

**Title 10
DEPARTMENT OF
HEALTH AND MENTAL HYGIENE**

Subtitle 09 MEDICAL CARE PROGRAMS

Notice of Proposed Action

[09-396-P]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulations .07—.09 under **COMAR 10.09.11 Maryland Children's Health Program**;
- (2) Regulations .04 and .07 under **COMAR 10.09.24 Medical Assistance Eligibility**; and
- (3) Regulation .12 under **COMAR 10.09.60 Primary Adult Care Program—Eligibility**.

Statement of Purpose

The purpose of this action is to amend and clarify requirements specified in regulations relating to signatures required on an application, child care expenses, self-employment income disregards, and exclusions to income so that regulations are consistent with policy and procedures implemented as a result of : 1) the expansion of Medical Assistance (MA) eligibility coverage to families and children; and 2) exclusions to income included in Policy Alert No. 07-1 of the Maryland MA Eligibility Policy Manual.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499, or email to regs@dhhm.state.md.us, or fax to 410-333-7687. Comments will be accepted through January 19, 2010. A public hearing has not been scheduled.

10.09.24 Medical Assistance Eligibility

Authority: Health-General Article, §§2-104(b), 2-105(b), 15-103, 15-105,
and 15-121,
Annotated Code of Maryland

.04 Application.

A.—B. (text unchanged)

C. An individual requesting Medical Assistance shall be given an opportunity to apply. The Department or its designee shall make the application form available to the individual without delay. A resident temporarily absent from the State but intending to return may apply for assistance [by mail] to the Department or its designee [in the jurisdiction where the individual's residence is located]. The individual shall demonstrate continued residency in the State and shall meet all [technical] *nonfinancial* and financial requirements in order to be determined eligible.

D. A [written and] signed application is required for all persons for whom assistance is requested. If, after the completion of an eligibility determination, assistance is requested for additional family members, a [written and] signed application is required for those persons. The following exception to this requirement is that a child born to a mother eligible for and receiving Medical Assistance on the date of the child's birth shall be considered to have applied for Medical Assistance and to have been found eligible for Medical Assistance on the date of his birth and to remain eligible for Medical Assistance for a period of 1 year so long as he is a member of the mother's household and the mother remains eligible for Medical Assistance.

E. (text unchanged)

F. Application Filing and Signature Requirements.

(1) An individual who wishes to apply for Medical Assistance shall submit a [written and] signed application form to the Department or its designee. An applicant shall be responsible for the application but may be assisted in the completion by an individual of the applicant's choice.

(2) (text unchanged)

(3) For the purpose of establishing eligibility, the applicant [and, when living together, the spouse of the applicant] shall sign the application form. If [both] the applicant [and spouse are] *is* physically or mentally unable to sign the form, an authorized representative shall complete and sign it. In the case of a child applicant younger than [21] 18 years old, [the parents] *a parent* of the child shall sign the application form, except in the following situations:

(a) (text unchanged)

(b) An authorized representative who is [21] 18 years old or older shall complete and sign the application form for an unmarried child younger than 18 years old who is not living with a parent or caretaker relative other than the parent.

G. The date of application shall be the date on which a [written,] signed application is received by the Department or its designee.

H. An individual who has filed an application may voluntarily withdraw that application[. However]; *however*, the application form shall remain the property of the Department or its designee, and the withdrawal may not affect the

requirements for establishing periods under consideration specified in §I of this regulation or the penalty period associated with the transfer of a resource specified under Regulation .08J of this chapter.

I. (text unchanged)

J. Processing Applications—Time Limitations.

(1)—(2) (text unchanged)

(3) Information Required.

(a)—(b) (text unchanged)

(c) When an applicant completes the application form and requests coverage for:

(i) (text unchanged)

(ii) The retroactive period, verification of all elements of eligibility may be required for the retroactive period; *or*

(iii) (text unchanged)

(d) (text unchanged)

(4)—(6) (text unchanged)

(7) Disposition of Application Following a Decision of Ineligibility. If an applicant is determined ineligible for the current period under consideration:

(a) Due to a [technical] *nonfinancial* factor or excess resources, the application shall be disposed of and the application date may not be retained. If the applicant reapplies, the process and the period under consideration shall be established under §J(9) of this regulation.

