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Title of Rule: Revision to the Medical Assistance Rule Concerning allowing individuals ages 65 and older to qualify for the Medicaid Buy-In Program for Working Adults with Disabilities in Sections 8.100.3.F & 8.100.6.P.1.a.
Rule Number: MSB 22-01-10-B
Division / Contact / Phone: Eligibility Policy / Beverly Hirsekorn / 303-866-6320

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 22-01-10-B, Revision to the Medical Assistance Rule Concerning allowing individuals ages 65 and older to qualify for the Medicaid Buy-In Program for Working Adults with Disabilities in Sections 8.100.3.F & 8.100.6.P.1.a.

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections OP Pages, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100.3.F with the proposed text beginning at 8.100.3.F.1.l through the end of 8.100.3.F.1.l. Replace the current text at 8.100.6.P with the proposed text beginning at 8.100.6.P.1.a. through the end of 8.100.6.P.1.a. This rule is effective June 30, 2022.

*to be completed by MSB Board Coordinator

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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 rule change amends 10 CCR 2505-10 Section 8.100.6.P. 1. to remove the upper age limit of 65 currently on the Medicaid Buy-In Program for Working Adults with Disabilities (program) to comply with Senate Bill 20-033.

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:

   Balanced Budget Act of 1997, Public Law 105-33,111, as amended which provides individuals an opportunity to buy into Medicaid consistent with the Social Security Act, 42 U.S.C. Sec. 1396a (a)(10)(A)(ii)(XIII), as amended, to permit the Department to provide Medical Assistance Eligibility to individuals in the Work Incentives Eligibility group, age sixty-five and older, after they are no longer eligible under the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106-170.

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2021);
   C.R.S. 25.5-6-1402(6), C.R.S. 25.5-6-1403(5), C.R.S. 25.5-6-1404, C.R.S. 25.5-6-1405 C.R.S.

Initial Review	**04/08/22**	Final Adoption	**05/13/22**
Proposed Effective Date	**06/30/22**	Emergency Adoption	

DOCUMENT #11

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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 rule update will benefit enrolled members on the Medicaid Buy-In Program for Working Adults with Disabilities that will turn 65 or older to not be terminated due to age. New applicants age 65 and older will now be able to participate in the Medicaid Buy-In Program for Working Adults with Disabilities if they meet all other qualifying criteria including disability, employment, and income limits. There are no projected negative impacts to any classes of persons 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 allow individuals to not have an upper age limit to participate in the Medicaid Buy-In Program for Working Adults with Disabilities will allow individuals to continue working and receive needed medical assistance. Individuals will not lose benefits just because they are 65 or older. This change may enhance the ability of workers with disabilities to remain in the workforce. The change may also increase opportunities for successful and dignified community living for older individuals with disabilities

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.

   Expanding the Medicaid buy-in program to people over the age of 64 increases caseload, as most people eligible would not otherwise qualify for Medicaid due to income, asset, or age limits. This drives new expenditures, including federal funds at a 50% match rate and the Healthcare Affordability and Sustainability Fee (HAS Fee)

Cash Fund funding the state share of the program in FY 2022-23 and ongoing. There is an impact from some people over the age of 64 who had previously been enrolled shifting from other Medicaid categories to the buy-in program. This results in a reduction in expenditure to General Fund, which dampens the overall costs. The expansion to the Medicaid Buy-In Program for Working Adults with Disabilities that will turn 65 or older increases state expenditures in HCPF by $0.1 million in FY 2021-22, and $3.0 million in FY 2022-23 and future years. These costs are paid from cash and federal funds. These costs include administrative expenses and medical services. The Department anticipates that it will be at the maximum of federal net patient revenue limits in FY 2020-21 and FY 2021-22, which is a limiting factor in the amount of revenue the Department can collect from hospitals into the HAS Fee cash fund. Therefore, the Department will not be able to use HAS Fee as the state share for this additional population during those years. The Department projects that there will be more room under the net patient revenue limit in FY 2022-23, and the state share costs would then shift to the HAS Fee starting in that year. The bill allows the Department to expend gifts grants and donations, if received, for the administrative costs if HAS Fee Cash Fund is not available. The Department may or may not be able to claim a federal match on the donations. The costs of updating systems is planned to be absorbed within the Department's existing pool hours. The administrative activities are planned to be absorbed within existing capacity. The Department was appropriated $50,000 total funds to be used on an actuarial study of premiums.

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

   The probable costs of the proposed rule change include services for eligible individuals 65 and older, the implementation of the expansion, and the administration of the additional population.
   The probable benefit of this policy is providing eligible individuals with more opportunities to continue working and live a dignified and successful life in the community contributing to society.

   The cost of inaction is being out of compliance with state statute.

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 of implementing SB20-033.

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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.

