

Bulletin

October 18, 2011

Minnesota Department of Human Services □ P.O. Box 64941 □ St. Paul, MN 55164-0941

OF INTEREST TO

- County Directors
- Social Services Supervisors and Staff
- Health Plans
- LTCC Administrators
- Customized Living Providers
- Housing with Services Establishments
- EW Program Managers
- EW Case Managers
- Tribal EW Program Managers
- Area Agencies on Aging

ACTION

Implement legislative changes as instructed.

EXPIRATION DATE

October 18, 2013

2011 Legislative Changes to Customized Living and 24 Hour Customized Living Services – Elderly Waiver

TOPIC

The customized living (CL) and 24 hour customized living (24CL) service rate limits, component rates, and individual authorized rates were reduced by 5% in the 2011 Legislative Session. Other changes adopted by the 2011 Legislature established a new CL service rate limit for individuals with lower need, changed criteria for 24CL service, and defined additional provider expectations.

PURPOSE

Communicate 2011 legislative changes related to CL and 24CL service for the Elderly Waiver program. Outline changes to MMIS to support these changes.

CONTACT

Darlene.Schroeder@state.mn.us Phone: 651 431-2575

EW Customized Living Policy

Jolene.Kohn@state.mn.us Phone: 651 431- 2579 LTCC Policy

Michael.J.Dercks@state.mn.us Phone: 651 431-5626 CL Tools

DHS.ResourceCenter@state.mn.us for MMIS: 651 431- 2450 or 1-888-968-8463

SIGNED

LOREN COLMAN

Assistant Commissioner

Continuing Care Administration

I. Background

This bulletin describes 2011 Legislative changes to Minnesota Statutes, section 256B.0915, subdivisions 3e and 3h governing the Elderly Waiver (EW) program that affect customized living (CL) provider rates, as well as service criteria for 24 hour customized living (24CL) service and certain provider practices. See Section VI of the bulletin for a summary of the effective dates of implementation of various changes outlined here.

These changes do not affect any other policy related to eligibility for the EW program, provider qualifications or standards, allowable component services, or individual services planning, rate development, and authorization requirements. Please see bulletin 10-25-03 for comprehensive policies related to 24CL and CL service under the EW program.

The 2011 Legislature also amended Minnesota Statutes, section 256B.0911 governing the Long Term Care Consultation (LTCC) program to require all prospective residents, with the exception of individuals seeking a lease-only arrangement with a subsidized housing provider, to receive consultation service and verification of consultation prior to executing a lease or contract with any registered housing with services provider. See Section V for a brief description of this requirement, and bulletin 11-25-06 for more detailed information about implementation of this service.

II. Criteria for 24 Hour Customized Living (24CL) Service

The 2011 Legislature amended the criteria for 24CL service eligibility related to the need for medication management *and* 50 hours of service *and* dependencies in certain activities of daily living (ADLs). The legislative change to this criteria increased the number of ADL dependencies required from two to three ADLs. In order to be eligible for 24CL service under this criteria, the individual must:

- Need assistance with medication management AND
- Receive 50 hours of direct component services per month as determined and approved by the EW participant's case manager or care coordinator to be part of the 24CL services plan AND
- Have dependencies in three of the five following ADLs:
 - Dressing, bathing, grooming, walking, and eating, when the assessed need for eating is beyond that of assistance with meal preparation, indicated by a score ≥ 03 .¹

24 CL service eligibility determination is completed by Long Term Care Consultants and/or EW case managers or care coordinators. All criteria are based on completion of the LTCC assessment, including the determination of dependencies in ADLs within that assessment. "Fifty

¹ Please note: For purposes of case mix classification, the dependency score in eating is ≥ 02 . This required score of 03 or greater in eating is only related to 24CL service eligibility determination for this criteria.

hours of service” means 50 hours of direct component services per month approved to be part of the 24CL services plan as determined by the Long Term Care Consultant or the EW participant’s case manager or care coordinator and the waiver participant.

Minnesota Statutes, section 256B.0915, subdivision 3h, paragraphs (a) and (b) include requirements for lead agency authorization of 24CL. For new EW participants entering the program on or after September 1, 2011, and for current participants at the next reassessment occurring on or after September 1, 2011, these authorizations must be based upon an individual’s need for one or more of the following:

- Cognitive or behavioral intervention; **or**
- Clinical monitoring; **or**
- Staff assistance in toileting, positioning or transferring (*single dependency*); **or**
- Assistance with medication management, at least 3 of 5 specified ADLs, and 50 hours of component service.

Under the new criteria for 24CL, EW individuals who receive a case mix “L” classification are not eligible for 24CL service, but can still receive CL service, as well as all other EW services.

III. Case Mix “L” – Changes Affecting Lower Need Individuals

The 2011 Legislature also:

- **Amended the case mix “L” criteria in Minnesota Statutes, sections 256B.0913 (AC) and 256B.0915 (EW), to include individuals with *two* or fewer dependencies in bathing, dressing, grooming, eating, or walking** (rather than one or no ADLs). The case mix classification “L” criteria applies to both AC and EW participants.

For EW assessments and reassessments completed on or after September 1, 2011, an individual is classified as case mix “L” when, based on the LTCC assessment, the person has no cognitive or behavioral need, no need for clinical monitoring and treatment, no dependency in toileting, positioning (bed mobility) or transferring, and has two or fewer dependencies in bathing, dressing, grooming, walking, or eating.

- **Created a new community budget or case mix cap for EW individuals classified as case mix “L” of \$1,750, reduced to \$1,724** to account for the legislative reduction of 1.5% to home and community-based service rates and community case mix budget caps;
- **Reduced the service rate limit for CL service for case mix “L” to \$758 per month.** Minnesota Statutes 2011, section 256B.0915, subdivision 3e, new paragraph (e) establishes the service rate limit for CL service for case mix “L” as the payment limit for case mix A, reduced by 25%.

Section VI provides more detailed information about implementation and effective dates for these and other legislative changes included in this bulletin.

IV. Changes to CL and 24CL Component Rates, Service Rate Limits, and Individual Authorized Rates

CL and 24CL service include various allowable “component” services, with established component rates, and case mix-based service rate limits. Lead agencies (health plans, counties and tribes) that manage the EW program develop a CL or 24CL service delivery plan and authorize a provider rate for each individual receiving this service. The individual rate is based on assessed needs, planned component services to address these needs, and component rates and service rate limits built into a rate-setting workbook published and managed by the Department of Human Services (DHS).

The component rates and case mix service rate limits for both CL and 24CL were reduced by 5% in the 2011 Legislative Session. In addition, individual authorized rates were also to be decreased by 5%. These changes are effective for all service dates beginning on or after September 1, 2011 and are reflected in revisions to the CL/24CL rate-setting workbook. The workbook revision also incorporates the change in 24CL criteria outlined in Section II, and the new service rate limit for CL service and the community budget cap for case mix “L” as outlined in Section III.

See Bulletin #11-69-03 for information about how current CL and 24CL authorizations are to be decreased.

V. LTCC Expansion and Housing with Services

The 2007 Legislature amended Minnesota Statutes, section 256B.0911 governing Long Term Care Consultation (LTCC) services to include a new service to be initiated October 1, 2011. The service is intended to offer all individuals considering a move to housing with services settings an opportunity to receive counseling or consultation to help them understand and weigh long term care options that may help them maintain their health, home, independence, and their financial resources. The service, implemented in 2008, was developed as a partnership between the Area Agencies on Aging (AAA) and lead agencies (counties, tribes, and health plans) that provide LTCC services. This service is a point of entry to a combination of telephone-based Long Term Care Options Counseling provided by Senior LinkAge Line® and in-person Long Term Care Consultation provided by lead agencies.

The 2011 Legislature continued this partnership and amended Minnesota Statutes, section 256B.0911, subdivision 3c to require all prospective residents, with certain exceptions described in bulletin 11-25-06, to receive counseling or consultation service, and verification of consultation, prior to executing a lease or service contract with any registered housing with services provider.

