



The Advocate's Guide to MAGI

Updated August 2018

This update includes changes to the IRS tax filing thresholds under the Republican tax plan enacted in December 2017. The Guide also addresses other legislative changes to MAGI in Medicaid, including lottery winnings, payments under parent-mentor programs providing enrollment assistance, and participation in clinical trials.

As of the time of publication of this Guide, the IRS has not updated ACA-related tax forms and instructions to reflect the Republican tax plan. Please check the IRS website for more current versions as they may become available.

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Glossary of Acronyms

ABD	Aged, Blind, and Disabled
ACA	Affordable Care Act
AGI	Adjusted Gross Income
AFDC	Aid to Families with Dependent Children
AFDC-96	Aid to Families with Dependent Children as of July 16, 1996
APTC	Advance Premium Tax Credits
BCCTP	Breast and Cervical Cancer Treatment Program
CDC	The Centers for Disease Control and Prevention
CFR	Code of Federal Regulations
CHIP	Children's Health Insurance Program
CCIIO	Center for Consumer Information and Insurance Oversight
CMS	Centers for Medicare & Medicaid Services
CSR	Cost Sharing Reductions
FFM	Federally Facilitated Marketplace
FMAP	Federal Medical Assistance Percentage
FPL	Federal Poverty Level
FSA	Flexible Spending Arrangement
HCBS	Home and Community-Based Services
HHS	The United States Department of Health and Human Services
IAP	Insurance Affordability Programs
IRC	Internal Revenue Code
IRS	Internal Revenue Service
ISRP	Individual Shared Responsibility Payment
MAGI	Modified Adjusted Gross Income
MEC	Minimum Essential Coverage
MOE	Maintenance of Effort
QHP	Qualified Health Plan
SBM	State Based Marketplace
SEP	Special Enrollment Period
SPA	State Plan Amendment
SSA	Social Security Act
SSI	Supplemental Security Income
SSDI	Social Security Disability Insurance
USC	United States Code

I. Introduction

One of the significant changes brought about by the Affordable Care Act (ACA) is the introduction of a new methodology to evaluate financial eligibility for Insurance Affordability Programs (IAPs): Modified Adjusted Gross Income (MAGI).¹ Since January 1, 2014, states must use MAGI methodologies to determine eligibility in many Medicaid and Children’s Health Insurance Program (CHIP). MAGI is also used to determine eligibility for Advance Premium Tax Credits (APTCs) and Cost Sharing Reductions (CSRs) for applicants seeking financial assistance under the new insurance Exchanges (increasingly referred to as “Marketplaces”).² MAGI brings uniformity to a system of calculating income to determine financial eligibility that previously varied considerably from state to state and from program to program.

This Advocate’s Guide explains how MAGI works.³ It sets forth the guidelines that CMS has developed to implement and govern MAGI methodologies.⁴ This Guide is meant for national use, and we point out the few areas where states have flexibility to shape policies that affect the MAGI calculations.

The Guide will be an ongoing reference for advocates providing direct services to clients who have questions or problems pertaining to eligibility for health care affordability programs. NHeLP is publishing this Guide solely in electronic format, so we can efficiently update, expand, and improve it as appropriate. While advocates may want to print out a version for desk reference, we suggest regularly checking the NHeLP website to obtain the most up-to-date version. In the implementation of MAGI and

¹ The ACA and federal regulations establish three separate definitions of MAGI: 26 U.S.C. § 1.36B(e)(2), 26 C.F.R. § 1.36B-1(e) (for Marketplace subsidy eligibility determinations), 42 C.F.R. § 435.603(e) (for Medicaid eligibility determinations); and 26 U.S.C. § 1.5000A1(d)(10)(ii) (for calculating the Individual Shared Responsibility Payment (ISRP)). Insurance Affordability Programs (IAPs) include Medicaid, CHIP, Basic Health Plan (a state option), Advance Premium Tax Credits and cost-sharing assistance for enrollees in Qualified Health Plans (QHPs) through the health insurance Marketplaces (also known as Exchanges).

