

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

**Medicaid Eligibility  
Modified Adjusted Gross Income  
(LAC 50:III.2327,2529,10307, and 10705)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:III.10705 and adopts §2327, §2529 and §10307 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 1004(a)(2) of the Patient Protection and Affordable Care Act (ACA) of 2010 and Section 36B(d)(2)(B) of the *Internal Revenue Code* mandate that Medicaid eligibility use the Modified Adjusted Gross Income (MAGI) methodology for eligibility determinations for certain eligibility groups. In compliance with the ACA and *Internal Revenue Code*, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing Medicaid eligibility to adopt the MAGI eligibility methodology (*Louisiana Register*, Volume 40, Number 1). The department also adopted

provisions which allow qualified hospitals to make determinations of presumptive eligibility for individuals who are not currently enrolled in Medicaid.

The department promulgated an Emergency Rule which amended the provisions of the December 31, 2013 Emergency Rule in order to make technical revisions to ensure that these provisions are appropriately promulgated in a clear and concise manner (*Louisiana Register*, Volume 40, Number 4). The provisions governing the MAGI eligibility changes for the State Children's Health Insurance Program were removed from this Emergency Rule and repromulgated independently. The department now proposes to amend the provisions of the April 20, 2014 Rule in order to make an additional technical revision. This action is being taken to avoid federal sanctions.

Effective March 20, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the April 20, 2014 Emergency Rule governing Medicaid eligibility.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part III. Eligibility**

**Subpart 3. Eligibility Groups and Factors**

**Chapter 23. Eligibility Groups and Medicaid Programs**

**§2327. Modified Adjusted Gross Income (MAGI) Groups**

A. For eligibility determinations effective December 31, 2013 eligibility shall be determined by Modified Adjusted Gross Income (MAGI) methodology in accordance with Section 1004(a)(2) of the Patient Protection and Affordable Care Act (ACA) of 2010 and Section 36B(d)(2)(B) of the *Internal Revenue Code*, for the following groups:

1. parents and caretaker relatives group which includes adult individuals formerly considered for Low Income Families with Children as parents or caretaker relatives;
2. pregnant women;
3. child related groups; and
4. other adult related groups including breast and cervical cancer, tuberculosis (TB) and family planning.

B. A MAGI determination will be necessary for each individual in the home for whom coverage is being requested. The MAGI household resembles the tax household.

1. MAGI Household. The individual's relationship to the tax filer and every other household member must be established for budgeting purposes. The MAGI household is constructed based on whether an individual is a:

- a. tax filer;
- b. tax dependent; or

c. non-filer (neither tax filer or tax dependent).

2. For the tax filer the MAGI household includes the tax filer and all claimed tax dependents.

a. Whether claimed or not, the tax filer's spouse, who lives in the home, must be included.

b. If a child files taxes and is counted as a tax dependent on his/her parent's tax return, the child is classified as a tax dependent not a tax filer.

3. When taxes are filed for the tax dependent the MAGI household consists of the tax filer and all other tax dependents unless one of the following exceptions is met:

a. being claimed as a tax dependent by a tax filer other than a parent or spouse (for example, a grandchild, niece, or tax filer's parent);

b. children living with two parents who do not expect to file a joint tax return (including step-parents); or

c. children claimed as a tax dependent by a non-custodial parent.

4. For individuals who do not file taxes nor expect to be claimed as a tax dependent (non-filer), the MAGI household consists of the following when they all live together:

a. for an adult:

i. the individual's spouse; and

ii. the individual's natural, adopted, and step-children under age 19; and

b. for a minor:

i. the individual's natural, adoptive, or step-parents; and

ii. the individual's natural, adopted, and step-siblings under age 19.

C. Parents and Caretaker Relatives Group.

1. A caretaker relative is a relative of a dependent child by blood, adoption, or marriage with whom the child is living, and who assumes primary responsibility for the child's care. A caretaker relative must be one of the following:

- a. parent;
- b. grandparent;
- c. sibling;
- d. brother-in-law;
- e. sister-in-law;
- f. step-parent;
- g. step-sibling;
- h. aunt;
- i. uncle;
- j. first cousin;
- k. niece; or
- l. nephew.

