

Title of Rule: Revision to the Medical Assistance Eligibility Rule Concerning Long-Term Care Institution Recipient Income Calculation of Patient Payment Increase to the Personal Needs Allowance (PNA) for Residents of Nursing Facilities or Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), Section 8.100.7.V.3.d and 8.100.7.V.f

Rule Number: MSB 14-06-19-A

Division / Contact / Phone: Client Svs, Eligibility & Enrollment/Eric Stricca/303-866-4475

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).

Senate Bill 14-130 amends CRS 25.5-6-206-(2)(a) which increases the monthly personal needs allowance (PNA) base amount for persons who are residents of nursing facilities or intermediate care facilities for individuals with intellectual disabilities from \$50 to \$75 beginning January 1, 2015. Additionally, beginning January 1, 2015 the PNA base amount will be adjusted yearly at the same rate of the statewide average per diem rate increase described at CRS 25.5-6-202(9)(b)(I). The initial increase will be the new \$75 base with the addition of the 2015 per diem rate increase applied.

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:

42 USC § 1396a(o)
42 CFR 435.725(c)(1)

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2013);
SB 14-130 amending CRS 25.5-6-206-(2) (a)

EMS.
11/3/14

Initial Review **10/10/2014**

Final Adoption **11/14/2014**

Proposed Effective Date **12/30/2014**

Emergency Adoption

DOCUMENT #06

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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 rule affects two distinct populations:

Currently, there are approximately 9,434 nursing facility residents in Colorado that receive the PNA. However, only patients that have sufficient income to pay at least \$25 toward the monthly cost of their case are deemed to have a significant fiscal impact under the bill. Thus, the number of patients in long-term care that contribute to the fiscal impact is 7,760, including 214 patients in state veterans' nursing homes operated by the Department of Human Services (DHS).

DHS operates intermediate care facilities for individuals with intellectual disabilities or related conditions (ICF/IID). Approximately 164 ICF/IID residents in DHS Regional Centers receive the PNA.

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 January 1, 2015 increase to the personal needs allowance base amount from \$50 to \$75 and the simultaneous onset of an annual adjustment to the personal needs allowance quantitatively changes the set \$50 personal needs allowance that has not kept up with the cost of living. The qualitative impact is enabling the persons who are residents to keep enough of their income to pay for personal needs that are not covered by the nursing facilities or intermediate care facilities for individuals with intellectual disabilities.

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.

Cost to HCPF —With approximately 7,760 nursing facility residents affected by the bill, there is a statewide reduction in patient payments of \$211,460 per month in 2015 and \$229,463 per month in 2016. In FY 2014-15, HCPF expenditures increase by \$1,057,300 ($\$211,460 * 5 \text{ mo.}$) with a fund split, \$517,971 will be from the General Fund (\$539,329 federal funds).

In FY 2015-16, the bill results in HCPF payments to nursing facilities of \$2,645,540 ($(\$211,460 * 6 \text{ mo.}) + (\$229,463 * 6 \text{ mo.})$), consisting of \$1,296,050 out of the General Fund

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(\$1,349,490 federal funds). These HCPF expenditures include backfill for Resident payments at state veteran nursing homes. The 214 nonveteran residents affected by PNA under the bill account for \$29,157 (214 * \$27.25 * 5 mo.) in FY 2014-15 and \$72,957 ((214 * \$27.25 * 6 mo.)+(214 * \$29.57 * 6 mo.)) in FY 2015-16.

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

SB 14-130 has been signed into law, inaction is not an option.

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 were no alternative methods that were considered to achieve the purpose of the rule.

1 **8.100.7.V. Long-Term Care Institution Recipient Income**

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7 3. Calculation of Patient Payment

8 a. Specific instructions for computing the patient payment amount are contained in this
9 volume under The "Status of Long-Term Care institution Care" Form, AP-5615

10 b. Once an applicant for Nursing Facility Medical Assistance has been determined
11 eligible for Medical Assistance, the Eligibility Site shall determine the patient
12 payment due to the Nursing Facility which is to be applied to the Medicaid
13 reimbursement for the cost of care. That patient payment is calculated by:

14 i) Determining all applicable income of the recipient

15 ii) Deducting all applicable allowable monthly income adjustments, which
16 include:

17 1) Personal Needs Allowance

18 2) If applicable, Monthly Income Allowance for the community spouse.

19 3) If applicable, Family Dependent Allowance

20 4) If applicable, Home Maintenance Allowance

21 5) If applicable, Trustee/Maintenance Fees: actual fees, with a
22 maximum of \$20 per month

23 6) If applicable, Mandatory Income Tax Withheld

24 7) Mandatory garnishments repaying Federal assistance overpayment

25 8) Medical or remedial care expenses that are not subject to payment by
26 a third party:

27 a) Medicare Part B Premium expenses, if applicable, are
28 deductible only for the first and second month in the
29 Nursing Facility.

1 b) Medicare Part D Premium expenses, if applicable, are
2 ongoing deductions.

3 c) Other medical and remedial expenses covered under the
4 Nursing Facility PETI (NF PETI) program are not
5 deductible. NF PETI-approved expenses are allowed
6 only for residents with a patient payment, but do not
7 change the patient payment amount. For NF PETI, see
8 the Section 8.482.33 in this volume "Post Eligibility
9 Treatment of Income".

