

Title of Rule: Revision to the Medical Assistance Rule Concerning the Use of Private Disability Income, Section 8.100.4.C.
Rule Number: MSB 15-05-27-B
Division / Contact / Phone: Eligibility Division / Geoffrey Oliver / 303-866-2686

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 change amends 10 CCR 2505-10, Section 8.100.4.C, to reflect changes in the use of private disability income in MAGI methodology determination process for all applicants and MAGI-based beneficiaries. The purpose of this rule change is to bring the MAGI methodology for income calculations into alignment with tax law that says taxable private disability income should be counted as a source of gross income. The IRS construes 26 USC § 61(b), 26 USC §104(a)(3)(A), (B) and 26 USC § 105(a), (3) as meaning that disability benefits paid by an employer (either through an insurance policy or state disability fund) is taxable private disability income because the employee did not pay taxes on the premiums for the policy or contributions to the fund.

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:

Section 1902(e)(14) of the Social Security Act, 26 USC § 61 42 CFR § 435.603, 26 USC § 36B, 26 USC § 104, and 26 USC § 105.

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2014);
25.5-4-105.

Initial Review

07/10/2015

Final Adoption

08/14/2015

Proposed Effective Date

10/01/2015

Emergency Adoption

DOCUMENT #02

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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.

Individuals who reported a taxable private disability income amount that is less than their total private disability and who could be eligible for benefits from MAGI-based programs will be more likely to be found eligible for Medical Assistance because their income will be less than if their total private disability was taken into consideration.

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

Individuals who have private disability and have reported that a portion of that private disability is not taxable income will be more likely to be approved for MAGI-based programs because the non-taxable portion of their private disability will not be countable income. This should increase the number of approvals for MAGI-based programs. Individuals who are currently beneficiaries of a MAGI or non-MAGI-based programs and have private disability should not lose their eligibility for Medical Assistance. Some individuals who are enrolled in CHP+ and have private disability insurance may be found eligible for Medicaid instead of CHP+ based upon their reported taxable private disability.

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 of the proposed changes are indeterminate. The change only affects clients that have private disability income that have been determined eligible for MAGI populations. The majority of clients with a disability should be determined eligible for a non-MAGI population. The Department believes that very few individuals with private disability income would be determined eligible under a MAGI population. For this reason, costs of this change are expected to be nominal.

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

Implementation is necessary to comply with Federal requirements

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

There are no alternatives to achieve the proposed rule.

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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 the proposed rule that were considered.

1 **8.100.4.C. MAGI Methodology for Income Calculation**

2 1. The Modified Adjusted Gross Income calculation for the purposes of determining a
3 household's financial eligibility for Medical Assistance shall consist of the following:

4 a. Gross Income: For an in depth treatment of gross income, refer to 26 U.S.C. §
5 61, which is hereby incorporated by reference. The incorporation of 26 U.S.C. §
6 61 (2014) excludes later amendments to, or editions of, the referenced material.
7 Pursuant to § 24-4-103(12.5), C.R.S., the Department maintains copies of this
8 incorporated text in its entirety, available for public inspection during regular
9 business hours at: Colorado Department of Health Care Policy and Financing,
10 1570 Grant Street, Denver CO 80203. Certified copies of incorporated materials
11 are provided at cost upon request. Except as otherwise provided, ~~pursuant to~~
12 ~~26 U.S.C. § 61~~ gross income means all income from whatever source derived,
13 including (but not limited to) the following items:

14 i) Compensation for services, including fees, commissions, fringe benefits
15 and similar items;

16 ii) Gross income derived from business;

17 iii) Gains derived from dealings in property;

18 iv) Interest;

19 v) Rents;

20 vi) Royalties;

21 vii) Dividends;

22 viii) Alimony and separate maintenance payments;

23 ix) Annuities;

24 x) Income from life insurance and endowment contracts;

25 xi) Pensions;

26 xii) Income from discharge of indebtedness;

27 xiii) Distributive share of partnership gross income;

28 xiv) Income in respect of a decedent; ~~and~~

29 xv) Income from an interest in an estate or trust; ~~and-~~

30 xvi) Taxable private disability income.

31 b. Additional Income: In addition to the gross income identified in section
32 8.100.4.C.1.a., the following income is included if applicable:

33 i) Any tax exempt interest income

- 1 ix) Penalty on early withdrawal
- 2 x) Domestic production activities deduction
- 3 xi) Alimony paid outside the home
- 4 2. When discrepancies arise between self-attested income and electronic data source
5 results, the applicant shall receive every reasonable opportunity to establish his/her
6 financial eligibility through the test for reasonable compatibility, by providing a reasonable
7 explanation of the discrepancy, or by providing paper documentation in accordance with
8 this section.
- 9 a. Income information obtained through an electronic data source shall be
10 considered reasonably compatible with income information provided by or on
11 behalf of an applicant in the following circumstances:
- 12 i) If the amount attested by the applicant and the amount reported by an
13 electronic data source are both below the applicable income standard for
14 the requested program, that income shall be determined reasonably
15 compatible and the applicant shall be determined eligible.
- 16 ii) If the amount attested by the applicant is below the applicable income
17 standard for that program, but the amount reported by the electronic data
18 source is above, and the difference is within the reasonable compatibility
19 threshold percentage of 10%, the income shall be determined
20 reasonably compatible and the applicant shall be determined eligible.
- 21 iii) If both amounts are above the applicable income standard for that
22 program, the income shall be determined reasonably compatible, and the
23 applicant shall be determined ineligible due to income.
- 24 b. If income information provided by or on behalf of an applicant is not determined
25 reasonably compatible with income information obtained through an electronic
26 data source, a reasonable explanation of the discrepancy shall be requested. If
27 the applicant is unable to provide a reasonable explanation, paper
28 documentation shall be requested.
- 29 i) The Department may request paper documentation only if the
30 Department does not find income to be reasonably compatible and if the
31 applicant does not provide a reasonable explanation or if electronic data
32 are not available.
- 33 3. Self-Employment – If the applicant is self-employed the ledger included in the Medical
34 Assistance application shall be sufficient verification of earnings, unless questionable.
- 35 4. Budget Periods for MAGI-based Income determination – The financial eligibility of
36 applicants for Medical Assistance shall be determined based on current or previous
37 monthly household income and family size.
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