

Title of Rule: Revision of the Medical Assistance Rule Concerning Changes to Expand the Exception Criteria for Citizenship for New Population for Section Definitions, 8.100.3.G.1.g.viii, and 8.100.3.H.1.b.vii.

Rule Number: MSB 24-06-25-A

Division / Contact / Phone: Office of Medicaid Operations/Megan Crabtree

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 Sections 8.100.3.G and 8.100.3.H effective January 1, 2025. It will remove current citizenship requirements and barriers to provide full coverage Medicaid and Child Health Plan Plus (CHP+) to non-citizens who are pregnant, and/or postpartum, and/or 18 years of age and younger, if they are eligible in all other respects except for citizenship status and enrolled. These requirements are to expand coverage for the described non-citizen population in accordance with the approved Colorado House Bill 22-1289 Cover All Coloradans. The exception criteria will specifically remove the requirement for those non-citizens in the described to demonstrate a qualified immigration status or satisfy a 5-year bar to enroll. Presently, non-citizens in the described population have limited options to including only Emergency Medical Services and limited Reproductive Health Care Services with no full coverage category available through Medicaid or CHP+.

2. An emergency rule-making is imperatively necessary N/A

- 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:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2024)
CRS 25.5-8-109

Initial Review

10/09/24

Final Adoption

11/08/24

Proposed Effective Date

12/30/24

Emergency Adoption

DOCUMENT #02

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5. 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 update will benefit all members who are found eligible and enrolled in Medicaid or CHP+ coverage who are under 18 years of age and younger or who report a pregnancy or in postpartum period despite their immigration status. These members will be eligible for full Medicaid coverage versus only receiving Emergency Medical Services or Reproductive Health benefits, which is permitted today. The Department will be updating the Colorado Benefits Management System (CBMS) to reflect these changes. There are no projected negative impacts to any classes of people with these proposed rule changes.

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 to make exception to citizenship rules in order to cover pregnant, postpartum and persons 18 years of age and younger has the potential to improve overall health care coverage and advance equity health outcomes for our Medicaid and CHP + eligible members.

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 Department anticipates that this policy will increase Medicaid caseload by approximately 4,400 members and increase CHP+ caseload by approximately 280 members, in calendar year 2025. This policy will also create two new programs that mirror the existing Medicaid and CHP+ programs except that these new programs will not be a state/federal partnership. Instead, the two new programs be exclusively funded by the State of Colorado. These two new programs can be thought of as Medicaid and CHP+ "look-a-like" programs and are expected to have a caseload of approximately 600 in the Medicaid "look-a-like" program and 800 individuals in the CHP+ look-a-like" program. The Department anticipates that the estimated total fiscal impact of coverage of Medicaid and CHP+ programs for these members will be \$27 million and \$2.1 million, respectively. The Department anticipates that the estimated total impact of the new state-only funded Medicaid and CHP+ programs will be approximately \$2 million each or \$4 million total. The Department continues to evaluate the caseload and expenditure estimates and expects to provide updated estimates as part of the Governor's November 1 Budget Request.

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

The probable costs of this policy include approximately \$33.4 million in additional Medicaid and CHP+ spending necessary to provide benefits to new members. The probable benefits to this policy include providing medical care to individuals in need, improving health outcomes, and preventing or reducing severity of illness or injury among the population targeted by this rule.

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Inaction will cause the Department to be out of compliance with the changes to its statutory mandate implemented by Colorado House Bill 22-1289. It is possible that inaction will increase costs elsewhere relative to action particularly as it relates to uncompensated costs for providers of emergency services for individuals whose income is above the Medicaid threshold but within the CHP+ threshold. There are no benefits to inaction.

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

The Department does not have any less costly method of enrolling 6000 newly eligible members.

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.

No alternative methods to the proposed rule were seriously considered.

