

Title of Rule: Revision to the Medical Assistance Eligibility Rule Concerning the General and Citizenship Eligibility, Section 8.100.3.G
Rule Number: MSB 17-05-22-A
Division / Contact / Phone: Health Information Office / Jennifer VanCleave / 303-866-6204

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 will amend 10 CCR 2505-10 8.100.3.G to incorporate changes mandated by Section 431 of the PRWORA and Section 214 of CHIPRA, as detailed in the State Plan Amendment, to citizenship and non-citizen eligibility. The rule regarding children pending Special Immigrant Juvenile status must be corrected to comply with federal regulations, which clarify that only children with a pending application for Special Immigrant Juvenile status shall be eligible for Medical Assistance. Other updates will include removing the 40 qualifying quarters of work since it is not required to be eligible for Medicaid. The Colorado Benefits Management System (CBMS) is currently in alignment with federal requirements, so no updates are needed at this time.

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:

§435.406; 42 U.S.C. § 1396b(v)(A) (Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) Section 214, as amended), and interpretive guidance from the Centers for Medicare and Medicaid Services (CMS), e.g. State Health Official Letter # 10-006 (July 1, 2010); section 431 of the Personal Responsibility and Work Opportunity Act (PRWORA).

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2015);
§ 25.5-1-303(3)(a)(b), C.R.S. (2016)
§ 25.5-5-101; §25.5-5-201(2)(b), C.R.S. (2016)

Initial Review

07/14/17 Final Adoption

08/11/17

Proposed Effective Date

09/30/17 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.

With the proposed rule, the 40 qualified work quarter requirement will be removed for the eligibility of qualified non-citizens. Children pending Special Immigrant Juvenile status will also be eligible to receive Medical Assistance and do not need to meet the 5-year bar.

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 will remove the 40 qualifying work quarter requirement for eligibility determination of qualified non-citizens to align with federal policy. Currently, 8.100.3.G states that children that are pending or receiving Special Immigrant Juvenile status are eligible for medical assistance. Additional clarification was received from the Centers for Medicare and Medicaid Services (CMS) that only children who are pending Special Immigrant Juvenile status are eligible to receive benefits, and the change is needed to comply with our current State Plan Amendment.

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 changes to this rule involve editing rule language to align with current policy and practices, so there are no costs to the Department or any other agency based on the implementation and enforcement of the proposed rule, or any anticipated effect on state revenues.

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

There are no costs to the rule change, but the benefit of the proposed rule is that the rule would align with actual policy and procedures that are in effect. Inaction would continue misalignment between rule language and policy.

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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 intrusive methods for achieving this purpose than to update the rule language.

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 **8.100.3.G. General and Citizenship Eligibility Requirements**

2 **1. To be eligible to receive Medical Assistance, an eligible person shall:**

- 3 a. Be a resident of Colorado;
- 4 b. Meet the following requirements while being an inmate, in-patient or resident of a
5 public institution:
- 6 i). The following individuals, if eligible, may be enrolled for Medical
7 Assistance
- 8 1. Patients in a public medical institution
- 9 2. Residents of a Long-Term Care Institution
- 10 3. Prior inmates who have been paroled
- 11 4. Resident of a publicly operated community residence which
12 serves no more than 16 residents
- 13 5. Individuals participating in community corrections programs or
14 residents in community corrections facilities (“halfway houses”)
15 who have freedom of movement and association which includes
16 individuals who:
- 17 a) are not precluded from working outside the facility in
18 employment available to individuals who are not under
19 justice system supervision;
- 20 b) can use community resources (e.g., libraries, grocery
21 stores, recreation, and education) at will;
- 22 c) can seek health care treatment in the broader
23 community to the same or similar extent as other
24 Medicaid enrollees in the state; and/or
- 25 d) are residing at their home, such as house arrest, or
26 another location
- 27 ii). Inmates who are incarcerated in a correctional institution such as a city,
28 county, state or federal prison may be enrolled, if eligible, with benefits
29 limited to an in-patient stay of 24 hours or longer in a medical institution.
- 30 c. Not be a patient in an institution for tuberculosis or mental disease, unless the
31 person is under 21 years of age or has attained 65 years of age and is eligible for
32 the Medical Assistance Program and is receiving active treatment as an inpatient

1 in a psychiatric facility eligible for Medical Assistance reimbursement. See
2 section 8.100.4.H for special provisions extending Medical Assistance coverage
3 for certain patients who attain age 21 while receiving such inpatient psychiatric
4 services;

5 d. Meet all financial eligibility requirements of the Medical Assistance Program for
6 which application is being made;