² A more accurate term might be premium tax credits, rather than *Advance* Premium Tax Credits, because the tax credits available to subsidize premiums for insurance plans purchased through the new Exchanges for persons up to 400% of the Federal Poverty Level need not be taken in advance. However, because “APTCs” is commonly used as an abbreviation for these subsidies, we use that term. We generally use the term “Marketplace” herein, but it is interchangeable with “Exchange.”

³ The term “MAGI” is commonly used to describe the entire new methodology, which encompasses far more than a simple calculation of Modified Adjusted Gross Income. Thus, in this Guide, the term MAGI may refer to the income itself, as well as the broader methodology used to determine eligibility.

⁴ These notes include citation to federal documents, primarily Dear State Medicaid Director letters. We do not link to these letters because the web address may change. To begin your search to obtain a DSMD, cited below, go to <http://www.medicaid.gov/Federal-Policy-guidance/federal-policy-guidance.html>.

learning the “ins and outs” of it together, we welcome any suggestions for improvement or for further clarification.

A. Overview of MAGI Methodology

MAGI aims to replace the diversity of income counting methodologies used in Medicaid, which entail numerous income deductions and disregards that vary from state to state. MAGI is also intended to be a more simplified methodology that will increase uniformity across the states and across Insurance Affordability Programs.

MAGI has two principal components: income counting and household composition. First, MAGI counts income according to federal tax law. Second, MAGI rules determine household composition and family size, with different rules applying in Marketplaces and Medicaid. Income and family size are then compared to the Federal Poverty Level (FPL) to determine which Insurance Affordability Programs may be available to someone seeking an eligibility determination.

As noted, MAGI applies across Insurance Affordability Programs. Thus, it will affect:

- APTCs: Individuals who purchase insurance through a Marketplace and whose income is at or below 400% FPL qualify for APTCs to help pay for monthly insurance premiums.⁵ Those making up to 250% FPL may receive additional assistance to reduce cost sharing, including co-pays, deductibles, and co-insurance, as well as lowering out-of-pocket limits.⁶
- Medicaid: Medicaid programs have historically provided health coverage to low-income families with children and the aged, blind and disabled. The ACA extends Medicaid eligibility to a new adult expansion group, set at 133% FPL, although states can elect to cover more people under the adult expansion by establishing a higher income threshold. Other Medicaid eligibility categories, such as parents and caretaker relatives, can have income thresholds as high as 200% FPL (or higher for limited coverage options).⁷

⁵ 26 U.S.C. § 36B(b).

⁶ 42 U.S.C. § 18071.

⁷ See Kaiser Family Foundation, *Adult Income Eligibility Limits at Application as a Percent of the Federal Poverty Level (FPL)* (as of Jan. 1, 2018), available at <http://kff.org/health-reform/state-indicator/medicaid-income-eligibility-limits-for-adults-as-a-percent-of-the-federal-poverty-level/>.

- CHIP: Because of the strong public interest in providing health coverage to children, CHIP programs often set much higher income eligibility thresholds – as high as 400% FPL in some states.⁸

Because eligibility thresholds may differ for children and adults, members of a single family may qualify for different programs. For example, a mixed-eligibility family could have children in CHIP and parents with APTCs in the Marketplace.

The Other MAGI

This Guide focuses on the MAGI rules used to determine eligibility for Insurance Affordability Programs, and highlights differences between Medicaid/CHIP and Marketplace determinations. However, the ACA establishes another definition of MAGI used in calculating the Individual Shared Responsibility Payment (ISRP).⁹ The ISRP version of MAGI does not include non-taxable Social Security income.¹⁰ For more on the IRSP, see Sec. VII of this Guide.

B. How MAGI Relates to Federal Taxes

MAGI is defined under Section 36B of the Internal Revenue Code (IRC). Subject to a few exceptions that apply to all Insurance Affordability Programs, and a few more exceptions that apply only to CHIP and Medicaid, MAGI eligibility is based on adjusted gross income as reported for federal income tax purposes. Because the calculation of income generally follows the rules for federal income tax reporting, the determination of what income counts is fairly straightforward.

