CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 20:010. Medicaid procedures for determining initial and continuing eligibility other than procedures related to a modified adjusted gross income eligibility standard or related to former foster care individuals.

RELATES TO: KRS 205.520, 42 C.F.R. 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 435.906, 435.926, 42 U.S.C. 416, 1382, 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Eligibility Determination Process.

(1)

(a) Except as provided in subsection (3) or (5) of this section, eligibility shall be determined prospectively.

(b) To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria, for the appropriate month of coverage, pursuant to:

1. This section;
2. Section 3 of this administrative regulation; and
3. As established in:
   a. 907 KAR 20:005;
   b. 907 KAR 20:020; and
   c. 907 KAR 20:025.

(2) A decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025; and
2. Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(b)

1. The department may schedule an appointment with an applicant or recipient to receive specified information as proof of eligibility.
2. Failure to appear for the scheduled appointment or to furnish the required information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid not related to the receipt of SSI benefits shall be effective no earlier than the third month prior to the month of application if:

(a) A Medicaid service was received;

(b) Technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025; and

(c) The applicant is excluded from managed care organization participation in accordance with 907 KAR 17:010.

(4) Eligibility for qualified Medicare beneficiary coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025.

(5) Retroactive eligibility for benefits for a specified low-income Medicare beneficiary benefits, Medicare qualified individual group 1 (QI-1), or a qualified disabled and working individual shall be effective no earlier than the third month prior to the month of application if the individual meets technical and financial eligibility requirements as established in 907 KAR 20:005, 907 KAR 20:020, and 907 KAR 20:025.

(6) An SSI-related recipient, in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be eligible for Medicaid benefits effective the month prior to the first month of SSI payment if the individual:

(a) Is eligible to be enrolled with a managed care organization in accordance with 907 KAR 17:010; and

(b) Meets Medicaid eligibility requirements for that month.

(7) An SSI-related recipient, in accordance with HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97, shall be retroactively eligible for Medicaid benefits effective no earlier than the third month prior to the first month of SSI payment if the individual:

(a) Is excluded from managed care organization participation in accordance with 907 KAR 17:010; and

(b) Meets Medicaid eligibility requirements for these months.

Section 2. Continuing Eligibility.

(1) The recipient shall be responsible for reporting within thirty (30)~~[ten (10)]~~ days a change in circumstances which may affect eligibility.

(2) Eligibility shall be redetermined:

(a) Every twelve (12) months; or

(b) If a report is received or information is obtained about a change in circumstances.

Section 3. Continuous Eligibility for Children.

(1) An individual who is younger than nineteen (19) shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for a child recipient shall be for a period of twelve (12) months.

(3) A child's eligibility during a continuous eligibility period shall only be terminated under the following circumstances:

(a) The child becomes nineteen (19) during the continuous eligibility period.

(b) The child, or representative, voluntarily requests that the eligibility be terminated;

(c) The child ceases to be a resident of the Commonwealth;

(d) The agency determines that the eligibility was granted due to:

1. Agency error; or

2. Fraud, abuse, or perjury attributed to the child or representative; or

(e) The death of the child.

Section 4. Determination of Incapacity or Permanent and Total Disability.

(1) Except as provided in subsections (2) and (3) of this section, a determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to disability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

(a) The parent declares physical inability to work;

(b) The worker observes some physical or mental limitation; and

(c) The parent:

1. Is receiving SSI benefits;

2. Is age sixty-five (65) years or over;

3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 U.S.C. 1382c, 416, or 423 by either the Social Security Administration or the medical review team;

4.

a. Has previously been determined to be incapacitated or both permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested; and

b. Has not demonstrated any visible improvement in condition;

5. Is receiving Retirement, Survivors, and Disability Insurance benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

6. Is receiving Veterans Affairs benefits based on 100 percent disability, as verified by an award letter; or

7. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician shall indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

(a) Receives RSDI or railroad retirement benefits based on disability;

(b) Received SSI benefits based on disability during a portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources and not to improvement in physical condition;

(c) Has been determined to meet the definition of blindness or both permanent and total disability as contained in 42 U.S.C. 416 or 1382 by the Social Security Administration; or

(d)

1. Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested; and

2. Has not demonstrated any visible improvement in condition.

(4)

(a) A child who was receiving SSI benefits on August 22, 1996 and who, but for the change in definition of childhood disability established by 42 U.S.C. 1396a(a)(10) would continue to receive SSI benefits, shall continue to meet the Medicaid definition of disability.