8.100.3. Medical Assistance General Eligibility Requirements

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. Meet the following requirements while being an inmate, in-patient or resident of a public institution:
 - i). The following individuals, if eligible, may be enrolled for Medical Assistance
 1. Patients in a public medical institution
 2. Residents of a Long-Term Care Institution
 3. Prior inmates who have been paroled
 4. Resident of a publicly operated community residence which serves no more than 16 residents
 5. Individuals participating in community corrections programs or residents in community corrections facilities ("halfway houses") who have freedom of movement and association which includes individuals who:
 - a) are not precluded from working outside the facility in employment available to individuals who are not under justice system supervision;
 - b) can use community resources (e.g., libraries, grocery stores, recreation, and education) at will;
 - c) can seek health care treatment in the broader community to the same or similar extent as other Medicaid enrollees in the state; and/or
 - d) are residing at their home, such as house arrest, or another location
 - ii). Inmates who are incarcerated in a correctional institution such as a city, county, state or federal prison may be enrolled, if eligible, with benefits limited to an in-patient stay of 24 hours or longer in a medical institution.
 - 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");
 - 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
 - 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
 - 12) 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, or
 - 13) Compact of Free Association (COFA) migrants, including citizens of Micronesia, the Marshall Islands, and Palau, pursuant to section 208 of the Consolidated Appropriations Act of 2021 (in effect December 27, 2020).
- v) The statutes listed at sections 8.100.3.G.1.g.iii.1-5 and at 8.100.3.G.1.g.iv.3-11 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)(b)(2016), 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.
- 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 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 241.6(2016), 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 application for Special Immigrant Juvenile status under 8 U.S.C. 1101(a)(27)(J), or
 - 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) Be an Afghan Humanitarian Parolee who falls into one of the following categories listed below, as defined in Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021 (HR 5305). These individuals are exempt from the 5-year waiting period until March 31, 2023, or through the termination of their parole period, whichever is later:

- 1) paroled into the United States between July 31, 2021 – September 30, 2022; or
- 2) paroled into the United States after September 30, 2022, and
 - a) is the spouse or child of an individual in subparagraph 1 as defined under section 101(b) of the Immigration and Nationality Act (8 U.S.C. 4 1101(b)); or
 - b) is the parent or legal guardian of an individual in subparagraph 1 who is determined to be an unaccompanied child under 6 U.S.C.279(g)(2).

viii) Exception: Criteria set forth at 8.100.3.G.1.g does not apply to persons who apply for and meet the criteria for one of the specific Medical Assistance programs:

- 1) Persons who are under the age of 19, whose 19th birthday occurred in the current month, who are pregnant, or who are within 12 months of the beginning of their postpartum period shall not be excluded from the following Medical Assistance Categories on the basis of immigration status:
 - a) MAGI Children, MAGI Pregnant, Psych <21, Transitional Medical Assistance, 4 Month Extended Medical Assistance, MAGI Prenatal Presumptive Eligibility, MAGI Child Presumptive Eligibility
 - b) Medical Buy-In Program for Working Adults with Disabilities (including with Home and Community Based Services), Medicaid Buy-In Program for Children with Disabilities, and Long-Term Care waivers except Program of All Inclusive Care for the Elderly (PACE)
- 2) Persons requesting limited emergency medical care only and/or reproductive care shall not be excluded on the basis of immigration status. ~~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 who are not citizens, and are not eligible non-citizens, according to the criteria set forth in 8.100.3.G.1.g, shall receive Medical Assistance benefits for emergency medical care only and/or reproductive health care services upon request. 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 and/or reproductive health care services.~~

For non-qualified aliens non-citizens 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:

- a4) placing the patient's health in serious jeopardy;
- b2) serious impairment of bodily function; or
- c3) serious dysfunction of any bodily organ or part.

These persons need not select a primary care physician as they are eligible only for emergency medical services and/or reproductive health care services Applicants are not required to obtain a written statement by their physician for their application to be complete and processed. For emergency care, a physician must certify and declare 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. This will suffice as the physician statement for an emergency medical condition when services were provided. Medical Assistance coverage for emergency medical care only 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. Medical Assistance benefits for reproductive health care services are limited to care and services that provide reproductive health and/or family planning services only. Once a member has been determined eligible for either of these emergency and/or reproductive health services, the member will not be required to submit a new application before 12 months for any other emergency and/or reproductive health services. Members will have the option to advise the Department, at any time, that they no longer need the services. Members receiving emergency and/or limited reproductive health services will receive a renewal at 12 months to redetermine their eligibility.