8.100 MEDICAL ASSISTANCE ELIGIBILITY

8.100.3.F. Groups Assisted Under the Program

1. The Medical Assistance Program provides benefits to the following persons who meet the federal definition of categorically needy at the time they apply for benefits:

   a. Parents and Caretaker Relatives, Pregnant Women, Children, and Adults as defined under the Modified Adjusted Gross Income (MAGI)Medical Assistance section 8.100.4.

   b. Persons who meet legal immigrant requirements as outlined in this volume, who were or would have been eligible for SSI but for their alien status, if such persons meet the resource, income and disability requirements for SSI eligibility.

   c. Persons who are receiving financial assistance; and who are eligible for a SISC Code of A or B. See section 8.100.3.M for more information on SISC Codes.

   d. Persons who are eligible for financial assistance under Old Age Pension (OAP) and SSI, but are not receiving the money payment.

   e. Persons who would be eligible for financial assistance from OAP or SSI, except for the receipt of Social Security Cost of Living Adjustment (COLA) increases, or other retirement, survivors, or disability benefit increases to their own or a spouse's income. This group also includes persons who lost OAP or SSI due to the receipt of Social Security Benefits and who would still be eligible for the Medical Assistance Program except for the cost of living adjustments (COLA's) received. These populations are referenced as Pickle and Disabled Widow(er)s.

   f. Persons who are blind, disabled, or aged individuals residing in the medical institution or Long Term Care Institution whose income does not exceed 300% of SSI.

   g. Persons who are blind, disabled or aged receiving HCBS whose income does not exceed 300% of the SSI benefit level and who, except for the level of their income, would be eligible for an SSI payment.

   h. A disabled adult child who is at least 18 years of age and who was receiving SSI as a disabled child prior to the age of 22, and for whom SSI was discontinued on or after May 1, 1987, due to having received of OASDI drawn from a parent(s) Social Security Number, and who would continue to be eligible for SSI if the above OASDI and all subsequent cost of living adjustments were disregarded. This population is referenced as Disabled Adult Child (DAC).

   i. Children age 18 and under who would otherwise require institutionalization in an Long Term Care Institution, Nursing Facility (NF), or a hospital but for which it is appropriate to provide care outside of an institution as described in 1902(e)(3) of the Act Public Law No. 97-248 (Section 134).

   j. Persons receiving OAP-A, OAP-B, and OAP Refugees who do not meet SSI eligibility criteria but do meet the state eligibility criteria for the OAP State Only Medical Assistance Program. These persons qualify for a SISC Code C.

k. Persons who apply for and meet the criteria for one of the categorical Medical Assistance programs, but do not meet the criteria of citizenship shall receive Medical Assistance benefits for emergencies only.

l. Persons with a disability or limited disability who are at least 16 ~~but less than 65 years of age~~, with income less than or equal to 450% of FPL after income disregards, regardless of resources, and who are employed.

m. Children with a disability who are age 18 and under, with household income less than or equal to 300% of FPL after income disregards, regardless of resources.

n. Due to the Coronavirus COVID-19 Public Health Emergency, an applicant who is not eligible for Medical Assistance but has been impacted through exposure to or potential infection of COVID-19 may be eligible to receive services for COVID-19 testing, treatment, or care for complications related to COVID-19. To qualify for this limited benefit, the applicant must satisfy residency and immigration-or citizenship and not be enrolled in other health insurance.

8.100.6 Aged, Blind, and Disabled Medical Assistance Eligibility

8.100.6.P. Medicaid Buy-In Program for Working Adults with Disabilities.

1. To be eligible for the Medicaid Buy-In Program for Working Adults with Disabilities:

a. Applicants must be at least age 16 ~~but less than 65 years of age~~.

b. Income must be less than or equal to 450% of FPL after income allocations and disregards. See 8.100.5.F for Income Requirements and 8.100.5.H for Income allocations and disregards. Only the applicant's income will be considered.

c. Resources are not counted in determining eligibility.

d. Individuals must have a disability as defined by Social Security Administration medical listing or a limited disability as determined by a state contractor.

e. Individuals must be employed. Please see Verification Requirements at 8.100.5.B.1.c.

i) Due to the federal COVID-19 Public Health Emergency, and required by the Federal CARES Act for the Maintenance of Effort (MOE), members who had a loss of employment will remain in the Buy-In program until the end of the federal Public Health Emergency. At the end of the federal Public Health Emergency, members will be redetermined based on their current employment status. New applicants enrolled will still need to meet the work requirement.

f. Individuals will be required to pay monthly premiums on a sliding scale based on income.

i) The amount of premiums cannot exceed 7.5% of the individual's income.

ii) Premiums are charged beginning the month after determination of eligibility. Any premiums for the months prior to the determination of eligibility will be waived.

iii) Premium amounts are as follows:

1) There is no monthly premium for individuals with income at or below 40% FPL.

2) A monthly premium of $25 is applied to individuals with income above 40% of FPL but at or below 133% of FPL.

3) A monthly premium of $90 is applied to individuals with income above 133% of FPL but at or below 200% of FPL.

4) A monthly premium of $130 is applied to individuals with income above 200% of FPL but at or below 300% of FPL.

5) A monthly premium of $200 is applied to individuals with income above 300% of FPL but at or below 450% of FPL.

iv) The premium amounts will be updated at the beginning of each State fiscal year based on the annually revised FPL if the revised FPL would cause the premium amount (based on percentage of income) to increase by $10 or more.

v) A change in client net income may impact the monthly premium amount due. Failure to pay premium payments in full within 60 days from the premium due date will result in client's assistance being terminated prospectively. The effective date of the termination will be the last day of the month following the 60 days from the date on which the premium became past due.

vi) Due to the federal COVID-19 Public Health Emergency, the Department will waive premiums for the Medicaid Buy-In for Working Adults with Disability Program during the federal COVID-19 emergency declaration. Once the federal emergency declaration has concluded, the Department will notify all members as to when required premiums will resume.

2. Retroactive coverage is available according to 8.100.3.E, however is not available prior to program implementation

3. Individuals have the option to request to be disenrolled if they have been enrolled into the Medicaid Buy-In Program for Working Adults with Disabilities. This is also called "opt out."