2. The spouse of such parents or caretaker relatives may be considered a caretaker relative even after the marriage is terminated by death or divorce.

3. The assistance/benefit unit consists of the parent and/or caretaker relative and the spouse of the parent and/or caretaker relative, if living together, of child(ren) under age 18, or age 18 and a full-time student in high school or vocational/technical training. Children are considered deprived if income eligibility is met for the Parents and Caretaker Relatives Group. Children shall be certified in the appropriate children's category.

D. Pregnant Women Group.

1. Eligibility for the pregnant women group may begin:

a. at any time during a pregnancy; and  
b. as early as three months prior to the month of application.

2. Eligibility cannot begin before the first month of pregnancy. The pregnant women group certification may extend through the calendar month in which the 60-day postpartum period ends.

3. An applicant/enrollee whose pregnancy terminated in the month of application or in one of the three months prior without a surviving child shall be considered a pregnant woman

for the purpose of determining eligibility in the pregnant women group.

4. Certification shall be from the earliest possible month of eligibility (up to three months prior to application) through the month in which the 60-day postpartum period ends.

5. Retroactive eligibility shall be explored regardless of current eligibility status.

a. If the applicant/enrollee is eligible for any of the three prior months, she remains eligible throughout the pregnancy and 60-day postpartum period. When determining retroactive eligibility actual income received in the month of determination shall be used.

b. If application is made after the month the postpartum period ends, the period of eligibility will be retroactive but shall not start more than three months prior to the month of application. The start date of retroactive eligibility is determined by counting back three months prior to the date of application. The start date will be the first day of that month.

6. Eligibility may not extend past the month in which the postpartum period ends.

7. The applicant/enrollee must be income eligible during the initial month of eligibility only. Changes in income after the initial month will not affect eligibility.

E. Child Related Groups.

1. Children Under Age 19-CHAMP. CHAMP children are under age 19 and meet income and non-financial eligibility criteria. ACA expands mandatory coverage to all children under age 19 with household income at or below 133 percent Federal Poverty Level (FPL). Such children are considered CHAMP Children.

2. Children Under Age 19-LaCHIP. A child covered under the Louisiana State Children's Health Insurance Program (LaCHIP) shall:

- a. be under age 19;
- b. not be eligible for Medicaid under any other optional or mandatory eligibility group or eligible as medically needy (without spend-down liability);
- c. not be eligible for Medicaid under the policies in the State's Medicaid plan in effect on April 15, 1997;
- d. not have health insurance; and
- e. have MAGI-based income at or below 212 percent (217 percent FPL with 5 percent disregard) of the Federal Poverty Level.

3. Children Under Age 19-LaCHIP Affordable Plan. A child covered under the Louisiana State Children's Health Insurance Program (LaCHIP) Affordable Plan shall:

- a. be under age 19;
  - b. not be income eligible for regular LaCHIP;
  - c. have MAGI-based income that does not exceed 250 percent FPL;
  - d. not have other insurance or access to the State Employees Health Plan;
  - e. have been determined eligible for child health assistance under the State Child Health Insurance Plan;
- and
- f. be a child whose custodial parent has not voluntarily dropped the child(ren) from employer sponsored insurance within the last three months without good cause. Good cause exceptions to the three month period for dropping employer sponsored insurance are:
    - i. lost insurance due to divorce or death of parent;
    - ii. lifetime maximum reached;
    - iii. COBRA coverage ends (up to 18 months);
    - iv. insurance ended due to lay-off or business closure;
    - v. changed jobs and new employer does not offer dependent coverage;

- vi. employer no longer provides dependent coverage;
- vii. monthly family premium exceeds 9.5 percent of household income; or
- viii. monthly premium for coverage of the child exceeds 5 percent of household income.

4. Children Under Age 19-Phase IV LaCHIP (SCHIP).

The State Child Health Insurance Program (SCHIP) provides prenatal care services, from conception to birth, for low income uninsured mothers who are not otherwise eligible for other Medicaid programs, including CHAMP pregnant women benefits. This program, Phase IV LaCHIP, also covers non-citizen women who are not qualified for other Medicaid programs due to citizenship status only.

F. Regular and Spend Down Medically Needy MAGI. Regular and spend down medically needy shall use the MAGI determination methodology.

