

STATEMENT OF EMERGENCY

907 KAR 20:045E.

This emergency administrative regulation is being promulgated to modify the Medicaid eligibility renewal standard for children. The department has the opportunity to implement a continuous eligibility standard for children pursuant to the mandate of the federal Consolidated Appropriations Act of 2023 which requires all state Medicaid programs to provide this coverage by January 1, 2024. At this time the following states have already implemented this coverage in advance of the federal mandate, and are providing 12 month continuous eligibility for Medicaid: Alabama, Alaska, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Washington, West Virginia and Wyoming. This emergency administrative regulation will provide sustained access to healthcare for children and provide continued support to the network of providers who treat them. This emergency regulation will also ease the anticipated administrative burden of the COVID-19 Public Health Emergency unwinding process. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding and ensure the most efficient use of funds. In addition, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of children Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

ERIC C. FRIEDLANDER, Secretary

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

907 KAR 20:045E. Special income requirements for hospice and 1915(c) home and community based services.

RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family 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 special income requirements for 1915(c) home and community based waiver and hospice services, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.

Section 1. Special Provisions for Recipients Participating in a 1915(c) Home and Community Based Services Waiver Program.

(1) Medicaid eligibility for a recipient receiving 1915(c) home and community based services shall be determined if necessary to establish eligibility for Medicaid benefits for a case with income in excess of the basic maintenance standard taking into consideration the special provisions established in:

- (a) This section; and
- (b) 907 KAR 20:035.

(2) Income protected for the basic maintenance of a 1915(c) home and community based services waiver program participant who is eligible as medically needy or under the special income level established in this section shall be the standard used for an individual in the Federal SSI Program in addition to the SSI general exclusion from income.

(3) A 1915(c) home and community based services waiver program participant who participates in a 1915(c) home and community based services waiver program for thirty (30) consecutive days, including the actual days of institutionalization within that period, and who has income which does not exceed the special income level, shall be determined to be eligible as categorically needy under the special income level.

(4) If a Supports for Community Living (SCL) Program participant has income in excess of the special income level, eligibility of the participant shall be determined on a monthly spend-down basis with the cost of SCL services projected.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035.

(6)

(a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.

(b) Mandatory withholdings shall:

- 1. Include state and federal taxes; and
- 2. Not include child support, alimony, or a similar payment resulting from an action by the recipient.

(7) A veteran or the spouse of a veteran who is receiving services in a 1915(c) home and community based services waiver program and who is receiving a Veterans Affairs

benefit shall have ninety (90) dollars excluded from the eligibility and posteligibility determination process.

(8) Veterans Affairs payments for unmet medical expenses (UME) and aid and attendance (A&A) shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a home and community based waiver program.

(9) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall not be excluded in the posteligibility determination.

Section 2. Special Provisions for Hospice Recipients. Medicaid eligibility for a participant in the Medicaid Hospice Program shall be determined in accordance with the provisions in this section.

(1) Income protected for basic maintenance shall be:

(a) The SSI standard and the SSI general exclusion from income for the hospice participant in the posteligibility determination for a noninstitutionalized individual eligible on the basis of the special income level;

(b) The medically needy standard established in 907 KAR 20:020, Section 1, plus the SSI general exclusion for a noninstitutionalized medically needy participant, who shall spend-down on a quarterly basis;

(c) The medically needy standard for the appropriate family size plus the SSI general exclusion for the institutionalized medically needy;

(d) Forty (40) dollars per month for the hospice participant institutionalized in a long-term care facility;

(e) For a veteran or the spouse of a veteran who is receiving services from a hospice and who is receiving a Veterans Affairs benefit, ninety (90) dollars, which shall be excluded from the eligibility and posteligibility determination process; or

(f) The amount of Veterans Affairs payments for unmet medical expenses (UME) and aid and attendance (A&A), which shall be excluded in a Medicaid eligibility and posteligibility determination for a veteran or the spouse of a veteran receiving services from a hospice.

(2) If eligibility is determined for an institutionalized spenddown case, the attributed cost of care against which available income of the hospice participant shall be applied shall be the hospice routine home care per diem for the hospice providing care as established by 42 U.S.C. 1395f(i) plus the private pay rate for the nursing facility.

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual if the recipient is eligible based on the special income level.

(4) A hospice participant shall be eligible for a benefit based on this section if he or she has elected coverage under the Medicaid Hospice Program rather than the regular Medicaid Program.

(5) Institutional deeming rules shall apply in accordance with 907 KAR 20:035 with regard to the categorically needy including a participant eligible on the basis of the special income level.

(6) Community deeming procedures shall be used in accordance with 907 KAR 20:040 for a noninstitutionalized hospice recipient who is:

(a) A medically needy individual, who shall spend-down on a quarterly basis; and

(b) Not eligible under the special income level.

(7)

(a) In the posteligibility determination of available income, the basic maintenance needs allowance shall include a mandatory withholding from income.

(b) Mandatory withholdings shall:

1. Include state and federal taxes; and

2. Not include child support, alimony, or a similar payment resulting from an action by the recipient.
- (8) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall not be excluded in the posteligibility determination.

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. 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 standard pursuant to 907 KAR 20:100; or
- (2) Pursuant to 907 KAR 20:075.

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 June 26, 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 June 19, 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 June 30, 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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