(b)—(c) (text unchanged)

(8) Reactivation of an Application Following a Decision of Ineligibility for Reasons Other than [Technical] *Nonfinancial* Factors, Excess Resources, or Excess Income.

(a) A request for current eligibility following the rejection of an application for reasons other than [technical] *nonfinancial* factors, excess resources, or excess income shall be considered a reactivation of the appropriate earlier application.

(b)—(c) (text unchanged)

(9) Reapplication Following a Decision of Ineligibility Due to a [Technical] *Nonfinancial* Factor or Excess Resources.

(a) When an applicant reapplies following a decision of ineligibility due to a [technical] *nonfinancial* factor or excess resources, a new period under consideration shall be established based on the date a new application is filed. Coverage may not be provided for any month in which the applicant has not overcome the prior factor of ineligibility.

(b) The incurred medical expenses from a past period during which [technical] *nonfinancial* ineligibility or excess resources existed may be applied to excess income, if any, for the current period.

(10) (text unchanged)

K. Interview.

[(1) A face-to-face interview with the applicant may be required.]

[(2)] (1) [The Department or its designee] *A face-to-face interview* may [arrange for the face-to-face interview] *be conducted at the request of the applicant or the Department or its designee.*

[(3)] (2) If it is determined that a face-to-face interview is [required] *necessary*, the interview may be conducted with an individual other than the applicant in the following situations:

(a) When the Department or its designee [decides] *determines* that the [requirement cannot be met] *applicant cannot participate in the interview* because of unusual circumstances such as severely incapacitating disabilities, the interview shall be conducted with an authorized representative or individual acting responsibly on behalf of the applicant; *or*

(b) (text unchanged)

L. An applicant or recipient may be assisted by an individual or individuals of the applicant's or recipient's choice in the application process and may be accompanied by this individual or individuals [in contacts] *when in contact* with the Department or its designee.

M. Establishing Applicable Regulations.

(1)—(2) (text unchanged)

(3) Category Selection.

(a) A person may select any federal category for which [technical] *nonfinancial* eligibility may be established.

(b)—(d) (text unchanged)

N.—O. (text unchanged)

P. Social Security Number.

[(1) As a condition of eligibility, applicants and recipients shall furnish to the Department or its designee a Social Security card or cards, if more than one number has been issued, for each member of an assistance unit and any individual whose income and resources are considered in determining the financial eligibility of an assistance unit. If the applicant or recipient cannot furnish a Social Security card for each of these individuals, the applicant or recipient shall apply for a card. Assistance may not be denied, delayed, or discontinued pending the issuance or verification of the number if the applicant or recipient complies with the above.]

[(2)] (1) Eligibility may not be established until the applicant or recipient furnishes *or applies for* a Social Security [card] *number* for each member of an assistance unit, and any person whose income and resources are considered in determining the financial eligibility of an assistance unit[, or requests the assignment of the numbers through the Social Security Administration. A person may not be added to an assistance unit until a Social Security card has been applied for].

[(3) The Department or its designee shall obtain evidence from an applicant or recipient according to regulations contained in the Enumeration Manual issued by the Social Security Administration to establish the age, citizenship or alien status, and true identity of each individual who applies for a Social Security number.

(4) Failure to provide required verification documents will result in ineligibility for the person whose Social Security number has not been applied for.]

(2) Assistance may not be denied, delayed, or discontinued pending the issuance or verification of the number if the applicant or recipient complies with §P(1) of this regulation.

(3) An individual may not be added to an assistance unit until an application is completed for a Social Security number.

[(5)] (4) (text unchanged)

[(6) If the application indicates that a Social Security card was issued previously, the Department or its designee shall request validation of the number by the Social Security Administration.]

Q.—W. (text unchanged)

.07 Consideration of Income.

A. (text unchanged)

B. Definitions.

(1) (text unchanged)

(2) “Excludable income” means [incomes] *income* which is exempt from consideration as countable income.

[(3) “Federal Insurance Contribution Act” (FICA) means the amount withheld from wages by an employer or paid directly to the Internal Revenue Service by a self-employed person as a contribution to Social Security.]

[(4)] (3) (text unchanged)

[(5) “Nonpersonal business expenses” means the total cost of the production of the income excepting those expenses specified below:

(a) Payments for federal, State, and local income taxes;

(b) Federal Insurance Contribution Act (FICA).

