

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Administration and Financial Management

4 (Amendment)

5 907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibil-
6 ity.

7 RELATES TO: KRS 205.520, 42 C.F.R. 435.530, 435.531, 435.540, 435.541,
8 435.914, 435.916, 42 U.S.C. 416, 1382, 1396a, b, d, Public Law 109-171

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42
10 U.S.C. 1396a[, ~~EO 2004-726~~]

11 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9,~~
12 ~~2004, reorganized the Cabinet for Health Services and placed the Department for Medi-~~
13 ~~caid Services and the Medicaid Program under the Cabinet for Health and Family Ser-~~
14 ~~vices.] The Cabinet for Health and Family Services, Department for Medicaid Ser-~~
15 ~~vices has responsibility to administer the Medicaid Program. KRS 205.520(3) author-~~
16 ~~izes the cabinet, by administrative regulation, to comply with a requirement that may~~
17 ~~be imposed or opportunity presented by federal law for the provision of medical as-~~
18 ~~sistance to Kentucky's indigent citizenry. This administrative regulation establishes~~
19 ~~provisions relating to determining initial and continuing eligibility for assistance under~~
20 ~~the Medicaid Program. The amendment establishes Medicaid eligibility for SSI re-~~
21 ~~ipients under age twenty-one (21) as mandated by Public Law 109-171.~~

1 Section 1. Definition.

2 (1) "Department" means the Department for Medicaid Services or its designee.

3 (2) "First month of SSI payment" means the first month for which an SSI-related
4 Medicaid recipient is determined to be eligible for SSI payments.

5 (3) "Partnership" means an entity that meets the criteria as established in 907
6 KAR 1:705, Demonstration project: services provided through regional managed care
7 partnerships (1115 Waiver), Section 5, and under contract with the department in ac-
8 cordance with KRS Chapter 45A, agrees to provide, or arrange for the provision of,
9 health services to members on the basis of prepaid capitation payments.

10 Section 2. Eligibility Determination Process.

11 (1)(a) Except as provided in subsection (3) or (5) of this section, eligibility shall be
12 determined prospectively.

13 (b) To receive or continue to receive assistance, a household shall meet technical
14 and financial eligibility criteria:

15 1. Pursuant to this section;

16 2. Pursuant to ~~and~~ Section 3 of this administrative regulation; and

17 3. As established in the following administrative regulations for the appropriate
18 month of coverage:

19 a. 907 KAR 1:011, Technical eligibility requirements;

20 b. 907 KAR 1:640, Income standards for Medicaid; and

21 c. 907 KAR 1:645, Resource standards for Medicaid [~~for the appropriate month of~~
22 ~~coverage~~].

23 (2) A decision regarding eligibility or ineligibility for Medicaid shall be supported by

1 facts recorded in the case record.

2 (a) The applicant or recipient shall be the primary source of information and shall:

3 1. Furnish verification of financial and technical eligibility as required by the follow-
4 ing administrative regulations:

5 a. 907 KAR 1:011, Technical eligibility requirements;

6 b. 907 KAR 1:640, Income standards for Medicaid; and

7 c. 907 KAR 1:645, Resource standards for Medicaid; and

8 2. Give written consent to those contacts necessary to verify or clarify a factor per-
9 tinent to the decision of eligibility.

10 (b)1. The department may schedule an appointment with an applicant or recipient
11 to receive specified information as proof of eligibility.

12 2. Failure to appear for the scheduled appointment or to furnish the requested in-
13 formation shall be considered a failure to present adequate proof of eligibility if the
14 applicant or recipient was informed in writing of the scheduled appointment and the
15 required information.

16 (3) Retroactive eligibility for Medicaid not related to the receipt of SSI shall be ef-
17 fective no earlier than the third month prior to the month of application if:

18 (a) A Medicaid service was received;

19 (b) Technical and financial eligibility requirements were met as established in the
20 following administrative regulations:

21 1. 907 KAR 1:011, Technical eligibility requirements;

22 2. 907 KAR 1:640, Income standards for Medicaid; and

23 3. 907 KAR 1:645, Resource standards for Medicaid; and

1 (c)1. The applicant resides in a nonpartnership county; or

2 2. The applicant resides in a county served by a partnership and meets one (1) of
3 the excluded categories as established in 907 KAR 1:705, Demonstration project: ser-
4 vices provided through regional managed care partnerships (1115 Waiver).