The amendment requires that:

- Prospective residents receive consultation and verification of consultation prior to signing a lease or contract;
- The point of entry service is provided within five working days of the request by the prospective resident;
- All registered housing with services establishments inform prospective residents of the availability of, and contact information for, consultation service; and
- All registered housing with services establishments receive verification of consultation prior to signing a lease or service contract, and maintain a record of the verification in the resident's file.

See DHS Bulletin #11-25-06 for more detailed information about this service, including a description of qualifying subsidized housing programs, how Long Term Care Options Counselors and Long Term Care Consultants obtain and provide verification of consultation to consumers, and more detailed information about the roles of lead agencies, the Area Agencies on Aging, and providers in implementing this requirement.

VI. Summary of Implementation and Effective Dates

Due to timelines necessary to provide adequate notice, the effective implementation date for legislative changes outlined in this bulletin is **September 1, 2011 and shall not be applied by lead agencies retroactively prior to this date.**

- **Changes affecting new EW or AC participants entering the program(s) on or after September 1, 2011, and to current EW or AC participants at their next reassessment that becomes effective on or after September 1, 2011:**
 - Changes to 24 CL criteria must be applied to all new EW participants effective September 1, 2011, and to all current participants at their next reassessment that becomes effective on or after September 1, 2011.
 - Changes to case mix classification criteria for “L”, and reduced case mix “L monthly budget amounts must be applied to all new EW participants effective September 1, 2011, and to current participants at their next reassessment that becomes effective on or after September 1, 2011.
 - The new service rate limit for case mix “L” for customized living service will be applied to all new EW participants effective September 1, 2011, and to current participants at their next reassessment that becomes effective on or after September 1, 2011.

- Reductions to AC and EW case mix monthly budget caps will be effective September 1, 2011, and will be applied to all new participants on or after September 1, 2011 and current participants at their next reassessment that becomes effective on or after September 1, 2011.
- **Changes affecting service dates effective on or after September 1, 2011:**
 - The 5% reduction to component rates and service rate limits apply to all services authorized for all individuals for service dates effective September 1, 2011 and later (with the exception of the new CL rate limit for case mix classification “L”, which is applied based on effective dates of assessment or reassessment.)
 - Reductions of 5% to currently authorized individual CL and 24CL rates will be applied to service dates effective on or after September 1, 2011.
- **Long Term Care Options Counseling and Long Term Care Consultation** for prospective residents of housing with services is effective October 1, 2011.
- **Changes to both screening document and service agreements in MMIS** will be made to support these amendments; forms will also be changed as needed. With the exception of reductions to individual rates that must be adjusted by lead agencies as directed in bulletin #11-69-03, all of the other MMIS changes are automated to implement the legislative changes and provide support to lead agency staff. Case mix “L” criteria will be reflected in revisions to DHS Form 3428B (*AC, EW, CADI & BI Waiver Case Mix Classification Worksheet*) used by lead agencies to determine case mix classification. As noted previously, legislative changes will also be supported by revisions to the CL/24CL rate-setting workbook published by DHS.

VII. Implementation and the CL/24CL Rate-setting Workbook

- **Submitting the CL/24CL rate-setting workbook for current EW participants:** For EW participants who entered the program before September 1, 2011, changes in 24CL criteria, case mix “L” classification, and the case mix “L” service rate limit for CL may NOT be applied unless and until a reassessment has been completed and entered into MMIS. However, a case manager or care coordinator must submit a revised rate-setting workbook when, for example:
 - An individual may need, and a case manager wishes to authorize, additional units of a service (or different services for which there is an existing assessed need), and
 - There is not a significant change that warrants a reassessment or that would result in a case mix change, and
 - There are resources available under the service rate limit for the individual.

Under these circumstances, the revised service plan is not edited in the rate-setting workbook using the 2011 criteria when the lead agency submits these kinds of changes for individuals who entered the EW program prior to September 1, 2011.

- **Workbook Versions:** For workbooks submitted on or after October 1, 2011, all workbooks must be submitted in versions 6.0.5 or higher.

No workbook, including revisions to previously submitted workbooks, will be accepted for processing if submitted on or after October 1, 2011 in a version published previous to version 6.0.5. Lead agencies must go to http://www.dhs.state.mn.us/dhs16_143983 to ensure they are using the most recent version of the workbook available. Data related to services planned and rates calculated in versions earlier than 6.0.5 can be imported into 6.0.5 (instructions are contained within the workbook).

