THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revision to the Medical Assistance Rule Concerning Medicaid Income Verification §8.100.4.B. & 8.100.5.B.

Rule Number: MSB 10-06-09-A

Division / Contact / Phone: CCR / Ann Clemens / 6115

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 10-06-09-A, Revision to the Medical Assistance Rule Concerning Medicaid Income Verification §8.100.4.B. & 8.100.5.B.
3. This action is an adoption of: new rules
4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.4.B. & 8.100.5.B., 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*

Revisions to the existing rule at §8.100.4.B.2. are a change to paragraph (c), a change to the first unnumbered paragraph following and the insertion of an unnumbered paragraph two moving the existing unnumbered paragraph to the third position. The remainder of this section of the rule is unchanged.

Revisions to the existing rule at §8.100.5.1 are a change to paragraph (c), the inclusion of an unnumbered paragraph following (unnumbered paragraph 1) and moving the existing unnumbered paragraph with a change to the unnumbered paragraph 2 position. The remainder of this section of the rule is unchanged.

These changes are effective October 30, 2010.

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Medicaid Income Verification §8.100.4.B. & 8.100.5.B.
Rule Number:	MSB 10-06-09-A
Division / Contact / Phone:	CCR / Ann Clemens / 6115

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).

   Senate Bill 08-161 (25.5-8-109 C.R.S. (2008)) allowed self-declaration of income for families. The Department is now implementing self-declaration of income verified through the Income and Eligibility Verification System (IEVS).

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 Part 435.948(a)(1)

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2009);
   25.5-8-101 through 25.5-8-104, C.R.S. (2008);
   Senate Bill 08-161 (25.5-8-109, C.R.S. (2008))

Initial Review	**07/09/2010**	Final Adoption	**09/10/2010**
Proposed Effective Date	**10/30/2010**	Emergency Adoption	

DOCUMENT #01

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Medicaid Income Verification §8.100.4.B. & 8.100.5.B.
Rule Number:	MSB 10-06-09-A
Division / Contact / Phone:	CCR / Ann Clemens / 6115

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 class of persons that will be affected and benefit from this proposed rule change are Medicaid program clients with work income.

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 population affected by this change will have less burden to provide income documentation. This will also ease administrative burden for eligibility site workers as the process will be automated within CBMS.

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.

   There is currently an interface between the Colorado Benefits Management System (CBMS) and the Department of Labor and Employment that runs monthly and returns quarterly wage information for currently eligible Medicaid clients. It did not have the capacity to verify income for Children's Basic Health Plan clients or new applicants that are not currently eligible in CBMS. It also did not have the capacity to automatically interface wage data into CBMS income screens without worker intervention.

   CBMS system changes were required to allow wage data updates for all medical assistance clients as well as to automate the process within CBMS. The Department was appropriated $43,901 to implement SB 08-161 for CHP+ and Medicaid.

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

   This rule is needed to comply with new legislation, Senate Bill 08-161 (25.5-8-109 C.R.S. (2008)).

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   N/A

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.

   N/A

8.100.4.B. Family and Children's Minimal Verification Requirements

1. The particular circumstances of a family will dictate the appropriate documentation needed for a complete application. Documentation to establish that a situational requirement is met is needed only when inadequate or inconsistent information supplied by the caretaker relative warrants securing verification to clarify a question of eligibility.

2. Minimal Verification - The following items shall be verified for all families applying for medical assistance:

   a. A Social Security Number shall be provided for each individual on the application for whom Medical Assistance is being requested, or proof shall be submitted that an application for a Social Security Number has been made. Members of religious groups whose faith will not permit them to obtain Social Security Numbers shall be exempt from providing a Social Security Number.

   b. Verification of citizenship and identity as outlined in section 8.100.3 under Citizenship and Identity Requirements.

   c. Earned income may be self-declared by an individual and verified by the Income and Eligibility Verification System (IEVS). Individuals who provide self-declaration of earned income must also provide a Social Security Number for wage verification purposes. ~~shall be verified by wage stubs, written documentation from the employer stating the employees' gross income or a telephone call to an employer, if the applicant authorizes the telephone call.~~If a discrepancy occurs between self-declared income and IEVS wage data reports, IEVS wage data will be used to determine eligibility. An individual may dispute IEVS wage data by submitting all wage verification for all months in which there is a wage discrepancy.

      If the applicant is self employed, ledgers are sufficient for verification of earnings, if a ledger is not available, receipts are acceptable. The ledger included in the ~~Public Health Insurance for Families~~ Colorado Medical Assistance application is sufficient verification of earnings, unless questionable.

      If an individual cannot provide verification through self-declaration, income shall be verified by wage stubs, written documentation from the employer stating the employees' gross income or a telephone call to an employer, if the applicant authorizes the telephone call.

      Estimated earned income shall be used to determine eligibility if the applicant/client provides less than a full calendar month of wage stubs for the application month. A single recent wage stub shall be sufficient if the applicant's income is expected to be the same amount for the month of application. Verification of earned income received during the month prior to the month of application shall be acceptable if the application month verification is not yet available. Actual earned income shall be used to determine eligibility if the client provides verification for the full calendar month.

   d. Immigrant registration cards or papers, if applicable, to determine if the client is eligible for full Medical Assistance benefits. If an applicant does not provide this, he/she shall only be eligible for emergency Medical Assistance if they meet all other eligibility requirements.

   e. Pregnancy verification, if applicable, and if the pregnancy is not observable. The verification shall be documented according to 8.100.4.G.9.a.

f. Unearned income may be declared by the client verbally or in writing on the application.

3. Additional Verification - No other verification shall be required of the client unless information is found to be questionable on the basis of fact.

4. The determination that information is questionable shall be documented in the applicant's case file and CBMS case comments.

5. Information that exists in another case record or in CBMS shall be used by the eligibility site to verify those factors that are not subject to change, if the information is reasonably accessible.

6. The criteria of age, school attendance, and relationship can be declared by the client unless questionable. If questionable, these criteria can be established with information provided from:

    a. official papers such as: a birth certificate, order of adoption, marriage license, immigration or naturalization papers; or,

    b. records or statements from sources such as: a court, school, government agency, hospital, or physician.

7. Establishing that a dependent child meets the eligibility criterion of:

    a. age, if questionable requires (1) viewing the birth certificate or comparably reliable document at eligibility site discretion, and (2) documenting the source of verification in the case file and CBMS case comments;

    b. school attendance, if questionable requires (1) obtaining confirmation from the school by phone or in writing, and (2) documenting the means of verification in the case file and CBMS case comments;

    c. living in the home of the caretaker relative, if questionable requires (1) viewing the appropriate documents which identify the relationship, (2) documenting these sources of verification in the case file and CBMS case comments.

8.100.5.B. Verification Requirements

1. The particular circumstances of an applicant will dictate the appropriate documentation needed for a complete application. The following items shall be verified for individuals applying for Medical Assistance:

   a. A Social Security Number shall be provided for each individual on the application for whom Medical Assistance is being requested, or proof shall be submitted that an application for a Social Security Number has been made. Members of religious groups whose faith will not permit them to obtain Social Security Numbers shall be exempt from providing a Social Security Number.

   b. Verification of citizenship and identity as outlined in the section 8.100.3 under Citizenship and Identity Eligibility Requirements.

   c. ~~Verification of earned income shall be provided if the applicant earned money in the month for which eligibility is being determined or during the previous month.~~ Earned income may be self-declared by an individual and verified by the Income and Eligibility Verification System (IEVS). Individuals who provide self-declaration of earned income must also provide a Social Security Number for wage verification purposes. If a discrepancy occurs between self-declared income and IEVS wage data reports, IEVS wage data will be used to determine eligibility. An individual may dispute IEVS wage data by submitting all wage verification for all months in which there is a wage discrepancy.

      If the applicant is self employed, ledgers are sufficient for verification of earnings, if a ledger is not available, receipts are acceptable. The ledger included in the Medical Assistance application is sufficient verification of earnings, unless questionable. If an individual cannot provide verification through self-declaration, income shall be verified by wage stubs, written documentation from the employer stating the employees' gross income or a telephone call to an employer, if the applicant authorizes the telephone call.

