Title of Rule: Revision to the Medical Assistance Eligibility Rule Concerning General and Citizenship Eligibility Requirements, Section 8.100.3.G
Rule Number: MSB 16-07-05-A
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 8.100.3.G to ensure that individuals with certain non-citizen status can be found eligible for Medical Assistance, other than Emergency Medicaid Services (EMS) after 7 years from their date of entry without adjusting their status to that of lawfully admitted for permanent residence (LPR) under the INA.

   The non-citizen status that will be impacted by this rule include granted asylum under section 208 of the Immigration and Nationality Act (INA); refugee under section 207 of the INA; deportation withheld under section 243(h) or section 241(b)(3) of the INA; Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; individuals admitted to the U.S. as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Exporting Financing, and Related Programs Appropriations Act of 1988; certain Iraqi special immigrants under section 101(a)(27) of the INA; and certain Afghan special immigrant under section 101(a)(27) of the INA.

   Finally, this rule will remove the non-citizen status at 8.100.3.G.iii.6 from 8.100.3.G.iii and provide these non-citizen status with their own paragraph under 8.100.3.G.iv. This change is to provide additional clarity and minimize the possibility of misinterpretation of what populations the 5 year bar is applied to. This change will also cause updates to citations within 8.100.3.G and 8.100.4.G.6.

   Implementation of this rule is essential to ensure that the state rules are in alignment with federal statute. The Colorado Benefit Management System (CBMS) is also being updated to reflect the changes to section 8.100.3.G.

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:

Initial Review	**10/14/16**	Final Adoption	**11/10/16**
Proposed Effective Date	**12/30/16**	Emergency Adoption	

DOCUMENT #05

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3. Federal authority for the Rule, if any:

   42 C.F.R. §435.406, 8 U.S.C. §§ 1612, 1613, and 1641.

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2015);
   25.5-4-104 C.R.S. (2015).

Initial Review	**10/14/16**	Final Adoption	**11/10/16**
Proposed Effective Date	**12/30/16**	Emergency Adoption	

DOCUMENT #05

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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.

   The proposed rule will impact individuals who are refugees or have a non-citizen status that are similarly treated as refugees who have not adjusted their status to lawfully admitted for permanent residence and have a date of entry greater than 7 years.

   These individuals will gain the benefit of being able to be found eligible for Medical Assistance other than Emergency Medicaid Assistance so long as they meet all other appropriate eligibility criteria.

   This is in line with the Department's current manual enrollment process for these individuals, which is necessary to comply with federal regulation.

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 Department estimates that the implementation of this rule will affect 321 non-citizens in 2016, who will continue to be found eligible for Medical Assistance under the rule. These clients would have been manually enrolled absent this rule change in order to comply with federal regulation.

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 proposed rule would not incur any additional costs to the Department or to any other agency. The Department is already complying with federal regulations to ensure the individuals with the specified non-citizen statuses are receiving medical assistance. This would not result in a change to Medicaid caseload, and therefore would not impact costs or state revenues.

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

   The Department would still need to comply with federal regulations, therefore there would not be any costs of inaction. The change updates state regulations to be in compliance with federal regulations and current practice.

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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 is not a less costly or less intrusive method 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.

   Colorado's State Plan provides Medical Assistance to Qualified Aliens. So long as the Department's State Plan provides Medical Assistance to Qualified Aliens, federal statute does not allow for alternative methods and requires the Department to implement this rule change.

8.100.3.G. General and Citizenship Eligibility Requirements

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

a. Be a resident of Colorado;

b. Not be an inmate of a public institution, except as a patient in a public medical institution or as a resident of an Long Term Care Institution or as a resident of a publicly operated community residence which serves no more than 16 residents;

c. Not be a patient in an institution for tuberculosis or mental disease, unless the person is under 21 years of age or has attained 65 years of age and is eligible for the Medical Assistance Program and is receiving active treatment as an inpatient in a psychiatric facility eligible for Medical Assistance reimbursement. See section 8.100.4.H for special provisions extending Medical Assistance coverage for certain patients who attain age 21 while receiving such inpatient psychiatric services;

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

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

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

g. Fall into one of the following categories:

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

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

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

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

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

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

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

5) lawfully admitted for permanent residence under the INA with 40 qualifying quarters as defined under Title II of the Social Security Act. The 40 quarters is counted based on a combination of the 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~~; or~~.

iv~~6~~) Be a non-citizen who arrived in the United States on any date, who falls into one of the following categories:

1~~a~~) lawfully residing in Colorado and is an honorably discharged military veteran (also includes spouse, unremarried surviving spouse and unmarried, dependent children), or

2~~b~~) 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~~c~~) granted asylum under section 208 of the INA ~~for seven years after the date of entry into the United States~~, or

4~~d~~) refugee under section 207 of the INA ~~for seven years after the date of entry into the United States~~, or

5~~e~~) 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 ~~for seven years after the date of entry into the United States~~, or

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6~~f~~) Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980~~ for seven years after the date of entry into the United States~~, or

7~~g~~) 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. 450b(e), or

8~~h~~) 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)~~ for seven years after the date of entry into the United States~~, or

9~~i~~) lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam conflict, or

10~~j~~) 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)), or

11~~k~~) 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~~ for seven years after the date of entry into the United States~~, or

12~~l~~) An alien who arrived in the United States on or after December 26, 2007 who is an Afghan Special Immigrant under section 101(a)(27) of the INA~~ for seven years after the date of entry into the United States~~.

v~~7~~) The statutes listed at sections 8.100.3.G.1.g.iii.1-5 and at 8.100.3.G.1.g.iv~~ii~~.3-11~~6.c-l~~ are incorporated herein by reference. No amendments or later editions are incorporated. These regulations are available for public inspection at the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Pursuant to C.R.S. 24-4-103(12.5)(V)(b), the agency shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline or rule.

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~~i~~vi) Be a lawfully admitted non-citizen who is a pregnant women or a child under the age of 19 years in the United States who falls into one of the categories listed in 8.100.3.G.1.g.iii~~.1-6~~ or into one of the following categories listed below. These individuals are exempt from the 5-year waiting period:

1) granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a,or

2) granted Temporary Protected Status (TPS) in accordance with 8 U.S.C 1254a and pending applicants for TPS granted employment authorization,

3) granted employment authorization under 8 CFR 274a.12(c),or

4) Family Unity beneficiary in accordance with section 301 of Pub. L. 101-649, as amended.

5) Deferred Enforced Departure (DED), pursuant to a decision made by the President,

6) granted Deferred Action status (excluding Deferred Action for Childhood Arrivals (DACA)) as described in the Secretary of Homeland Security's June 15,2012 memorandum,

7) granted an administrative stay of removal under 8 CFR 241, or

8) Beneficiary of approved visa petition who has a pending application for adjustment of status.

9) Pending an application for asylum under 8 U.S.C. 1158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who-

a) as been granted employment authorization; or

b) Is under the age of 14 and has had an application pending for at least 180 days.

10) granted withholding of removal under the Convention Against Torture,

11) A child who has a pending an application or is a recipient of Special Immigrant Juvenile status under 8 U.S.C. 1101(a)(27)(J), or

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12) Citizens of Micronesia, the Marshall Islands, and Palau, or

13) is lawfully present American Samoa under the immigration of laws of American Samoa.

14) A non-citizen in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15) or under 8 U.S.C. 1101(a)(17), or

15) A non-citizen who has been paroled into the United States for less than one year under 8 U.S.C. § 1182(d)(5), except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings.

vii) Exception: The exception to these requirements is that persons who apply for and meet the criteria for one of the categorical Medical Assistance programs, but do not meet the criteria of citizenship shall receive Medical Assistance benefits for emergency medical care only. The rules on confidentiality prevent the Department or eligibility site from reporting to the United States Citizenship and Immigration Services persons who have applied for or are receiving assistance. These persons need not select a primary care physician as they are eligible only for emergency medical services.

For non-qualified aliens receiving Medical Assistance emergency only benefits, the following medical conditions will be covered:

An emergency medical condition (including labor and delivery) which manifests itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

1) placing the patient's health in serious jeopardy;

2) serious impairment of bodily function; or

3) serious dysfunction of any bodily organ or part.

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

2. For determinations of eligibility for Medical Assistance, legal immigration status must be verified. This requirement applies to a non-citizen individual who meets

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the criteria of any category defined at 8.100.3.G(1)(g)(ii) (iii) (iv) or (vi~~iv~~) and has declared that he or she has a legal immigration status.

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

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

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

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

3. Reasonable Opportunity Period

a. If the verification through Step 1 of the electronic interface is unsuccessful then the applicant will be provided a reasonable opportunity period, of 90 days, to submit documents indicating a legal immigration status. The reasonable opportunity period will begin as of the date of the Notice of Action. The required documentation must be received within the reasonable opportunity period.

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

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

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

i) For the purpose of this section only, MAGI Programs for persons 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

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

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8.100.4.G. MAGI Covered Groups

6. A lawfully admitted non-citizen who is pregnant and who has been in the United States for less than five years is eligible for Medical Assistance if she meets all of the other eligibility requirements specified at 8.100.4.G.5 and fits into one of the immigration categories listed in 8.100.3.G.1.g.iii.1-5~~6~~ and 8.100.3.G.1.g.~~i~~vi.1-15. This population is referenced as Legal Immigrant Prenatal.

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