

Title of Rule: Revision to the exemptions as income or resource section 8.100.5.F.6 for the Aged, Blind, and Disabled, Long Term Care and Medicare Savings Plan programs.
Rule Number: MSB 25-01-09-A
Division / Contact / Phone: Office of Medicaid Operations / Nancy Brenes / 303-866-2897 /

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 8.100.5.F.6 to add compensation received for Medicaid Advisory Committee (MAC) & Beneficiary Advisory Council (BAC) participation, such as gift cards, to the list of exemptions from consideration as income or resources for the Aged, Blind, and Disabled, Long Term Care and Medicare Savings Plan programs. These changes are being implemented as an effort to encourage the participation of members in department surveys and initiatives that could be reimbursed through methods such as gift card awards. The change will prevent this compensation from resulting in impacts to financial eligibility for their programs. Changes will also include updating the reference of clients to be replaced with the word member or applicant/member.

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:

N/A

3. Federal authority for the Rule, if any:

N/A

4. State Authority for the Rule:

42 CFR § 431.12(h) and Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2024)

Initial Review
Proposed Effective Date

05/09/25
08/14/25

Final Adoption
Emergency Adoption

06/13/25

DOCUMENT #03

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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, applicants and/or recipients for the Aged, Blind, and Disabled, Long Term Care and Medicare Savings Program will exempt compensation received for Medicaid Advisory Committee (MAC) & Beneficiary Advisory Council (BAC) participation from consideration as income or resources. This will allow members in these programs to participate in department surveys and initiatives that provide compensation, including compensation in the form of gift cards. This change will prevent applicable compensation from impacting members' financial eligibility for their programs.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.
3. The proposed rule will exempt compensation received for Medicaid Advisory Committee (MAC) & Beneficiary Advisory Council (BAC) participation from the income and resources eligibility requirements for the Aged, Blind, and Disabled, Long Term Care and Medicare Savings Program. This change is not expected to significantly impact member eligibility for these programs. Nevertheless, this change may encourage members to participate in State advisory councils. 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.

There are no probable costs to the Department or other agencies associated with the implementation of this rule.

It is assumed that the amount of money members receive as compensation for State advisory panel participation is insufficient to affect member eligibility. Therefore, exempting this compensation from consideration for the purposes of member eligibility is not expected to have a significant fiscal impact.

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

There are no probable costs associated with the proposed rule. Benefits of the proposed rule include streamlining the process of reporting member income and

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encouraging member participation in State advisory panels by exempting participants' compensation from consideration as a part of members' income.

There are no probable benefits associated with inaction. Costs of inaction may include the inadvertent discouragement of member participation in State advisory panels. Though unlikely, inaction could result in some State advisory panel participants losing eligibility due to the income they received for participating on a panel.

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 considered for the proposed rule.

1 **8.100 MEDICAL ASSISTANCE ELIGIBILITY**

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5 **8.100.5. Aged, Blind, and Disabled, Long Term Care, and Medicare Savings Plan Medical**
6 **Assistance General Eligibility**

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9 **8.100.5.F. Income Requirements**

10 1. This section reviews how income is looked at for the ABD and Long Term Care Medical
11 Programs and determining premiums for the Medicaid Buy-In Program for Working Adults with
12 Disabilities. For more general income information and income types refer to the Medical
13 Assistance General Eligibility Requirements [Section 8.100.3](#).

14 2. Income for the ABD Medical Programs eligibility is income which is received by an individual or
15 family in the month in which they are applying for or receiving Medical Assistance, or the previous
16 month if income for the current month is not yet available to determine eligibility.

17 3. A self-declared common law spouse retains the same financial responsibility as a legally married
18 spouse. Once self-declared as married under the common law, financial responsibility remains
19 unless legal separation or divorce occurs. If two persons live together, but are not married to each
20 other, neither one has the legal responsibility to support the other. This is not changed by the fact
21 that the unmarried individuals may share a common child.

22 4. Earned income is countable as income in the month received and a countable resource the
23 following month. Earned Income includes the following:

24 a. Wages, which include salaries, commissions, bonuses, severance pay, and any other
25 special payments received because of employment;

26 b. Net earnings from self-employment;

27 c. Payments for services performed in a sheltered workshop or work activities center;

28 d. Certain Royalties and honoraria.

29 5. Unearned income is the gross amount received in cash or kind that is not earned from
30 employment or self-employment.

