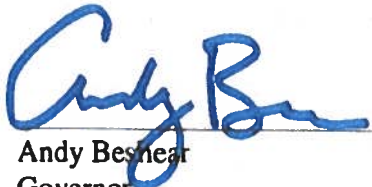


FILED WITH LRC
TIME: 2:45 pm
APR 20 2023
Emily B Caudill
REGULATIONS COMPILER

**STATEMENT OF EMERGENCY
907 KAR 20:100E**

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

DocuSigned by:
Eric Friedlander
0AEA1D6C15D6431
Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

4/2/12

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Emergency Amendment)

5 907 KAR 20:100E. Modified Adjusted Gross Income (MAGI) Medicaid eligibility standards.

6 RELATES TO: KRS 205.520

7 STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42

8 U.S.C. 1396a(e)(14)

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services,
10 Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS
11 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that
12 may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This
13 administrative regulation establishes the provisions and requirements for individuals whose Medi-
14 caid eligibility is determined using the modified adjusted gross income as the income standard. The
15 affected individuals include children under the age of nineteen (19) years, pregnant women to 365
16 days postpartum, caretaker relatives, and adults under age sixty-five (65) who do not have a depend-
17 ent child under the age of nineteen (19) years and are not otherwise eligible for Medicaid benefits.

18 Section 1. Applicability.

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

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

3 1. A child under the age of nineteen (19) years, excluding a child in foster care;

4 2. A caretaker relative with income up to 133 percent of the federal poverty level established an-
5 nually by the United States Department of Health and Human Services pursuant to 42 U.S.C.
6 9902(2);

7 3. A pregnant woman, with income up to 195 percent of the federal poverty level established an-
8 nually by the United States Department of Health and Human Services pursuant to 42 U.S.C.
9 9902(2), including the postpartum period to 365 days after delivery;

10 4. An adult under age sixty-five (65) with income up to 133 percent of the federal poverty level
11 established annually by the United States Department of Health and Human Services pursuant to 42
12 U.S.C. 9902(2), who:

13 a. Does not have a dependent child under the age of nineteen (19) years; and

14 b. Is not otherwise eligible for Medicaid benefits; or

15 5. A targeted low income child with income up to 150 percent of the federal poverty level estab-
16 lished annually by the United States Department of Health and Human Services pursuant to 42
17 U.S.C. 9902(2).

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

23 (b) If after the five (5) percent adjustment, the individual's income is under the adjusted income

1 threshold, the individual shall meet the modified adjusted gross income standard.

2 (c) A pregnant person's federal poverty level calculation pursuant to 42 U.S.C. 9902(2) shall be at
3 least two (2) and shall include the pregnant person and the number of children expected to be deliv-
4 ered. Other members of the household shall be calculated and included consistent with KAR Title
5 907.

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

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

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

15 Section 4. Citizenship and Residency Requirements.

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

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

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

19 1. A citizen of the United States as verified through satisfactory documentary evidence of citizen-
20 ship or nationality presented during initial application or if a current recipient, upon next redetermi-
21 nation of continued eligibility;

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

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

- 1 b. Granted asylum pursuant to 8 U.S.C. 1158;
- 2 c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
- 3 d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1)
- 4 year;
- 5 e. A noncitizen whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect
- 6 prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
- 7 f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;
- 8 g. A noncitizen who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;
- 9 h. A battered noncitizen pursuant to 8 U.S.C. 1641(c);
- 10 i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an
- 11 honorable discharge and not on account of alienage;
- 12 j. On active duty other than active duty for training in the Armed Forces of the United States and
- 13 who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);
- 14 k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this
- 15 subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this
- 16 subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or
- 17 l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or
- 18 3. A qualified noncitizen who entered the United States on or after August 22, 1996, and is:
- 19 a. Granted asylum pursuant to 8 U.S.C. 1158;
- 20 b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;
- 21 c. A noncitizen whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect
- 22 prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);
- 23 d. A noncitizen who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

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

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

5 g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this
6 subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this
7 subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

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

9 i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has
10 earned forty (40) quarters of Social Security coverage; and

11 (b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets
12 the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

13 (3) A qualified or nonqualified noncitizen shall be eligible for medical assistance pursuant to 42
14 C.F.R. 440.255 and as provided in this paragraph.

15 (a) The individual shall meet the income, resource, and categorical requirements of the Medicaid
16 Program.

17 (b) Coverage for the individual shall be:

18 1. Limited to the medical care and services necessary for the treatment of an emergency medical
19 condition or pregnancy of the individual;

20 2. Not related to an organ transplant procedure; and

21 3. For a medical condition, including severe pain, in which the absence of immediate medical at-
22 tention could reasonably be expected to result in placing the individual's health in serious jeopardy,
23 serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

1 (c) The individual's coverage shall be recertified every twelve (12) months.

