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Title of Rule: Revision to the Medical Assistance programs Rule Concerning updates to add Family Planning Services for Sections 8.100.3.F, 8.100.4.E, 8.100.4.F, and 8.100.4.G
Rule Number: MSB 22-01-12-A
Division / Contact / Phone: Office of Medicaid Operations / Melissa Torres / 5052

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 22-01-12-A, Revision to the Medical Assistance programs Rule Concerning updates to add Family Planning Services for Sections 8.100.4.E, 8.100.4.F, and 8.100.4.G

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(s) 8.100.3.F, 8.100.4.E, 8.100.4.F, and 8.100.4.G, 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.1.a with the proposed text beginning at 8.100.3.F.1.a through the end of 8.100.3.F.1.a. Replace the current text at 8.100.4 with the proposed text beginning at 8.100.4.Ethrough the end of 8.100.4.G. 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 proposed rule change will amend 10 CCR 2505-10 sections 8.100.3.F, 8.100.4.E, 8.100.4.F, and 8.100.4.G, to include requirements to add a new limited family planning medical assistance program per Senate Bill 21-025. The updates to add the limited family planning services will allow Colorado to align with Federal requirements described at 42 CFR §435.214 and §435.603(k), which codifies the statutory provisions in sections 1902(a)(10)(A)(ii)(XXI) and 1902(ii) of the Social Security Act (the Act). This limited family planning medical assistance category covers individuals of any age or gender who are not pregnant, not eligible for a Medicaid eligibility category that provides full coverage, and whose income is no more than 260% of the federal poverty level. The department will also add a new category for the presumptive eligibility program for the limited family planning services to allow members to receive immediate services. This category will be called family planning presumptive eligibility. Family planning presumptive eligibility will provide services while their application is processed to determine eligibility for medical assistance. The department eligibility policy will be updated to reflect these changes in the Colorado Benefits Management System (CBMS). Updates to the rule will correct the listed federal poverty level (FPL) of 185% to 195% of the FPL to align with Colorado's current FPL limit of 195% for presumptive eligibility for pregnant women and 60% to 68% for parent and caretaker relatives. No System changes will be made for the FPL updates.

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:

   42 CFR §435.214 and §435.603(k)

4. State Authority for the Rule: C.R.S. 25.5-5-102(1)(h) and C.R.S. 25.5-5-329

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

DOCUMENT #09

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Sections 25.5-1-301 through 25.5-1-303, 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.

   Applicants applying for Medical Assistance whose total household income is greater than 133% but does not exceed 260% of the federal poverty level shall benefit from the proposed rule, as applicants meet financial eligibility for the limited Family Planning Medical Assistance services. Currently, Colorado only has medical assistance programs that cover applicants within these guidelines who are either pregnant or a child under 19 years of age. This medical assistance program will now expand family planning services to individuals who would otherwise have been ineligible for medical assistance services. The limited family planning medical assistance services will not impose age, sex, or gender identity limitations on eligibility and is only available for applicants who are not eligible for a Medicaid eligibility category with full coverage.

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 add the new limited family planning medical assistance coverage can increase the member's medical care for necessary evaluations or preventative services. These services will also offer members contraceptive services and provide healthcare or counseling services focused on preventing, delaying, or planning a pregnancy. With the utilization of these services, members can now avoid unintended pregnancies allowing members to control their current and future family planning.

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 was appropriated $1,921,292 total funds, including $253,117 General Fund in FY 2021-22 and $4,416,575 total funds, including $893,390 General Fund in FY 2022-23 to implement SB 21-025 which allows eligible individuals with incomes below 260% FPL to receive family planning services. The funds will be

used for administrative staff to manage the program, making necessary changes in the interchange and CBMS, determining member eligibility, and reimbursing providers for family planning services. The costs are offset by anticipated savings from avoided pregnancies.

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

   The cost of this policy is paying for family planning and family planning-related services for eligible individuals under the expanded benefit, as well as the costs associated with setting up and running the program.

   The probable benefit of this policy is providing eligible Coloradans access to family planning services to prevent and/or delay pregnancies and the costs associated with those unintended pregnancies to the Medicaid and CHP+ programs.

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

   There are no obvious benefits to inaction.

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 SB 21-025 Family Planning Services for Eligible Individuals.

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. Medical Assistance General Eligibility Requirements

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, Adults, and Family Planning Medical Assistance 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 only. To qualify for this limited benefit, the applicant must satisfy residency and immigration-or citizenship and not be enrolled in other health insurance.

8.100.4 MAGI Medical Assistance Eligibility [Eff. 01/01/2014]

8.100.4.E. Determining MAGI Household Composition.

1. MAGI household composition is similar to, but not necessarily the same as a tax household. To determine MAGI household composition, the individual's relationship to the tax filer must be established as declared on the Single Streamlined Application.

   a. In the case of an applicant who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and does not expect to be claimed as a tax dependent by anyone else, then the applicant's MAGI household shall consist of the following:

      i) The Tax-Filer;

      ii) The Tax-Filer's spouse if living in the home;

      iii) All persons whom the Tax-Filer expects to claim as a tax dependent on their personal income tax return

   b. In the case of an applicant who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the applicant's MAGI household shall be:

i) The Tax Dependent;

ii) The Tax-Filer and their spouse if living in the home;

iii) The Tax-Filer's other tax dependents;

iv) The Tax Dependent's spouse, if living with the Tax Dependent.

c. The MAGI household of an applicant who expects to be claimed as a tax dependent is as outlined in 8.100.4.E.b above, except in the following circumstances:

i) The applicant expects to be claimed as a tax dependent by someone other than a spouse, biological, adoptive or step parent.

ii) The applicant is a child under 19 who is expected to be claimed by one parent as a tax dependent and is living with both parents, but the parents do not expect to file a joint tax return.

iii) The applicant is a child under 19 and who expects to be claimed as a tax dependent by anon-custodial parent.

d. If the applicant meets one of the exceptions in 8.100.4.E.c above or is a non-filer, household composition shall be determined using the following non-filer rules and the applicant's household shall consist of the following:

i) The applicant;

ii) The applicant's spouse who lives in the household;

iii) The applicant's natural, adopted, and step children under the age of 19, who live in the household; and

iv) In the case of applicants under the age of 19, the applicant's natural, adoptive, and step parents and natural, adoptive, and step siblings under age 19, who live in the household.

2. When a household includes a pregnant woman, regardless of the Medical Assistance category, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

3. When a household includes an individual applying for the limited Family Planning Medical Assistance category, the individual is counted as a household of two in addition to any other household members.

4~~3~~. Married couples living together will each be included in the other's MAGI household regardless of whether or not they expect to file taxes jointly, separately or if one expects to be claimed as a tax dependent of the other.

5~~4~~. If a child is claimed as a tax dependent by both parents who are married and who will file taxes jointly but one parent lives outside of the household due to separation or pending divorce, the child's household composition is determined by non-filer rules. The parent living outside of the household will not be counted as part of the household.

6~~5~~. An individual who is both a tax dependent and a tax filer will be considered a tax dependent for the purpose of determining eligibility for Medical Assistance.

8.100.4.F. MAGI Category Presumptive Eligibility

1. A pregnant applicant may apply for presumptive eligibility for ambulatory services through Medical Assistance presumptive eligibility sites. A child under the age of 19 may apply or have an adult apply on their behalf for presumptive eligibility for State Plan approved medical services through presumptive eligibility sites. Presumptive eligibility is available to applicants for limited family planning who are not pregnant. There are no restrictions of age or gender under the limited family planning presumptive eligibility category.

2. To be eligible for presumptive eligibility:

   a. a pregnant woman shall have an attested pregnancy, declare that her household's income shall not exceed 19~~8~~5% of the federal poverty level (MAGI-equivalent) and declare that she is a United States citizen or a lawfully residing ~~documented~~ immigrant. Refer to the MAGI-Medicaid income guidelines chart available on the Department's website

   b. a child under the age of 19 shall have a declared household income that does not exceed 133% of federal poverty level (MAGI-equivalent) and declare that the child is a United States citizen or a documented immigrant.

   c. To qualify for limited family planning presumptive eligibility, an applicant must have declared household income greater than 133% but not exceeding 260% of the federal poverty level. The applicant cannot be eligible for a Medicaid eligibility category that provides full coverage. The applicant must declare they are a United States citizen or a lawfully residing immigrant. An applicant applying for limited family planning presumptive eligibility will be counted individually as a household member of two.

3. Presumptive eligibility sites shall be certified by the Department to make presumptive eligibility determinations. Sites shall be re-certified by the Department every 2 years to remain approved presumptive eligibility sites.

4. The presumptive eligibility site shall forward the application to the county within five business days.

5. The presumptive eligibility period begins on the date the applicant(s) is determined eligible and ends with ~~the earlier of:~~

~~a. T~~ the day an eligibility determination for Medical Assistance is made for the applicant(s)~~; or~~

~~b. The last day of the month following the month in which a determination for presumptive eligibility was made.~~

6. A presumptive eligible client may not appeal the end of a presumptive eligibility period.

7. Presumptively eligible women and Medical Assistance clients may appeal the county department's failure to act on an application within 45 days from date of application or the denial of an application. Appeal procedures are outlined in the State Hearings section of this volume.

8.100.4.G. MAGI Covered Groups

1. For MAGI Medical Assistance, any person who is determined to be eligible for Medical Assistance based on MAGI at any time during a calendar month shall be eligible for benefits during the entire month.

2. Children applying for Medical Assistance whose total household income does not exceed 133% of the federal poverty level (MAGI-equivalent) shall be determined financially eligible for Medical Assistance. Refer to the MAGI-Medicaid income guidelines chart available on the Department's website.

   a. Children are eligible for Children's MAGI Medical Assistance through the end of the month in which they turn 19 years old. After turning 19, the individual may be eligible for a different Medical Assistance category.

3. Parents and Caretaker Relatives applying for Medical Assistance whose total household income does not exceed 6~~0~~8% of the federal poverty level (MAGI-equivalent) shall be determined financially eligible for Medical Assistance. Parents or Caretaker Relatives eligible for this category shall have a dependent child in the household.

   a. A dependent child is considered to be living in the home of the parent or caretaker relative as long as the parent or specified relative exercises responsibility for the care and control of the child even if:

      i) The child is under the jurisdiction of the court (for example, receiving probation services);

      ii) Legal custody is held by an agency that does not have physical possession of the child;

      iii) The child is in regular attendance at a school away from home;

      iv) Either the child or the relative is away from the home to receive medical treatment;

      v) Either the child or the relative is temporarily absent from the home;

      vi) The child is in voluntary foster care placement for a period not expected to exceed three months. Should the foster care plan change within the three months and the placement become court ordered, the child is no longer considered to be living in the home as of the time the foster care plan is changed.

4. Adults applying for Medical Assistance whose total household income does not exceed 133% of the federal poverty level shall be determined financially eligible for Medical Assistance. This category includes adults who are parents or caretaker relatives of dependent children whose income exceeds the income threshold to qualify for the Parents and Caretaker Relatives MAGI category and who meet all other eligibility criteria.

   a. A dependent child living in the household of a parent or caretaker relative shall have minimum essential coverage, in order for the parent or caretaker relative to be eligible for Medical Assistance under this category. Refer to section 8.100.4.G.3.a on who is considered a dependent child.

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

5. Pregnant Women whose household income does not exceed 1~~9~~8~~8~~5% of the federal poverty level (MAGI-equivalent) are eligible for the Pregnant Women MAGI Medical Assistance program.

Medical Assistance shall be provided to a pregnant woman for a period beginning with the date of application for Medical Assistance through the last day of the 12th month following ~~60 days from~~ the date the pregnancy ends. Once eligibility has been approved, Medical Assistance coverage will be provided regardless of changes in the woman's financial circumstances once the income verification requirements are met.

a. A pregnant women's eligibility period will end effective the earliest possible month, if the following occurs:

i) Fails to provide a reasonable explanation or paper documentation when self-attested income is not reasonably compatible with income information from an electronic data source, by the end of the 90 day reasonable opportunity period. This exception only applies the first-time income is verified following an initial eligibility determination or an annual redetermination.

6. A lawfully admitted non-citizen who is pregnant and who has been in the United States for less than five years is eligible for Medical Assistance if she meets all of the other eligibility requirements specified at 8.100.4.G.5 and fits into one of the immigration categories listed in 8.100.3.G.1.g.iii.1-5 and 8.100.3.G.1.g.vi.1-15. This population is referenced as Legal Immigrant Prenatal.

7. A child whose mother is receiving Medical Assistance at the time of the child's birth is continuously eligible for one year. This population is referred to as "Eligible Needy Newborn". This coverage also applies in instances where the mother received Medical Assistance to cover the child's birth through retroactive Medical Assistance. The child is not required to live with the mother receiving Medical Assistance to qualify as an Eligible Needy Newborn.

a. To receive Medical Assistance under this category, the birth must be reported verbally or in writing to the County Department of Human Services or eligibility site. Information provided shall include the baby's name, date of birth, and mother's name or Medical Assistance number. A newborn can be reported at any time by any person. Once reported, a newborn meeting the above criteria shall be added to the mother's Medical Assistance case, or his or her own case if the newborn does not reside with the mother, according to timelines defined by the Department. If adopted, the newborn's agent does not need to file an application or provide a Social Security Number or proof of application for a Social Security Number for the newborn

8. Applicants applying for Medical Assistance whose total household income is greater than 133% but does not exceed 260% of the federal poverty level shall be determined financially eligible for limited Family Planning Medical Assistance services. The applicant must satisfy residency and immigration or citizenship status to qualify for this limited benefit. The limited family planning services eligibility category has no age or gender restriction and is available for those not eligible for a Medicaid eligibility category that provides full coverage.