

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Division of Policy and Operations**

**(Amendment)**

**907 KAR 20:100. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(e)(14)

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 any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the provisions and requirements for individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard. The affected individuals include children under the age of nineteen (19) years, pregnant women to 365 days postpartum, caretaker relatives, and adults under age sixty-five (65) who do not have a dependent child under the age of nineteen (19) years and are not otherwise eligible for Medicaid benefits.

Section 1. Applicability.

(1)

(a) The provisions and requirements of this administrative regulation shall apply to individuals whose Medicaid eligibility is determined using the modified adjusted gross income as the income standard.

(b) An individual whose Medicaid eligibility is determined using the modified adjusted gross income as an income standard shall be an individual who is:

1. A child under the age of nineteen (19) years, excluding a child in foster care;
2. A caretaker relative with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);
3. A pregnant woman, with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), including the postpartum period to 365 days after delivery;
4. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:
  - a. Does not have a dependent child under the age of nineteen (19) years; and
  - b. Is not otherwise eligible for Medicaid benefits; or
5. A targeted low income child with income up to 150 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2).

(2)

(a) If an eligibility determination indicates that an individual's income exceeds 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), the department shall apply an additional cushion of five (5) percent of the federal poverty level toward the eligibility determination for the individual as described pursuant to 42 U.S.C. 1396a(e)(14)(I)(i).

(b) If after the five (5) percent adjustment, the individual's income is under the adjusted income threshold, the individual shall meet the modified adjusted gross income standard.

(c) A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at least two (2) and shall include the pregnant person and the number of children expected to be delivered. Other members of the household shall be calculated and included consistent with KAR Title 907.

(3) The provisions and requirements of this administrative regulation shall not apply to an individual whose Medicaid eligibility is determined using an eligibility standard that is not the modified adjusted gross income.

Section 2. MAGI-based Methods. The department shall use the MAGI-based methods established in 42 C.F.R. 435.603 to determine whether an individual meets the Medicaid income eligibility requirements if the eligibility standard is the modified adjusted gross income.

Section 3. Resources Not Considered. An individual's resources shall not be considered for the purpose of determining Medicaid eligibility if the eligibility standard is the modified adjusted gross income.

Section 4. Citizenship and Residency Requirements.

(1) The citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirements, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified noncitizen who entered the United States before August 22, 1996, and is:

a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

b. Granted asylum pursuant to 8 U.S.C. 1158;

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

e. A noncitizen whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

g. A noncitizen who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

h. A battered noncitizen pursuant to 8 U.S.C. 1641(c);

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified noncitizen who entered the United States on or after August 22, 1996, and is:

- a. Granted asylum pursuant to 8 U.S.C. 1158;
  - b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
  - c. A noncitizen whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
  - d. A noncitizen who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;
  - e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
  - f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
  - g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;
  - h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
  - i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and
- (b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.
- (3) A qualified or nonqualified noncitizen shall be eligible for medical assistance pursuant to 42 C.F.R. 440.255 and as provided in this paragraph.
- (a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.
  - (b) Coverage for the individual shall be:
    - 1. Limited to the medical care and services necessary for the treatment of an emergency medical condition or pregnancy of the individual;
    - 2. Not related to an organ transplant procedure; and
    - 3. For a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
  - (c) The individual's coverage shall be recertified every twelve (12) months.
- (4)
- (a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:
    - 1. Is receiving SSI benefits;
    - 2. Previously received SSI benefits but is no longer receiving them;
    - 3. Is entitled to or enrolled in any part of Medicare;
    - 4. Previously received Medicare benefits but is no longer receiving them;
    - 5. Is receiving:
      - a. Disability insurance benefits under 42 U.S.C. 423; or
      - b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 423(d);
    - 6. Is in foster care and who is assisted under Title IV-B of the Social Security Act, which is codified as 42 U.S.C. 621 through 628b; or
    - 7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act, which is codified as 42 U.S.C. 670 through 679c.
  - (b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf.

(6)

(a) Except as established in paragraph (b) of this subsection, an individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

(b) The retroactive eligibility period shall begin no earlier than January 1, 2014 for an individual who gains Medicaid eligibility solely by qualifying:

1. As a former foster care individual pursuant to 907 KAR 20:075; or
2. As an adult with income up to 133 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2), who:
  - a. Does not have a dependent child under the age of nineteen (19) years; and
  - b. Is not otherwise eligible for Medicaid benefits.

(7) The documentation of citizenship requirements established in this administrative regulation shall not apply to a noncitizen under nineteen (19) years of age who is lawfully present in the United States of America.

(8) Except as established in subsection (9) of this section, a noncitizen shall be considered to be lawfully present in the United States of America if the individual:

- (a) Is a qualified noncitizen;
- (b) Is a noncitizen in a valid immigrant status;
- (c) Is a noncitizen who has been paroled into the United States of America in accordance with 8 U.S.C. 1182(d)(5) for less than one (1) year, except for an individual:
  1. Paroled for:
    - a. Prosecution; or
    - b. Deferred inspection; or
  2. Pending removal proceedings;
- (d) Is a noncitizen who:
  1. Has been granted:
    - a. Temporary resident status in accordance with 8 U.S.C. 1160 or 1225a;
    - b. Temporary protected status in accordance with 8 U.S.C. 1254a or is an individual with a pending application for temporary protected status who has been granted employment authorization;
    - c. Employment authorization under 8 C.F.R. 274a.12(c);
    - d. Deferred action status; or
    - e. An administrative stay of removal under 8 C.F.R. Part 241;
  2. Is a family unity beneficiary in accordance with Section 301 of Pub. L. 101-649 as amended, and 8 C.F.R. Part 236;
  3. Is under deferred enforced departure in accordance with a decision made by the President of the United States of America; or
  4. Is a beneficiary of an approved visa petition who has a pending application for an adjustment of status;
- (e) Is an individual with a pending application for asylum:
  1.
    - a. Under 8 U.S.C. 1158;
    - b. For withholding of removal under 8 U.S.C. 1231; or
    - c. Under the Convention of Torture; and
  2. Who:
    - a. Has been granted employment authorization; or

- b. Is under the age of fourteen (14) years and has had an application pending for at least 180 days;
  - (f) Is an individual who has been granted withholding of removal under the Convention Against Torture;
  - (g) Is a child who has a pending application for special immigrant juvenile status as described in 8 U.S.C. 1101(a)(27)(J); or
  - (h) Is a victim of severe trafficking in persons in accordance with the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386, as amended in 22 U.S.C. 7105(b)).
- (9) An individual with deferred action under the Department of Homeland Security's deferred action for the childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not be considered to be lawfully present with respect to any of the categories listed in subsection (8) of this section.

#### Section 5. Provision of Social Security Numbers.

- (1)
- (a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.
  - (b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn, refuses to cooperate with obtaining a Social Security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility requirements.
- (2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.
- (3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

#### Section 6. Institutional Status.

- (1) An individual shall not be eligible for Medicaid if the individual is a:
- (a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of this section;
  - (b) Patient in a state tuberculosis hospital unless he or she has reached age sixty-five (65);
  - (c) Patient in a mental hospital or psychiatric facility unless the individual is:
    - 1. Under age twenty-one (21) years of age;
    - 2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or
    - 3. Sixty-five (65) years of age or over; or
  - (d) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases, unless the individual has reached age sixty-five (65).
- (2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:
- (a) Has been admitted to a hospital;
  - (b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and
  - (c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have assigned to the Cabinet for Health and

Family Services any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

#### Section 8. Third-party Liability as a Condition of Eligibility.

(1)

(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of an individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) shall not be required to cooperate in establishing paternity or securing support for her unborn child.

#### Section 9. Application Process, Initial and Continuing Eligibility Determination.

(1) An individual may apply for Medicaid by:

- (a) Using the Web site located at [www.kynect.ky.gov](http://www.kynect.ky.gov);
- (b) Applying over the telephone by calling:
  1. 1-855-459-6328;
  2. 1-855-306-8959 to speak to the DCBS Family Support Call Center; or
  3. 1-855-326-4654 if deaf or hearing impaired;
- (c) Faxing an application to 1-502-573-2007;
- (d) Mailing a paper application to DCBS Family Support, P.O. Box 2104, Frankfort, Kentucky 40602; or
- (e) Going to the applicant's local Department for Community Based Services Office and applying in person.

(2)

(a) An application shall be processed (approved, denied, or a request for additional information sent) within forty-five (45) days of application submittal.

(b) Immediately after submittal if there is a variance of ten (10) percent or more regarding income information reported by the applicant versus information available from a trusted source or sources, a request for additional information shall be generated for the applicant requesting documentation to prove the applicant's income.

(c) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated requesting verification of the applicant's incarceration dates.

(d) If an applicant fails to provide information in response to a request for additional information within thirty (30) days of the receipt of the request, the application shall be denied.

(3)

(a) An annual renewal of eligibility shall occur without an individual having to take action to renew eligibility, unless:

1. The individual's eligibility circumstances change resulting in the individual no longer being eligible for Medicaid; or
2. A request for additional information is generated due to a change in income or incarceration status.

(b)

1. If an individual receives a request for additional information as part of the renewal process, the individual shall provide the information requested within forty-five (45) days of receiving the request.
2. If an individual fails to provide the information requested within forty-five (45) days of receiving the request, the individual's eligibility shall be terminated on the forty-fifth day from the request for additional information.

(4) An individual shall be required to report to the department any changes in circumstances or information related to Medicaid eligibility.

#### Section 10. 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 11. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard.

#### Section 12. Miscellaneous Special Circumstances.

(1) A person during pregnancy, and as though pregnant through the end of the month containing the 365th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(1)(1), shall meet the income requirements for this eligibility group in accordance with this administrative regulation.

(2) If an eligible child is receiving covered inpatient services, except for services in a long term care facility or behavioral health services in an inpatient facility on a long-term basis, on a birthday which will make the child ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(3) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of the child's birth if the child has not reached his or her first birthday.

(4)

(a) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(b) If a parent is not included in the case, a caretaker relative or relatives may be included to the same extent the caretaker relative would have been eligible in the Aid to Families with Dependent Children program using the AFDC methodology in effect on July 16, 1996.

(5) For an individual eligible on the basis of utilizing his or her excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(6) If a family member is pregnant, the unborn child shall be considered as a family member for income determination purposes.

*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.

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