- **24CL Criteria:** The revised criteria for 24CL will be reflected in the workbook. Lead agencies must be aware that it is *the individual* that meets one of the criteria for 24CL based on the assessment, while a provider may or may not be able to meet those particular needs. Only when a provider can meet the needs associated with any particular 24CL criteria will the workbook allow the 24CL service rate limit to be used in rate-setting and services planning. For example, an individual may have 3 ADL dependencies in bathing, grooming, and toileting. This person ONLY meets the 24CL criteria related to the need for staff assistance in toileting, and the provider must be able to meet the needs associated with toileting in order for the rate-setting workbook to allow the 24CL service rate limit to be used for rate-setting and services planning. The 24CL criteria related to medication management, 50 hours of service and 3 of 5 ADLs is specific to the ADLs of dressing, grooming, walking, bathing and eating, when the need for eating is beyond that of meal preparation.
- **Verification of Consultation for Housing with Services** on the Screening Document Input Worksheet in the rate-setting workbook: Implementation of the required consultation for prospective residents will begin on October 1, 2011. Additional information has been provided to lead agencies and providers about issuing and obtaining the verification information. Until the verification issuance is fully implemented, this field in the workbook can be left blank. This will cause an error on the Error Report. As with any green box on an error line, the lead agency can override the error by entering 'yes' in the green box (J121 for this error) on the Error Report.

VIII. Other Changes

- **Prohibited CL/24CL provider practice:** Minnesota Statutes, section 256B.0915, subdivisions 3e and 3h were both amended to prohibit CL or 24 CL providers from billing or otherwise charging an EW participant or their family for additional units of any allowable component service beyond those available under the service rate limits, or for additional units of any allowable component service beyond those approved in the CL/24CL service plan by the lead agency.

This prohibition is a provider requirement. Compliance with all federal and state statutes and rules relating to the delivery of services, and with all MHCP requirements is a condition of enrollment. A provider that fails to meet provider requirements may be terminated from enrollment and, in more serious instances involving fraud and abuse, be subject to monetary recovery, sanctions, or civil or criminal action. The provider cannot charge the family for additional amounts beyond the MA payment as a condition of continuing service or residence.

An individual with changing needs can be reassessed to increase both their community budget cap and the CL or 24CL service rate limit. In addition, an individual may be able to access additional services to meet their needs that may not be included in an approved CL or 24CL service delivery plan but that can be funded under their community budget cap. For examples:

- Skilled nurse visits may be available from a Medicare-certified home care agency
- Personal care is available as a state plan service from qualified providers
- “Waiver” transportation and companion service are available from qualified providers under the EW program.

The *individual* can access all other EW services with the exception of chore, respite and homemaker service in combination with CL and 24CL, up to their community case mix budget cap or limit. The “cap” for an individual is different than the CL or 24CL service rate limit. Individuals can always access additional needed services up to their community budget cap.

• **Medicare referral requirement for CL/24CL providers:** Minnesota Statute, section 256B.0915, subdivision 3e, paragraph (f) defines the home care license requirements for CL/24CL providers. This paragraph was amended to require licensed home care providers providing CL/24CL to comply with provisions regarding referral to Medicare providers found in section 256B.0651 (Home Care Services), subdivision 14. This subdivision states:

“Home care providers that do not participate in or accept Medicare assignment must refer and document the referral of dual-eligible recipients to Medicare providers when Medicare is determined to be the appropriate payer for services and supplies and equipment. Providers must be terminated from participation in the medical assistance program for failure to make these referrals.”

This is not a new requirement for licensed home care agencies. It is expected that the home care agency understand those service they provide, if any, that may be covered by Medicare or other payors. For EW individuals, a provider may meet this requirement by communicating with the individual’s case manager or care coordinator in order for the case manager or care coordinator to make appropriate provider referrals when needs change.

IX. MMIS Changes Related to the Changes in Criteria for 24 Hour Customized Living Service (24CL) and Case Mix L

- **24CL Criteria** - Three primary MMIS changes have been made to support the amended criteria for authorizing 24CL:
 1. **A new valid value for eligibility for 24CL was created** in MMIS that describes the new criteria.
 - **Value 86** reads: 24 hour supervision-50hrs/3ADLs/medication management

- 2. Existing edits related to 24CL were updated to account for this new criteria and valid value 86.** These edits are set to suspend the LTC SDOC and/or SA if conditions are not met. Both Long Term Care Screening Document (LTC SDOC) and Service Agreement (SA) edits are updated to:

- Allow value 86 when the Effective Date field is equal to or greater than 9/1/2011 (SD edit 806)
- Allow value 86 C with 35F on the Service Plan Summary (SD edit 806)
- Allow value 86 to be used only with funding code C (SD edit 517)
- Post SD edit 517 if value 86 is present with value 52 and funding code C or F
- Post SD edit 529 if value 86 is used with any program type other than 03 or 04
- Post SD edit 520 if value 86 is present but not supported by the correct ADL combination
- Post SD Edit 520 if values 58, 59, 60, or 86 are present, the case mix is L, and the effective date field is 9/1/11 or greater

- 3. The current value 85 (50 hours plus 2 ADLs plus medication management) will no longer be valid for use with:**

- Face-to-face assessments (Activity Types 02, 04, or 06) with Effective Dates on or after September 1, 2011 OR
- Activity Type 07 (Case Mgmt/Admin Activity) with Assessment Result = 10 (Changing programs) and Effective Dates on or after September 1, 2011.
- Service agreement edit 523 will post for 24-Hour CLS line items with begin dates 9/1/12 or greater when the last approved screening document contains value 85.

• **Case Mix L Criteria**

Screening document edit 792 assures that the correct case mix budget is populated for EW and AC case mix L. Which case mix amount is populated is dependent on the Effective Date field. This edit will also be applied to all screening documents for assessments for any individual aged 65 and older, including those in managed care. Screening document edit 784 will also post if a case mix budget amount is manually entered that exceeds the case mix budget, based on Effective Date Field, applied to all screening documents for assessments for any individual aged 65 and older.

• **CL Service Rate Limit**

Service agreement edit 675 assures that the correct service rate is used for case mix L depending on the Effective Date field, and Assessment Results 01, 10, 11, or 13, as well as the county of residence.

X. Additional Resources

MMIS Information: “Instructions for Completing and Entering the Long Term Care Screening Document and Service Agreement into MMIS” at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4625-ENG>

Minnesota Statutes, section 256B.0915, Medicaid Waiver for Elderly Services

<https://www.revisor.mn.gov/statutes/?id=256B.0915>

Provider Enrollment: Forms, instructions and technical assistance related to enrollment in Minnesota Health Care Programs are located at http://www.dhs.state.mn.us/main/id_000221

CL/24CL Rate-setting: Instructions, technical assistance information, and the most recent version of the rate-setting workbook can be found at http://www.dhs.state.mn.us/main/dhs16_143983

Bulletins:

Comprehensive Policy Related to CL and 24CL: http://www.dhs.state.mn.us/main/dhs16_149326.pdf

2011 Minnesota Legislature authorizes rate changes for continuing care providers

http://www.dhs.state.mn.us/main/dhs16_163294.pdf

2011 Legislative Changes to the Long Term Care, Elderly Waiver and Alternative Care Programs

http://www.dhs.state.mn.us/main/dhs16_163997.pdf

Long Term Care Options Counseling and Long Term Care Consultation for Prospective Residents of Housing with Services http://www.dhs.state.mn.us/main/dhs16_164210.pdf

All Other Bulletins: http://www.dhs.state.mn.us/main/id_000305

XI. Americans with Disabilities Act (ADA) Advisory

This information is available in alternative formats to individuals with disabilities by calling (651) 431-2500 (voice) or toll free at 1 800 882-6262. TTY users can call through Minnesota Relay at (800) 627-3529. For Speech-to-Speech, call (877) 627-3848. For additional assistance with legal rights and protections for equal access to human services programs, contact your agency's ADA coordinator.