

Title of Rule: Revision to the Medical Assistance Eligibility Rules concerning General and
Citizenship Eligibility Requirements, Section 8.100.3.G
Rule Number: MSB 21-10-22-A
Division / Contact / Phone: Eligibility Policy / Jennifer VanCleave / 303-866-6204

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).

On September 30, 2021, Congress signed the Extending Government Funding and Delivering Emergency Assistance Act (HR 5305) into law. Section 2502 of HR 5305 expanded eligibility to entitlement programs such as Medicaid, to include Afghan evacuees as qualified non-citizens not subject to the five-year bar. The resolution states that a citizen or national of Afghanistan who is paroled into the United States between July 31, 2021 and September 30, 2022; or is paroled into the United States after September 30, 2022 and is either a spouse or child (defined under section 101(b) of the Immigration and Nationality Act 8 U.S.C. 4 1101(b); or is the parent or legal guardian of an individual arriving from Afghanistan in the prescribed date range who was determined to be an unaccompanied child (under 6 U.S.C. 279(g)(2), will considered a qualified non-citizen not subject to the 5 year bar. The population is referred to as Afghan humanitarian parolees.

Currently, these statuses are already considered qualified non-citizens not subject to the five-year bar for children under the age of 19 and pregnant women. HR 5305 states that all humanitarian parolees arriving from Afghanistan during the specified date ranges should be considered qualified non-citizens not subject to the five-year bar, as long as their parole has not been terminated by the Department of Homeland Security. Individuals with these statuses are not automatically entitled for Medical Assistance, they will still need to apply and meet all categorical requirements to be approved. Their status will also be verified electronically through the Verify Lawful Presence (VLP) interface with the Systematic Alien Verification for Entitlements (SAVE) program per current state and federal rule.

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:

The Extending Government Funding and Delivering Emergency Assistance Act (HR 5305) was signed into law on September 30, 2021, and changes are required to align state rules with the continuing resolution. Additionally, several hundred individuals that would potentially be categorized and covered based on their Afghan Humanitarian Parolee status have already arrived in Colorado and need access to health coverage for urgent health needs.

Initial Review

Proposed Effective Date

11/12/21

Final Adoption

Emergency Adoption

11/12/21

DOCUMENT #18

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3. Federal authority for the Rule, if any:

HR 5305, Section 2502

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);

Section 25.5-4-205, C.R.S. (2021)

Section 24.4-4-103(6)(a), C.R.S. (2021)

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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 Governor's Office and the Department of Human Services Office of Refugee Resettlement estimates 1,000 – 2,000 total Afghan evacuees arriving in Colorado, with an estimate of up to half of the total population (approximately 1,000) entering Colorado under the newly established eligible immigration status.

With the proposed rule change, Afghan humanitarian parolees who arrived during the specified date ranges, will be considered qualified non-citizens not subject to the five-year bar until March 31, 2023, or through the extent of their parole timeframe, whichever is later. They will be eligible for full benefits, rather than only those services necessary to treat an emergency medical condition. Many Afghan refugees will arrive in Colorado with immigration statuses that are already considered qualified non-citizens not subject to the five-year bar for Medical Assistance, and their eligibility will be unaffected by the proposed rule change.

The Department will also benefit from the proposed change as the rule will align with federal requirements. The Department will also bear the cost of the proposed rule change, as there will be an increase in the number of individuals who will be eligible for Medical Assistance.

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 change will update rule to comply with the requirements put forth in Extending Government Funding and Delivering Emergency Assistance Act (HR 5305), Section 2502. The Department will benefit from compliance with federal regulations. This will ensure that Medical Assistance eligibility will be accurately determined for Afghan evacuees. The proposed change will also expand eligibility for full Medical Assistance benefits to Afghan humanitarian parolees who were previously only eligible for the coverage of services necessary to treat an emergency medical condition.

The Department, stakeholders, applicants, and providers will benefit from a description of the expanded population eligible for benefits, as well as the date ranges during which the newly expanded population will be considered qualified non-citizens for Medical Assistance.

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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 estimates that this policy would increase the Medicaid caseload by up to 1,000 members. The Department anticipates that the total impact of coverage of Medicaid programs for these members will be \$4,425,970 in Fiscal Year 2021-2022.

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 potentially paying up to \$4.4 million for Medicaid services attributable to new members.

The probable benefits to the policy include staying in compliance with federal laws, as well as providing medical care to individuals in need.

The probable costs of inaction will be that the Department will be out of compliance with federal laws. This could cause the Department to pay a disallowance to CMS or forfeit the Federal Match the Department receives from the Federal Government.

