CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Administration and Financial Management

(Amended After Comments)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520, 341.360, 42 C.F.R. 435, 403, 45 C.F.R. 233.100, 8 U.S.C. 1101, 1153(a)(7), 1157, 1158, 1182(d)(5), 1231(b)(3), 1253(h), 1522, 1612, 1613, 1622, 1641, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A, 42 U.S.C. 402, 416, 423, 1382c, 1383c, 1395i, 1396a, Public Law 109-171

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6481-205.6497, 42 U.S.C. 1397aa

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid Program.

Section 1. Definitions.

(1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Child" means a person who:

(a)1.a. Is under the age of eighteen (18); or

b. Is under age nineteen (19) if the person is:

(i) A full-time student in a secondary school or the equivalent level of vocational or technical training; and

(ii) Expected to complete the program before age nineteen (19);

2. Is not self-supporting;

3. Is not a member of the Armed Forces of the United States; and

4. If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative; or

(b) Has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1).

(3) "Evidence of identity" means:

(a) A current state driver's license or state identity document bearing the individual's picture;

(b) A certificate of Indian Blood or other United States American Indian or Alaska Native tribal document; or

(c) For children who are age sixteen (16) or younger:

1. A school identification card with a photograph;

2. A military dependent's identification card if it contains a photograph;

3. A school record that shows the:

a. Date and place of birth; and

b. Parent or parents' name;

4. A clinic, doctor, or hospital record showing date of birth;

5. A daycare or nursery school record showing date and place of birth; or

6. An affidavit signed under penalty of perjury by a parent or guardian attesting to the child's identity.

(4) [~~(2)~~] "Kentucky Transitional Assistance Program" or "(K-TAP)" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(5) [~~(3)~~] "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married; and

(c) Has a minor child in his care.

(6) "Satisfactory documentary evidence of citizenship or nationality" means:

(a) A United States passport;

(b) A Certificate of Naturalization (DHS Form N-550 or N-570);

(c) A Certificate of United States Citizenship (DHS Form N-560 or N-561);

(d) One (1) of the following documents submitted with evidence of identity if a document identified in paragraph (a) through (c) of this subsection is not available or

cannot be obtained:

1. A United States birth certificate;

2. A Certification of birth issued by the Department of State (Form DS-1350);

3. A Report of Birth Abroad of a Citizen of the United States (Form FS-240);

4. A Certification of Birth Abroad (FS-545);

5. A United States Citizen Identification Card (DHS Form I-197);

6. An American Indian Card (I-872);

7. A final adoption decree;

8. Evidence of civil service employment by the United States government before June 1976;

9. An official military record of service showing a United States place of birth; or

(e) One (1) of the following documents submitted with evidence of identity if a document identified in paragraph (a) through (d) of this subsection is not available or cannot be obtained:

1. An extract of a United States hospital record of birth that:

a. Was established at the time of a person's birth;

b. Was created at least five (5) years before the initial application date; and

c. Indicates a United States place of birth; or

2. A life, health, or other insurance record that:

a. Shows a United States place of birth; and

b. Was created at least five (5) years before the initial application date; or

(f) One (1) of the following documents submitted with evidence of identity if a document identified in paragraph (a) through (e) of this subsection is not available or

cannot be obtained, the applicant alleges citizenship, and nothing exists to indicate the person is not a citizen:

1. Federal or state census record showing:

a. United States citizenship; or

b. A United States place of birth;

2. Institutional admission papers that:

a. Are from a nursing facility, skilled nursing facility, or other institution;

b. Were created at least five (5) years before the initial application date; and

c. Indicate a United States place of birth;

3. Medical record that:

a. Was created at least five (5) years before the initial application date; and

b. Indicates a United States place of birth unless the application is for a child under age five (5); or

4. Written affidavit by at least two (2) individuals:

a. Of whom one (1) is not related to the applicant;

b. Who have personal knowledge of the event establishing the applicant's claim of citizenship; and

c. Provide proof of their own citizenship and identity.

(7) [~~(4)~~] "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in Section 5(12) of this administrative regulation.

(8) [~~(5)~~] "Veteran" is defined in 38 U.S.C. 101(2).

Section 2. The Categorically Needy.

(1) An individual receiving Title IV-E benefits, Supplemental Security Income, Optional or Mandatory State Supplementation shall be eligible for Medicaid as a categorically-needy individual.