- 3) The rules on confidentiality indicated under CRS § 24-74-103 prevent the Department or– eligibility site from reporting to the USCIS persons who have applied for or are receiving assistance.

8.100.3.H. Citizenship and Identity Documentation Requirements

1. For determinations of initial eligibility and redeterminations of eligibility for Medical Assistance made on or after July 1, 2006, citizenship or nationality and identity status must be verified unless such satisfactory documentary evidence has already been provided, as described in 8.100.3.H.4.b. This requirement applies to an individual who declares or who has previously declared that he or she is a citizen or national of the United States.

- a. The following electronic interfaces shall be accepted as proof of citizenship and/or identity as listed and should be used prior to requesting documentary evidence from applicants/clients:
- i) SSA Interface is an acceptable interface to verify citizenship and identity. An automated response from SSA that confirms that the data submitted is consistent with SSA data, including citizenship or nationality, meets citizenship and identity verification requirements. No further action is required for the individual and no additional documentation of either citizenship or identity is required.
 - ii) Department of Motor Vehicles (DMV) Interface is an acceptable interface to verify identity. An automated response from DMV confirms that the data submitted is consistent with DMV data for identity verification requirements. No further action is required for the individual and no additional documentation of identity is required.
- b. This requirement does not apply to the following groups:
- i) Individuals who are entitled to or who are enrolled in any part of Medicare.
 - ii) Individuals who receive Supplemental Security Income (SSI).
 - iii) Individuals who receive child welfare services under Title IV-B of the Social Security Act on the basis of being a child in foster care.
 - iv) Individuals who receive adoption or foster care assistance under Title IV-E of the Social Security Act.
 - v) Individuals who receive Social Security Disability Insurance (SSDI).
 - vi) Children born to a woman who has applied for, has been determined eligible, and is receiving Medical Assistance on the date of the child's birth, as described in 8.100.4.G.5. This includes instances where the labor and delivery services were provided before the date of application and were covered by the Medical Assistance Program as an emergency service based on retroactive eligibility.
 - 1) A child meeting the criteria described in 8.100.3.H.1.b.vi shall be deemed to have provided satisfactory documentary evidence of citizenship or nationality and shall not be required to provide further documentary evidence at any time in the future, regardless of any subsequent changes in the child's eligibility for Medical Assistance.
 - 2) Special Provisions for Retroactive Reversal of a Previous Denial
 - a) If a child described at 8.100.3.H.1.b.vi was previously determined to be ineligible for Medical Assistance solely for failure to meet the citizenship and identity documentation requirements, the denial shall be reversed. Eligibility shall be effective retroactively to the date of the child's birth provided all of the following criteria are met:
 - (1) The child was determined to be ineligible for Medical Assistance during the period between July 1, 2006 and October 1, 2009 solely for failure to meet the citizenship

and identity documentation requirements as they existed during that period;

- (2) The child would have been determined to be eligible for Medical Assistance had 8.100.3.H.1.b.vi and/or 8.100.3.H.1.b.vi.2.a been in effect during the period from July 1, 2006 through October 1, 2009; and
- (3) The child's parent, caretaker relative, or legally appointed guardian or conservator requests that the denial of eligibility for Medical Assistance be reversed. The request may be verbal or in writing.

b) A child for whom denial of eligibility for Medical Assistance has been retroactively reversed shall be subject to the eligibility redetermination provisions described at 8.100.3.P.1. Such redetermination shall occur twelve months from the retroactive eligibility date determined when the denial was reversed pursuant to this subsection 1.

c) A child granted retroactive eligibility for Medical Assistance shall be subject to the requirements described at 8.100.4.G.2. for continued eligibility.

vii) Individuals receiving Medical Assistance during a period of presumptive eligibility.

viii) Individuals qualifying for Medical Assistance under 8.100.3.G.g.viii.