G. Former Foster Care Children. Former foster care children are applicants/enrollees under 26 years of age, who were in foster care under the responsibility of the state at the time of their eighteenth birthday, and are not eligible or enrolled in another mandatory coverage category.

1. Former foster care children may also be applicants/enrollees who:

a. have lost eligibility due to moving out of state, but re-established Louisiana residency prior to reaching age 26; or

b. currently reside in Louisiana, but were in foster care in another state's custody upon reaching age 18.

2. Former foster care children must:

a. be at least age 18, but under age 26;

b. currently live in Louisiana;

c. have been a child in foster care in any state's custody upon reaching age 18; and

d. not be eligible for coverage in another mandatory group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

## **Chapter 25. Eligibility Factors**

### **§2529. Hospital Presumptive Eligibility**

A. Effective December 31, 2013 any hospital designated by Louisiana Medicaid as a Hospital Presumptive Eligibility Qualified Provider (HPEQP) may obtain information and determine Hospital Presumptive Eligibility (HPE) for individuals who are not currently enrolled in Medicaid and who are in need of medical services covered under the State Plan.

1. Coverage groups eligible to be considered for Hospital Presumptive Eligibility include:

- a. parents and caretaker relatives;
- b. pregnant women;
- c. children under age 19;
- d. former foster care children;
- e. family planning; and
- f. certain individuals needing treatment for

breast or cervical cancer.

B. Qualified Hospitals. Qualified hospitals shall be designated by the department as entities qualified to make presumptive Medicaid eligibility determinations based on preliminary, self-attested information obtained from individuals seeking medical assistance.

1. A qualified hospital shall:

- a. be enrolled as a Louisiana Medicaid provider under the Medicaid state plan or a Medicaid 1115 Demonstration;
  - b. not be suspended or excluded from participating in the Medicaid Program;
  - c. have submitted a statement of interest in making presumptive eligibility determinations to the department;
- and

d. agree to make presumptive eligibility determinations consistent with the state policies and procedures.

C. The qualified hospital shall educate the individuals on the need to complete an application for full Medicaid and shall assist individuals with:

1. completing and submitting the full Medicaid application; and

2. understanding any document requirements as part of the full Medicaid application process.

D. Eligibility Determinations

1. Household composition and countable income for HPE coverage groups are based on Modified Adjusted Gross Income (MAGI) Methodology.

2. The presumptive eligibility period shall begin on the date the presumptive eligibility determination is made by the qualified provider.

3. The end of the presumptive eligibility period is the earlier of:

a. the date the eligibility determination for regular Medicaid is made, if an application for regular Medicaid is filed by the last day of the month following the month in which the determination for presumptive eligibility is made; or

b. the last day of the month following the month in which the determination of presumptive eligibility is made, if no application for regular Medicaid is filed by that date.

4. Those determined eligible for presumptive eligibility shall be limited to no more than one period of eligibility in a 12-month period, starting with the effective date of the initial presumptive eligibility period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

#### **Subpart 5. Financial Eligibility**

#### **Chapter 103. Income**

#### **§10307. Modified Adjusted Gross Income - (MAGI) Groups**

##### **A. MAGI Related Types of Income.**

1. Alimony shall be counted as unearned income payments made directly to the household from non-household members.

2. Alien sponsor's income shall be counted against the flat grant needs of the alien's household. If the income of the sponsor is equal to or greater than the flat grant amount for the number of people in the alien parent's family, the alien

parent(s) is not eligible for inclusion in his children's Medicaid certification.

3 Business income or loss shall be countable net profit or loss from partnerships, corporations, etc.

4. Capital gain or loss shall be countable income.

5. A child's earned income is counted, except for the tax filer's budget when earnings are below the tax filing threshold.

6. Annual income received under an implied, verbal, or written contract in less than 12 months shall be averaged over the 12 month period it is intended to cover unless the income is received on an hourly or piecework basis.

7. Disability insurance benefits shall count as unearned income. If federal and/or state taxes are deducted, disability insurance benefits shall count as earned income.

8. Dividends shall count as unearned income. Dividends shall be averaged for the period they are intended to cover.

9. Interest, including tax-exempt interest, shall count as unearned income. Interest shall be averaged for the period it is intended to cover.