However, under MAGI, the *types* of countable income differ significantly from previous Medicaid and CHIP income counting rules. Some types of income traditionally counted in Medicaid are excluded under MAGI, while MAGI includes other types of income not previously counted.

Significantly, none of the previous Medicaid/CHIP income deductions and disregards apply under the MAGI methodology.¹¹ Rather, Medicaid and CHIP programs now apply

⁸ See Kaiser Family Foundation, *Income Eligibility Limits for Children's Separate CHIP Programs by Annual Incomes and as a Percent of Federal Poverty Level* (Jan. 2017), available at <https://www.kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-children-as-a-percent-of-the-federal-poverty-level/>.

⁹ 26 U.S.C. § 5000A(c)(4)(C); 26 C.F.R. § 1.5000A-1(d)(10)(ii).

¹⁰ *Id.*

¹¹ 42 U.S.C. § 1396a(e)(14)(B).

an across-the-board 5% disregard when (as explained below) overall eligibility is at stake. As a result, some enrollees who most benefitted from the old deductions and disregards stood to lose eligibility in the switch to MAGI, despite the “conversion” of prior/previous income limits to higher levels to account for the removal of deductions and disregards. On the other hand, others who would not previously have been eligible will gain eligibility. This across-the-board disregard is not used for APTCs/CSRs.

The rules defining “household” size and whose income is counted are far more complex. Like the rules on the types of countable income, the rules defining household composition differ substantially from previous Medicaid and CHIP rules. The MAGI household definition rules for Medicaid and CHIP also differ from the MAGI household definition rules for APTCs/CSRs. Accordingly, each application for insurance affordability programs will require a two-step analysis to determine the applicant’s Marketplace household size for purposes of APTC/CSR eligibility, and the Medicaid/CHIP household size.

Note that certain decisions by a taxpayer in regard to how to file taxes could have an impact on eligibility for IAPs or the amount of subsidy. But such decisions, such as whether a couple should file jointly or whether a taxpayer should claim someone as a dependent, will also have an impact on how much tax will be paid. This is an individualized determination, and in some cases advocates should refer clients to an accountant or tax attorney for advice.

C. No Asset Test

The ACA prohibits consideration of assets or resources that an individual or family owns for MAGI-based eligibility determinations.¹² Many states already disregarded assets for children’s Medicaid and CHIP eligibility, and nearly half the states have eliminated Medicaid asset tests for parents and caretakers. Nevertheless, many individuals stand to gain eligibility due to the elimination of asset tests.¹³ Note, also, that asset tests may continue to apply in non-MAGI Medicaid eligibility categories.

¹² 42 U.S.C. § 1396a(e)(14); 42 C.F.R. § 435.603(g).

¹³ Kaiser Comm. on Medicaid and the Uninsured, *Eliminating the Asset Test for Families: A Review of State Experiences* (April 2001); *available at*

<https://kaiserfamilyfoundation.files.wordpress.com/2001/04/2239-eliminating-the-medicaid-asset-test.pdf>.

Note – Eliminating asset tests not only simplified and streamlined Medicaid eligibility determinations, but also led to significant cost savings for states. For example, Oklahoma officials calculated they had been spending \$3.5 million for administrative activities related to verification of assets; but would spend just \$2.5 million on benefits for persons who might have been denied eligibility.¹⁴

D. Limited Applicability of MAGI

Though the MAGI methodology applies to all eligibility determinations for APTCs/CSRs and CHIP, the ACA exempts certain Medicaid eligibility categories from MAGI. For example, persons linked to eligibility through disability or age (65 and over) are not be subject to MAGI. Current state-specific income and resource counting rules will continue in effect for exempt eligibility categories. Thus, advocates will have to continue understanding rules for traditional Medicaid in applicable categories as well as the new MAGI system.

States also use MAGI to calculate the appropriate Federal Medical Assistance Percentages (FMAP). Services for the new adult group are entitled to an enhanced federal match.¹⁵

E. Legal Authorities Governing MAGI

1. Legislation

The Patient Protection and Affordable Care Act - Pub. L. No. 111-148, 124 Stat. 119 (2010). That statute was amended by the Health Care and Education Reconciliation Act (Pub. L. No. 111-152, 124 Stat. 1029 (2010)), which President Obama signed on March 30, 2010.

2. United States Code

- 42 U.S.C. § 1396a(a)(10)(A)(i), (ii) and (C) (mandatory and optional Medicaid coverage groups)
- 42 U.S.C. § 1396a(e)(14) (ACA application of MAGI to Medicaid)
- 42 U.S.C. § 1397bb(b)(1)(B)(v) (ACA application of MAGI to CHIP)
- 26 U.S.C. § 36B (MAGI application to Marketplaces)
- 26 U.S.C. § 151 (allowance of deductions for personal exemptions)
- 26 U.S.C. § 152 (coverage of dependents)

¹⁴ *Id* at 13.

¹⁵ 42 U.S.C. § 1396d(y).

- 26 U.S.C. § 5000A(c)(4)(C) (MAGI definition for calculating IRSP)
- 26 U.S.C. § 7703 (marriage definition)

3. Rulemaking

- Notice of Proposed Rulemaking - Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010; 76 Fed. Reg. 51148 (Aug. 17, 2011)
- Final Rule and Interim Final Rule - Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010, 77 Fed. Reg. 17144 (March 23, 2012)
- Final Rule and Interim Final Rule - Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers; 77 Fed. Reg. 18310 (March 27, 2012)
- Proposed Rule - Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing; 78 Fed. Reg. 4594 (Jan. 22, 2013)
- Final Rule - Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment; 78 Fed. Reg. 42160 (July 15, 2013)
- Final Rule - Medicaid and Children's Health Insurance Programs: Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP; 81 Fed. Reg. 86382 (Nov. 30, 2016)

4. Code of Federal Regulations

- 42 C.F.R. § 435.603 (Medicaid MAGI regulation)
- 45 C.F.R. § 155.305 (Marketplace MAGI regulation)
- 26 C.F.R. § 36B (income counting regulations for MAGI)
- 26 C.F.R. § 1.5000A-1(d)(10)(ii) (MAGI for calculating Individual Shared Responsibility Payment)

5. CMS Training Materials

- CMS Household and Income Training Manual (Nov. 21, 2013); *available at* <https://www.medicaid.gov/state-resource-center/mac-learning-collaboratives/downloads/household-composition-and-income-training.zip>.
- CMS All-State SOTA: MAGI 2.0: Building MAGI Knowledge, Part 1: Household Composition (July 21, 2016); *available at* <https://www.medicaid.gov/state-resource-center/mac-learning-collaboratives/downloads/part-1-household.pdf>.
- CMS All-State SOTA: MAGI 2.0: Building MAGI Knowledge, Part 2: Income Counting (Sept. 1, 2016); *available at* <https://www.medicaid.gov/state-resource-center/mac-learning-collaboratives/downloads/part-2-income.pdf>.

6. CMS Guidance

- CMCS Bulletin, MAGI-Based Eligibility Verification Plans (Feb. 21, 2013); *available at* <https://www.medicaid.gov/federal-policy-guidance/downloads/cib-02-21-13.pdf>.
- CMCS, Medicaid and CHIP FAQs: MAGI Conversion (Feb. and Aug. 2013); *available at* <https://www.medicaid.gov/State-Resource-Center/FAQ-Medicaid-and-CHIP-Affordable-Care-Act-Implementation/Downloads/FAQs-by-Topic-MAGI-Conversion-2013.pdf>.
- CMS, Dear State Medicaid Director Letter, SMDL#14-001, Application of Liens, Adjustments and Recoveries, Transfer-of-Asset Rules and Post-Eligibility Income rules to MAGI Individuals (Feb. 21, 2014); *available at* <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-001.pdf>.

II. MAGI Applicability in Medicaid and CHIP

Since 2014, states must apply MAGI to determine eligibility for CHIP and applicable Medicaid categories. States that require cost sharing for certain eligibility categories must also use MAGI to determine income levels and limits on the co-pays, premiums, and out-of-pocket expenses for enrollees.¹⁶

¹⁶ Preamble, Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment; Final Rule, 78 Fed. Reg. 42272, col 3 (July 15, 2013). For more information on cost-sharing in Medicaid, see NHeLP, *The Advocate's Guide to the Medicaid Program*, 4.12 Q (May 2011), and David Machledt and Jane Perkins, NHeLP, *Medicaid Premiums and Cost*

MAGI applies irrespective of whether the population is covered through the Medicaid state plan or through a waiver or demonstration project. MAGI applies regardless of whether a state expands Medicaid to include the new adult group.¹⁷ MAGI applies to eligibility determinations for new applicants as well as recertification. Some enrollees lost Medicaid eligibility as income disregards were discontinued under MAGI. The ACA provided limited protection for persons whose eligibility redeterminations are scheduled between January 1, 2014 and March 31, 2014 who lose eligibility solely due to the switch to MAGI.¹⁸

The ACA prohibits HHS from waiving MAGI except in limited circumstances, as explained in the sections below.

A. Populations and Eligibility Categories Subject to MAGI

1. Low income adults

MAGI applies to adults made newly eligible as a result of the ACA.¹⁹ The ACA expanded Medicaid in 2014 to cover all non-disabled, non-pregnant adults below age 65 with incomes up to 133% of the Federal Poverty Level (FPL).²⁰

While the ACA expansion is a mandatory provision of the Medicaid Act, the Supreme Court ruled that CMS cannot compel states to implement the new eligibility, in effect allowing states to opt out of the adult Medicaid expansion.²¹ States that do not take up the adult expansion must still implement MAGI for other applicable eligibility categories.

The ACA allowed states to expand Medicaid coverage to childless adults before 2014 by amending their state plans.²² Connecticut, Minnesota, and the District of Columbia

Sharing (March 26, 2014), available at <http://www.healthlaw.org/issues/medicaid/Medicaid-Premiums-Cost-Sharing#>.

¹⁷ *Id.*

¹⁸ 42 U.S.C. § 1396a(e)(14)(D)(v); 42 C.F.R. § 435.603(a)(3).

¹⁹ For a discussion of this eligibility group, see NHeLP, *The Advocate's Guide to the Medicaid Program*, 3.3 (May, 2011) (all references to the Medicaid Guide hereinafter are to the May 2011 edition).

²⁰ 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII). The statute provides for coverage up to 133% of the FPL, but with the 5% income disregard used to calculate income under the MAGI methodology, the limit is effectively 138%. See Section III.G. of this Guide for an explanation of the 5% disregard.

²¹ *NFIB v. Sebelius*, 567 U.S. 519, 585 (2012). For additional discussion, see Jane Perkins et al., *Summary of the Supreme Court Decision on the ACA*, NHeLP, June 29, 2012, available at <http://www.healthlaw.org/publications/search-publications/summary-of-the-supreme-court-decision-on-the-aca#.WhLtAbQ-efQ>.

²² 42 U.S.C. § 1396a(k)(2).

are the only early expansion states. These states were required to implement MAGI methodologies for the adult expansion group by January 2014.

2. Pregnant women

MAGI applies to all pregnancy-related Medicaid eligibility categories. States must provide full Medicaid coverage to pregnant women who meet the income and family composition rules that applied to the state's Aid to Families with Dependent Children (AFDC) program on July 16, 1996 (AFDC-96). If a pregnant woman's household income exceeds the AFDC-96 limit, but is at or below 133% of the FPL (or up to 185% of the FPL, at state option), she is entitled to Medicaid coverage of "pregnancy-related services" during pregnancy and the 60-day post-partum period.²³

Notably, while not directly affecting MAGI, HHS rulemaking simplified and consolidated eligibility for pregnant women in the myriad of statutory eligibility categories, including qualified pregnant women,²⁴ poverty-level related pregnant women,²⁵ and institutionalized pregnant women.²⁶ All mandatory pregnancy categories are now described under the rule at 42 C.F.R. § 435.116.

a) Pregnancy coverage for individuals under 21

Prior to 2014, states decided Medicaid eligibility for pregnant minors under the same rules used for adults. States considered the family income of a minor child, including parental income. States could also use less restrictive income and resource methodologies.²⁷ Thus, a state could disregard a parent's income to make the pregnant teen eligible on her own.

Since 2014 under MAGI, the income of every household member must be counted, and states can no longer apply selective income disregards.²⁸ The loss of these income disregards could render some pregnant minors financially ineligible for Medicaid, if pregnancy is their only pathway to coverage.

CMS has taken steps to avoid this loss of coverage. Federal guidance allows states to preserve pregnancy coverage for minors by using an existing regulatory provision to create "reasonable classifications" of persons under age 21. The guidance outlines a two-part State Plan Amendment (SPA) whereby states can, in effect, grandfather the

²³ 42 U.S.C. §§ 1396a(e)(5)-(6).

²⁴ 42 U.S.C. §§ 1396a(a)(1)(A)(i)(IV), 1396a(a)(1)(A)(ii)(IX).

²⁵ 42 U.S.C. § 1396a(a)(10)(A)(ii)(I).

²⁶ 42 U.S.C. § 1396a(a)(10)(ii)(IV).

²⁷ 42 U.S.C. § 1396a(r)(2)(A).

²⁸ 42 U.S.C. § 1396a(e)(14)(B).

parental income disregard after 2014.²⁹ First, a state must establish a “reasonable classification” of pregnant individuals under age 21 (or under age 18, 19, or 20), as authorized under existing Medicaid regulations.³⁰ Second, a state must disregard *all income* for this population pursuant to § 1396a(r)(2)(A). Finally, the state then calculates a MAGI-equivalent income threshold based upon a 100% “block income disregard.”³¹ The net result is no income test at all. States using this method to grant 100% block income disregards were required to do so before MAGI became mandatory in 2014.

3. Parents and caretaker relatives

States must provide Medicaid coverage to low-income parents and caregivers. Caretaker relatives can include parents, grandparents, siblings or other relatives.³² Those eligible under this category are commonly referred to as the “Section 1931 group” after the section of the Social Security Act that provides for the eligibility.³³ MAGI methodologies apply to determining financial eligibility under the parents and caretaker relatives category beginning in 2014.

NOTE: MAGI rules for calculating household size and income apply only when determining financial eligibility for IAPs. Other eligibility criteria, for example, the definition establishing who qualifies as a “parent or caretaker relative,” are established elsewhere in the Medicaid statute and regulations.³⁴

States must convert their § 1931 income eligibility thresholds, based on AFDC and state-level income disregards, to a MAGI-equivalent eligibility standard. Under § 1931, states have a range from which to select the state’s eligibility income threshold. The § 1931 federal minimum is the state’s May 1, 1988 AFDC payment standards by family size. Therefore, states must convert to a MAGI equivalent the current threshold as well as the statutory minimum and maximum the state can choose for the § 1931 group.

²⁹ CMS, *Answers to Frequently Asked Questions: Telephonic Applications, Medicaid and CHIP Eligibility Policy and 75/25 Federal Matching Rate* (Aug. 9, 2013), at 5.

³⁰ 42 C.F.R. § 435.222. The pre-print SPAs provided by CMS include the option to disregard 100% of the income of other vulnerable youth populations, such as children in state foster care, who are also subject to mandatory MAGI. See CMS State Plan Amendment Repository, Form S52, Eligibility Groups - Options for Coverage Reasonable Classification of Individuals under Age 21, available at <http://medicaid.gov/State-Resource-Center/Medicaid-and-CHIP-Program-Portal/Medicaid-and-CHIP-PDF-Repository.html>.

³¹ CMS, *Dear State Health Official & State Medicaid Director Letter* (Dec. 28, 2012) (Conversion of Net Income Standards to MAGI Equivalent Income Standards).

³² 42 U.S.C. §§ 1396a(a)(10)(i)(I), 1396u-1(a).

³³ See NHeLP, *The Advocate’s Guide to the Medicaid Program*, 3.4.

³⁴ See 42 C.F.R. § 435.4 for definitions of “parent,” “child,” and “caretaker relative” under the Parent and Caretaker Relative category.