(2) The following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation:

(a) A child in a foster family care or private nonprofit child-caring institution dependent in whole or in part on a governmental or private agency;

(b) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(c) A pregnant woman;

(d) A child of unemployed parents;

(e) A child in a subsidized adoption dependent in whole or in part on a governmental agency;

(f) A child (but not his parents) who:

1. Would have been financially eligible for Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996; and

2. Meets the definition of Section 1(1) of this administrative regulation;

(g) A qualified severely impaired individual as specified in 42 U.S.C. 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(h) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in his child's insurance benefits based on disability as specified in 42 U.S.C. 1383c;

(i) An individual specified in 42 U.S.C. 1383c who:

1. Loses SSI or state supplementation payments as a result of receipt of benefits pursuant to 42 U.S.C. 402(e) or (f);

2. Would be eligible for SSI or SSP except for these benefits; and

3. Is not entitled to hospital insurance benefits under the Medicare Program;

(j) A disabled widow, widower or disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, or disability insurance (OASDI) benefit resulting from a change in the definition of disability;

(k) A child who:

1. Was receiving supplemental security income on August 22, 1996; and

2. Except for the change in definition of childhood disability would continue to receive supplemental security income; or

(l) A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

(3) The classifications of needy persons listed in this subsection shall be included in the program as categorically-needy and thus eligible for Medicaid participation as limited by the provisions of this subsection.

(a) A family which correctly received Medicaid for three (3) of the last six (6) calendar months and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.

(b) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards shall be eligible for up to twelve (12) months of extended Medicaid.

(c) A child born to a woman eligible for and receiving Medicaid shall be eligible for Medicaid as of the date of his birth if:

1. The child:

a. Has not reached his first birthday; and

b. Resides in the household of the woman; and

2. The woman remains, or would remain if pregnant, eligible for the assistance.

(d)1. Except as provided in subparagraph 3 of this paragraph, an individual in an institution meeting appropriate patient status criteria who, if not institutionalized, would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

2. Except as provided in subparagraph 3 of this paragraph, eligibility for a similar hospice participant or similar participant in a waiver project of home and community based services for the mentally retarded or the aged, blind or disabled shall be determined using the method established in subparagraph 1 of this subsection.

3. Eligibility of an institutionalized individual in an intermediate care facility for the mentally retarded and developmentally disabled (ICF/MR/DD) or supports for community living (SCL) for an individual with mental retardation or a developmental disability waiver meeting appropriate patient status criteria whose gross income

exceeds 300 percent of the SSI benefit amount shall be determined by comparing the cost of the individual's care to the individual's income.

(e) A woman during pregnancy, and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy, or a child under six (6) years of age, as specified in 42 U.S.C. 1396a(l)(1), shall meet the income requirements for this eligibility group as specified in 907 KAR 1:640.

(f) If an eligible child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the child remains otherwise eligible except for age.

(g) A child who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 U.S.C. 1396a(l)(1) shall meet income requirements established in 907 KAR 1:640, Section 2(2)(c).

(h) If federal Medicaid-matching funds are available to cover the costs of the program, an optional targeted low-income child as established in 907 KAR 4:020, Section 2(1) who has not attained the age of nineteen (19) years as specified in 42 U.S.C. 1396a(l)(1) shall meet the income requirements established in 907 KAR 1:640, Section 2(2)(f).

Section 3. The Medically Needy.

(1) An individual including a child pursuant to Section 2(2)(f) of this administrative regulation or a pregnant woman who has sufficient income to meet his basic maintenance needs may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 1:640 through 907 KAR

1:665 if he meets:

(a) The income and resource standards of the medically needy program established in 907 KAR 1:640 and 907 KAR 1:645; and

(b) The technical requirements of the appropriate categorically needy group identified in Section 2 of this administrative regulation.

(2) The medically needy eligible groups shall include:

(a) A pregnant woman during the course of her pregnancy; and

(b) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, and who shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled Working Individuals, Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI).

(1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907 KAR 1:645, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary shall:

(a) Be eligible for and receiving Medicare Part A benefits;

(b) Be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made; and

(c) Not be eligible for benefits as a qualified Medicare beneficiary eligible individual:

1. Retroactively; or

2. For the month in which the determination was made.

(2) A qualified disabled and working individual as defined in 42 U.S.C. 1396d(s) shall be eligible under Medicaid for payment of his Medicare Part A premiums as established in 907 KAR 1:006.

