

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing**

**Medicaid Eligibility
Modified Adjusted Gross Income Groups
(LAC 50:III.10307)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:III.10307 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Affordable Care Act of 2010 (ACA) requires that eligibility for all Medicaid and Children's Health Insurance Program (CHIP) eligibility groups be calculated using a household's modified adjusted gross income (MAGI). Temporary census income is taxable as employment income and must now be counted when calculating household income for MAGI-based Medicaid and CHIP eligibility groups.

In compliance with the ACA, the Department of Health, Bureau of Health Services Financing now proposes to amend the provisions governing Medicaid eligibility for modified adjusted gross income (MAGI) groups and income factors in order to clarify and align these provisions with current Federal regulations.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility

Subpart 5. Financial Eligibility

Chapter 103. Income

§10307. Modified Adjusted Gross Income (MAGI) Groups

A. ~~MAGI-Related Types of Income~~ MAGI-based

1. ~~Alimony shall be counted as unearned income payments made directly to the household from non-household members~~ Income shall be calculated in accordance with 42 CFR §435.603 and §457.315.

2. ~~Alien sponsor's income shall be counted against the flat grant needs of the alien's household. If the income of the sponsor is equal to or greater than the flat grant amount for the number of people in the alien parent's family, the alien parent(s) is not eligible for inclusion in his children's Medicaid certification.~~

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

~~4. Capital gain or loss shall be countable income.~~

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

~~6. Annual income received under an implied, verbal, or written contract in less than 12 months shall be averaged~~

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

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

~~8. Dividends shall count as unearned income.~~

~~Dividends shall be averaged for the period they are intended to cover.~~

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

~~10. Irregular and unpredictable income shall count as income in the month of receipt. Annual income received under an implied, verbal, or written contract in less than 12 months shall be averaged over the 12-month period it is intended to cover unless the income is received on an hourly or piecework basis.~~

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

~~12. A non-recurring cash payment (lump sum) shall count as income only in the calendar month of receipt. This includes insurance settlements, back pay, state tax refunds,~~

~~inheritance, IRA or other retirement distributions, and retroactive benefit payments.~~

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

~~14. Pensions and annuities shall count as unearned income.~~

~~15. Income is potentially available when the applicant/enrollee has a legal interest in a liquidated sum and has the legal ability to make this sum available for the support and maintenance of the assistance unit. Potential income shall be counted when it is actually available as well as when it is potentially available but the applicant/enrollee chooses not to receive the income. If the agency representative is unable to determine the amount of benefits available, the application shall be rejected for failure to establish need.~~

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

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

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

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

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

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

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

~~a. Allowable expenses are those allowed when filing taxes on a schedule C or farm income schedule F.~~

~~23. Social Security retirement, survivors and disability insurance benefits (RSDI) shall count as unearned income. The amount counted shall be that of the entitlement including the amount deducted from the check for the Medicare premium, less any amount that is being recouped for a prior overpayment.~~

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

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

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

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

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

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

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

~~c. foreign earnings.~~

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

~~a. adoption assistance;~~

~~b. agent orange settlement payments;~~

~~c. American Indian and Native American Claims and Lands and income distributed from such ownership;~~

~~d. Census Bureau earnings;~~

~~e. child support payments received for anyone in the home;~~

~~f. contributions from tax-exempt organizations;~~

~~g. disaster payments;~~

~~h. Domestic Volunteer Service Act;~~

~~i. earned income credits;~~

~~j. educational loans;~~

~~k. energy assistance;~~

~~l. foster care payments;~~

~~m. Housing and Urban Development (HUD) block grant funds, payments, or subsidies;~~

~~n. in-kind support and maintenance;~~

~~o. loans;~~

~~p. income from nutritional programs;~~

~~q. income from radiation exposure;~~

~~r. relocation assistance;~~

~~s. scholarships, awards or fellowship grants used for education purposes and not for living expenses;~~

~~t. supplemental security income (SSI);~~

~~u. vendor payments;~~

~~v. veterans' benefits;~~

~~w. Women, Infants and Children Program (WIC) benefits;~~

~~x. work-study program income;~~

~~y. worker's compensation benefits; and~~

~~z. cash contributions. Money which is contributed by the absent parent of a child in the assistance unit is considered child support and not counted. Small, non-recurring monetary gifts (e.g., Christmas, birthday, or graduation gifts) are not counted. Cash contributions include~~

~~any money other than loans received by or for a member of the income unit if:~~

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

~~_____ ii. the contribution is provided for the specific purpose of meeting the maintenance needs of a member of the assistance unit.~~
2. - 29.z.ii. Repealed.

B. - B.1.b.iii. ...

2. ~~Income of a Tax Dependent. The earned~~ The net countable income ~~of a tax dependent including a child shall be counted when calculating the financial eligibility of a tax filer when the earned~~ for the individual's household shall be compared to the applicable income ~~meets the tax filing threshold. The unearned income of a tax dependent, including a child, shall be used when calculating MAGI based financial~~ standard for the household size to determine eligibility ~~regardless of tax filing status (e.g., RSDI).~~

a. ~~Cash contributions to a dependent shall be counted towards the dependent~~ If the countable income is below the income standard for the applicable MAGI group, the individual is income eligible.

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

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

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

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

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

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

~~b. If the countable income is above the income standard for the applicable MAGI group, the individual is income ineligible.~~ 3. - 5.b. Repealed.

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

1. - 4. ...

5. LaCHIP IV (unborn option), income is less or equal to 214 percent FPIG; ~~and~~

6. LaCHIP Affordable Plan, income ~~does not exceed~~ is less or equal to 255 percent FPIG; ;

7. Adult Group, income is less than or equal to 138 percent FPIG; and

8. Take Charge Plus, income is less than or equal to 138 percent FPIG.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:947

(May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 46:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Statement

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that

this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2019.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no

later than 4:30 p.m. on November 12, 2019. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on November 27, 2019 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after November 12, 2019. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Rebekah E. Gee MD, MPH

Secretary