target group criteria shall be certified by the Utilization Review Committee (URC) as functionally eligible for HCBS-CMHS. The URC shall only certify HCBS-CMHS eligibility for those clients:

a. Determined to meet the target group definition, ~~for the mentally ill as defined at Section 8.400.16; and~~ defined as a person experiencing a severe and persistent mental health need that requires assistance with one or more Activities of Daily Living (ADL):

i. A person experiencing a severe and persistent mental health need is defined as someone who:

1) Is 18 years of age or older with a severe and persistent mental health need; and

2) Currently has or at any time during the past year leading up to assessment has a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the Diagnostic and Statistical Manual of Mental Disorders (DSM -5); and

a) Has a disorder that is episodic, recurrent, or has persistent features, but may vary in terms of severity and disabling effects; and

b) Has resulted in functional impairment which substantially interferes with or limits one or more major life activities.

ii. A severe and persistent mental health need does not include:

1) Intellectual or developmental disorders; or

2) Substance use disorder without a co-occurring diagnosis of a severe and persistent mental health need.

b. Determined by a formal level of care assessment to require the level of care available in a nursing facility, according to Section 8.401.11-15; and

~~c. Who are determined to be persons with mental illness as defined by State Mental Health Services and documented by the case management agency;~~

~~d~~c. A length of stay shall be assigned by the URC for approved admissions, according to guidelines at Section 8.402.50.

8.515.3 GENERAL DEFINITIONS

Brain Injury means an injury to the brain of traumatic or acquired origin which results in residual physical, cognitive, emotional, and behavioral difficulties of a non-progressive nature and is limited to the ~~following~~ following broad diagnoses found within the most current version of the International Classification of Diseases (ICD) at the time of assessment:~~International Classification of Diseases, 9th Edition, Clinical Modification (ICD-9-CM) codes:~~:

1. ~~310 – 310.9 Specific n~~Nonpsychotic mental disorders due to brain damage; or

2. ~~348.1 Anoxic brain damage~~; or

3. ~~348.4 Compression of the brain~~; or

4. ~~349.82 Toxic encephalopathy~~; or

5. ~~430~~ Subarachnoid and/or intracerebral hemorrhage; or

~~431 Intracerebral hemorrhage~~

6. ~~433~~ Occlusion and stenosis of precerebral arteries; or

7. ~~436~~ Acute, but ill-defined cerebrovascular disease; or

8. ~~437 – 437.9~~ Other and ill-defined cerebrovascular disease; or

9. ~~438 – 438.9~~ Late effects of cerebrovasular disease; or

10. ~~800 – 800.9~~ Fracture of ~~vault of skull~~the skull or face; or

~~801 – 801.9 Fracture of base of skull~~

~~803 – 803.9 Other and unqualified skull fractures~~

~~804 – 804.9 Multiple fractures involving skull or face with other bones~~

11. ~~850 – 850.9~~ Concussion resulting in an ongoing need for assistance with activities of daily living; or

12. ~~851 – 851.9~~ Cerebral laceration and contusion; or

13. ~~852 – 8.52.5~~ Subarachnoid, subdural, and extradural hemorrhage, following injury; or

14. ~~853 – 853.1~~ Other unspecified intracranial hemorrhage following injury; or

15. ~~854 – 854.1~~ Intracranial injury ~~of other and unspecified nature~~; or

16. ~~905~~ Late effects of musculoskeletal and connective tissue injuries; or

17. ~~907~~ Late effects of injuries to the nervous system; or

18. Unspecified injuries to the ~~959.01 Hh~~ead ~~injury, unspecified~~resulting in ongoing need for assistance with activities of daily living.

Case Management Agency means the agency designated by the Department to provide the Single Entry Point Functions detailed at Section 8.393.

Individual Cost Containment Amount means the average cost of services for a comparable population institutionalized at the appropriate level of care, as determined annually by the Department.

Service Plan means the plan developed by the case manager in coordination with the HCBS-BI client and/or the legal guardian to identify and document the HCBS-BI services, other Medicaid services, and any other non-Medicaid services or supports that the HCBS-BI client requires in order to live successfully in the community.

8.517.2 GENERAL DEFINITIONS

Acupuncture means the stimulation of anatomical points on the body by penetrating the skin with thin, solid, metallic, single-use needles that are manipulated by the hands or by electrical stimulation for the purpose of bringing about beneficial physiologic and /or psychological changes.