(c) Cost of Transportation to and from Work.

(d) The cost of child care expense.]

C.—E. (text unchanged)

F. Current Eligibility. In considering income for current eligibility, the following rules apply:

(1) (text unchanged)

(2) When a person works for less than 12 months but receives an annual salary, is self-employed, or has irregular or seasonal earning, the amount to be considered is one-half the [amount which is available or can reasonably be expected to be available as annual income] *expected annual income based on the prior year's gross income*;

(3) (text unchanged)

G. (text unchanged)

H. Earned income includes the following:

(1)—(4) (text unchanged)

(5) Profit from self-employment *income, as described in §§L(3)(a) and M(2)(c)(i) of this regulation*. [Profit is determined by deducting nonpersonal business expenses from gross receipts.]

(6)—(9) (text unchanged)

I. Unearned income includes the following:

(1)—(7) (text unchanged)

(8) Lump sum benefits or other amounts of income received on a [a] one-time-only basis including gifts, inheritances, retroactive benefit payments, lottery winnings, damage claims unless specifically excluded by other regulations, or any other lump sums or portions of them that are not excluded under §J or [§K] K of this regulation.

(9) Profit from Rental Income *as described in §§L(3)(b) and M(2)(c)(ii) of this regulation*.

[a] Profit is the amount remaining after deducting the documented expenses of producing the income when the source of income is rental of a home or apartment not associated with the person's home, or other real property such as ground rents, lands, and garages.

(b) When the source of payment is from rental of real property in which the person lives, or the home from which a person is temporarily absent due to institutionalization, profit is determined as follows:

(i) The Home. Profit is determined by deducting from rental income the documented cost of utilities associated with renting the property.

(ii) Apartment. Profit is determined by deducting from rental income the documented cost of utilities associated with renting. Consolidated utilities will be apportioned among the number of independent units.

(iii) Room, Board, or Room and Board. Profit is 75 percent of total payment, unless otherwise documented.]

(10) (text unchanged)

(11) Grants, loans, scholarships, and fellowships for educational purposes, except as specified in [§J(1)(c) and (h)] §J(3) and (9) of this regulation.

(12)—(13) (text unchanged)

J. Excludable Income—Aged, Blind, or Disabled.

[1] Income from the following sources shall be excluded in determining countable gross income:

[(a)] (1) (text unchanged)

[(b)] (2) Payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq., *excluding* [Compensation] *compensation* received for the fair market value of the acquired real property [is not subject to this regulation].

[(c)] (3) (text unchanged)

(4) *Work-study earnings, work-study stipends, and reimbursement for out-of-pocket expenses of a student.*

[(d)] (5) (text unchanged)

[(e)] (6) Stipends, compensation, or expenses received by volunteers from a program existing or to be set up under the “Domestic Volunteer Service Act of 1973” sponsored by ACTION, such as but not limited to:

[(i)] (a)—[(viii)] (h) (text unchanged)

[(f)] (7)—[(g)] (8) (text unchanged)

[(h)] (9) Educational Expenses.

[(i)] (a) (text unchanged)

[(ii)] (b) These expenses may be allowed to the extent that there are insufficient funds from those grants and loans specified under [§J(1)(c)] §J(3) of this regulation to cover these expenses.

[(i)] (10) (text unchanged)

[(j)] (11) Payments received from providing foster care *or subsidized adoption services* to a child placed in the home by a public or private nonprofit child placement or child care agency.

[(k)] (12) (text unchanged)

[(l)] (13) The value of rent subsidies or other assistance received by a person for his dwelling unit under:

[(i)] (a)—[(iv)] (d) (text unchanged)

[(m)] (14) Infrequent or Irregular Earned Income. Infrequent or irregular earned income shall be excluded if:

[(i)] (a)—[(ii)] (b) (text unchanged)

[(n)] (15) Infrequent or Irregular Unearned Income. Infrequent or irregular unearned income shall be excluded if:

[(i)] (a) The total amount does not exceed [§60] \$200 per [quarter] 6 months; and

[(ii)] (b) (text unchanged)

(16) *The value of earned and unearned in-kind income.*

(17) *Third-party payments for food, clothing, shelter, or other goods and services made on behalf of an assistance unit or other persons whose income and resources are considered in determining eligibility, if the payment is not*

reimbursement for services rendered by a member of the assistance unit or other persons whose income and resources are considered.

(18) The Earned Income Tax Credit (EITC) a person receives through the Tax Reduction Act of 1973.

[(o)] (19)—[(p)] (20) (text unchanged)

[(2)] (21) (text unchanged)

[(3)] (22) Assistance, including any interest earned on the assistance, received under the Disaster Relief Act of 1974 (PL 93-288) or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States is not income but an excluded resource [in accordance with the provisions of Regulation .08G(8) of this chapter].

[(4)] (23) Support and Maintenance (In-Kind Income) Provided as Replacement for an Excluded Home Because of a Casualty Loss or a Presidentially Declared Major Disaster.

(a) When an excluded home is damaged or destroyed and temporary housing is furnished to a person who owned an excluded home, the in-kind support and maintenance is not counted as income. This temporary housing is intended to replace the home pending repair or replacement of the excluded home [pursuant to Regulation .08G(7) of this chapter].

(b) When an excluded home is damaged or destroyed as a result of a presidentially declared major disaster, the value of support and maintenance (in cash or in-kind) received by a person, or [person and spouse] couple, is excluded [for the time periods specified in Regulation .08G(8) of this chapter], if:

(i) The person, or [person and spouse] couple, was residing in the household as a home when a catastrophe occurred in the area in which the home was located;

(ii) (text unchanged)

(iii) The person, or [person and spouse] couple, stopped living in the home because of the catastrophe and, within 30 days after the catastrophe, began to receive the support and maintenance; and

(iv) The person, or [person and spouse] couple, received the support and maintenance while living in a residential facility, including a private home, maintained by another person.

[(5)] (24)—[(6)] (25) (text unchanged)

(26) Interest income accrued to a:

(a) Bank account during the period under consideration, such as a checking, savings, or money market account;

(b) Dedicated bank or other financial institution account that is considered an excludable resource because it is unavailable, such as an escrow account for a security deposit; or

(c) Keogh account, individual retirement account (IRA), or other private retirement account that is countable as a resource.

(27) Interest payments received for a mortgage, promissory note, or other loan.

(28) Refund of taxes on income, property, food, or other items already paid.

(29) *Proceeds of a loan received by an individual as the borrower.*

(30) *Payments received from a trust, if the trust is countable as a resource.*

(31) *Income from the sale of an assistance unit member's blood or plasma.*

(32) *Cash donations based on need received from one or more charitable organizations.*

(33) *All income excluded by federal statute for medical assistance programs.*

K. Excludable Income—Families and Children. Income from the following sources shall be excluded in determining countable gross income:

(1) (text unchanged)

(2) Payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §4601 et seq., *excluding compensation received for the fair market value of the acquired real property.*

(3) (text unchanged)

(4) Work-study earnings [and], work-study stipends [of a child], *and reimbursement for out-of-pocket expenses of a student.*

(5)—(7) (text unchanged)

(8) The value of *livestock and* home produce used for own consumption.

(9) (text unchanged)

(10) Payments received from providing foster care *or subsidized adoption services* to a child placed in the home by a public or private nonprofit child placement or child care agency.

(11)—(12) (text unchanged)

(13) Earnings of a person younger than 21 years old. This includes the following:

(a) *The earned income of each person younger than 18 years old;*

~~[(a)]~~ (b)—~~[(b)]~~ (c) (text unchanged)

(14) The value of *earned and* unearned in-kind income.

(15) *Infrequent or irregular earned income if:*

(a) *The total gross amount does not exceed \$30 per quarter; and*

(b) *It is received less frequently than twice per quarter or cannot be reasonably anticipated.*

(16) *Infrequent or irregular unearned income if:*

(a) *The total amount does not exceed \$200 per 6 months; and*

(b) It is received less frequently than twice per quarter or cannot be reasonably anticipated.

[(15)] (17) (text unchanged)

(18) The Earned Income Tax Credit (EITC) a person receives through the Tax Reduction Act of 1973.

(19) Assistance, including any interest earned on the assistance, received under the Disaster Relief Act of 1974 (PL 93-288) or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States.

(20) Support and maintenance (in-kind income) provided as replacement for an excluded home because of a casualty loss or a presidentially declared major disaster, such as:

(a) If an excluded home is damaged or destroyed, and temporary housing is furnished to a person who owned an excluded home, the temporary housing is in-kind support and maintenance intended to replace the home pending repair or replacement of the excluded home;

(b) If an excluded home is damaged or destroyed as a result of a Presidentially declared major disaster, the value of support and maintenance (in cash or in-kind) received by a person, or couple if:

(i) The person, or couple, was residing in the household as a home when a catastrophe occurred in the area in which the home was located;

(ii) The catastrophe was declared by the President to be a major disaster for purposes of the Disaster Relief Act of 1974;

(iii) The person, or couple, stopped living in the home because of the catastrophe and, within 30 days after the catastrophe, began to receive the support and maintenance; and

(iv) The person, or couple, received the support and maintenance while living in a residential facility, including a private home, maintained by another person.

(21) Income from the sale of an assistance unit member's blood or plasma.

(22) Cash, including interest earned on the cash, or in-kind replacement received from any source for purposes of repairing or replacing an excluded resource that is lost, damaged, or stolen.

(23) Reparation payments made by the Federal Republic of Germany.

(24) Cash donations based on need from one or more charitable organizations.

(25) Interest income accrued to a:

(a) Bank account during the period under consideration, such as a checking, savings, or money market account;

(b) Dedicated bank or other financial institution account that is considered an excludable resource because it is unavailable, such as an escrow account for a security deposit; or

(c) Keogh account, individual retirement account (IRA), or other private retirement account that is countable as a resource.

(26) Refund of taxes on income, property, food, or other items already paid.

(27) *Proceeds of a loan received by an individual as the borrower.*

(28) *Payments received from a trust, if the trust is countable as a resource.*

(29) *Interest payments received for a mortgage, promissory note, or other loan.*

(30) *All income excluded by federal statute for medical assistance programs.*

L. Disregards—Aged, Blind, or Disabled. In order to determine countable net income, the following disregards shall be deducted from the countable gross income of an aged, blind, or disabled assistance unit:

(1)—(2) (text unchanged)

(3) *A disregard of one-half of the gross income amount for the following types of income:*

(a) *Profit from self-employment income, unless an applicant or recipient can document a cost to produce in excess of the disregard of one-half of gross income; and*

(b) *Profit from rental property income and other income-producing property.*

~~[(3)] (4)—[(4)] (5)~~ (text unchanged)

M. Disregards—Families and Children.

(1) (text unchanged)

(2) ~~[(Earned)]~~ Income ~~[(Disregard)]~~ *Disregards*. The following disregards shall be deducted, in the following order, from the countable gross ~~[(earned)]~~ income of a families and children unit:

(a)—(b) (text unchanged)

(c) *A disregard of one-half of the gross income amount for the following types of income:*

(i) *Profit from self-employment income, unless an applicant or recipient can document a cost to produce in excess of the disregard of one-half of gross income; and*

(ii) *Profit from rental property income and other income-producing property.*

~~[(c)]~~ (d) (text unchanged)

~~[(d)]~~ (e) The ~~[(documented)]~~ *actual* amount of child care expenses not to exceed ~~[\$175]~~ \$200 monthly per child [(or, in the case of a child less than 2 years old, not to exceed \$200 monthly)] if employed at least 100 hours per month (\$100 monthly per child if employed less than 100 hours per month) paid to a person who is not a:

(i)—(ii) (text unchanged)

(3) (text unchanged)

(4) Disregard of Child Support and Alimony Paid to Dependents Not Living with the Family [by a Stepparent].

The actual amount of child support and alimony paid [by a person who is stepparent to a member of the assistance unit and lives with the unit] *to dependents not living with the assistance unit* shall be deducted from the [stepparent's total income if all of the following conditions are met:

- (a) The stepparent is not receiving or applying for Medical Assistance or Medical Assistance, State-Only;
- (b) The stepparent's income and resources are considered available to a member of the assistance unit under Regulation .06C(6)(a)(ii) of this chapter; and
- (c) The support or alimony is paid to dependents who are not living in the home] *assistance unit's countable net income*.

N. (text unchanged)