2 (4)(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsec-
3 tion (2)(a)1 of this section shall not apply to an individual who:

4 1. Is receiving SSI benefits;

5 2. Previously received SSI benefits but is no longer receiving them;

6 3. Is entitled to or enrolled in any part of Medicare;

7 4. Previously received Medicare benefits but is no longer receiving them;

8 5. Is receiving:

9 a. Disability insurance benefits under 42 U.S.C. 423; or

10 b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42
11 U.S.C. 423(d);

12 6. Is in foster care and who is assisted under Title IV-B of the Social Security Act, which is codi-
13 fied as 42 U.S.C. 621 through 628b; or

14 7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the So-
15 cial Security Act, which is codified as 42 U.S.C. 670 through 679c.

16 (b) The department's documentation requirements shall be in accordance with the requirements
17 established in 42 U.S.C. 1396b(x).

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

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

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

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

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

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

- 13 (a) Is a qualified noncitizen;
14 (b) Is a noncitizen in a valid immigrant status;
15 (c) Is a noncitizen who has been paroled into the United States of America in accordance with 8
16 U.S.C. 1182(d)(5) for less than one (1) year, except for an individual:

- 17 1. Paroled for:
18 a. Prosecution; or
19 b. Deferred inspection; or
20 2. Pending removal proceedings;

21 (d) Is a noncitizen who:

- 22 1. Has been granted:
23 a. Temporary resident status in accordance with 8 U.S.C. 1160 or 1225a;

- 1 **b. Temporary protected status in accordance with 8 U.S.C. 1254a or is an individual with a pend-**
- 2 **ing application for temporary protected status who has been granted employment authorization;**
- 3 **c. Employment authorization under 8 C.F.R. 274a.12(c);**
- 4 **d. Deferred action status; or**
- 5 **e. An administrative stay of removal under 8 C.F.R. Part 241;**
- 6 **2. Is a family unity beneficiary in accordance with Section 301 of Pub. L. 101-649 as amended,**
- 7 **and 8 C.F.R. Part 236;**
- 8 **3. Is under deferred enforced departure in accordance with a decision made by the President of**
- 9 **the United States of America; or**
- 10 **4. Is a beneficiary of an approved visa petition who has a pending application for an adjustment**
- 11 **of status;**
- 12 **(e) Is an individual with a pending application for asylum:**
- 13 **1.a. Under 8 U.S.C. 1158;**
- 14 **b. For withholding of removal under 8 U.S.C. 1231; or**
- 15 **c. Under the Convention of Torture; and**
- 16 **2. Who:**
- 17 **a. Has been granted employment authorization; or**
- 18 **b. Is under the age of fourteen (14) years and has had an application pending for at least 180 days;**
- 19 **(f) Is an individual who has been granted withholding of removal under the Convention Against**
- 20 **Torture;**
- 21 **(g) Is a child who has a pending application for special immigrant juvenile status as described in 8**
- 22 **U.S.C. 1101(a)(27)(J); or**
- 23 **(h) Is a victim of severe trafficking in persons in accordance with the Victims of Trafficking and**

1 **Violence Protection Act of 2000 (Public Law 106-386, as amended in 22 U.S.C. 7105(b)).**

2 **(9) An individual with deferred action under the Department of Homeland Security's deferred ac-**
3 **tion for the childhood arrivals process, as described in the Secretary of Homeland Security's June 15,**
4 **2012 memorandum, shall not be considered to be lawfully present with respect to any of the catego-**
5 **ries listed in subsection (8) of this section.**

6 **Section 5. Provision of Social Security Numbers.**

7 **(1)(a) Except as provided in subsections (2) and (3) of this section, an applicant for or recipient of**
8 **Medicaid shall provide a Social Security number as a condition of eligibility.**

9 **(b) If a parent or caretaker relative and the child, unless the child is a deemed eligible newborn,**
10 **refuses to cooperate with obtaining a Social Security number for the newborn child or other depend-**
11 **ent child, the parent or caretaker relative shall be ineligible due to failing to meet technical eligibility**
12 **requirements.**

13 **(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in**
14 **receipt of a Social Security number from the United States Social Security Administration if appro-**
15 **prate application for the number has been made.**

16 **(3) An individual who refuses to obtain a Social Security number due to a well-established reli-**
17 **gious objection shall not be required to provide a Social Security number as a condition of eligibility.**

18 **Section 6. Institutional Status.**

19 **(1) An individual shall not be eligible for Medicaid if the individual is a:**

20 **(a) Resident or inmate of a nonmedical public institution except as established in subsection (2) of**
21 **this section;**

22 **(b) Patient in a state tuberculosis hospital unless he or she has reached age sixty-five (65);**

23 **(c) Patient in a mental hospital or psychiatric facility unless the individual is:**

- 1 1. Under age twenty-one (21) years of age;
- 2 2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st
- 3 birthday; or
- 4 3. Sixty-five (65) years of age or over; or

5 (d) Patient in a nursing facility classified by the Medicaid program as an institution for mental
6 diseases, unless the individual has reached age sixty-five (65).