5 (4) Eligibility for qualified Medicare beneficiary (QMB) coverage shall be effective
6 the month after the month of case approval if technical and financial eligibility re-
7 quirements were met as established in the following administrative regulations:

8 (a) 907 KAR 1:011, Technical eligibility requirements;

9 (b) 907 KAR 1:640, Income standards for Medicaid; and

10 (c) 907 KAR 1:645, Resource standards for Medicaid.

11 (5)(a) Retroactive eligibility for specified low-income Medicare beneficiary (SLMB)
12 benefits, Medicare qualified individuals (QI) benefits or qualified disabled working in-
13 dividuals shall be effective no earlier than the third month prior to the month of appli-
14 cation if an individual meets technical and financial eligibility requirements as estab-
15 lished in the following administrative regulations:

16 1. 907 KAR 1:011, Technical eligibility requirements;

17 2. 907 KAR 1:640, Income standards for Medicaid; and

18 3. 907 KAR 1:645, Resource standards for Medicaid.

19 (b) Retroactive eligibility for a qualified individual shall not include months of a
20 prior year.

21 (6) An SSI-related recipient age twenty-one (21) or older, in accordance with
22 HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97,
23 shall be eligible for Medicaid benefits effective the month prior to the first month of

1 SSI payment if he:

2 (a) Resides in a partnership county; and

3 (b) Meets Medicaid eligibility requirements for that month.

4 (7) An SSI-related recipient age twenty-one (21) or older, in accordance with
5 HCFA Program Issuance Transmittal Notice, Region IV, May 7, 1997, MCD-014-97,
6 shall be retroactively eligible for Medicaid benefits effective no earlier than the third
7 month prior to the first month of SSI payment if he:

8 (a)1. Resides in a nonpartnership county; and

9 2. Meets Medicaid eligibility requirements for these months; or

10 (b)1. Resides in a partnership county; and

11 2. Meets the requirements for one (1) of the excluded categories established in
12 907 KAR 1:705, Demonstration project: services provided through regional managed
13 care partnerships (1115 Waiver).

14 (8) For an SSI recipient under age twenty-one (21), Medicaid coverage:

15 (a) Automatically begins with the month prior to the first month of SSI payment; and

16 (b) Is available for the three (3) preceding months if the recipient meets Medicaid eli-
17 gibility requirements for those three months.

18 Section 3. Continuing Eligibility.

19 (1) A [~~The~~] recipient shall be responsible for reporting within ten (10) days a
20 change in circumstances which may affect eligibility. In addition, eligibility shall be
21 redetermined:

22 (a) Every twelve (12) months; or

23 (b) If a report is received or information is obtained about a change in circum-

1 stances.

2 (2) Pursuant to the waiver granted by the Secretary, United States Department of
3 Health and Human Services, and promulgated as 907 KAR 1:705, Demonstration pro-
4 ject: services provided through regional managed care partnerships (1115 Waiver, a re-
5 cipient shall have a one (1) time guarantee of six (6) months of eligibility regardless
6 of a loss of technical eligibility for Medicaid during that six (6) month time period if the
7 recipient:

8 (a) Resides in a county included in a partnership;

9 (b) Did not meet one (1) of the excluded categories established in 907 KAR 1:705,
10 Demonstration project: services provided through regional managed care partnerships
11 (1115 Waiver);

12 (c) Did not receive Medicaid in any of the twelve (12) months preceding participa-
13 tion in a partnership;

14 (d) Participated in a partnership for less than six (6) months;

15 (e) Continued to reside in a partnership region during the guaranteed six (6) month
16 eligibility period; and

17 (f) Is not an:

18 1. Incarcerated recipient;

19 2. Alien who is eligible for emergency Medicaid; or

20 3. A recipient requesting discontinuance of Medicaid.

21 Section 4. Determination of Incapacity or Permanent and Total Disability.

22 (1) Except as provided in subsections (2) and (3) of this section, a determination
23 that a parent with whom the needy child lives is incapacitated, or that the individual

1 requesting Medicaid due to disability is both permanently and totally disabled, shall
2 be made by the medical review team following review of both medical and social re-
3 ports.

4 (2) A parent shall be considered incapacitated without a determination from the
5 medical review team if:

6 (a) The parent declares physical inability to work;

7 (b) The worker observes some physical or mental limitation; and

8 (c) The parent:

9 1. Is receiving supplemental security income (SSI);

10 2. Is age sixty-five (65) or over;

11 3. Has been determined to meet the definition of blindness or permanent and total
12 disability as contained in 42 U.S.C. 1382 or 416 by either the Social Security Admini-
13 stration or the medical review team;

14 4. Has previously been determined to be incapacitated or permanently and totally
15 disabled by the medical review team, hearing officer, appeal board, or court of proper
16 jurisdiction without a reexamination requested and there is no visible improvement in
17 condition;

18 5. Is receiving retirement, survivors, and disability insurance (RSDI) benefits, fed-
19 eral black lung benefits, or railroad retirement benefits based on disability as evi-
20 denced by an award letter;

21 6. Is receiving Veterans Administration (VA) benefits based on 100 percent disabil-
22 ity, as verified by an award letter; or

23 7. Is currently hospitalized and a statement from the attending physician indicates

1 that incapacity will continue for at least thirty (30) days. If application was made prior
2 to the admission, the physician shall indicate if incapacity existed as of the applica-
3 tion date.

4 (3) An individual shall be considered permanently and totally disabled without a
5 determination from the medical review team if the individual:

6 (a) Receives RSDI or railroad retirement benefits based on disability;

7 (b) Received SSI based on disability during a portion of the twelve (12) months
8 preceding the application month and discontinuance was due to income or re-
9 sources, not to improvement in physical condition;

10 (c) Has been determined to meet the definition of blindness or permanent and total
11 disability as contained in 42 U.S.C. 416 or 1382 by the Social Security Administra-
12 tion; or

13 (d) Has previously been determined to be permanently and totally disabled by the
14 medical review team, hearing officer, appeal board, or court of proper jurisdiction
15 without a reexamination requested and there is no visible improvement in condition.

16 (4)(a) A child who was receiving supplemental security income benefits on August
17 22, 1996 and who, but for the change in definition of childhood disability established
18 by 42 U.S.C. 1396a(a)(10) would continue to receive SSI, shall continue to meet the
19 Medicaid definition of disability.

20 (b) If a redetermination is necessary, [~~and in accordance with 921 KAR 5:470,~~] the
21 definition of childhood disability effective on August 22, 1996 shall be used.

22 Section 5. Disqualification. An adult individual shall be disqualified from receiving
23 Medicaid for a specified period of time if the department or a court determines the

1 individual has committed an intentional program violation in accordance with 907
2 KAR 1:675, Program Integrity.

3 Section 6. Incorporation by Reference.

4 (1) "HCFA Program Issuance Transmittal Notice Region IV", May 7, 1997, MCD-
5 014-97, is incorporated by reference.

6 (2) This material may be inspected, copied, or obtained at the Department for Medi-
7 caid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Fri-
8 day, 8 a.m. to 4:30 p.m.

907 KAR 1:605

REVIEWED:

Date

Glenn Jennings, Commissioner
Department for Medicaid Services

APPROVED:

Date

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

907 KAR 1:605

A public hearing on this administrative regulation shall, if requested, be held on October 22, 2007 at 9:00 a.m. in the Cafeteria on the first floor of the Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 15, 2007, 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. The hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 31, 2007. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:605
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502-564-6204)

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes provisions relating to the determination of initial and continuing eligibility for assistance under the Medicaid program.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions relating to the determination of initial and continuing eligibility for assistance under the Medicaid program.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in the authorizing statutes by establishing provisions relating to the determination of initial and continuing eligibility for assistance under the Medicaid program.
 - (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 the determination of initial and continuing eligibility for assistance under the Medicaid program.

