

STATEMENT OF EMERGENCY

907 KAR 20:075E.

This emergency administrative regulation is being promulgated to modify the Medicaid eligibility renewal standard for individuals formerly in foster care. The department has the opportunity to implement a continuous eligibility standard for individuals formerly in foster care 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 individuals formerly in foster care 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 Medicaid recipients who were formerly in foster care. 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 Health Care Policy
(Emergency Amendment)

907 KAR 20:075E. Eligibility provisions and requirements regarding former foster care individuals, and individuals who were in out-of-state equivalents to foster care.

RELATES TO: KRS 205.520, 42 C.F.R. 435.150

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

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 Medicaid eligibility provisions and requirements for an individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time that the individual aged out of foster care, or the out-of-state equivalent.

Section 1. Former Foster Care Eligibility Criteria. An individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time the individual's age exceeded the foster care, or out-of-state equivalent, age limit shall be eligible for Medicaid benefits if the individual meets the requirements of this administrative regulation.

Section 2. Income Standard. There shall be no income standard for individuals between the age of nineteen (19) and twenty-six (26) years and who formerly were in foster care, or an out-of-state equivalent to foster care, but aged out of foster care or the out-of-state equivalent.

Section 3. Resource Standard. There shall be no resource standard for individuals between the age of nineteen (19) and twenty-six (26) years and who formerly were in foster care, or an out-of-state equivalent to foster care, but aged out of foster care or the out-of-state equivalent.

Section 4. Attestation of Having Aged Out of Foster Care.

(1) An individual between the age of nineteen (19) and twenty-six (26) years, who formerly was in foster care, or an out-of-state equivalent to foster care, and was receiving Medicaid benefits at the time the individual's age exceeded the foster care, or out-of-state equivalent to foster care, shall attest, during the application process, that the individual was receiving Medicaid benefits at the time that the individual reached the age which exceeded the foster care, or out-of-state equivalent to foster care, age limit.

(2) An individual who does not attest as established in subsection (1) of this section shall not be eligible for Medicaid benefits under this administrative regulation.

Section 5. Citizenship and Residency Requirements.

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

(2) 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 alien 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. An alien 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. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;
 - h. A battered alien 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 alien 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. An alien 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. An alien 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.

Section 6. Provision of Social Security Numbers.

- (1) 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.
- (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 7. 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 mental hospital or psychiatric facility unless the individual is:

1. Under age twenty-one (21) years of age; or

2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or

(c) Patient in a nursing facility classified by the Medicaid program as an institution for mental diseases.

(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 8. Application Process, Initial and Continuing Eligibility Determination.

(1) An individual may apply for Medicaid benefits by:

(a) Using the Web site located at www.kynect.ky.gov;

(b) Applying over the telephone by calling:

1. 1-855- 459-6328; or

2. 1-855-326-4654 if deaf or hearing impaired;

(c) Faxing an application to 1-502-573-2007;

(d) Mailing a paper application to Office of Health Benefits Exchange, 12 Mill Creek, Frankfort, Kentucky 40601; or

(e) Going to the applicant's local Department for Community Based Services Office and applying in person.

(2) An individual shall attest in accordance with Section 4 of this administrative regulation when applying for Medicaid benefits.

(3)

(a) An application shall be processed (approved, denied, or a request for additional information sent) by the department or other entity involved in processing the given application within forty-five (45) days of application submittal.

(b) If a trusted source indicates that an applicant is incarcerated, a request for additional information shall be generated by the department or other entity involved in processing the application requesting verification of the applicant's incarceration dates or status.

(c) If an applicant fails to provide information in response to a request for additional information within forty-five (45) days of the receipt of the request, the application shall be denied.

Section 9. Continuous Eligibility for Children.

(1) An individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

(2) The continuous eligibility period for an individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to

foster care, while receiving Medicaid coverage recipient shall be for a period of twelve (12) months.

(3) The eligibility during a continuous eligibility period of an individual who is between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage shall only be terminated under the following circumstances:

- (a) The individual becomes older than twenty (26) during the continuous eligibility period.
- (b) The individual voluntarily requests that the eligibility be terminated;
- (c) The individual 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 individual; or
- (e) The death of the individual.

Section 10. Adverse Action, Notice, and Appeals. The adverse action, notice, and appeals provisions established in 907 KAR 20:060 shall apply to former foster care, or out-of-state equivalent, individuals between the age of nineteen (19) and twenty-six (26) who aged out of foster care, or an out-of-state equivalent to foster care, while receiving Medicaid coverage.

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.

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.