(b) If a redetermination is necessary, and in accordance with 923 KAR 2:470, the definition of childhood disability effective on August 22, 1996 shall be used.

Section 5. ~~[Section 4.]~~ Disqualification. An adult individual shall be disqualified from receiving Medicaid for a specified period of time if the department or a court determines the individual has committed an intentional program violation in accordance with 907 KAR 1:675, Program integrity.

Section 6. ~~[Section 5.]~~ Applicability. The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined:

(1) Using the modified adjusted gross income as the income standard pursuant to 907 KAR 20:100; or

(2) Pursuant to 907 KAR 20:075.

~~[Section 6.] [Incorporation by Reference.]~~

~~[(1)] ["HCFA Program Issuance Transmittal Notice Region IV", May 7, 1997, MCD-014-97, is incorporated by reference.]~~

~~[(2)] [This material may be:]~~

~~[(a)] [Inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or]~~

~~[(b)] [Viewed at] [http://www.chfs.ky.gov/dms/incorporated.htm.]~~

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 14, 2023

FILED WITH LRC: April 20, 2023 at 2:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 24, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 17, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation establishes Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(b) The necessity of this administrative regulation:
This administrative regulation is necessary to establish Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(c) How this administrative regulation conforms to the content of the authorizing statutes:
This administrative regulation conforms to the content of authorizing statutes by establishing Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid program policies and requirements regarding initial and continuing eligibility for individuals who are not eligible via the modified adjusted gross income (MAGI) or as former foster care youth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:
The amendment implements a continuous eligibility requirement for all children. The continuous eligibility period will last for twelve (12) months and may only be terminated if the child becomes older than 19, voluntarily requests termination, ceases to be a Kentucky resident, dies, or the agency determines that eligibility was granted in error or due to fraud, abuse, or perjury. In addition, a form that is no longer used has been removed.

(b) The necessity of the amendment to this administrative regulation:
This amendment is necessary to implement a new continuing eligibility requirement for children among the MAGI population.

(c) How the amendment conforms to the content of the authorizing statutes:
The amendment conforms to the content of the authorizing statutes by implementing a continuous eligibility requirement for children.

(d) How the amendment will assist in the effective administration of the statutes:
The amendment assists in the effective administration of the statutes by clearly adopting a continuous eligibility requirement for children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Approximately 500,000 children in the Medicaid program will begin to receive continuous eligibility. In addition, the department and MCOs will be impacted.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No cost is imposed by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Children will receive continuous eligibility.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

DMS does not anticipate additional costs in administering this administrative regulation in the first year.

(b) On a continuing basis:

DMS does not anticipate additional costs administering this program in future years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

This administrative regulation does not impose or increase any fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied?

Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all regulated entities.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Department for Medicaid Services will be affected by the amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

42 C.F.R. 435.906 and 435.926 authorize the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year?

DMS anticipates no cost in the first year as a result of these amendments.

(d) How much will it cost to administer this program for subsequent years?

DMS anticipates no cost in subsequent years as a result of these amendments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

DMS does not anticipate cost savings for regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

DMS does not anticipate cost savings for regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years?

DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars ($500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.
42 U.S.C. 1396a(e)(14) and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

(2) State compliance standards.
KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 194A.050(1) requires the cabinet secretary to "formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

(3) Minimum or uniform standards contained in the federal mandate.
Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. 42 U.S.C. 1396a(a)(10)(A)(i)(IX) creates the new eligibility group comprised of former foster care individuals and bars the application of certain existing Medicaid eligibility requirements to this population.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
No, additional or stricter limits are not imposed.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.
Additional or stricter limits are not imposed.