      As of CBMS implementation, estimated earned income shall be used to determine eligibility if the applicant/client provides less than a full calendar month of wage stubs for the application month. A single recent wage stub shall be sufficient if the applicant's income is expected to be the same amount for the month of application. Written documentation from the employer stating the employees' gross income or a telephone call to an employer, if the applicant authorizes the telephone call shall also be acceptable verification of earned income. Verification of earned income received during the month prior to the month of application shall be acceptable if the application month verification is not yet available. Actual earned income shall be used to determine eligibility if the client provides verification for the full calendar month. ~~If the applicant is self employed, ledgers are sufficient for verification of earnings, if a ledger is not available, receipts are acceptable.~~

   d. Verification of all unearned income shall be provided if the unearned income was received in the month for which eligibility is being determined or during the previous month. If available, information that exists in another case record or verification system shall be used to verify unearned income.

   e. Verification of all resources shall be provided if the resources were available to the applicant in the month for which eligibility is being determined.

f. Immigrant registration cards or papers, if applicable, to determine if the client is eligible for full Medical Assistance benefits. If an applicant does not provide this, he/she shall only be eligible for emergency Medical Assistance if they meet all other eligibility requirements.

g. Pregnancy verification, if applicable, and if the pregnancy is not observable. The verification shall be documented according to 8.100.4.G.9.a.

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Medicaid Special Immigrants §8.100.3.G.
Rule Number:	MSB 10-06-09-B
Division / Contact / Phone:	CCR / Ann Clemens / 6115

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 10-06-09-B, Revision to the Medical Assistance Rule Concerning Medicaid Special Immigrants §8.100.3.G.
3. This action is an adoption of: new rules
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.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*

This rule revision changes text at §8.100.3.G.1.g.iii)7)k) and l) as provided. All other text for this section of the rule remains unchanged and is provided for reference only.

This rule revision is effective 10/30/2010.

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Medicaid Special Immigrants §8.100.3.G.
Rule Number:	MSB 10-06-09-B
Division / Contact / Phone:	CCR / Ann Clemens / 6115

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).

   Section 101 (a) (27) of the Immigration and Nationality Act allows for Special Immigrant status for Iraqi and Afghan immigrants. H.R. 3326/Public Law 111-118 Section 8120 revised Medicaid eligiblity policy for this population to mirror eligibility for refugees thus extending Medicaid eligibility from up to 8 months to up to 7 years.

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:

   8 U.S.C.§ 1101, Public Law 110-161, Section 525 of Title V of Division G, Public Law 110-181, Section 1244, and H.R. 3326/Public Law 111-118 Section 8120(a) and (b)

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2009);

Initial Review	**07/09/2010**	Final Adoption	**09/10/2010**
Proposed Effective Date	**10/30/2010**	Emergency Adoption	

DOCUMENT #03

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Medicaid Special Immigrants §8.100.3.G.
Rule Number:	MSB 10-06-09-B
Division / Contact / Phone:	CCR / Ann Clemens / 6115

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 class of person that will be affected and benefit from this proposed rule are Medicaid clients that were admitted into the U.S. with Special Immigrant status.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Medicaid eligibility will expand for clients with Special Immigrant status.

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.

   Costs associated with the Special Immigrant status are 100% federally funded. There is no fiscal impact to the State.

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

   N/A The rules are necessary to be in conformity with current federal law.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   N/A

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.

   N/A.

8.100.3.G. General and Citizenship Eligibility Requirements

1. To be eligible to receive Medical Assistance, an eligible person shall:
    a. Be a resident of Colorado;
    b. Not be an inmate of a public institution, except as a patient in a public medical institution or as a resident of an Long Term Care Institution or as a resident of a publicly operated community residence which serves no more than 16 residents;
    c. Not be a patient in an institution for tuberculosis or mental disease, unless the person is under 21 years of age or has attained 65 years of age and is eligible for the Medical Assistance Program and is receiving active treatment as an inpatient in a psychiatric facility eligible for Medical Assistance reimbursement. See section 8.100.4.H for special provisions extending Medical Assistance coverage for certain patients who attain age 21 while receiving such inpatient psychiatric services;
    d. Meet all financial eligibility requirements of the Medical Assistance Program for which application is being made;
    e. Meet the definition of disability or blindness, when applicable. Those definitions appear in this volume at 8.100.1 under Definitions;
    f. Meet all other requirements of the Medical Assistance Program for which application is being made; and
    g. Fall into one of the following categories:
        i) Be a citizen or national of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa or Swain's Island; or
        ii) Be a lawfully admitted non-citizen who entered the United States prior to August 22, 1996, or
        iii) Be a non-citizen who entered the United States on or after August 22, 1996 and is applying for Medical Assistance benefits to begin no earlier than five years after the non-citizen's date of entry into the United States who falls into one of the following categories:
            1) lawfully admitted for permanent residence under the Immigration and Nationality Act (hereafter referred to as the "INA");
            2) paroled into the United States for at least one year under section 212(d)(5) of the INA; or
            3) granted conditional entry under section 203(a)(7) of the INA, as in effect prior to April 1, 1980; or
            4) determined by the eligibility site, in accordance with guidelines issued by the U.S. Attorney General, to be a spouse, child, parent of a child, or child of a parent who, in circumstances specifically described in 8 U.S.C. sec. 1641, has been battered or subjected to extreme cruelty which necessitates the provision of Medical Assistance (Medicaid); or
            5) lawfully admitted for permanent residence under the INA with 40 qualifying quarters as defined under Title II of the Social Security Act. The 40 quarters is counted based on a combination of the quarters worked by the individual, the individual's spouse as long

as they remain married or spouse is deceased, and/or the individual's parent while the individual is under age 18; or

6) The statutes and acts listed at 8.100.3.G.1.g.iii.1 through 8.100.3.G.1.g.iii.5 are incorporated herein by reference. No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library.

7) Be a non-citizen who arrived in the United States on any date, who falls into one of the following categories:

   a) lawfully residing in Colorado and is an honorably discharged military veteran (also includes spouse, unremarried surviving spouse and unmarried, dependent children); or

   b) 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

   c) granted asylum under section 208 of the INA for seven years after the date of entry into the United States; or

   d) refugee under section 207 of the INA for seven years after the date of entry into the United States; or

   e) 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 for seven years after the date of entry into the United States; or

   f) Cuban or Haitian entrant, as defined in section 501(e)(2) of the Refugee Education Assistance Act of 1980 for seven years after the date of entry into the United States; or

   g) 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. 450b(e); or

   h) 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) for seven years after the date of entry into the United States; or

   i) lawfully admitted permanent resident who is a Hmong or Highland Lao veteran of the Vietnam conflict; or

   j) a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Act of 2000, 22 U.S.C. 7102; or

   k) 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 ~~within the initial 8 months of special~~

~~immigrant status~~ for seven years after the date of entry into the United States; or

l) 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 ~~within the initial 8 months of special immigrant status~~ for seven years after the date of entry into the United States.

m) The statutes and acts listed at 8.100.3.G.1.g.iii.7.c through 8.100.3.G.1.g.iii.7.l are incorporated herein by reference. No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Any material that has been incorporated by reference in this rule may be examined at any state publications depository library.

iv) 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 do not meet the criteria of citizenship 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.

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Enforcement Remedies, Section 8.435
Rule Number:	MSB 10-05-18-A
Division / Contact / Phone:	Long Term Benefits / Janice Brenner / 4758

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 10-05-18-A, Revision to the Medical Assistance Rule Concerning Enforcement Remedies, Section 8.435
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) 8.435, 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)? Yes
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Revisions to this rule include:

at §8.435.1 DEFINITIONS please add two new definitions between "Enforcement Action" and "immediate Jeopardy"

In §8.435.2.B GENERAL PROVISIONS please delete "2005" at §8.435.2.B.4. (§8.435.2.B GENERAL PROVISIONS and text at §8.435.2.B is provided for instructional purposes only and not intended for publication)

At §8.435.2.E.5 through §8.435.2.E.8.d please amend current text and add new text as provided. (§8.435.2.E. Nursing Home Penalty Cash Fund is provided for instructional purposes only and not intended for publication)

These changes are effective 10/30/2010

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

*to be completed by MSB Board Coordinator

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Enforcement Remedies, Section 8.435
Rule Number:	MSB 10-05-18-A
Division / Contact / Phone:	Long Term Benefits / Janice Brenner / 4758

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).

Enforcement Remedies, Section 8.435, was changed to add authorization to contract with Colorado Health Care Association Education Foundation for the purpose of CHCAEF serving as the agent to disburse to grantees, as recommended by the Nursing Facility Culture Change Accountability Board, a fiscal year 2009-2010 appropriation from the nursing home penalty cash fund of $194,977.00. Also added were requirements for annual reporting and for return and deposit into the Nursing Home Penalty Cash Fund of any funds not expended for the approved purposes.

The authority for this rule change is contained in 25.5-1-301 through 305, C.R.S. (2009) and 25-1-107.5, C.R.S. (2009).

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:

25-1-107.5, C.R.S (2009) requires a distribution from the nursing home penalty cash fund of $200,000. The Nursing Facility Culture Change Accountability Board has recommended an allocation of funds to different organizations that applied. In order to accomplish the statutorily-required disbursement by June 30, 2010, a contract is required with an organization that will serve as agent, Colorado Health Care Association Education Foundation

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2009);
25-1-107.5, C.R.S (2009).

Initial Review	**06/09/2010**	Final Adoption	**09/10/2010**
Proposed Effective Date	**10/30/2010**	Emergency Adoption	

DOCUMENT #05

THIS PAGE NOT FOR PUBLICATION

Title of Rule:	Revision to the Medical Assistance Rule Concerning Enforcement Remedies, Section 8.435
Rule Number:	MSB 10-05-18-A
Division / Contact / Phone:	Long Term Benefits / Janice Brenner / 4758

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.

Nursing facility clients should benefit from the disbursement of funds for projects for resident-centered care, including culture change. There are no additional costs to any clients or providers, as the expenditures come from the Nursing Home Penalty Cash Fund.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Expenditures for education, training promotion and consultation related to resident-centered care are expected to improve the quality of life of nursing facility residents.

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.

   There are no identified costs to the Department.

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

   Action is required in order to disburse the statutorily-required funds by 6/30/10.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   The Department consulted the Office of the State Controller and determined that this was the best method.

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.

   No alternative methods were seriously considered.

8.435 ENFORCEMENT REMEDIES

8.435.1 DEFINITIONS

Civil Money Penalty (CMP) means any penalty, fine or other sanction for a specific monetary amount that is assessed or enforced by the Department for a Class I non-State-operated Medicaid-only Nursing Facility or by the Centers for Medicare and Medicaid Services (CMS) for all other Class I nursing facilities.

Deficiency means a nursing facility's failure to meet a participation requirement specified in 42 C.F.R. Part 483 Subpart B. No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

Enforcement Action means the process of the Department imposing against a Class I non-State operated Medicaid-only nursing facility one (or more) of the remedies for violation of federal requirements for participation as a nursing facility enumerated in the Federal Omnibus Reconciliation Act of 1987, 1989, and 1990, 42 U.S.C. 1396r(h). No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

Nursing Facility Culture Change Accountability Board means a board authorized by 25-1-107.5 C.R.S. (2009) to distribute funds from the nursing home penalty cash fund for measures that will benefit residents of nursing facilities by improving their quality of life at the facilities.

Grantee means a recipient of funds from the Nursing Home Penalty Cash Fund for measures that will benefit residents of nursing facilities by improving their quality of life as specified in Section 8.435.2.E.4.b.

Immediate Jeopardy means a situation in which the nursing facility's non-compliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment or death to a resident.

Medicaid-Only Nursing Facility means a nursing facility that is reimbursed by Medicaid, but not Medicare.

Nursing Home Penalty Cash Fund means the account that contains the money collected from CMPs imposed by the Department and also the amount transmitted by CMS from CMPs imposed by CMS. CMS computes the amount to be transmitted, the Medicaid portion, by applying the percentage of Medicaid clients in the nursing facility to the total CMP amount.

8.435.2 GENERAL PROVISIONS

8.435.2.A. The Department enforces remedies for Class I Non-State-Operated Medicaid-Only Nursing Facilities and CMS enforces remedies for all other Class I nursing facilities, pursuant to 42 C.F.R. 488.330. Class I nursing facilities are subject to one or more of the following remedies when found to be in substantial non-compliance with program requirements:

1. Termination of the Medicaid provider agreement.

2. CMP.

3. Denial of payment for new admissions of Medicaid clients.

4. Temporary management.

5. Transfer of residents.

6. Transfer of residents in conjunction with facility closure.

7. The following three remedies with imposition delegated to the Department of Public Health and Environment (DPHE):

    a. State monitoring.

    b. Directed plan of correction.

    c. Directed in-service training.

8.435.2.B. The following factors shall be considered by the Department in determining what remedy will be imposed on the Class I non-State-operated Medicaid-only nursing facility:

1. The scope and severity of the Deficiency(ies).

2. The most serious Deficiency in relationship to other cited Deficiencies.

3. The nursing facility's past Deficiencies and willingness to become compliant with program rules and regulations.

4. The recommendation of DPHE pursuant to Section 25-1-107.5, C.R.S. ~~(2005)~~.

5. The requirements and guidelines for selecting remedies in 42 C.F.R. Sections 488.408-414. No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

8.435.2.C. Enforcement Guidelines for Class I Non-State-Operated Medicaid-Only Nursing Facilities

1. At the Department's discretion, nursing facilities may be given an opportunity to correct Deficiencies before remedies are imposed or recommended for imposition except as stated below.

2. Nursing facilities shall not be given the opportunity to correct Deficiencies prior to a remedy being imposed or recommended for imposition under the following:

    a. Nursing facilities with Deficiencies of actual harm or of greater severity on the current survey, and

        i) Deficiencies of actual harm or of greater severity on the previous standard survey, or

        ii) Deficiencies of actual harm or of greater severity on any type of survey between the current survey and the last standard survey.

    b. Nursing facilities, previously terminated, with Deficiencies of actual harm or of greater severity on the first survey after re-entry into the Medicaid program.

c. Nursing facilities for which a determination of Immediate Jeopardy is made during the course of a survey.

d. Nursing facilities with a per instance CMP imposed due to non-compliance.

3. The Class I non-State-operated Medicaid-only nursing facility shall be notified of any adverse action and may appeal these actions pursuant to 10 C.C.R. 2505-10, Section 8.050.

a. Advance notice for state monitoring is not required.

b. The advance notice requirement for other remedies is two days when Immediate Jeopardy exists and 15 days in other situations, with the exception of CMP.

c. The notice requirement for CMP is in accordance with 42 C.F.R. Sections 488.434 and 488.440. No amendments or later editions are incorporated. Copies are available for inspection from the following person at the following address: Custodian of Records, Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203-1714. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

8.435.2.D. Enforcement Actions

1. Termination of the Medicaid provider agreement:

a. Shall be effective within 23 days after the last day of the survey if the nursing facility has not removed the Immediate Jeopardy as determined by DPHE.

b. May be rescinded by the Department when DPHE notifies the Department that an Immediate Jeopardy is removed.

2. Denial of payment for new Medicaid admissions shall end on the date DPHE finds the nursing facility to be in substantial compliance with all participation requirements.

3. CMP

a. CMP amounts range in $50 increments from $50-$3,000 per day for Deficiencies that do not constitute immediate jeopardy, but either caused actual harm or caused no actual harm with the potential for more than minimal harm, and from $3,050 to $10,000 per day for Deficiencies constituting immediate jeopardy, or $1,000 to $10,000 per instance as recommended by DPHE.

b. CMPs are effective on the date the non-compliance began.

c. If the nursing facility waives its right to an appeal in writing within 60 calendar days from the date the CMP is imposed, the CMP shall be reduced by 35%, notwithstanding the provisions of 10 C.C.R. 2505-10, Section 8.050.

d. The CMP shall be submitted to the Department by check or subsequent Medicaid payment to the provider shall be withheld until the CMP is satisfied.

e. Upon notice to the Department of change in ownership or intent to terminate the Medicaid agreement, the Department shall withhold all Medicaid payments to satisfy any CMP that has not been paid in full.

f. Payment of CMP shall not be an allowable cost on the nursing facility's annual Med-13 cost reports as described in 10 C.C.R. 2505-10, Section 8.441.

8.435.2.E. Nursing Home Penalty Cash Fund

1. All CMPs collected from non-State-operated Medicaid-only nursing facilities shall be transmitted by the Department to the state treasurer to be credited to the Nursing Home Penalty Cash Fund.

   a. The Medicaid portions of CMPs imposed by CMS and transmitted to the State shall be credited to the Nursing Home Penalty Cash Fund.

2. The Department and DPHE have joint authority for administering the Nursing Home Penalty Cash fund, with final authority in the Department.

   a. For measures aimed at improving the quality of life of residents of nursing facilities, the Nursing Facility Culture Change Accountability Board shall review and make recommendations to the departments regarding the use of the funds in the Nursing Home Penalty Cash Fund available for quality of life measures as specified in Section 8.435.2.E.4.b.

3. The maximum amount of funds to be distributed from the Nursing Home Penalty Cash Fund each fiscal year for the purposes in Section 8.435.2.E.4.b is specified in Section 25-1-107.5, C.R.S.

4. As a basis for distribution of funds from the Nursing Home Penalty Cash Fund:

   a. The Department and DPHE shall consider the need to pay costs to:

      1) Relocate residents to other facilities when a nursing facility closes

      2) Maintain the operation of a nursing facility pending correction of violations;

      3) Close a nursing facility;

      4) Reimburse residents for personal funds lost.

   b. The Nursing Facility Culture Change Accountability Board shall review and recommend distribution of funds for measures that will benefit residents of nursing facilities by improving their qualify of life at the facilities, including:

      1) Consumer education to promote resident-centered care in nursing facilities;

      2) Training for state surveyors, supervisors and the state and local long-term care ombudsman, established pursuant to article 11.5 of Title 26, C.R.S., regarding resident-centered care in nursing facilities;

      3) Development of a newsletter and web site detailing information on resident-centered care in nursing facilities and related information;

      4) Education and consultation for purposes of identifying and

implementing resident-centered care initiatives in nursing facilities.

c. Expenses to administer and operate the accountability board, including reimbursement of expenses of accountability board members.

1) This expense shall not exceed 10 percent of the fiscal year amount authorized under Section 435.2.E.3.

5. The Department and DPHE shall consider the recommendations of the Nursing Facility Culture Change Accountability Board regarding the use of the funds available each fiscal year for quality of life improvement purposes specified in Section 8.435.2.E.4.b.

6. For fiscal year 2009-2010 only, the Department shall contract with Colorado Health Care Education Foundation (CHCEF) to serve as the agent to disburse to grantees $194,997.00, the fiscal year 2009-2010 appropriation for measures that will benefit residents of nursing facilities by improving their quality of life.

a. This total amount of $194,997.00 is in accordance with the recommendations of the Nursing Facility Culture Change Accountability Board and approved by the Department and DPHE, with final authority in the Department.

b. This appropriation of $194,997.00 from the Nursing Home Penalty Cash Fund is within the maximum appropriation of $200,000.00 authorized in Section 25-1-107.5, C.R.S. for fiscal year 2009-2010.

c. If any grantee does not accept any portion of its approved disbursement amount, within thirty days of grantee notification to CHCEF, CHCEF shall return that portion to the Department to be credited to the Nursing Home Penalty Cash Fund.

7. For fiscal year 2010-2011 and successive fiscal years:

a. If any grantee does not accept any portion of its approved disbursement amount:

i. If funds are disbursed through an agent, the disbursement agent shall return that portion, within thirty days of grantee notification, to the Department to be credited to the Nursing Home Penalty Cash Fund.

ii. If funds are disbursed directly to the grantee, the grantee shall return that portion to the Department, within thirty days of disbursement, to be credited to the Nursing Home Penalty Cash Fund.

8. By October 1, 2010, and by each October 1 thereafter, the Department and DPHE, with the assistance of the Nursing Facility Culture Change Accountability Board, shall jointly submit a report to the governor and the health and human services committees of the senate and house of representatives of the general assembly, or their successor committees, regarding the expenditure of moneys in the Nursing Home Penalty Cash Fund for the purposes described in Section 8.435.2.E.4.b. The report shall detail the amount of moneys expended for such purposes, the recipients of the funds, the effectiveness of the use of the funds, and any other information deemed pertinent by the Department and DPHE or requested by the governor or the committees.

a. The Nursing Facility Culture Change Accountability Board is responsible for monitoring grantee compliance in expending moneys for the approved measures.

b. If the total amount distributed to the grantee is not expended on the approved measure, the grantee shall return the remaining amount, within thirty days of completion of the measure, to the Department to be credited to the Nursing Home Penalty Cash Fund.

c. If the Department and DPHE, based on the review of the Nursing Facility Culture Change Accountability Board, determine that any portions of the moneys received for the purposes described in Section 8.435.2.E.4.b was not used appropriately, the grantee shall return that portion of the moneys, within thirty days of Nursing Facility Culture Change Accountability Board notification, to the Department to be credited to the Nursing Home Penalty Cash Fund.

d. Misuse of the funds by a grantee is subject to the false Medicaid claims provisions of Sections 25.5-4-304 through 25.5-4-305, C.R.S.