(3) A specified low-income Medicare beneficiary as defined in 42 U.S.C. 1396a(a)(10)(E)(iii) shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) A Medicare qualified individual group 1 (QI-1) as established in 42 U.S.C. 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for a family or individual included as categorically needy under Section 2 of this administrative regulation or as medically needy under Section 3 of this administrative regulation shall be:

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation institution shall meet the definition in Section 1(1) of this administrative regulation;

(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy;

(3) At the time of application, unemployment relating to eligibility of both parents and children shall be determined using the following criteria:

(a)1. Employment of less than 100 hours per month, except that the hours may

exceed that standard for a particular month if:

a. The work is intermittent; and

b. The excess is of a temporary nature as evidenced by the fact that the individual:

(i) Was under the 100 hour standard for the prior two (2) months; and

(ii) Is expected to be under the standard during the next month;

2. Within twelve (12) months prior to application, a parent received unemployment compensation; or

3. A parent is receiving or has been found ineligible for unemployment compensation; and

(b) A parent shall not have refused suitable employment without good cause as determined in accordance with 45 C.F.R. 233.100(a)(3)(ii);

(4) Subsection (3)(a) of this section shall not apply if a change is made in a Medicaid case or if a case is recertified;

(5) An aged individual shall be at least sixty-five (65) years of age;

(6) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to retirement, survivors, and disability insurance (RSDI) or supplemental security income (SSI);

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI;

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance

unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. The family shall meet the eligibility and reporting requirements for each transitional benefit period established in this subsection.

(a) The first transitional six (6) month benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Report earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b)1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall:

a. Have received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Have gross income minus child care cost equaling less than 185 percent of the federal poverty income level;

d. Report earnings and child care costs no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months, have a caretaker relative who shall have been:

(i) Employed; or

(ii) If unemployed in one (1) or more months, unemployed due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid Program in accordance with paragraph (c) of this subsection.

2. If a family no longer has a dependent child living in the home, Medicaid shall be terminated the last day of the month the family no longer includes a dependent child.

3. If the family's income exceeds the income standard or the family does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid Program in accordance with paragraph (c) of this subsection, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form;

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

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children Program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin;

10. A relative of the half-blood;

11. A preceding generation denoted by a prefix of:

a. Grand;

b. Great; or

c. Great-great; or

12. A stepfather, stepmother, stepbrother, or stepsister;

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, to cover medical expenditures during the terminal illness;

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes;

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be:

1.a. A citizen of the United States <u>as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility. The Cabinet:</u>

<u>(i) Shall exempt an applicant or recipient who receives Medicare or SSI from providing further documentation of citizenship or nationality;</u>

<u>(ii) Shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf; and</u>

<u>(iii) May use a cross match with the Cabinet's Office of Vital Statistics to document a birth record or use a cross match with a federal or state governmental, public assistance, law enforcement or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individuals</u>;

b. Except as provided in paragraph (b) of this subsection, a qualified alien who

entered the United States before August 22, 1996 and is:

(i) Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

(ii) Granted asylum pursuant to 8 U.S.C. 1158;

(iii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iv) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

(v) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

(vi) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

(vii) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

(viii) A battered alien pursuant to 8 U.S.C. 1641(c);

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

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

(xi) The spouse or unmarried dependent child of an individual described in subclause (ix) or (x) of this clause or the unremarried surviving spouse of an individual described in subclause (ix) or (x) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

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

c. A qualified alien who entered the United States on or after August 22, 1996 and is:

(i) Granted asylum pursuant to 8 U.S.C. 1158;

(ii) A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

(iii) An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h) as in effect prior to April 1, 1997 or 8 U.S.C. 1231(b)(3);

(iv) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;

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

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

(vii) The spouse or unmarried dependent child of an individual described in subclause (v) or (vi) of this clause or the unremarried surviving spouse of an individual described in subclause (v) or (vi) of this clause if the marriage fulfills the requirements established in 38 U.S.C. 1304;

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

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

2. A resident of Kentucky meeting the conditions for determining state residency under 42 C.F.R. 435.403.

(b) A qualified or nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. [~~The alien shall be qualified as a categorically needy recipient;~~

~~2.~~] The alien shall meet the income, resource and categorical requirements of the Medicaid Program;

2. [~~3.~~] The alien shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition not related to an organ transplant procedure, which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. [~~4.~~] Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. [~~5.~~] The Medicaid benefits to which the alien is entitled shall be limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien;

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care partnership.

