

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revisions to the Medicaid Eligibility Rules to Comply with the Maintenance of Eligibility Provisions of the American Recovery and Reinvestment Act of 2009, Section 8.100

Rule Number: MSB 09-05-13-A

Division / Contact / Phone: Legal / Brian Zolynas / 2814

**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 09-05-13-A, Revisions to the Medicaid Eligibility Rules to Comply with the Maintenance of Eligibility Provisions of the American Recovery and Reinvestment Act of 2009, Section 8.100
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, 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*

Please replace the current text in the unnumbered paragraph only that immediately follows the text at **§8.100.3.G.1.g.iv.3)** and is immediately before **§8.100.3.H. Citizenship and Identity Documentation Requirements**

Please add a new paragraph to **§8.100.5.H Income Disregards** at §8.100.5.H.2.h that immediately follows current text at §8.100.5.H.2.g

Please delete current text in **§8.100.5.M. Resource Requirements** at §8.100.5.M.2.e.vi) and renumber existing paragraph at §8.100.5.M.2.e.vii) to §8.100.5.M.2.e.vi)

This rule change is effective 06/12/2009.

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Title of Rule: Revisions to the Medicaid Eligibility Rules to Comply with the Maintenance of Eligibility Provisions of the American Recovery and Reinvestment Act of 2009, Section 8.100

Rule Number: MSB 09-05-13-A

Div/Contact/Phone: Legal / Brian Zolynas / 2814

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 American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5, enacted February 17, 2009) makes a state ineligible for increased federal Medicaid funding if the state has implemented eligibility "standards, methodologies, or procedures" that are more restrictive than the eligibility standards, methodologies, or procedures that were in effect on July 1, 2008. A state can avoid the loss of the increased federal Medicaid funding by rescinding the more restrictive provisions. The Department has identified several changes in the Medicaid rules that were promulgated as part of the comprehensive reorganization of the Medicaid eligibility rules approved by the Medical Services Board in February (MSB 08-08-19-A) that could be interpreted as being a more restrictive eligibility standard, methodology, or procedure. These provisions became effective on April 1, 2009. The proposed rule revision rescinds those changes.

2. An emergency rule-making is imperatively necessary

to comply with state or federal law or federal regulation and/or

for the preservation of public health, safety and welfare.

Explain:

The proposed changes are necessary to comply with the maintenance of eligibility provisions in Section 5001 of ARRA to prevent the loss of increased federal Medicaid funding.

3. Federal authority for the Rule, if any:

American Recovery and Reinvestment Act of 2009 (Public Law 111-5, enacted February 17, 2009)

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2008);
25.5-4-104(1), C.R.S. (2008); 25.5-4-105, C.R.S. (2008)

Initial Review

Final Adoption

Proposed Effective Date **06/12/2009**

Emergency Adoption

06/12/2009

DOCUMENT #01

Title of Rule: Revisions to the Medicaid Eligibility Rules to Comply with the Maintenance of Eligibility Provisions of the American Recovery and Reinvestment Act of 2009, Section 8.100

Rule Number: MSB 09-05-13-A

Division / Contact / Phone: Legal / Brian Zolynas / 2814

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 revisions will primarily affect county caseworkers who process Medicaid applications and administer Medicaid cases, as they will need to become familiar with the changed provisions. They are not expected to have any significant impact on Medicaid applicants or clients.

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 changes are not expected to have any effect on county caseworkers other than the time required to become familiar with the changes. The changes are not expected to have any impact on Medicaid enrollment.

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.

Implementation and enforcement of the proposed rule changes are not expected to have any effect on state revenues and are not expected to have any effect on Medicaid enrollment.

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

Inaction could result in the Department being deemed to be not in compliance with the maintenance of eligibility provisions of the American Recovery and Reinvestment Act of 2009 and could result in the loss of the increased federal financial participation the Act provides.

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 or less intrusive methods for achieving the purpose of the proposed rules.

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

There are no alternative methods for achieving the purpose of the proposed rule.

8.100.3.G. General and Citizenship Eligibility Requirements

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, ~~or ongoing routine treatment of chronic conditions.~~

8.100.5.H. Income Disregards

2. The gross amount of earned and unearned income is countable toward eligibility with the following exclusions:

h. any other applicable exemptions in 20 CFR 416.1112. 20 CFR 416.1112 is 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, CO 80203. Any material that has been incorporated by reference in this rule may be examined at any state publications repository library.

8.100.5.M. Resource Requirements

~~vi) The intent to return home does not apply to a home outside the State of Colorado. The home outside Colorado is a countable resource.~~

~~vi)~~ vii) For an institutionalized individual in a Long Term Care institution, receiving HCBS or enrolled in the PACE program, the exemption for the principal place of residence does not apply to a residence which has been transferred to a trust or other entity, such as a partnership or corporation. If the residence is transferred back into the name of the individual's name, the exemption will be regained.