10 c.) Long-Term Care Insurance

11 Long-Term Care insurance payments are not counted as income for eligibility
12 purposes. However, they are income available for a patient payment. The patient
13 payment shall include the client's income after the allowable deductions and any
14 Long-Term Care insurance payments for the month. In the event that the patient
15 payment is greater than the cost of care, the Long-Term Care insurance payment
16 shall be applied before the client's income.

17 i) If Long-Term Care insurance is received for the month, and:

18 1) If, after all deductions, the client has income available for a patient
19 payment, add this to the amount of the Long-Term Care
20 insurance to determine the total patient payment.

21 a) If the total amount is greater than the allowable cost of care,
22 the Long-Term Care insurance is applied before the
23 client's income, or;

24 b) If after all deductions, the client does not have income
25 available for the patient payment, only the Long-Term
26 Care insurance payment is used.

27 d. ~~The amount to be reserved for personal needs is \$50 per month with the following~~
28 ~~exceptions: Personal Needs Allowances~~

29 i) Non-Veteran related personal needs allowance

30 1) Prior to January 1, 2015 the personal needs allowance base amount
31 is \$50 per month.

32 2) Effective January 1, 2015 the personal needs allowance base amount
33 is \$75 per month and will be adjusted annually at the same rate
34 as the statewide average of the nursing facility per diem rate net
35 of patient payment pursuant to C.R.S. § 25.5-6-202(9)(b)(I).
36 Each yearly adjustment will set a new base amount.

1 a) The first annual rate adjustment to the new \$75 base amount
2 will occur on January 1, 2015.

3 ii) Veterans-related personal needs allowance

4 Effective 07/01/91, the personal needs allowance shall be \$90 per month
5 for a veteran in a Long-Term Care institution who has no spouse or
6 dependent child and who receives a non-service connected disability
7 pension from the U.S. Veterans Administration. The personal needs
8 allowance shall also be \$90 per month for the widow(er) of a veteran with
9 no dependent children.

10 1) Public Law requires that a veteran, without a spouse or dependent
11 child, who enters a Long-Term Care institution have their
12 veteran's pension reduced to \$90 which is to be reserved for
13 their personal needs. This reduction in pension is not applicable
14 to veteran's who reside in a State Veteran's Nursing facility. If a
15 veteran, who does not reside in a State Veteran's Nursing
16 facility, receives a pension reduction of \$90 he/she is allowed to
17 apply this \$90 to his/her personal needs allowance. It is not
18 considered income toward the patient payment. The same
19 regulation applies to a widow of a veteran without any dependent
20 children.

21 2) To verify if those veterans residing in State Veteran's Nursing
22 facilities are receiving a non-service connected pension you may
23 request their award letter from the Department of Veterans
24 Affairs or call the Department of Veterans Affairs and verify
25 through contact. If they are receiving any amount in a non-
26 service connected pension they are entitled to a \$90 personal
27 needs allowance so long as they do not have a spouse or
28 dependent child. The same regulation applies to a widow of a
29 veteran without any dependent children.

30 iii) For aged, disabled, or blind Long-Term Care institution recipients engaged in
31 income-producing activities, an additional amount of \$65 per month plus
32 one-half of the remaining gross income may be retained by the
33 individual.

34 ~~iii~~iv) Effective September 15, 1994, aged, disabled, or blind Long-Term Care
35 institution residents, HCBS or PACE recipients with mandatory
36 withholdings from earned or unearned income to cover federal state, and
37 local taxes may have an additional amount included as a deduction from
38 the patient payment. The patient payment deduction must be for a
39 specific accounting period when the taxes are owed and expected to be
40 withheld from income or paid by the individual in the accounting period.
41 The Eligibility Site must verify that the taxes were withheld. If the taxes
42 are not paid, the Eligibility Site must establish a recovery. The deduction
43 is also applicable for any Federal pensions with mandated tax

1 withholdings from unearned income despite the individual earner being
2 institutionalized. All other pensions will discontinue the tax withholding
3 once notified that the recipient is receiving institutionalized care through
4 Medicaid, thus signifying that the withholding was not mandatory. This
5 deduction does not apply to individuals who have elected to have taxes
6 withheld from their earnings as a means to receiving a greater tax
7 refund.

8 e. The reserve specified in section 8.100.7.V.3.~~bd.iii.~~ of this volume shall apply to Long-
9 Term Care institution residents who are engaged in income-producing activities
10 on a regular basis. Types of income-producing activities include:

- 11 i) work in a sheltered workshop or work activity center;
- 12 ii) "protected employment" which means the employer gives special privileges to
13 the individual;
- 14 iii) an activity that produced income in connection with a course of vocational
15 rehabilitation;
- 16 iv) employment training sessions;
- 17 v) activities within the facility such as crafts products and facility employment.

18 f. In determining the personal needs reserve amount for Long-Term Care institution
19 residents engaged in income-producing activities:

- 20 i) The ~~\$50personal needs~~ allowance ~~for personal needs~~ is reserved from earned
21 income only when the person has insufficient unearned income to meet
22 this need;
- 23 ii) In determining countable earned income of a Long-Term Care institution
24 resident, the following rules shall apply:
- 25 1) \$65 shall be subtracted from the gross earned income.
- 26 2) The result shall be divided in half.
- 27 3) The remaining income is the countable earned income and shall be
28 considered in determining the patient payment.
- 29 iii) When the ~~\$50personal needs~~ allowance is reserved from unearned income,
30 the additional reserve is computed based on the total gross earned
31 income.

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