(a) Except as provided in paragraphs (b) and (c) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month of application.

(c) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met;

(14) Benefits shall be denied to a family for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees;

(15) A caretaker relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed; and

(16) A caretaker relative, but not a child, who is ineligible for K-TAP benefits for failure to comply with K-TAP work requirements shall not be eligible for medical assistance unless the individual is eligible as a pregnant woman.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid if the individual is a:

(1) Resident or inmate of a nonmedical public institution;

(2) Patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) Patient in a mental hospital or psychiatric facility unless the individual is:

(a) Under age twenty-one (21);

(b) Under age twenty-two (22) if he was receiving inpatient services on his 21st birthday; or

(c) Sixty-five (65) years of age or over; or

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

Section 7. Emergency Shelters. An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall:

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits.

(1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement and disability benefit to which he is entitled, unless he

can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement and disability benefits shall include:

1. Veterans' compensations and pensions;

2. Retirement and survivors disability insurance benefits;

3. Railroad retirement benefits;

4. Unemployment compensation; and

5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and

(b) A potential applicant or recipient is not required to apply for the benefit if the applicant or recipient believes that applying for the benefit would be to his disadvantage.

(3) An individual who would be eligible for supplemental security income (SSI) but has not made application shall not be eligible for Medicaid.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health and Family Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third-party Liability as a Condition of Eligibility.

(1)(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the

Cabinet for Health and Family Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate.

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

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

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

3. May interfere with adoption considerations or proceedings.

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

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers.

(1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a social security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the parent or caretaker relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent child, the parent or caretaker relative shall be ineligible due to failure to meet technical requirements. The newborn

1 child or other dependent child shall be eligible for Medicaid if financial eligibility

2 requirements are met.

907 KAR 1:011
(Amended After Comments)

REVIEWED:

_____	_____
Date	Glenn Jennings, Commissioner Department for Medicaid Services
_____	_____
Date	Mike Burnside, Undersecretary Administrative and Fiscal Affairs

APPROVED:

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

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:011
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502-564-6204)

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the technical eligibility requirements of the Medicaid Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the technical eligibility requirements of 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 the technical eligibility requirements of 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 the technical eligibility requirements of 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: Section 6036 of the Deficit Reduction Act of 2005 (DRA), Improved Enforcement of Documentation Requirements, created a new subsection 1903(x) of the Social Security Act that requires individuals claiming U.S. citizenship to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid on or after July 1, 2006. Therefore, this amendment assures compliance with the DRA by requiring individuals to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid or during the next redetermination of continued eligibility.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement Section 6036 of the DRA.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of Public Law No. 109-171, DRA, Section 6036, which requires individuals (effective July 1, 2006) to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid or during the next redetermination of continued eligibility.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by requiring individuals to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid or during the next redetermination of continued eligibility.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all applicants for Medicaid benefits and current recipients who are now subject to the new federal rule that requires individuals to present satisfactory documentary evidence of citizenship or nationality in order to receive 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 will require all individuals to provide satisfactory documentary evidence of citizenship or nationality when initially applying for Medicaid or during the next redetermination of continued eligibility.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants and current recipients could experience costs associated with compliance such as cost to procure a birth certificate.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Requiring applicants and current recipients to provide satisfactory documentary evidence of citizenship or nationality is a federal rule by which Kentucky Medicaid must comply in order to continue receiving Federal Financial Participation (FFP) for Medicaid expenditures.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department for Medicaid Services (DMS) anticipates initial additional expenditures of approximately $300,000 ($150,000 state funds, $150,000 federal funds) resulting from systems modifications and member notifications of the new policies.
(b) On a continuing basis: DMS anticipates on-going additional expenditures of approximately $250,000 ($125,000 state funds; $125,000 federal funds) per year for additional staff time related to document verification during member initial enrollment and re-enrollment.

(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 the Social Security Act, Title XIX 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 or funding will be necessary to implement 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 not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 1:011 Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502-564-6204)

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 all applicants for Medicaid benefits and current recipients who are now subject to the new federal rule that requires individuals to present satisfactory documentary evidence of citizenship or nationality in order to receive Medicaid.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Section 6036 of the Deficit Reduction Act of 2005 (Public Law No. 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? Implementation of this amendment will not result in any additional costs during the first year.

   (d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years.

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: No additional expenditures are necessary to implement this amendment.