

Title of Rule: Revision to the Medical Assistance Nursing Facility Rule Concerning Fair Rental Allowance For Capital-Related Assets, 10 CCR 2505-10, Section 8.443.9  
Rule Number: MSB 16-04-28-A  
Division / Contact / Phone: Long Term Services and Support / Bryan Fife / 2798

## 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 Department intends to modify 10 CCR 2505-10, section 8.443.9.A.1.h by defining "Index" as Square Foot Cost Book published by R.S. Means Company and "Appraised Value" as the Boeckh Commerical System. This is a technical changes to correct the improper incorporation by reference that were removed by HB16-1257.

- The modification's purpose is to clarify C.R.S. 25.5-6-201(19) by identifying Index as RSMears and Appraised Value as Boeckh Commerical System. This modification does not have any impact on clients or providers. This update remedies the impropoer incorporations and aligns the rule with Section 25.5-6-201 C.R.S.
- In response to Office of Legislative Legal Services, the Department worked with OLLS and Colorado Attorney's Generals Office (COAG) to develop a solution to correct the improper incorporation. The solution was to delete the incorporation by reference provision and define "Index" by referencing R.S. Means Square Foot Cost Book and "Appraised Value" by referencing Boeckh Commerical System.

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:

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2015);  
25.5-6-201, CRS (2015)

Initial Review **08/12/2016** Final Adoption **09/09/2016**  
Proposed Effective Date **10/30/2016** 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.

None

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

N/A

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.

None

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

None

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

N/A

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.

N/A

## 1 8.443.9.A. FAIR RENTAL ALLOWANCE: DEFINITIONS AND SPECIFICATIONS

2 1. For purposes of this section concerning fair rental allowance, the following definitions  
3 shall apply:

4 ~~a. a.~~ [Expired 05/15/2016 per House Bill 16-1257].

5 ~~b.~~ Appraised Value means the determination by a qualified appraiser who is a member of an  
6 institute of real estate appraisers or its equivalent, the depreciated cost of replacement of a  
7 capital-related asset to its current owner. The depreciated replacement appraisal shall be based  
8 on the most recent edition of the Boeckh™ Commercial Building Valuation System available on  
9 December 31st of the year preceding the year in which the appraisals are to be performed.

10 ~~c. b.~~ Base Value means the value of the capital related assets as determined by the most  
11 current appraisal report completed by the Department or its designee and any additional  
12 information considered relevant by the Department. For each year in which an appraisal is not  
13 done, base value means the most recent appraisal value increased or decreased by fifty percent  
14 (50%) of the change in the Index. Under no circumstances shall the base value exceed \$25,000  
15 per bed plus the percentage rate of change referred to as the per bed limit.

16 ~~d. e.~~ Capital-Related Asset means the land, buildings and fixed equipment of a participating  
17 facility.

18 ~~e. d.~~ Fair Rental Allowance means the product obtained by multiplying the base value of a  
19 capital-related asset by the rental rate.

20 ~~f. e.~~ Fair Rental Allowance Per Diem Rate means the fair rental allowance described above,  
21 divided by the greater of the audited patient days on the provider's annual cost report or ninety  
22 percent (90%) of licensed bed capacity on file. This calculation applies to both rural and urban  
23 facilities.

24 ~~g. f.~~ Fiscal Year means the State fiscal year from July 1 through June 30.

25 ~~h. g.~~ Fixed equipment means building equipment as defined under the Medicare principle of  
26 reimbursement as specified in the Medicare provider reimbursement manual, part 1, section  
27 104.3. Specifically, building equipment includes attachments to buildings, such as wiring,  
28 electrical fixtures, plumbing, elevators, heating systems, air conditioning systems, etc. The  
29 general characteristics of this equipment are:

30 ~~i) i)~~ Affixed to the building and not subject to transfer; and

31 ~~ii) ii)~~ A fairly long life but shorter than the life of the building to which it is affixed.

32 ~~i. h.~~ [Expired 05/15/2016 per House Bill 16-1257]

33 ~~j.~~ Index means the square foot construction costs for nursing facilities in the Means Square Foot  
34 Costs Book, which shall be the most recent publication of R.S.Means Company, Inc. that is  
35 updated quarterly (section M.450. "Nursing Home"), hereafter referred to as the Means Index.

36 ~~k.~~ Rental Rate means the average annualized composite rate for United States treasury bonds  
37 issued for periods of ten years and longer plus two percent; except that the rental rate shall not  
38 exceed ten and three-quarters percent nor fall below eight and one-quarter percent.

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