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 enrolled the 1,000 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.

The Department considered no alternative methods for achieving the purpose of the proposed rule, as it is required to come into compliance with federal law.

1 **8.100 MEDICAL ASSISTANCE ELIGIBILITY**

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4 **8.100.3. Medical Assistance General Eligibility Requirements**

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8 **8.100.3.G. General and Citizenship Eligibility Requirements**

9 1. To be eligible to receive Medical Assistance, an eligible person shall:

10 a. Be a resident of Colorado;

11 b. Meet the following requirements while being an inmate, in-patient or resident of a public
12 institution:

13 i). The following individuals, if eligible, may be enrolled for Medical Assistance

14 1. Patients in a public medical institution

15 2. Residents of a Long-Term Care Institution

16 3. Prior inmates who have been paroled

17 4. Resident of a publicly operated community residence which serves no
18 more than 16 residents

19 5. Individuals participating in community corrections programs or residents
20 in community corrections facilities ("halfway houses") who have freedom
21 of movement and association which includes individuals who:

22 a) are not precluded from working outside the facility in employment
23 available to individuals who are not under justice system
24 supervision;

25 b) can use community resources (e.g., libraries, grocery stores,
26 recreation, and education) at will;

27 c) can seek health care treatment in the broader community to the
28 same or similar extent as other Medicaid enrollees in the state;
29 and/or

30 d) are residing at their home, such as house arrest, or another
31 location

- 1 ii). Inmates who are incarcerated in a correctional institution such as a city, county,
2 state or federal prison may be enrolled, if eligible, with benefits limited to an in-
3 patient stay of 24 hours or longer in a medical institution.
- 4 c. Not be a patient in an institution for tuberculosis or mental disease, unless the person is
5 under 21 years of age or has attained 65 years of age and is eligible for the Medical
6 Assistance Program and is receiving active treatment as an inpatient in a psychiatric
7 facility eligible for Medical Assistance reimbursement. See section 8.100.4.H for special
8 provisions extending Medical Assistance coverage for certain patients who attain age 21
9 while receiving such inpatient psychiatric services;
- 10 d. Meet all financial eligibility requirements of the Medical Assistance Program for which
11 application is being made;
- 12 e. Meet the definition of disability or blindness, when applicable. Those definitions appear in
13 this volume at 8.100.1 under Definitions;
- 14 f. Meet all other requirements of the Medical Assistance Program for which application is
15 being made; and
- 16 g. Fall into one of the following categories:
- 17 i) Be a citizen or national of the United States, the District of Columbia, Puerto
18 Rico, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa
19 or Swain's Island; or
- 20 ii) Be a lawfully admitted non-citizen who entered the United States prior to August
21 22, 1996, or
- 22 iii) Be a non-citizen who entered the United States on or after August 22, 1996 and
23 is applying for Medical Assistance benefits to begin no earlier than five years
24 after the non-citizen's date of entry into the United States who falls into one of the
25 following categories:
- 26 1) lawfully admitted for permanent residence under the Immigration and
27 Nationality Act (hereafter referred to as the "INA");
- 28 2) paroled into the United States for at least one year under 8 U.S.C. §
29 1182(d)(5); or
- 30 3) granted conditional entry under section 203(a)(7) of the INA, as in effect
31 prior to April 1, 1980; or
- 32
- 33 4) determined by the eligibility site, in accordance with guidelines issued by
34 the U.S. Attorney General, to be a spouse, child, parent of a child, or
35 child of a parent who, in circumstances specifically described in 8 U.S.C.
36 §1641(c), has been battered or subjected to extreme cruelty which
37 necessitates the provision of Medical Assistance (Medicaid); or
- 38 iv) Be a non-citizen who arrived in the United States on any date, who falls into one
39 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