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revisions to Medicaid Eligibility Rules Concerning Resources of Native Americans to Comply with American Recovery & Reinvestment Act of 2009

Rule Number: MSB 09-04-03-A

Div/Contact/Phone : Legal / Brian Zolynas / 2814

**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 09-04-03-A, Revisions to the Medicaid Eligibility Rules Concerning Resources of Native Americans to Comply with the American Recovery and Reinvestment Act of 2009
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) 8.100.5.M., 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*

Please add a new section in **§8.100.5.M. Resource Requirements** at §8.100.5.M.4 through §8.100.5.M.4.a.iv) with the text attached.

This rule is effective 07/01/2009

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Title of Rule: Revisions to Medicaid Eligibility Rules Concerning Resources of Native Americans to Comply with American Recovery & Reinvestment Act of 2009

Rule Number: MSB 09-04-03-A

Div/Contact/Phone : Legal / Brian Zolynas / 2814

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 change is to revise the rules governing Medicaid resource eligibility to provide an exemption for certain Native American property to comply with the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) which was enacted on February 17, 2009.

2. An emergency rule-making is imperatively necessary

to comply with state or federal regulation and/or

for the preservation of public health, safety and welfare.

Explain:

The American Recovery and Reinvestment Act of 2009, P.L. 111-5, exempts certain property owned by Native Americans from consideration as a resource when determining eligibility for Medicaid. The proposed rule changes are necessary to comply with the changes in the Act.

3. Federal authority for the Rule, if any:

American Recovery and Reinvestment Act of 2009 (Public Law 111-5, enacted February 17, 2009)

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2008);
25.5-4-104(1), C.R.S. (2008); 25.5-4-105, C.R.S. (2008)

Initial Review

Final Adoption

Proposed Effective Date **07/01/2009**

Emergency Adoption

06/12/2009

DOCUMENT #02

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revisions to Medicaid Eligibility Rules Concerning Resources of Native Americans to Comply with American Recovery & Reinvestment Act of 2009

Rule Number: MSB 09-04-03-A

Div/Contact/Phone Legal / Brian Zolynas / 2814

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 changes will benefit Native Americans by exempting certain property from consideration in determining resource eligibility for Medicaid. The proposed rule changes will also affect county caseworkers who process Medicaid applications and administer Medicaid cases, as they will need to become familiar with the new resource exemptions.

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

It is not possible to quantify the net effect of the proposed rule changes because the Department does not have any data on the number of Native American Medicaid applicants and clients who have resources that could be subject to the new exemptions.

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 does not have any data at this time with which to quantify the net effect of the proposed changes.

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

Inaction would result in the Department not being in compliance with federal law and could result in the loss of federal financial participation.

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 or less intrusive methods for achieving the purpose of the proposed rules.

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 achieving the purpose of the proposed rule. The rule changes are necessary for the Department to remain in compliance with federal law.

8.100.5.M. Resource Requirements

4. Treatment of Property Owned by Native Americans

- a. Effective July 1, 2009, notwithstanding any other requirement in 10 C.C.R. 2505-10, Section 8, the following property shall be considered exempt for the purpose of determining Medicaid resource eligibility for a Native American:
- i) Property, including real property and improvements, that is held in trust, subject to federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act, and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior;
 - ii) For any federally recognized Tribe not described in 8.100.5.M.4.a.i, property located within the most recent boundaries of a prior federal reservation;
 - iii) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights; and
 - iv) Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revision to the Pharmacy Rule for Determining Reimbursement Rates of Pharmaceuticals, Section 8.800

Rule Number: MSB 09-01-16-A

Division / Contact / Phone: Pharmacy Benefits Section / Tom Leahey / 303-866-2519

**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 09-01-16-A, Revision to the Pharmacy Rule for Determining Reimbursement Rates of Pharmaceuticals, Section 8.800
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) 8.800, 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*

Please replace current text in **§8.800.13 REIMBURSEMENT CALCULATION** at §8.800.13.D.1.a & b with the new text provided.

This rule is effective 07/01/2009

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revision to the Pharmacy Rule for Determining Reimbursement Rates of Pharmaceuticals, Section 8.800
Rule Number: MSB 09-01-16-A
Division / Contact / Phone: Pharmacy Benefits Section / Tom Leahey / 303-866-2519

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 revision is a targeted reduction in selected reimbursement rates for covered fee-for-service outpatient drugs. The proposed outpatient drug rate reduction is a component of the overall Medicaid provider rate reductions being implemented to offset the state budget shortfall.

2. An emergency rule-making is imperatively necessary

to comply with state or federal law or federal regulation and/or

for the preservation of public health, safety and welfare.

Explain:

The Department may not be able to provide the services necessary to preserve the public health, safety and welfare, if the provider rate reductions are not implemented.

3. Federal authority for the Rule, if any:

Social Security Act, Section 1902(a)(30)(A)

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2008);

Initial Review

Final Adoption

Proposed Effective Date **07/01/2009**

Emergency Adoption

06/12/2009

DOCUMENT #03

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revision to the Pharmacy Rule for Determining Reimbursement Rates of Pharmaceuticals, Section 8.800

Rule Number: MSB 09-01-16-A

Division / Contact / Phone: Pharmacy Benefits Section / Tom Leahey / 303-866-2519

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 providers affected by the proposed rule revision are pharmacies that bill Medicaid for covered fee-for-service outpatient drugs. Medicaid clients will benefit from the proposed rule because the rate reduction will help the Department maintain current outpatient drug benefits.

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 Department anticipates that the aggregate outpatient drug reimbursement to pharmacies will be reduced by about \$4 million for Fiscal Year 2009-10.

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 can implement and enforce the proposed rule revision with existing resources. The Department anticipates that the rule revision will reduce aggregate outpatient drug expenditures for Fiscal Year 2009-10, thereby requiring less state revenue to provide outpatient drug benefits at the anticipated level of utilization.

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

The benefit of the proposed rule revision is a reduction in aggregate drug expenditures, which will help offset the projected state budget shortfall and allow the Department to provide outpatient drug benefits without significant changes in coverage. The cost is that pharmacies may receive less reimbursement for drugs, depending on which drugs are billed to Medicaid. If the Department does not reduce expenditures and help offset the state budget shortfall, the outpatient drug benefit and/or other Medicaid benefits may have to be significantly reduced.

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

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The targeted reduction of provider reimbursement rates, including those for outpatient drugs, is one of the most effective means to reduce Department expenditures, given the size of the forecasted state budget shortfall and the urgency in which the shortfall must be offset.

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 is taking many steps to reduce expenditures, including other targeted provider rate reductions.

8.800 PHARMACEUTICALS

8.800.13 REIMBURSEMENT CALCULATION

8.800.13.D. The allowed ingredient cost is determined utilizing different methodologies as applicable. The pricing methodologies are:

1. Based on Average Wholesale Price (AWP):
 - a. AWP less ~~13.5%~~14% for brand name drugs; and
 - b. AWP less ~~35%~~40% for generic drugs;

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revision to the Medical Assistance Rule for Out of State Hospital Reimbursement
Rule Number: MSB 09-05-26-A
Division / Contact / Phone: Rates Section / Jessica McKeen / 3858

**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 09-05-26-A, Revision to the Medical Assistance Rule for Out of State Hospital Reimbursement
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) 8.302, 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*

Please replace current text in **§8.302 MEDICAID PARTICIPATING HOSPITAL: REQUIREMENTS** at §8.302.D with the new text provided.

This rule is effective 07/01/2009.

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revision to the Medical Assistance Rule for Out of State Hospital Reimbursement
Rule Number: MSB 09-05-26-A
Division / Contact / Phone: Rates Section / Jessica McKeen / 3858

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 reduce reimbursement to out of state hospitals for outpatient services from 70% of billed charges to 30% of billed charges. This change is necessary in order to achieve the Department's budget savings targets for outpatient hospital services.

2. An emergency rule-making is imperatively necessary

to comply with state or federal law or federal regulation and/or

for the preservation of public health, safety and welfare.

Explain:

The Department is required to reduce outpatient hospital expenditures for FY 09-10 to achieve required savings.

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. (2008);
25.5-4-402, C.R.S., (2008)
SB 09-0259

Initial Review

Proposed Effective Date

07/01/2009

Final Adoption

Emergency Adoption

06/12/2009

DOCUMENT #04

THIS PAGE NOT FOR PUBLICATION

Title of Rule: Revision to the Medical Assistance Rule for Out of State Hospital Reimbursement

Rule Number: MSB 09-05-26-A

Division / Contact / Phone: Rates Section / Jessica McKeen / 3858

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.

Out of state hospitals that provide outpatient services to Colorado Medicaid clients will receive lower reimbursement as a result of this rule. However, in-state hospitals will benefit since the savings achieved by lowering out of state hospital reimbursement will offset reductions to in-state hospital outpatient reimbursement.

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

Reimbursement to out of state hospitals for outpatient services is estimated to be reduced by \$300,000 for FY 09-10.

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.

None.

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

The benefit of the proposed rule change is to align out of state hospital reimbursement more closely with in-state hospital reimbursement.

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

There are no known less costly methods for achieving this purpose.

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 other alternative methods for achieving this purpose were considered.

8.302 MEDICAID PARTICIPATING HOSPITAL: REQUIREMENTS

- D. a hospital located outside of Colorado which is more accessible to Medicaid clients who require inpatient hospital services than a hospital within the State, can provide services to Colorado Medicaid clients. The Office of Medical Assistance will be free to make the proximity determination. For inpatient services, these hospitals will be paid the average Colorado urban or rural DRG payment rate. Out-of-state urban hospitals are those hospitals located within the metropolitan statistical area (MSA) as designated by the U.S. Department of Health and Human Services. For outpatient services, these hospitals will be paid ~~70%~~30% of billed charges. Consideration of additional benefit will be made on a case by case basis in accordance with the supporting documentation submitted by the out-of-state hospital; or