10. Irregular and unpredictable income shall count as income in the month of receipt. Annual income received under an implied, verbal, or written contract in less than 12 months

shall be averaged over the 12 month period it is intended to cover unless the income is received on an hourly or piecework basis.

11. Income received from employment through the Job Training Partnership Act of 1982 (JTPA) program shall be counted as earned income. JTPA income received for training through JTPA program shall be counted as unearned income.

12. A non-recurring cash payment (lump sum) shall count as income only in the calendar month of receipt. This includes insurance settlements, back pay, state tax refunds, inheritance, IRA or other retirement distributions, and retroactive benefit payments.

13. Regular recurring income from oil and land leases shall be counted over the period it is intended to cover and counted as unearned income. Payments received in the first year of an oil lease, which are above the regular recurring rental and payments received when an oil lease is written for only one year, are treated as non-recurring lump sum payments.

14. Pensions and annuities shall count as unearned income.

15. Income is potentially available when the applicant/enrollee has a legal interest in a liquidated sum and has the legal ability to make this sum available for the support and maintenance of the assistance unit. Potential income shall

be counted when it is actually available as well as when it is potentially available but the applicant/enrollee chooses not to receive the income. If the agency representative is unable to determine the amount of benefits available, the application shall be rejected for failure to establish need.

16. Railroad retirement shall count as unearned income the amount of the entitlement including the amount deducted from the check for the Medicare premiums, less any amount that is being recouped for a prior overpayment.

17. Ownership of rental property is considered a self-employment enterprise. Income received from rental property may be earned or unearned. To be counted as earned income, the applicant/enrollee must perform some work related activity. If the applicant/enrollee does not perform work related activity, the money received shall be counted as unearned income. Only allowable expenses associated with producing the income may be deducted. If the income is earned, any other earned income deductions are allowed.

18. The gross amount of retirement benefits, including military retirement benefits, counts as unearned income.

19. Royalties shall count as unearned income. Royalties shall be prorated for the period they are intended to cover.

20. Scholarships, awards, or fellowship grants shall count as unearned income if used for living expenses such as room and board.

21. Seasonal earnings shall count as earned income in the month received. If contractual, such as a bus driver or teacher, the income shall be prorated over the period it is intended to cover. If earnings are self-employment seasonal income, they shall be treated as self-employment income as below in Subparagraph 22.

22. Self-employment income is counted as earned income. Self-employment income is income received from an applicant/enrollee's own business, trade, or profession if no federal or state withholding tax or Social Security tax is deducted from his job payment. This may include earnings as a result of participation in Delta Service Corps and farm income.

a. Allowable expenses are those allowed when filing taxes on a Schedule C or Farm Income Schedule F.

23. Social Security Retirement, Survivors and Disability Insurance Benefits (RSDI) shall count as unearned income. The amount counted shall be that of the entitlement including the amount deducted from the check for the Medicare premium, less any amount that is being recouped for a prior overpayment.

24. Income from taxable refunds, credits, or offsets of state and local income taxes if claimed on Form 1040 shall count as unearned income.

25. Income from income trust withdrawals, dividends, or interest which are or could be received by the applicant/enrollee shall count as unearned income.

26. Tutorship funds are any money released by the court to the applicant/enrollee and shall be counted as unearned income.

27. Unemployment compensation benefits (UCB) shall be counted as unearned income in the month of receipt.

28. Taxable gross wages, salaries, tips, and commissions, including paid sick and vacation leave, shall count as earned income. Included as earned income are:

a. vendor payments made by the employer instead of all or part of the salary;

b. the cash value of an in-kind item received from an employer instead of all or part of the salary; and

c. foreign earnings.