31 Unearned income is countable as income in the month received and any unspent amount is a
32 countable resource the following month. Unearned income includes, but is not limited to, the
33 following:

34 a. Death benefits, reduced by the cost of last illness and burial;

- 1 b. Prizes and awards;
- 2 c. Gifts and inheritances;
- 3 d. Interest payments on promissory notes established on or after March 1, 2007;
- 4 e. Interest or dividend payments received from any resources;
- 5 f. Lump sum payments from workers' compensation, insurance settlements, etc.;
- 6 g. Dividends, royalties, or other payments from mineral rights or other resources listed for
7 sale within the resource limits;
- 8 h. Income from annuities that meet requirements for exclusion as a resource;
- 9 i. Lottery/Gambling winnings
 - 10 1) An applicant/member may request a hardship exemption when denied/or
11 terminated due to Lottery/Gambling winnings.
 - 12 a. The applicant/member must demonstrate a severe medical or financial
13 hardship, as determined by the Department.
 - 14 b. The applicant/member must provide a written request and
15 documentation to their County Department of Human Services, within 30
16 calendar days from the date of their denial or termination notice.
- 17 j. Pensions and other period payments, such as:
 - 18 i) Private pensions or disability benefits;
 - 19 ii) Social Security benefits (Retirement, survivors, and disability);
 - 20 iii) Workers' Compensation payments;
 - 21 iv) Railroad retirement annuities;
 - 22 v) Unemployment insurance payments;
 - 23 vi) Veterans benefits other than Aid and Attendance (A&A) and Unusual Medical
24 Expenses (UME); and
 - 25 vii) Alimony and support payments.
- 26 k. Support and maintenance in kind - The support and maintenance in kind amount should
27 not be greater than one third of the Federal Benefit Rate (FBR). Use the Presumed
28 Maximum Value (PMV) of 1/3 of the ~~applicant/member recipient's~~ portion of the rent to
29 determine the support and maintenance in kind amount. Use one third of the FBR if an
30 amount is not declared by the ~~client~~ applicant/member.
- 31 6. For the purpose of determining eligibility for the Long Term Care and Aged, Blind, and Disabled
32 Medical Assistance categories the following shall be exempt from consideration as either income
33 or resources:

- 1 a. A bona fide loan. Bona fide loans are loans, either private or commercial, which have a
2 repayment agreement. Declaration of such loans is sufficient verification.
- 3 b. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older
4 Americans Act.
- 5 c. Title XVI ([Supplemental Security Income](#)) or Title II (Retirement Survivors or Disability
6 Insurance) retroactive payments (lump sum) for nine months following receipt and the
7 remainder countable as a resource thereafter.
- 8 d. The value of supplemental food assistance received under the special food services
9 program for children provided for in the National School Lunch Act and under the Child
10 Nutrition Act, including benefits received from the special supplemental food program for
11 women, infants and children (WIC).
- 12 e. Home produce utilized for personal consumption.
- 13 f. Payments received under Title II of the Uniform Relocation Assistance and Real Property
14 Acquisition Policies Act; ~~R~~elocation payments to a displaced homeowner toward the
15 purchase of a replacement dwelling are considered exempt for up to 6 months.
- 16 g. The value of any assistance paid with respect to a dwelling unit is excluded from income
17 and resources if paid under:
- 18 i) Experimental Housing Allowance Program (EHAP) payments made by HUD
19 under section 23 of the U.S. Housing Act ([12 USCA § 1701z-3](#));
- 20 ii) The United States Housing Act of 1937 ([42 U.S.C. § 1437 et seq.](#) ~~of 42 U.S.C.~~);
- 21 iii) The National Housing Act ([12 U.S.C. § 1701 et seq.](#) ~~of 12 U.S.C.~~);
- 22 iv) Section 101 of the Housing and Urban Development Act of 1965 ([12 U.S.C. §](#)
23 [1701s](#) ~~of 12 U.S.C.~~; [42 U.S.C. § 1451](#) ~~of 42 U.S.C.~~);
- 24 v) Title V of the Housing Act of 1949 ([42 U.S.C. § 1471 et seq.](#) ~~of 42 U.S.C.~~); or
- 25 vi) Section 202(h) of the Housing Act of 1959.
- 26 h. Payments made from Indian judgment funds and tribal funds held in trust by the
27 Secretary of the Interior and/or distributed per capita; and initial purchases made with
28 such funds. (Public Law No 98-64 and Public Law No. 97-458).
- 29 i. Distributions from a native corporation formed pursuant to the Alaska Native Claims
30 Settlement Act (ANCSA) which are in the form of: cash payments up to an amount not to
31 exceed \$-2000 per individual per calendar year; stock; a partnership interest; or an
32 interest in a settlement trust. Cash payments, up to \$-2000, received by a [client member](#)
33 in one calendar year which is retained into subsequent years is excluded as income and
34 resources; however, cash payments up to \$-2000 received in the subsequent year would
35 be excluded from income in the month(s) received but counted as a resource if retained
36 beyond that month(s).
- 37 j. Assistance from other agencies and organizations.

- 1 k. Major disaster and emergency assistance provided to individuals and families, and
2 comparable disaster assistance provided to states, local governments and disaster
3 assistance organizations shall be exempt as income and resources in determining
4 eligibility for Medical Assistance.
- 5 l. Payments received for providing foster care.
- 6 m. Payments to volunteers serving as foster grandparents, senior health aids, or senior
7 companions, and to persons serving in the Service Corps of Retired Executives (SCORE)
8 and Active Corps of Executives (ACE) and any other program under Title I (VISTA) when
9 the value of all such payments adjusted to reflect the number of hours such volunteers
10 are serving is not equivalent to or greater than the minimum wage, and Title II and Title III
11 of the Domestic Volunteer Services Act.
- 12 n. The benefits provided to eligible persons or households through the Low Income Energy
13 Assistance (LEAP) Program.
- 14 o. Training allowances granted by the Workforce Investment Act (WIA) to enable any
15 individual whether dependent child or caretaker relative, to participate in a training
16 program
- 17 p. Payments received from the youth incentive entitlement pilot projects, the youth
18 community conservation and improvement projects, and the youth employment and
19 training programs under the Youth Employment and Demonstration Project Act.
- 20 q. Social Security benefit payments and the accrued amount thereof to a client-member
21 when an individual plan for self-care and/or self-support has been developed. In order to
22 disregard such income and resources, it shall be determined that (1) SSI permits such
23 disregard under such developed plan for self-care-support goal, and (2) assurance exists
24 that the funds involved will not be for purposes other than those intended.
- 25 r. Monies received pursuant to the "Civil Liberties Act of 1988" P.L. No. 100-383, (by
26 eligible persons of Japanese ancestry or certain specified survivors, and certain eligible
27 Aleuts).
- 28 s. Payments made from the Agent Orange Settlement Fund or any fund established
29 pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L.
30 No. 381 (E.D.N.Y).
- 31 t. A child receiving subsidized adoption funds shall be excluded from the Medical
32 Assistance budget unit and his income shall be exempt from consideration in determining
33 eligibility, unless such exclusion results in ineligibility for the other members of the
34 household.
- 35 u. The Earned Income Tax Credit (EIC). EIC shall also be exempt as resources for the
36 month it is received and for the following month.
- 37 v. Any money received from the Radiation Exposure Compensation Trust Fund, Including
38 the Energy Employees Occupational Illness Compensation Program Act, pursuant to P.L.
39 No. 101-426 as amended by P.L. No. 101-510.
- 40 w. Reimbursement or restoration of out-of-pocket expenses. Out-of-pocket expenses are
41 actual expenses for food, housing, medical items, clothing, transportation, or personal
42 needs items.

- 1 x. Payments to individuals because of their status as victims of Nazi persecution pursuant
2 to Public Law No. 103-286.
- 3 y. General Assistance, SSI, OAP-A and cash assistance under the Temporary Assistance
4 to Needy Families (TANF) funds.
- 5 z. All wages paid by the United States Census Bureau for temporary employment related to
6 the decennial Census.
- 7 aa. Any grant or loan to an undergraduate student for educational purposes made or insured
8 under any programs administered by the Commissioner of Education (Basic Education
9 Opportunity Grants, Supplementary Education Opportunity Grants, National Direct
10 Student Loans and Guaranteed Student Loans), Pell Grant Program, the PLUS Program,
11 the BYRD Honor Scholarship programs, and the College Work Study Program.
- 12 bb. Any portion of educational loans and grants obtained and used under conditions that
13 preclude their use for current living cost (need-based).
- 14 cc. Financial assistance received under the Carl D. Perkins Vocational and Applied
15 Technology Education Act that is made available for attendance cost shall not be
16 considered as income or resources. Attendance cost includes tuition, fees, rental or
17 purchase of equipment, materials or supplies required of all students in the same course
18 of study, books, supplies, transportation, dependent care, and miscellaneous personal
19 expenses of students attending the institution on at least a half-time basis, as determined
20 by the institution.
- 21 dd. The additional unemployment compensation of \$25 a week enacted through the
22 American Recovery and Reinvestment Act of 2009.
- 23 ee. The total value of any gift cards received as compensation received for Medicaid
24 Advisory Committee (MAC) & Beneficiary Advisory Council (BAC) participation, such
25 as including gift cards.

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