- (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 purpose of this amendment is to incorporate the mandatory provision under §1902(a)(10)(A)(i)(II) of the Social Security Act as amended by Section 6065 of Public Law 109-171 also known as The Deficit Reduction Act of 2005. Prior to the effective date of Section 6065 of Public Law 109-171, Medicaid eligibility for Supplemental Security Income (SSI) recipients was effective the month of application or the first month of eligibility. Where retroactive eligibility was applicable, such eligibility was counted backwards for up to three months from the first month of SSI payment. SSI payment begins the month after application for SSI or the first month after eligibility criteria are met to receive SSI. The first month of Medicaid eligibility in Kentucky was referred to as the "gap" month. Prior to enactment of Section 6065 of Public Law 109-171, states had not been required to begin Medicaid eligibility for the "gap" month.

Section 6065 of Public Law 109-171 eliminated the "gap" month to deem individuals under twenty-one (21) found eligible for and receiving SSI payment to be receiving SSI without regard to the delay imposed under section 1611(c)(7) of the Social Security Act. Therefore, an SSI recipient under age twenty-one (21) becomes Medicaid eligible in the month before the first month of SSI payment,

rather than the month of SSI payment. Effective February 8, 2007, SSI recipients must be eligible for Medicaid beginning with the "gap" month. When computing retroactive Medicaid eligibility, SSI recipients under twenty-one (21) will have retroactive Medicaid eligibility counted backwards for up to three months from the "gap" month rather than the first month of SSI payment. In all other respects, retroactive Medicaid eligibility will be computed in accordance with the policy the state employs for all other SSI recipients. Additionally, the amendments include wording or related changes to ensure conformity with KRS 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement Section 6065 of Public Law 109.171.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of Section 6065 of Public Law 109-171.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by implementing the provisions of Section 6065 of Public Law 109-171.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect those SSI recipients who are less than twenty-one (21) years of age, applying for retroactive Medicaid.
- (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: This amendment conforms to the content of Public Law 109-171. The regulated entities identified in question (3) will not be required to take additional action in order to comply with this amendment.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Compliance with this amendment will not result in any costs to the entities identified in question (3).
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The anticipated public benefit of enforcing the proposed amendments is a potential increased month of coverage for those SSI recipients, who are less than 21 years of age, applying for retroactive Medicaid.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: One additional month of Medicaid coverage for SSI recipients who are less than twenty-one (21) years of age has no significant fiscal impact on the Department for Medicaid Services (DMS).
 - (b) On a continuing basis: One additional month of Medicaid coverage for SSI recipients who are less than twenty-one (21) years of age has no significant fiscal impact on DMS.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund 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 amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was applied in that the amendment, as established by Public Law 109-171, only applies to individuals under age twenty-one (21).

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 1:605 Agency Contact: Stuart Owen (502-564-6204)

1. Federal statute or regulation constituting the federal mandate.

§1902(a)(10)(A)(i)(II) of the Social Security Act as amended by Section 6065 of Public Law 109-171, the Deficit Reduction Act of 2005.

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.

3. Minimum or uniform standards contained in the federal mandate.

Section 6065 of Public Law No. 109.171 provides that Medicaid eligibility for children under age twenty-one (21) will occur on the latter of the date of application or the date SSI eligibility is granted. This provision eliminates the requirement that the child wait until the beginning of the following month.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation does not set stricter requirements.

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

No additional standard or responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 1:605

Contact Person:

Stuart Owen
(564-6204)

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?

Yes X No _____
If yes, complete 2-4.

2. 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? This amendment will affect those SSI recipients who are less than twenty-one (21) years of age, applying for retroactive Medicaid.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by §1902(a)(10)(A)(i)(II) of the Social Security Act (SSA) as amended by Section 6065 of Public Law 109-171.
4. 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? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.
 - (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? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.
 - (c) How much will it cost to administer this program for the first year? One additional month of Medicaid coverage for SSI recipients who are less than twenty-one (21) years of age has no significant fiscal impact.
 - (d) How much will it cost to administer this program for subsequent years? One additional month of Medicaid coverage for SSI recipients who are less than twenty-one (21) years of age has no significant fiscal impact.

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: