

**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 14-04-24-A, MSB 14-04-24-A Revision to the Medical Assistance Rule Concerning Reasonable Opportunity Period for Citizens and Non-Citizens, Section 8.100.3.G and 8.100.3.H.
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.G and 8.100.3.H, 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\***

Insert new subsection text beginning at §8.100.3.G.2 through the end of the table at of §8.100.3.G.3.d. Replace current text beginning at §8.100.3.H.9.a through the end of the table at §8.100.H.9.c. All text indicated in blue is for clarification only and should not be changed. This revision is effective 10/01/2014.

Title of Rule: MSB 14-04-24-A Revision to the Medical Assistance Rule Concerning Reasonable Opportunity Period for Citizens and Non-Citizens, Section 8.100.3.G and 8.100.3.H.

Rule Number: MSB 14-04-24-A

Division / Contact / Phone: Eligibility Division / Geoffrey Oliver / 303-866-2686

**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 changes amend 10 CCR 2505-10, Section 8.100.3.G and 8.100.3.H, to reflect changes to Reasonable Opportunity Period for citizens and national, and incorporate the ROP into the eligibility determination process for non-citizens.

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:

Section 1902(ee)(1)(B)(ii)(II), and Section 1137(d)(4)(A)(i) of the Social Security Act.  
Title 42 Code of Federal Regulations Section 435.949

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2013);  
25.5-4-105.

Initial Review **07/11/2014**

Final Adoption **08/08/2014**

Proposed Effective Date **10/01/2014**

Emergency Adoption

Title of Rule: MSB 14-04-24-A Revision to the Medical Assistance Rule Concerning Reasonable Opportunity Period for Citizens and Non-Citizens, Section 8.100.3.G and 8.100.3.H.

Rule Number: MSB 14-04-24-A

Division / Contact / Phone: Eligibility Division / Geoffrey Oliver / 303-866-2686

## **REGULATORY ANALYSIS**

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The proposed rule extends the Reasonable Opportunity Period (ROP) for citizens and nationals applying for MAGI programs from 14 calendar days to 90 calendar days, and for citizens and nationals applying for Adult Programs from 70 calendar days to 90 calendar days to provide the necessary citizenship and identity documentation. It also incorporates a ROP of 90 calendar days for non-citizens applying for Medicaid to provide satisfactory documentation of evidence of qualified alien status. These changes will benefit applicants to Medicaid programs by giving them a longer period to produce the necessary documents needed to make a final determination on eligibility.

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

The proposed rule will increase the time limit for applicants to produce the necessary documents needed to make a final determination for Medicaid eligibility.

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 proposed change is expected to have a financial impact because it will extend the ROP for applicant and recipients who qualify for ROP. The estimated impact over a full Fiscal Year is \$151,584.

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

The Department is implementing the proposed rule in order to be in compliance with sections 1902 and 1137 of the Social Security Act. Inaction in the implementation of the rule could lead to possible withholding of federal match.

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

There is no alternative action that is less costly or less intrusive. Extension of the Reasonable Opportunity Period is required under the Social Security Act.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

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

### 8.100.3.G. General and Citizenship Eligibility Requirements

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

a. An electronic interface with a federally-approved electronic data source will be used to verify legal immigration status.

b. The Verify Lawful Presence (VLP) interface is an acceptable interface to verify immigration status. The VLP interface connects to the Department of Homeland Securities Systematic Alien Verification for Entitlements (SAVE) Program. An automated response from VLP confirms that the data submitted is consistent with VLP data for immigration status verification requirements. No further action is required for the individual and no additional documentation of immigration status is required.

#### 3. Reasonable Opportunity Period

a. If the verification through the electronic interface is unsuccessful then the applicant will be provided a reasonable opportunity period to submit documents indicating a legal immigration status. The reasonable opportunity period will begin as of the date of the application notice of action. The required documentation must be received within the reasonable opportunity period.