Chiropractic Care means the use of manual adjustments (manipulation or mobilization) of the spine or other parts of the body with the goal of correcting alignment and other musculoskeletal problems.

Complementary and Integrative Health Care Plan means the plan developed prior to the delivery of Complementary and Integrative Health Services in accordance with Section 8.517.11.D.

Complementary and Integrative Health Provider means an individual or agency certified annually by the Department of Health Care Policy and Financing to have met the certification standards listed at Section 8.517.11.Denver Metro Area means the counties of Adams, Arapahoe, Denver, Douglas, and Jefferson.

Emergency Systems means procedures and materials used in emergent situations and may include, but are not limited to, an agreement with the nearest hospital to accept patients; an Automated External Defibrillator; a first aid kit; and/or suction, AED, and first aid supplies.

Individual Cost Containment Amount means the average cost of services for a comparable population institutionalized at the appropriate level of care, as determined annually by the Department.

Massage Therapy means the systematic manipulation of the soft tissues of the body, (including manual techniques of gliding, percussion, compression, vibration, and gentle stretching) for the purpose of bringing about beneficial physiologic, mechanical, and/or psychological changes.

Medical Director means an individual that is contracted with the Department of Health Care Policy and Financing to provide oversight of the Complementary and Integrative Health Services and the program evaluation.

Spinal Cord Injury means an injury to the spinal cord which is further defined at 8.517.2.1.

8.517.2.1 SPINAL CORD INJURY DEFINITION

A spinal cord injury is ~~defined as an injury to the spinal cord and is~~ limited to the following broad diagnoses found within the most current version of the International Classification of Diseases (ICD) at the time of assessment:

1. Spinal cord injury unspecified
2. Complete lesion of spinal cord
3. Anterior cord syndrome
4. Central cord syndrome
5. Other specified spinal cord injury
6. Lumbar spinal cord injury without spinal bone injury
7. Sacral spinal cord injury without spinal bone injury
8. Cauda equina spinal cord injury without spinal bone injury
9. Multiple sites of spinal cord injury without spinal bone injury

10. Unspecified site of spinal cord injury without spinal bone injury

11. Injury to cervical nerve root

12. Injury to dorsal nerve root

13. Injury to lumbar nerve root

14. Injury to sacral nerve root

15. Injury to brachial plexus

16. Injury to lumbosacral plexus

17. Injury to multiple sites of nerve roots and spinal plexus

18. Injury to unspecified site of nerve roots and spinal plexus

19. Injury to cervical sympathetic nerve excluding shoulder and pelvic girdles

20. Injury to other sympathetic nerve excluding shoulder and pelvic girdles

21. Injury to other specified nerve(s) of trunk excluding shoulder and pelvic girdles

22. Injury to unspecified nerve of trunk excluding shoulder and pelvic girdles

23. Paraplegia

24. Paraplegia, Unspecified

25. Paraplegia, Complete

26. Paraplegia, Incomplete

27. Quadriplegia/Tetraplegia/Incomplete – unspecified

28. Quadriplegia – C1-C4/Complete

29. Quadriplegia – C1-C4/Incomplete

30. Quadriplegia – C5-C7/Complete

31. Quadriplegia – C5-C7/Incomplete

8.517.5 CLIENT ELIGIBILITY

8.517.5.A. ELIGIBLE PERSONS

Home and Community-Based Services for Persons with Spinal Cord Injury (HCBS-SCI) waiver services shall be offered only to persons who meet all of the following eligibility requirements:

1. Individuals shall be aged 18 years or older.

2. Individuals shall have a diagnosis of Spinal Cord Injury. This diagnosis must be outlined in 8.517.2.1 and documented on the individual's Professional Medical Information Page (PMIP) and in the Uniform Long Term Care 100.2 (ULTC 100.2) assessment tool.

3. Individuals shall have been determined to have a significant functional impairment as evidenced by a comprehensive functional assessment using the ULTC 100.2 assessment tool that results in at least the minimum scores required per Section 8.401.1.15.

4. Individuals shall reside in the Denver Metro Area as evidenced by residence in one of the following counties:

    a. Adams;

    b. Arapahoe;

    c. Denver;

    d. Douglas; or

    e. Jefferson