- 1 United States, this state, another state, or the organization or association
2 originally issuing the code, standard, guideline or rule.
- 3 vi) Be a lawfully admitted non-citizen who is a pregnant women or a child under the
4 age of 19 years in the United States who falls into one of the categories listed in
5 8.100.3.G.1.g.iii or into one of the following categories listed below. These
6 individuals are exempt from the 5-year waiting period:
- 7 1) granted temporary resident status in accordance with 8 U.S.C. 1160 or
8 1255a,or
- 9 2) granted Temporary Protected Status (TPS) in accordance with 8 U.S.C
10 1254a and pending applicants for TPS granted employment
11 authorization,
- 12 3) granted employment authorization under 8 CFR 274a.12(c),or
- 13 4) Family Unity beneficiary in accordance with section 301 of Pub. L. 101-
14 649, as amended.
- 15 5) Deferred Enforced Departure (DED), pursuant to a decision made by the
16 President,
- 17 6) granted Deferred Action status (excluding Deferred Action for Childhood
18 Arrivals (DACA)) as described in the Secretary of Homeland Security's
19 June 15,2012 memorandum,
- 20 7) granted an administrative stay of removal under 8 CFR 241.6(2016), or
- 21 8) Beneficiary of approved visa petition who has a pending application for
22 adjustment of status.
- 23 9) Pending an application for asylum under 8 U.S.C. 1158, or for
24 withholding of removal under 8 U.S.C. 1231, or under the Convention
25 Against Torture who-
- 26 a) as been granted employment authorization; or
- 27 b) Is under the age of 14 and has had an application pending for at
28 least 180 days.
- 29 10) granted withholding of removal under the Convention Against Torture,
- 30 11) A child who has a pending application for Special Immigrant Juvenile
31 status under 8 U.S.C. 1101(a)(27)(J), or
- 32 12) Citizens of Micronesia, the Marshall Islands, and Palau, or
- 33 13) is lawfully present American Samoa under the immigration of laws of
34 American Samoa.
- 35 14) A non-citizen in a valid nonimmigrant status, as defined in 8 U.S.C.
36 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: 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. 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.

For non-qualified aliens 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:

- 1) placing the patient's health in serious jeopardy;
- 2) serious impairment of bodily function; or
- 3) serious dysfunction of any bodily organ or part.

A physician shall make a written statement certifying 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. Coverage 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.

2. For determinations of eligibility for Medical Assistance, legal immigration status must be verified. This requirement applies to a non-citizen individual who meets the criteria of any category defined

1 at 8.100.3.G(1)(g)(ii) (iii) (iv) ~~or~~ (vi) or (vii) and has declared that he or she has a legal immigration
2 status.

3 a. The Verify Lawful Presence (VLP) interface will be used to verify immigration status. The
4 VLP interface connects to the Systematic Alien Verification for Entitlements (SAVE)
5 Program to verify legal immigration status.

6 i) If an automated response from VLP confirms that the information submitted is
7 consistent with VLP data for immigration status verification requirements, no
8 further action is required for the individual and no additional documentation of
9 immigration status is required.

10 ii) If the VLP cannot automatically confirm the information submitted, the individual
11 will be contacted with a request for additional documents and/or information
12 needed to verify their legal immigration status through the VLP interface. If a
13 response from the VLP interface confirms that the additional documents and/or
14 information received from the individual verifies their legal immigration status, no
15 further action is required for the individual and no additional documentation of
16 immigration status is required.

17 3. Reasonable Opportunity Period

18 a. If the verification through the electronic interface is unsuccessful then the applicant will be
19 provided a reasonable opportunity period, of 90 days, to submit documents indicating a
20 legal immigration status, as listed in 8.100.3.G.1.g. The reasonable opportunity period will
21 begin as of the date of the Notice of Action. The required documentation must be
22 received within the reasonable opportunity period.

23 b. If the applicant does not provide the necessary documents within the reasonable
24 opportunity period, then the applicant's Medical Assistance application shall be
25 terminated.

26 c. The reasonable opportunity period applies to MAGI, Adult and Buy-In Programs.

27 i) For the purpose of this section only, MAGI Programs for persons covered
28 pursuant to 8.100.4.G or 8.100.4.I. include the following:
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Commonly Used Program Name	Rule Citation
Children's Medical Assistance	8.100.4.G.2
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Adult Medical Assistance	8.100.4.G.4
Pregnant Women Medical Assistance	8.100.4.G.5
Legal Immigrant Prenatal Medical Assistance	8.100.4.G.6
Transitional Medical Assistance	8.100.4.I.1-5

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31 ii) For the purpose of this section only, Adult and Buy-In Programs for persons
32 covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715. include the
33 following:
34

Commonly Used Program Name	Rule Citation
Old Age Pension A (OAP-A)	8.100.3.F.1.c
Old Age Pension B (OAP-B)	8.100.3.F.1.c

Qualified Disabled Widow/Widower	8.100.3.F.1.e
Pickle	8.100.3.F.1.e
Long-Term Care	8.100.3.F.1.f-h
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6.P
Medicaid Buy-In Program for Children with Disabilities	8.100.6.Q
Breast and Cervical Cancer Program (BCCP)	8.715

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