7 (2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a
8 hospital if the inmate:

- 9 (a) Has been admitted to a hospital;
- 10 (b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and
- 11 (c) Meets the Medicaid eligibility criteria established in this administrative regulation.

12 Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a
13 child, a recipient shall be deemed to have assigned to the Cabinet for Health and Family Services
14 any medical support owed for the child not to exceed the amount of Medicaid payments made on be-
15 half of the recipient.

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

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

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

- 23 1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;

1 2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or

2 3. May interfere with adoption considerations or proceedings.

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

5 (3) A pregnant woman with income up to 195 percent of the federal poverty level established an-
6 nually by the United States Department of Health and Human Services pursuant to 42 U.S.C.
7 9902(2) shall not be required to cooperate in establishing paternity or securing support for her un-
8 born child.

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

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

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

12 (b) Applying over the telephone by calling:

13 1. 1-855-459-6328;

14 2. 1-855-306-8959 to speak to the DCBS Family Support Call Center; or

15 3. 1-855-326-4654 if deaf or hearing impaired;

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

17 (d) Mailing a paper application to DCBS Family Support, P.O. Box 2104, Frankfort, Kentucky
18 40602; or

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

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

23 (b) Immediately after submittal if there is a variance of ten (10) percent or more regarding income

1 information reported by the applicant versus information available from a trusted source or sources,
2 a request for additional information shall be generated for the applicant requesting documentation to
3 prove the applicant's income.

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

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

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

10 1. The individual's eligibility circumstances change resulting in the individual no longer being el-
11 igible for Medicaid; or

12 2. A request for additional information is generated due to a change in income or incarceration
13 status.

14 (b)1. If an individual receives a request for additional information as part of the renewal process, the
15 individual shall provide the information requested within forty-five (45) days of receiving the re-
16 quest.

17 2. If an individual fails to provide the information requested within forty-five (45) days of receiv-
18 ing the request, the individual's eligibility shall be terminated on the forty-fifth day from the request
19 for additional information.

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

22 Section 10. Continuous Eligibility for Children. (1) An individual who is younger than nineteen
23 (19) shall receive continuous eligibility, consistent with 42 C.F.R. 435.926.

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

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

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

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

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

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

9 1. Agency error; or

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

11 (e) The death of the child.

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

15 Section 12[+1]. Miscellaneous Special Circumstances.

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

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

1 cept for age.

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

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

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

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

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

907 KAR 20:100E
REVIEWED:

4/14/2023

Date

DocuSigned by:
Lisa Lee
7CB973D215D941E

Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

4/14/2023

Date

DocuSigned by:
Eric Friedlander
0AEA1D6C15D6431

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 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, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 20:100E

**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 the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income (or MAGI.)
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions and requirements regarding Medicaid eligibility for individuals whose eligibility standard is the modified adjusted gross income. The Affordable Care Act mandates that the modified adjusted gross income be used (effective January 1, 2014) to determine Medicaid eligibility for certain populations rather than the prior Medicaid eligibility rules; thus, the administrative regulation is necessary to comply with the federal mandate.
 - (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 complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with a federal mandate to establish the modified adjusted gross income as the Medicaid eligibility standard, rather than existing Medicaid eligibility rules, for certain populations of individuals.

- (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.
 - (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 government 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 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? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 20:100E

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 USC 1396a(e)(14), 42 USC 1396a(r)(2).
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 governed by the new requirements include children under nineteen (19) [excluding children in foster care]; pregnant women; caretaker relatives with income up to 133 percent of the federal poverty level; adults with no child under nineteen (19) with income up to 133 percent of the federal poverty level who are not otherwise eligible for Medicaid benefits; and targeted low-income children with income up to 150 percent of the federal poverty level. 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. Additionally, states are prohibited from applying an asset or resource test for eligibility purposes for the aforementioned population. States are also required to create and adopt an income threshold (under the modified adjusted gross income) that ensures that individuals who were eligible for Medicaid benefits prior to January 1, 2014 (the date that the modified adjusted gross income standard is adopted) do not lose Medicaid coverage due to the modified adjusted gross income standard taking effect.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE

Regulation Number: 907 KAR 20:100E

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 this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 CFR 435.603 authorizes 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 estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.
 - (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 estimates that the Medicaid expansion has brought in at least \$1.4 billion in federal funds into the state in 2021 (this number is exclusive of rate enhancement programs utilized for hospitals and emergency medical transport). In addition, DMS estimates that more than 16,700 jobs have been created within the commonwealth as a result of the Medicaid expansion. Furthermore, in 2021, approximately \$30 million in income tax revenue, \$29.4 million in sales tax increases, and \$12 million in local occupational and payroll taxes were generated when compared to not expanding the Medicaid program.
 - (c) How much will it cost to administer this program for the first year? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.
 - (d) How much will it cost to administer this program for subsequent years? The department anticipates up to \$3.7 million in state funds may be spent in order to implement this administrative regulation on an annual basis.

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 that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation 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 that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation 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.