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

c. The reasonable opportunity period is 90 calendar days and applies to MAGI Programs for persons covered pursuant to 8.100.4.G or 8.100.4.I. For the purpose of this section only, MAGI Programs include the following:

i)

<u>Commonly Used Program Name</u>	<u>Rule Citation</u>
<u>Parent and Caretaker Relative Medical Assistance</u>	<u>8.100.4.G.3</u>
<u>Transitional Medical Assistance</u>	<u>8.100.4.I.1-5</u>
<u>Children's Medical Assistance</u>	<u>8.100.4.G.2</u>
<u>Pregnant Women Medical Assistance</u>	<u>8.100.4.G.5</u>
<u>Legal Immigrant Prenatal Medical Assistance</u>	<u>8.100.4.G.6</u>
<u>Adult Medical Assistance</u>	<u>8.100.4.G.4</u>

d. The reasonable opportunity period is 90 calendar days; and applies to Adult Programs for persons covered pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715. For the purpose of this section only, Adult Programs include the following:

ii)

<u>Commonly Used Program Name</u>	<u>Rule Citation</u>
<u>Old Age Pension A (OAP-A)</u>	<u>8.100.3.F.1.c</u>
<u>Old Age Pension B (OAP-B)</u>	<u>8.100.3.F.1.c</u>
<u>Qualified Disabled Widow/Widower</u>	<u>8.100.3.F.1.e</u>
<u>Pickle</u>	<u>8.100.3.F.1.e</u>
<u>Long-Term Care</u>	<u>8.100.3.F.1.f-h</u>
<u>Breast and Cervical Cancer Program (BCCP)</u>	<u>8.715</u>
<u>Medicaid Buy-In Program for Working Adults with Disabilities</u>	<u>8.100.6.P</u>
<u>Medicaid Buy-In Program for Children with Disabilities</u>	<u>8.100.6.Q</u>

## 8.100.3.H. Citizenship and Identity Documentation Requirements

### 9. Reasonable Opportunity Period

a. If a Medical Assistance applicant ~~or recipient~~ does not have the required documentation, he or she must be given a reasonable opportunity period to provide the required documentation. The reasonable opportunity period will begin as of the date of the application notice of action. The required documentation must be received within the reasonable opportunity period. If the applicant ~~or recipient~~ does not provide the required documentation within the reasonable opportunity period, then:

~~i) the applicant's Medical Assistance application shall be denied, or~~

~~ii) the recipient's applicant's Medical Assistance benefits shall be terminated.~~

b. The ~~R~~reasonable opportunity period is 90 calendar days; and applies to MAGI for MAGI Programs for persons covered under pursuant to 8.100.4.G or 8.100.4.I.3.H is 14 calendar days. For the purpose of this section only, MAGI Programs ~~are defined as include~~ the following:

<u>Commonly Used Program Name</u>	<u>Rule Citation</u>
Parent and Caretaker Relative Medical Assistance	8.100.4.G.3
Transitional Medical Assistance	8.100.4.I.1- <del>57</del>
Children's Medical Assistance	8.100.4.G.2
Pregnant Women Medical Assistance	8.100.4.G.5
Adult Medical Assistance	8.100.4.G.4

c. The reasonable opportunity period is 90 calendar days; and applies to for Adult Programs for persons covered under pursuant to 8.100.3.F, 8.100.6.P, 8.100.6.Q, or 8.715. is 70 calendar days. F For the purpose of this ~~rule~~section only, Adult Programs ~~are defined as include~~ the following:

<u>Commonly Used Program Name</u>	<u>Rule Citation</u>
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
Breast and Cervical Cancer Program (BCCP)	8.715
Medicaid Buy-In Program for Working Adults with Disabilities	8.100.6. <del>OP</del>
Medicaid Buy-In Program for Children with Disabilities	8.100.6.Q

## 10. Good Faith Effort

- a. In some cases, a Medical Assistance client or applicant may not be able to obtain the required documentation within the applicable reasonable opportunity period. If the client or applicant is making a good faith effort to obtain the required documentation, then the reasonable opportunity period should be extended. The amount of time given should be determined on a case-by-case basis and should be based on the amount of time the individual needs to obtain the required documentation.

Examples of good faith effort include, but are not limited to:

- i) Providing verbal or written statements describing the individual's effort at obtaining the required documentation;
- ii) Providing copies of emails, letters, applications, checks, receipts, or other materials sent or received in connection with a request for documentation; or
- iii) Providing verbal or written statements of the individuals' efforts at identifying people who could attest to the individual's citizenship or identity, if citizenship and/or identity are included in missing documentation.

An individual's verbal statement describing his or her efforts at securing the required documentation should be accepted without further verification unless the accuracy or truthfulness of the statement is questionable. The individual's good faith efforts should be documented in the case file and are subject to all record retention requirements.



**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 14-03-05-B, Revision to the Medical Assistance Rule Concerning the Limitation to Medicaid Estate Recovery, Section 8.063
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) 8.063, 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 current text beginning at §8.063.11 through the end of §8.063.12 with the new text provided. Delete the text at §8.063.20. All text indicated in blue is for clarification only and should not be changed. This revision is effective 10/01/2014.

Title of Rule: Revision to the Medical Assistance Rule Concerning the Limitation to Medicaid Estate Recovery, Section 8.063  
Rule Number: MSB 14-03-05-B  
Division / Contact / Phone: Legal Division / David L. Smith / 303-866-3247

**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 purpose of this rule amendment is to remove the Department's ability to make recoveries under its estate recovery program that are optional under federal law. The amendment reflects the various recoveries that the Department is required to make under its program. This change is necessary to encourage newly eligible individuals under the Affordable Care Act to apply for Medicaid who might perceive estate recovery as a reason not to apply.

Reports in the media suggested that individuals coming to Medicaid for the first time through the exchanges created in response to the Affordable Care Act might be reluctant to apply because of Medicaid estate recovery programs. Colorado's program had implemented the optional provisions of federal law by permitting estate recoveries for any medical assistance services for clients over the age of 55. The rule amendment removes the optional recoveries and limits Colorado's estate recovery rights to those items required by federal law.

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 U.S.C.A. § 1396p (2014)

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2013);  
25.5-4-302, C.R.S. (2013)

Initial Review

**07/11/2014**

Final Adoption

**08/08/2014**

Proposed Effective Date

**10/01/2014**

Emergency Adoption

Title of Rule: Revision to the Medical Assistance Rule Concerning the Limitation to Medicaid Estate Recovery, Section 8.063

Rule Number: MSB 14-03-05-B

Division / Contact / Phone: Legal Division / David L. Smith / 303-866-3247

## **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.

This rule limits the items subject to estate recoveries on clients who were 55 years of age or older at the time they received medical assistance. Previously the Department would seek to recover any items or services under the State Plan. This amendment will limit the Department to recoveries for nursing facility services, home and community-based services, and related hospital and prescription drug services for clients 55 years of age or older.

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

In calendar year 2013, the Department's estate recovery vendor recovered \$424,648.95 on 39 estate recovery cases that had no long term care or home and community based services claims. This figure represents recoveries on clients age 55 and older that were not institutionalized. The impact of the proposed amendment upon the affected class of clients is that the estates of these clients will not be subject to repayment of these medical assistance costs. Rather, the monies will be distributed to individuals' heirs in accordance with the probate code.

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.

As noted above, the estate recovery program recovered \$424,648.95 in calendar year 2013 on medical assistance claims other than long term care services. In absence of these recoveries the Department will be required to draw these funds from the State's general fund and from the federal government.

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

The benefit of inaction would be that the State would continue to recover these medical assistance payments from the estates of individuals age 55 or older. The benefit of proposed amendment to the rule potentially will be greater enrollment in Medicaid. The public might not perceive Colorado's estate recovery program as a disincentive to apply for Medicaid.

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

The proposed amendment benefits the estates of the group of Medicaid clients age 55 or older by removing the optional recoveries described in 42 U.S.C.A. § 1396p(b)(1)(B)(ii). The proposed amendment retains the required categories of services that must be recovered. We believe any less intrusive options would not further the policy goal.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

The Department determined that the elimination of the optional estate recoveries was the most effective means of achieving the purpose of ensuring that individuals would not be deterred from applying for Medicaid.

### 8.063 MEDICAL ASSISTANCE ESTATE RECOVERY

- .11 The state department may seek to recover medical assistance expenditures correctly paid from the estates ~~of a deceased person who~~ individuals as follows:
- A. Recoveries of payments are made for all medical assistance paid on behalf of an individual who was institutionalized at the time he/she received medical assistance. ~~was 55 years of age or older at the time he/she received medical assistance; or~~
  - B. Recoveries of payments are made for nursing facility services, home and community-based services, and related hospital and prescription drug services paid on behalf of an individual who was 55 years of age or older at the time he/she received medical assistance. The state department does not make the optional recoveries described under federal law in 42 U.S.C. § 1396p(b)(1)(B)(ii) in the case of an individual described in this subsection.  
  
~~was institutionalized at the time he/she received medical assistance; and~~
  - C. ~~where recovery is cost effective.~~
- .12 The state department may limit estate recovery to recoveries that are cost-effective. The term "cost effective" means that the amount of medical assistance expenditures likely to be recovered is greater than the likely cost to the state of the recovery.
- .13 The state department may file a lien on the real property of an institutionalized person for the amount of medical assistance correctly paid on behalf of the person, only if:
- A. the department determines that the medical assistance recipient cannot reasonably be expected to be discharged from the institution and to return home; and
  - B. there is no spouse of the recipient lawfully residing in the home; and
  - C. there is no child of the recipient under age 21 or blind or disabled dependent of the recipient lawfully residing in the home; and
  - D. there is no sibling of the recipient who has an equity interest in the home and who was lawfully residing in the home for at least one year immediately prior to the date the recipient was admitted to the institution; and
  - E. later recovery from the estate is likely to be cost-effective.
- Medical assistance payments made on behalf of an institutionalized recipient during the time that all lien criteria are not met will be subject to a lien at such time that all lien criteria are met.
- .14 The state department shall determine whether a medical assistance recipient reasonably can be expected to be discharged from the institution and to return home. This determination shall be made by the Utilization Review Contractor after notice and opportunity for a hearing. The determination that the recipient is not likely to return home will be used to decide if a lien will be filed. This determination will not change an exempt home into a countable resource for eligibility purposes.

The notice to the recipient shall include the following:

- A. A statement of the action that the Utilization Review Contractor intends to take, the reasons for the intended action, and the specific regulations that support the action.
- B. An explanation of the term "lien", and that imposing a lien does not mean that the individual will lose ownership of the home.
- C. A statement that the determination will not result in a loss of eligibility for medical assistance benefits.
- D. The process by which a recipient may request a hearing to appeal the decision of the Utilization Review Contractor.

The decision may be appealed through the procedures in the RECIPIENT APPEALS PROTOCOLS/PROCESS Section of this staff manual.

The state department shall dissolve any lien on a recipient's home if the recipient is discharged from the institution and returns to the home subject to the lien.

- .15 The state department shall not recover medical assistance expenditures correctly paid from the estate of a medical assistance recipient if:
  - A. There is a surviving spouse of the recipient; or
  - B. There is a child of the recipient under age 21 or a blind or disabled dependent of the recipient.

8.063.16 In addition to the prohibitions of 8.063.15, the state department shall not recover medical assistance expenditures correctly paid from the sale of the recipient's home, whether or not the home was subject to a lien, if:

- A. there is a sibling of the recipient who was lawfully residing in the home for at least one year immediately prior to the date the recipient was admitted to the institution and who has continuously lived in the home since that date; or
- B. there is a son or daughter of the recipient who was lawfully residing in the home for at least two years immediately prior to the date the recipient was admitted to the institution and who has continuously lived in the home since that date, and who provided care to the recipient which permitted the recipient to reside at home rather than in an institution.

If either of the two conditions above exist, the state department may recover medical assistance expenditures correctly paid from assets in the estate other than the sale of the recipient's home.

- .17 The state department shall file liens and recover expenditures for medical assistance provided on or after July 1, 1992.
- .18 The state department may compromise, settle, or waive recovery of medical assistance expenditures if it determines good cause to do so. The department shall determine that good cause exists if:
  - A. it concludes that without receipt of the proceeds of the estate, the heirs would become eligible for assistance payments and/or medical assistance programs; or
  - B. it concludes that allowing the heirs to receive the inheritance from the estate will enable these individuals to discontinue eligibility for assistance payments and/or medical assistance programs; or

C. it concludes that the home is part of a business, including a working farm or ranch, and recovery of medical assistance expenditures will result in the heirs to the estate losing their means of livelihood.

.19 The state department may agree to a payment plan for repayment of any debt owed the state under the Medical Assistance Estate Recovery Program.

~~.20 The state department shall make no recovery under the Medical Assistance Estate Recovery Program unless federal funds are available for persons who would qualify for medical assistance as a result of the creation of a trust that meets the criteria set forth in section 26-4-506.5(3), C.R.S., and in the SSI FINANCIAL ELIGIBILITY REQUIREMENTS FOR INDIVIDUALS ELIGIBLE FOR THE COLORADO MEDICAID PROGRAM section of the Staff Manual, Volume VIII.~~