

Title of Rule: Revision to the Medical Assistance Rule concerning Medical Assistance program rule updates, Sections 8.100.1,8100.3, 8.100.4, 8.100.5 and 8.100.6
Rule Number: MSB 23-05-10-A
Division / Contact / Phone: Eligibility / Ana Bordallo / 3558

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 8.100.1,8.100.3, 8.100.4, 8.100.5 and 8.100.6 based on the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Families First Coronavirus Response Act (FFCRA) and the Affordable Care Act (ACA), which includes the Maintenance of Effort (MOE) provision. All policy revisions will align with federal regulations for the state to be in compliance during the federal Coronavirus (COVID-19) Public Health Emergency. These changes will impact all Medical Assistance categories and these policy changes will stay in place until the end of the federal Coronavirus (COVID-19) Public Health Emergency. Effective May 11,2023 the coronavirus COVID-19 pandemic federal emergency has been declared to end. To ensure the Department maintains access to Federal funding provided by the Federal "Families First Coronavirus Response Act" Pub.L. 116-127, and the Federal "Consolidated Appropriations Act, 2023", the Department will process redeterminations and take appropriate action for all members whose eligibility has been maintained due to the Public Health Emergency will have completed the renewal process. A member's eligibility may no longer be maintained after May 31,2023 if they have completed the renewal process and / or change is reported, and they are found ineligible. Members whose eligibility has been maintained during the Public Health Emergency and whose renewal is not yet due yet will remain in their current eligibility category until their renewal due month, regardless if there is a change reported that makes them ineligible. With the expiration of the COVID-19 pandemic federal emergency declaration effective May 11,2023 the limited COVID-19 benefit group will end. Federal financial participation (FFP) is not available for services after the last day of the PHE. The Department will use state-only funds to continue to provide coverage for individual who were enrolled in the limited COVID-19 benefit group until May31,2023.The following policy changes were updated to be in compliance with the Consolidated Appropriations Act, 2023: Self-attestation for most verifications will no longer be acceptable, When a member is not reasonable compatible based off income a member self-attests, documentation will be required at the end of their renewal period for the member to remain eligible for Medical Assistance. Self-attestation of resources will no longer be acceptable for Non-MAGI programs. Premiums for the Buy-In program will continue to be waived. Members who had a loss of employment will be required to be employed to remain in the Buy-In program. Newly enrolled members will still need to meet the work requirements. The economic stimulus relief package designed to provide direct assistance to individuals to help offset the financial impacts of the COVID-19 Public Health Emergency will be exempt for MAGI and Non-MAGI eligibility determinations, this rule will be made permanent for auditing and historical purposes. The economic

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stimulus will *not* be a countable resource for 12 months for any Non-MAGI financial eligibility determinations that include a resource test, this rule will be made permanent for auditing and historical purposes. Lastly, the Federal Pandemic Unemployment Compensation (FPUC) program which provides an extra \$600.00 a week is not countable unearned income for Medical Assistance categories, this rule will be made permanent for auditing and historical purposes.

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:

Due to the Coronavirus (COVID-19) Public Health Emergency the state rules need to be updated to comply with federal regulations.

3. Federal authority for the Rule, if any:

Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 and Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136 and the Affordable Care Act (ACA), which includes the Maintenance of Effort (MOE) provision. The Federal "Consolidated Appropriations Act, 2023.

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2022);
25.5-4-205(3)(II)(b)(A), 25.5-5-105, 25.5-5-206(1)(II)(B), 25.5-6-1404(1)(b) and(3)(a)(b),
25.5-6-1405(1),25.5.-6-1405(2)

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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 rules will impact applicants and members who are applying or enrolled in a MAGI and Non-MAGI Medical Assistance program. The rule updates will put the state in compliance with federal regulations. Effective May 11, 2023, the coronavirus COVID-19 Public Health Emergency has been declared to end.

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 will help to determine eligibility correctly by applying regulations based on the Federal "Families First Coronavirus Response Act" Pub.L. 116-127, and the Federal "Consolidated Appropriations Act, 2023".

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.

Self-attestation of all eligibility requirements, including resources, is likely to increase the number of individuals who will be eligible to enroll in Medicaid, therefore the Department expects its expenditures to increase as a result of this policy change. The Department expects that the waiving of premiums for the Disabled Buy-In program will reduce the revenues to the Department, which will result in an increase in expenditures from the Healthcare Affordability and Sustainability Fee (HAS) Cash Fund and federal funds, in order to fill the gap in revenue lost from the premiums.

The Department expects that the provision of COVID testing to applicants will increase expenditures to the Department, but these expenditures will be covered with 100% federal funds and will not impact expenditures from state fund sources.

The exemptions to counting the economic relief provided to individuals from the federal government towards eligibility for Medical Assistance is likely to not affect eligibility, and therefore not impact costs to the Department.

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

The allowance of self-attestation of eligibility criteria is mandated by the Families First Coronavirus Response Act in order for states to qualify for an enhanced FMAP of 6.2%. If the Department does not act in accordance with this policy, the costs to the Department will increase beyond what is necessary. The benefit of implementing this policy will allow the Department to secure a higher FMAP, which will allow the Department to operate with less administrative burden and serve more members during the emergency period. With respect to the proposal to waive the premiums for the Disabled Buy-In program, the Department expects that inaction will cause potential members to not qualify for buy-in because they will be unable to pay the premiums due to the severity of the economic shock. Therefore, the Department sees no benefit to inaction of the rule changes.

In addition, the Families First Coronavirus Response Act allows state Medicaid and CHP+ programs to fund the cost of COVID-19 diagnostic testing for residents who do not qualify for Medical Assistance through 100% federal funds. Thus, inaction will lead to less testing of individual during the emergency and more uncertainty of the status of the emergency in Colorado. Again, the Department sees no benefit to inaction as the costs will be covered by federal funds.

The exemptions to counting the economic relief provided to individuals from the federal government towards eligibility for Medical Assistance are mandated by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. If the Department does not act it will be in violation of the law.

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 methods available to the Department to comply with the Families First Coronavirus Response Act and the CARES Act. The purposes of the proposed rule changes are to allow the Department to better serve Medicaid members and the people of Colorado during this emergency period and the Department sees no other method to accomplish this goal.

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 are no alternative methods for the proposed rule that were considered.