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Emily B Caudill
REGULATIONS COMPILER

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amendment)

907 KAR 20:020. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, 42 C.F.R. Part 130, Section 4735 of Pub.L. 105-33, [~~38 U.S.C. 5503,~~] 42 U.S.C. 1382a, 1383c(b), 1396-1396v, 1396p(d)(4), 1397jj(b)[~~1396jj(b), 1397aa, 9902(2)~~]

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396d, 1397aa, 1382a(b)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. 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 for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined, 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. Income Limitations. (1)(a) Income shall be determined by comparing adjusted income as required by Section 2 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,820[~~2,600~~]	$235[~~217~~]
2	3,492[~~3,200~~]	291[~~267~~]
3	4,056[~~3,700~~]	338[~~308~~]
4	5,028[~~4,600~~]	419[~~383~~]
5	5,904[~~5,400~~]	492[~~450~~]
6	6,672[~~6,100~~]	556[~~508~~]
7	7,452[~~6,800~~]	621[~~567~~]

(b) For each additional family member, $720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) For a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e) a change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant

woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The special income limits and provisions established in this subsection shall apply for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1).

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI program for:

(a) A child who lost eligibility for SSI benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 C.F.R. Part 130.

(5) Income shall be limited to the allowable amounts for the mandatory or optional state supplement program for an individual described in 42 C.F.R. 435.135.

[~~(6) The following special income factors shall apply for a Medicaid Works individual:~~

~~(a) Income for a Medicaid Works individual's spouse shall not exceed $45,000 per year;~~

~~(b) A Medicaid Works individual's unearned income shall be less than the SSI standard plus twenty (20) dollars monthly; and~~

~~(c) The combination of earned and unearned income for a Medicaid Works individual shall be less than 250 percent of the official poverty income guidelines.~~]

Section 2. Income Disregards. In comparing income with the scale established in Section 1 of this administrative regulation, gross income shall be adjusted as established in this section.

(1) In a TANF or family related Medicaid case:

(a) The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings;

(b) For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month; and

(c) Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) For an ABD Medicaid case [~~or a Medicaid Works individual~~], the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b) shall apply.

(3) For an individual in a Medicaid eligibility group subject to 42 U.S.C. 1396a(a)(10)(E)(i), (ii), or (iv) or 42 U.S.C. 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment causes an individual to be ineligible for Medicaid benefits:

(a) The individual's most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment shall be disregarded; and

(b) The disregard referenced in paragraph (a) of this subsection shall continue until the individual loses Medicaid eligibility for any other reason for three (3) consecutive months.

(4)

[~~(a)~~] An ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).

[~~(b) A Medicaid Works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).~~]

Section 3. Lump Sum Income. Except as established in Section 8 of this administrative regulation, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill a plan approved by the United States Social Security Administration to achieve self support, IRWE deduction, or BWE deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver program.

(5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1) un-

til after the month following the month in which the official poverty income guidelines promulgated by the United States Department of Health and Human Services are published.

(6) Any amount received from a victim's compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) pension benefit shall have ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) Excluded as income in the post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses and aid and attendance shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC or SSI) shall be excluded.

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. Part 130, any payment received by a person with hemophilia from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

(16) All monies received by an individual from the Tobacco Master Settlement Agreement shall be excluded.

(17) 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 be excluded.

Section 5. Consideration of Mandatory or Optional State Supplements. For an individual receiving a mandatory or optional state supplement, that portion of the individual's income which is in excess of the basic maintenance standard, established in Section 1(1) of this administrative regulation, shall be applied to the special need which results in the supplement.

Section 6. Pass-through Cases. (1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement.

(b) An individual who would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 7 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount specified in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 7. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2)(a) An individual with income in excess of the basic maintenance scale established in Section 1(1) of this administrative regulation shall qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(b) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined shall be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

Section 8. Individual Retirement Account. (1)(a) If an individual reaches the point where the individual is eligible to begin withdrawing from an IRA without suffering a penalty, the individual shall begin withdrawing from the IRA at least the minimum amount determined by the financial institution holding the IRA.

(b) If an individual does not begin withdrawing from an IRA pursuant to paragraph (a) of this subsection, the individual shall be ineligible for Medicaid benefits.

(2) If an individual withdraws funds from an IRA prior to reaching the point where the individual

would suffer no penalty for withdrawing funds, the withdrawal shall be considered non-recurring lump sum income.

(3) If an individual withdraws income pursuant to subsection (1)(a) of this section, the income shall be prorated over the period of time the income covers (for example monthly, quarterly, or annually).

Section 9. Applicability. The provisions and requirements of this administrative regulation shall:

(1) Apply to:

(a) A child in foster care;

(b) An aged, blind, or disabled individual; and

(c) An individual who receives supplemental security income benefits; and

(2) Not apply to an individual whose Medicaid eligibility is determined:

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

(b) Pursuant to 907 KAR 20:075.

907 KAR 20:020

REVIEWED:

10/21/2021

Date

DocuSigned by:
Lisa Lee
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Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

10/21/2021

Date

DocuSigned by:
Eric Friedlander
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Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on January 24, 2022, 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 January 14, 2022, 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 January 31, 2022. 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, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 20:020
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Krista Quarles, (502) 564-6746, CHFSRegs@ky.gov

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards except for Medicaid eligibility categories for which the modified adjusted gross income standard is the income standard.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to Medicaid eligibility income standards.
(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 statutes by establishing provisions related to Medicaid eligibility income standards.

(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 to this administrative regulation removes references to the Medicaid Works program to reflect the ending of that program. Medicaid Works recipients are being transferred into the expansion Medicaid population. The amendment also updates the income eligibility chart to reflect the current values used by DMS for non-MAGI individuals.
(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to reflect the ending of the Medicaid Works program.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by removing a reference to a discontinued program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing a reference to a discontinued program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Since the creation of the Medicaid Works program in 2007, only 15 different people have ever used it. Currently, there are only 5 beneficiaries using the program, and DMS intends to otherwise accommodate this population within the existing healthcare system.

(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. Recipients will be otherwise accommodated when applying for Medicaid services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate any expenses for this population in transferring

(c) As a result of compliance, what benefits will accrue to the entities identified in question. DMS anticipates that current beneficiaries will remain in the Medicaid Program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(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: Neither an increase in fees nor funding will be necessary to implement the amendments.

(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? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 20:020
Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Krista Quarles, (502) 564-6746, CHFSRegs@ky.gov

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), 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) authorizes the Cabinet for Health and Family Services 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. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance]; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals.

   Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 20:020
Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Krista Quarles, (502) 564-6746, CHFSRegs@ky.gov

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 (DMS) will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1315.

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? The department anticipates no additional costs in the implementation of this administrative regulation.
   (d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in the continuing operation of this administrative regulation.

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: