**PROPOSAL**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.37 Family Planning Program Eligibility**

Authority: Health-General Article, §§2-104(b), 15-103(a), and 15-140, Annotated Code of Maryland

**Notice of Proposed Action**

[19-171-P]

The Secretary of Health proposes to amend Regulations **.02—.05**, repeal existing Regulations **.06** and **.07**, amend and recodify existing Regulations **.08**, **.09**, and **.11** to be **.06**, **.07**, and **.09**, respectively, and recodify existing Regulations **.10** and **.12—.15** to be **.08** and **.10—.13**, respectively, under **COMAR 10.09.37 Family Planning Program Eligibility**.

**Statement of Purpose**

The purpose of this action is to update eligibility rules for the Family Planning Program required by Health-General Article, §15-140, Annotated Code of Maryland in order to integrate the Program in Maryland Health Connection and as required by the Centers for Medicare and Medicaid Services as a condition for approving Maryland’s Medicaid State Plan Amendment.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**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 Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through October 15, 2019. A public hearing has not been scheduled.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(6) (text unchanged)

**[**(7) "Countable income" means income that is considered in the determination of eligibility for the Family Planning Program.**]**

**[**(8)**]** *(7)*—**[**(9)**]** *(8)* (text unchanged)

**[**(10) "Disregard" means the amount of money specified by regulation that can be subtracted from countable income.

(11) Earned Income.

(a) "Earned Income" means payment received by an individual in cash or in-kind as a result of employment, including self-employment.

(b) "Earned Income" includes but is not limited to:

(i) Wages;

(ii) Salaries;

(iii) Commissions;

(iv) Tips; and

(v) Profit from self-employment.

(12) "Excludable income" means income which is exempt from consideration as countable income.**]**

**[**(13)**]** *(9)*—**[**(14)**]** *(10)*(text unchanged)

**[**(15)**]**(11) "Household" means **[**sharing a common household**]** *a MAGI household unit as set forth in COMAR 10.09.24.06-1*.

**[**(16)**]***(12)* "Income" **[**means any property or service received by a person in cash or in-kind which can be applied directly, or by sale or conversion, to meet basic needs for food, shelter, and medical expenses**]** *has the meaning stated in COMAR 10.09.24.02B*.

**[**(17) "Income tax" means federal, State, or local taxes either paid or withheld from income of a self-employed person not to exceed the tax table amount for the number of known dependents.

(18) "In-kind income" means support or benefits in the form of food or shelter, or both, received by a person.**]**

**[**(19)**]** (*13)* (text unchanged)

*(14) “MAGI” means modified adjusted gross income, as calculated for purposes of determining eligibility under the Affordable Care Act.*

*(15) “MAGI coverage groups” has the meaning stated in COMAR 10.09.24.03A.*

**[**(20)**]** *(16)* (text unchanged)

**[**(21**]***(17)* "Participant" means an individual who is **[**certified as**]***determined* eligible for the Family Planning Program.

**[**(22)"Period under consideration" means the period of 6 months beginning on the first day of the month of the application date, for which income is projected in order to determine eligibility under this chapter.

(23) "Permanent sterilization" means a permanent form of birth control.**]**

**[**(24)**]** *(18)*—**[**(25)**]** *(19)* (text unchanged)

**[**(26) "Spouse" means an individual who has been determined to be legally married to another individual under State law.

(27) "Unearned income" means all income which does not meet the definition of earned income.**]**

**.03 Eligibility for Family Planning Program Coverage.**

A. In order to be determined eligible for benefits under the Family Planning Program, an applicant:

(1) (text unchanged)

(2) May not:

(a) (text unchanged)

**[**(b) Have a permanent sterilization;**]**

**[**(c)**]***(b)*—**[**(e)**]***(d)* (text unchanged)

B. (text unchanged)

**.04 Application.**

**[**A. The Department shall:

(1) Determine initial and continuing eligibility;

(2) Give oral or written information about the eligibility requirements, coverage, scope and related services of the Family Planning Program, and an individual’s rights and obligations under the Family Planning Program, to any individual requesting this information;

(3) Give an individual requesting Family Planning Program coverage the opportunity to apply; and

(4) Make the application available to the individual without delay.

B. A resident temporarily absent from the State but intending to return may apply for assistance to the Department or its designee. The individual shall demonstrate continued residency in the State and shall meet all nonfinancial and financial requirements in order to be determined eligible.

C. An individual who wishes to apply for the Family Planning Program under this chapter shall submit a written, signed application form to the Department. An applicant shall be responsible for completing the application but may be assisted by another individual of the applicant’s choice.

D. The date of the application will be the date on which a signed application is received by the Department.

E. An individual who applies for the Family Planning Program may voluntarily withdraw that application; however, the application form will remain the property of the Department.

F. Time Limitations.

(1) When an application is filed with the Department, a decision shall be made promptly but not later than 45 days from the date the application is received, unless an extension is granted in accordance with §G of this regulation.

(2) The time standards specified in §F(1) of this regulation covers the period from the application date to the date the Department’s notice of decision is mailed to the applicant.

(3) The Department shall request in writing missing information needed to determine eligibility.

(4) When an applicant fails to complete the application form or to provide the required information needed to determine eligibility within the 45 day limit provided under §G(1) of this regulation, the applicant shall be determined ineligible.

G. Extension of Time Limitations.

(1) The Department may approve an extension of the time limitation specified in §E of this regulation if:

(a) The applicant or authorized representative is actively attempting to establish the applicant’s or participant’s eligibility but has been unable to provide the required information or verification through no fault of the applicant, participant, or authorized representative; or

(b) There is an administrative delay or other emergency beyond the Department’s control.

(2) The Department shall document the reason for the extension in the applicant’s or participant’s case record.

(3) The Department shall deny or terminate eligibility under the Family Planning Program when the criteria for the extension of time limitation in §F(1) of this regulation cease to be met.

H. Required Information.

(1) The Department shall inform the applicant of the required information and verifications needed to determine eligibility in accordance with the requirements stated in COMAR 10.09.24.04I(3)(b), (c), and (e).

(2) The information needed by the Department is subject to independent verification.

I. The Department shall maintain a case record including documentation of the required elements of eligibility.

J. The Department shall restrict disclosures of information concerning applicants in accordance with the requirements stated in COMAR 10.09.24.04Q.

K. Eligibility may not be established until the applicant furnishes or applies for a social security number in accordance with the requirements stated in COMAR 10.09.24.04L.

L. A participant shall cooperate with the Department in completing a form designated by the Department to report pertinent information and in collecting available health insurance benefits and other third-party payments.**]***For individuals not described in .03B of this chapter, application for Family Planning Program services will be conducted pursuant to the provisions of COMAR 10.09.24.04.*

**.05 Consideration of [Family] Income.**

**[**A. In determining an applicant’s financial eligibility for the Family Planning Program for applicants 19 years old or older and for married applicants younger than 19 years old, the income of the following individuals shall be considered:

(1) Applicant; and

(2) Spouse, if living in the home;

B. In determining an applicant’s financial eligibility for the Family Planning Program, income is not considered for:

(1) An unmarried applicant younger than 19 years old; and

(2) The applicant’s children who are younger than 19 years old and living in the home.

C. Regularity of Income. When an applicant or spouse with countable income:

(1) Has regular income, the amount to be considered is that which is available or can reasonably be expected to be available during the period under consideration; or

(2) Is self-employed or has irregular or seasonal earnings, the amount to be considered is the expected annual income based on the prior year’s gross income.

D. Household Size. In determining household size, the following individuals shall be considered:

(1) The applicant;

(2) The spouse, if living in the home; and

(3) The applicant’s children younger than 19 years old and living in the home.**]***Determination of an applicant’s income for purposes of the Family Planning Program shall be determined under the household provisions of COMAR 10.09.24.06-1 and the income provisions applicable to MAGI household units of COMAR 10.09.24.07.*

**[.08] *.06*Determining Financial Eligibility.**

An applicant is financially eligible for the Family Planning Program if the applicant's **[**countable net family**]** *MAGI household* income as determined under **[**Regulations.05, .06, and .07 of this chapter**]** *COMAR 10.09.24.06-1 and .07*does not exceed 250 percent of the federal poverty level.

**[.09] *.07* Certification Periods.**

A. (text unchanged)

B. A participant’s eligibility under Regulation .03 of this chapter will end as of the:

(1)—(2) (text unchanged)

(3) **[**Date the Department receives notice of permanent sterilization of a participant**]***Date the participant ceases to qualify under the requirements of Regulation .03A of this chapter*;

(4)—(5) (text unchanged)

**[.11] *.09* Post–Eligibility Requirements.**

**[**A. The Department shall inform the applicant of the applicant’s legal rights and obligations and give the applicant written notification of the following:

(1) For an eligible individual:

(a) A finding of eligibility;

(b) The beginning and ending dates for coverage; and

(c) The right to request a hearing; and

(2) For an ineligible individual:

(a) A finding of ineligibility;

(b) The reason for the finding;

(c) The regulation supporting the finding; and

(d) The right to request a hearing.

B. Participant Responsibility.

(1) A participant shall notify the Department within 10 business days of changes affecting the participant’s eligibility.

(2) A participant shall limit use of the Family Planning card to the individual whose name appears on the card.

(3) When written notice of cancellation is received, a participant shall discontinue use of the Family Planning card on the first day of ineligibility.

(4) Failure to comply with the provisions of §B(1)—(3) of this regulation may result in:

(a) Termination of assistance;

(b) Referral to the Department for fraud investigation, or for criminal or civil prosecution; or

(c) Termination of assistance and referral to the Department for fraud investigation, or for criminal or civil prosecution.

(5) A participant shall cooperate with the State’s Medical Assistance quality control review process, including verification of information pertinent to the determination of eligibility.

(6) If the participant refuses to cooperate, the participant’s coverage shall end subject to the regulation governing timely and adequate notice under COMAR 10.09.24.13.

C. Unscheduled Redeterminations.

(1) The Department shall promptly make an unscheduled redetermination when:

(a) The participant’s circumstance suggests future changes which may affect eligibility before the due date of a scheduled redetermination;

(b) Relevant facts or changes in circumstances are reported by the participant or an authorized representative; or

(c) Relevant facts or changes are brought to the attention of the Department from other responsible sources.

(2) The Department shall notify the participant that a redetermination shall establish continuing eligibility.

(3) The notice and reapplication packet shall be sent at least 10 days before the due date.

(4) The Department shall notify the participant of the required information and verifications needed to determine eligibility and the time standards in acting in the redetermination process.

(5) The criteria for continuing eligibility shall be met.

(6) Eligibility Decisions.

(a) Participants who are determined eligible for the remainder of the certification period shall be sent a notice in accordance with §A(1) of this regulation.

(b) Participants determined ineligible for the remainder of the certification period because of a change in circumstances or failure to establish eligibility following a change in circumstances, shall be sent a notice in accordance with §A(2) of this regulation.

(7) An individual may reapply after cancellation of current eligibility, at which time a new period under consideration shall be established.

D. Scheduled Redeterminations.

(1) The Department shall make a scheduled redetermination of a participant’s eligibility once every 12 months.

(2) The Department shall notify the participant that a redetermination shall establish continuing eligibility.

(3) The notice and application shall be sent at least 60 days before expiration of the current certification period.

(4) When the written, signed application is received by the Department, a new period under consideration shall be set.

(5) The new period shall be related to the date the application is received but may not include months in which the participant was entitled to coverage under the current certification period.

(6) A participant shall be treated the same as an applicant at the time of scheduled redetermination.

(7) The nonfinancial and financial criteria of eligibility shall be met.

(8) The Department shall make timely decisions in accordance with the provisions of Regulation .04E of this chapter.

(9) Eligibility Decisions.

(a) Applicants who are determined eligible for a new certification period shall be sent a notice in accordance with §A(1) of this regulation.

(b) Applicants determined ineligible for a new certification period shall be sent a notice in accordance with §A(2) of this regulation.**]***Post-eligibility requirements for the Family Planning Program are set forth at COMAR 10.09.24.12.*

ROBERT R. NEALL
Secretary of Health