29. The following types of income shall not be counted for MAGI budgeting:

a. adoption assistance;

b. Agent Orange Settlement payments;

- c. American Indian and Native American Claims and Lands and income distributed from such ownership;
- d. Census Bureau earnings;
- e. child support payments received for anyone in the home;
- f. contributions from tax-exempt organizations;
- g. disaster payments;
- h. Domestic Volunteer Service Act;
- i. earned income credits;
- j. educational loans;
- k. energy assistance;
- l. foster care payments;
- m. Housing and Urban Development (HUD) block grant funds, payments, or subsidies;
- n. in-kind support and maintenance;
- o. loans;
- p. income from nutritional programs;
- q. income from radiation exposure;
- r. relocation assistance;
- s. scholarships, awards or fellowship grants used for education purposes and not for living expenses;
- t. Supplemental Security Income (SSI);
- u. vendor payments;
- v. veterans' benefits;

w. Women, Infants and Children Program (WIC)

benefits;

x. work-study program income;

y. worker's compensation benefits; and

z. cash contributions. Money which is

contributed by the absent parent of a child in the assistance unit is considered child support and not counted. Small, non-recurring monetary gifts (e.g., Christmas, birthday, or graduation gifts) are not counted. Cash contributions include any money other than loans received by or for a member of the income unit if:

i. the use is left to the discretion of the member of the income unit; or

ii. the contribution is provided for the specific purpose of meeting the maintenance needs of a member of the assistance unit.

B. Financial eligibility for the MAGI groups shall be made using income received in the calendar month prior to the month of application or renewal as an indicator of anticipated income. The taxable gross income of each member of the MAGI household shall be used. Income eligibility of the household shall be based on anticipated income and circumstances unless it is discovered that there are factors that will affect income currently or in future months.

1. Income eligibility is determined by prospective income budgeting or actual income budgeting.

a. Prospective income budgeting involves looking at past income to determine anticipated future income. Income earned in the calendar month prior to the month of application or renewal which the applicant/enrollee earned shall be used to determine expected income in the current and future months.

b. Actual income budgeting involves looking at income actually received within a specific month to determine income eligibility for that month. Actual income shall be used for all retroactive coverage. Actual income or the best estimate of anticipated actual income shall be used if:

i. the income terminates during the month;  
ii. the income begins during the month; or  
iii. the income is interrupted during the month.

2. Income of a Tax Dependent. The earned income of a tax dependent including a child shall be counted when calculating the financial eligibility of a tax filer when the earned income meets the tax filing threshold. The unearned income of a tax dependent, including a child, shall be used when calculating MAGI based financial eligibility regardless of tax filing status (e.g., RSDI).

a. Cash contributions to a dependent shall be counted towards the dependent.

3. Allowable Tax Deductions for MAGI. The following deductions from an individual's income shall be used to determine the individual's adjusted gross income:

- a. educator expenses;
- b. certain business expenses of reservists, performing artists and fee basis government offices;
- c. health savings account deductions;
- d. moving expenses;
- e. the deductible part of self-employment tax;
- f. self-employed SEP, SIMPLE and qualified plans;
- g. self-employed health insurance deduction;
- h. the penalty on early withdrawal of savings;
- i. alimony paid outside the home;
- j. IRA deductions;
- k. student loan interest deduction;
- l. tuition and fees; and
- m. domestic production activities deductions.

4. A 5 percent disregard shall be allowed on MAGI budgets when it is the difference between eligibility or ineligibility for the individual in a child related program.

5. The net countable income for the individual's household shall be compared to the applicable income standard for the household size to determine eligibility.

a. If the countable income is below the income standard for the applicable MAGI group, the individual is income eligible.

b. If the countable income is above the income standard for the applicable MAGI group, the individual is income ineligible.

C. Federal Poverty Income Guidelines (FPIG). Eligibility shall be based upon the following guidelines using the Federal Poverty Income Guidelines and adjusted to account for the 5 percent disregard:

1. parents/caretakers, income is less or equal to 24 percent FPIG;

2. pregnant women, income is less or equal to 138 percent FPIG;

3. CHAMP (Children 0-18), income is less or equal to 147 percent FPIG;

4. LaCHIP, income is less or equal to 217 percent FPIG;

5. LaCHIP IV (Unborn Option), income is less or equal to 214 percent FPIG; and

6. LaCHIP Affordable Plan, income does not exceed 255 percent FPIG.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

## **Chapter 107. Resources**

### **§10705. Resource Disregards**

A. - C.2. ...

D. Modified Adjusted Gross Income (MAGI) Groups.

Resources will be disregarded for those groups using the MAGI determinations methodology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2867 (December 2010), LR 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this Emergency Rule. A copy

of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert

Secretary