7 e. Meet the definition of disability or blindness, when applicable. Those definitions
8 appear in this volume at 8.100.1 under Definitions;

9 f. Meet all other requirements of the Medical Assistance Program for which
10 application is being made; and

11 g. Fall into one of the following categories:

12 i) Be a citizen or national of the United States, the District of Columbia,
13 Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands,
14 American Samoa or Swain's Island; or

15 ii) Be a lawfully admitted non-citizen who entered the United States prior to
16 August 22, 1996, or

17 iii) Be a non-citizen who entered the United States on or after August 22,
18 1996 and is applying for Medical Assistance benefits to begin no earlier
19 than five years after the non-citizen's date of entry into the United States
20 who falls into one of the following categories:

21 1) lawfully admitted for permanent residence under the Immigration
22 and Nationality Act (hereafter referred to as the "INA");

23 2) paroled into the United States for at least one year under 8
24 U.S.C. § 1182(d)(5); or

25 3) granted conditional entry under section 203(a)(7) of the INA, as
26 in effect prior to April 1, 1980; or

27 4) determined by the eligibility site, in accordance with guidelines
28 issued by the U.S. Attorney General, to be a spouse, child,
29 parent of a child, or child of a parent who, in circumstances
30 specifically described in 8 U.S.C. §1641(c), has been battered or
31 subjected to extreme cruelty which necessitates the provision of
32 Medical Assistance (Medicaid); or

33 ~~5) lawfully admitted for permanent residence under the INA with 40~~
34 ~~qualifying quarters as defined under Title II of the Social Security~~
35 ~~Act. The 40 quarters is counted based on a combination of the~~
36 ~~quarters worked by the individual, the individual's spouse as long~~

~~as they remain married or spouse is deceased, and/or the individual's parent while the individual is under age 18.~~

- iv) Be a non-citizen who arrived in the United States on any date, who falls into one of the following categories:
- 1) lawfully residing in Colorado and is an honorably discharged military veteran (also includes spouse, unremarried surviving spouse and unmarried, dependent children), or
 - 2) lawfully residing in Colorado and is on active duty (excluding training) in the U.S. Armed Forces (also includes spouse, unremarried surviving spouse and unmarried, dependent children), or
 - 3) granted asylum under section 208 of the INA, or
 - 4) refugee under section 207 of the INA, or
 - 5) deportation withheld under section 243(h) (as in effect prior to September 30, 1996) or section 241(b)(3) (as amended by P.L. 104-208) of the INA, or
 - 6) Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, or
 - 7) an individual who (1) was born in Canada and possesses at least 50 percent American Indian blood, or is a member of an Indian tribe as defined in 25 U.S.C. sec. 5304(e)(2016), or
 - 8) admitted to the U.S. as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 (as amended by P.L. 100-461), or
 - 9) lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam conflict, or
 - 10) a victim of a severe form of trafficking in persons, as defined in section 103 of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, as amended (22 U.S.C. § 7105(b) (2016)), or
 - 11) An alien who arrived in the United States on or after December 26, 2007 who is an Iraqi special immigrant under section 101(a)(27) of the INA, or

- 1 9) Pending an application for asylum under 8 U.S.C. 1158, or for
2 withholding of removal under 8 U.S.C. 1231, or under the
3 Convention Against Torture who-
- 4 a) as been granted employment authorization; or
- 5 b) Is under the age of 14 and has had an application
6 pending for at least 180 days.
- 7 10) granted withholding of removal under the Convention Against
8 Torture,
- 9 11) A child who has a pending ~~an application or is a recipient for of~~
10 Special Immigrant Juvenile status as described in under 8 U.S.C.
11 § 1101(a)(27)(J), or
- 12 12) Citizens of Micronesia, the Marshall Islands, and Palau, or
- 13 13) is lawfully present American Samoa under the immigration of
14 laws of American Samoa.
- 15 14) A non-citizen in a valid nonimmigrant status, as defined in 8
16 U.S.C. 1101(a)(15) or under 8 U.S.C. 1101(a)(17), or
- 17 15) A non-citizen who has been paroled into the United States for
18 less than one year under 8 U.S.C. § 1182(d)(5), except for an
19 individual paroled for prosecution, for deferred inspection or
20 pending removal proceedings.
- 21 vii) Exception: The exception to these requirements is that persons who
22 apply for and meet the criteria for one of the categorical Medical
23 Assistance programs, but do not meet the criteria of citizenship shall
24 receive Medical Assistance benefits for emergency medical care only.
25 The rules on confidentiality prevent the Department or eligibility site from
26 reporting to the United States Citizenship and Immigration Services
27 persons who have applied for or are receiving assistance. These
28 persons need not select a primary care physician as they are eligible
29 only for emergency medical services.
- 30 For non-qualified aliens receiving Medical Assistance emergency only
31 benefits, the following medical conditions will be covered:
- 32 An emergency medical condition (including labor and delivery) which
33 manifests itself by acute symptoms of sufficient severity (including
34 severe pain) such that the absence of immediate medical attention could
35 reasonably be expected to result in:
- 36 1) placing the patient's health in serious jeopardy;

- 1 2) serious impairment of bodily function; or
2 3) serious dysfunction of any bodily organ or part.

3 A physician shall make a written statement certifying the presence of an
4 emergency medical condition when services are provided and shall
5 indicate that services were for a medical emergency on the claim form.
6 Coverage is limited to care and services that are necessary to treat
7 immediate emergency medical conditions. Coverage does not include
8 prenatal care or follow-up care.

9 2. For determinations of eligibility for Medical Assistance, legal immigration status must be
10 verified. This requirement applies to a non-citizen individual who meets the criteria of any
11 category defined at 8.100.3.G(1)(g)(ii) (iii) (iv) or (vi) and has declared that he or she has
12 a legal immigration status.

13 a. The Verify Lawful Presence (VLP) interface will be used to verify immigration
14 status. The VLP interface connects to the Systematic Alien Verification for
15 Entitlements (SAVE) Program. The VLP interface has three steps to verify legal
16 immigration status.

17 i) An automated response from VLP confirms that the information
18 submitted is consistent with VLP data for immigration status verification
19 requirements. No further action is required for the individual and no
20 additional documentation of immigration status is required. If Step 1 does
21 not verify the legal immigration status of the individual and the VLP
22 interface indicates additional information is required, Step 2 will
23 automatically be initiated.

24 ii) Step 2: A response from the VLP interface confirms that the information
25 submitted verifies the legal immigration status of the individual. No
26 further action is required for the individual and no additional
27 documentation of immigration status is required. If Step 2 does not verify
28 the legal immigration status of the individual and the VLP interface
29 indicates additional information is required Step 3 will be initiated.

30 iii) Step 3: The individual will be contacted by a state appointed designee
31 with a request for additional documents and/or information needed to
32 verify their legal immigration status through the VLP interface. A
33 response from the VLP interface confirms that the documents and/or
34 information received from the individual verifies their legal immigration
35 status. No further action is required for the individual and no additional
36 documentation of immigration status is required.

37 3. Reasonable Opportunity Period

38 a. If the verification through Step 1 of the electronic interface is unsuccessful then
39 the applicant will be provided a reasonable opportunity period, of 90 days, to

1 submit documents indicating a legal immigration status. The reasonable
 2 opportunity period will begin as of the date of the Notice of Action. The required
 3 documentation must be received within the reasonable opportunity period.

4 b. If the verification through Step 2 of the electronic interface is unsuccessful and
 5 Step 3 is initiated, the reasonable opportunity period will be reset to 90 calendar
 6 days which will commence on the date of the failure of Step 2.

7 c. If the applicant does not provide the necessary documents within the reasonable
 8 opportunity period, then the applicant's Medical Assistance application shall be
 9 terminated.

10 d. The reasonable opportunity period applies to MAGI, Adult and Buy-In Programs.

11 i) For the purpose of this section only, MAGI Programs for persons
 12 covered pursuant to 8.100.4.G or 8.100.4.I. include the following:

Commonly Used Program Name	Rule Citation
Children's Medical Assistance	8.100.4.G.2
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Adult Medical Assistance	8.100.4.G.4
Pregnant Women Medical Assistance	8.100.4.G.5
Legal Immigrant Prenatal Medical Assistance	8.100.4.G.6
Transitional Medical Assistance	8.100.4.I.1-5

13 ii) For the purpose of this section only, Adult and Buy-In Programs for
 14 persons covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715.
 15 include the following:

Commonly Used Program Name	Rule Citation
Old Age Pension A (OAP-A)	8.100.3.F.1.c
Old Age Pension B (OAP-B)	8.100.3.F.1.c
Qualified Disabled Widow/Widower	8.100.3.F.1.e
Pickle	8.100.3.F.1.e
Long-Term Care	8.100.3.F.1.f-h
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6.P
Medicaid Buy-In Program for Children with Disabilities	8.100.6.Q
Breast and Cervical Cancer Program (BCCP)	8.715