Under the ACA's Maintenance of Effort provision, a state may seek to limit eligibility under the § 1931 category by lowering the eligibility threshold, but can go no lower than the minimum standard allowed.

4. Children

Previously, states were required to provide Medicaid to children age 1-6 with family income up to 133% FPL and to children age 6-19 with family income up to 100% FPL.³⁵ The ACA extends Medicaid coverage to all children younger than age 19 in families at or below 133% FPL.³⁶ States have the option to cover additional groups of children whose incomes exceed these levels.³⁷ As of 2014, states now apply MAGI income counting methodologies to determine Medicaid eligibility for most of these children.³⁸

a) Independent foster care adolescents

Since 2000, states have had the option to provide Medicaid coverage to young adults known as "Independent Foster Care Adolescents."³⁹ Sometimes referred to as the "Chafee option," this provision permits states to cover individuals who are under age 21 (or at state option under 20 or 19) and were in foster care under the responsibility of the state on their 18th birthday, or any reasonable classification of those individuals.⁴⁰ States may, but are not required to, establish income limits for this coverage.⁴¹ For states that have established an income limit, proposed federal rules require a conversion to a MAGI based standard.⁴² Note, however, that many young adults who

³⁵ See NHeLP, *The Advocate's Guide to the Medicaid Program*, 3.4.

³⁶ 42 U.S.C. § 1396a(l)(2)(C).

³⁷ 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(IX), 1396a(l)(1)(A)-(B).

³⁸ The ACA's Maintenance of Effort (MOE) provision prevents states from adopting more restrictive eligibility standards until 2014 for adults and 2019 for children. 42 U.S.C. § 1396a(gg). Although some children may lose eligibility due to the loss of income disregards under MAGI, CMS has determined that the MAGI conversion process satisfies the MOE requirement. See CMS, *Dear State Health Official & State Medicaid Director Letter* (Dec. 28, 2012), at 2 (Conversion of Net Income Standards to MAGI Equivalent Income Standards).

³⁹ 42 U.S.C. § 1396a(a)(10)(A)(ii)(XVII).

⁴⁰ 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XVII), 1396d(w).

⁴¹ 42 U.S.C. § 1396d(w)(1)(C).

⁴² Medicaid, CHIP, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing, 78 Fed. Reg. 4594, 4689 (proposed Jan. 22, 2013) (to be codified at 42 C.F.R. § 435.226). Few states have opted to impose income limits for this population. Michael R. Pergamit et al., *Providing Medicaid to Youth Formerly in Foster Care Under the Chafee Option*, Urban Institute for the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (Nov. 2012), at 5.

are eligible for this coverage may also be eligible for coverage as a former foster youth, which does not require a MAGI determination (see Section II.B.2.c of this Guide for a discussion of the new mandatory category for former foster youth).⁴³

b) Children receiving state funded (non-IV-E) foster care, kinship guardianship assistance, or adoption assistance

States provide foster care and adoption assistance benefits with state and/or local funds for children who do not meet federal Title IV-E eligibility criteria and can use optional Medicaid categories to cover these children.⁴⁴ States may disregard income for these classifications of children.⁴⁵ However, states that have established an income test for this coverage will have to convert the income limits it to a MAGI based standard.⁴⁶ When MAGI took effect in 2014, some children lost eligibility due to the loss of income disregards.

Accordingly, CMS allows states to avoid cutting eligibility for these children. First, a state must establish a “reasonable classification” of the state foster or adoption assistance children as authorized under existing Medicaid regulations.⁴⁷ Second, a state must disregard *all income* for this population pursuant to § 1396a(r)(2)(A). Third, the state then calculates a MAGI-equivalent income threshold based upon a 100% “block income disregard.”⁴⁸ The net result would be no income test at all. By adopting a 100% income disregard for this population before the switch to MAGI, states can preserve existing disregards that allow children in state foster care and adoption agreements to retain Medicaid eligibility if the state applies an income test to determine eligibility.

⁴³ The main differences in eligibility criteria are, 1) the Chafee option does not require that the youth have been enrolled in Medicaid while in foster care, and 2) the Chafee option provides coverage to age 21 rather than 26.

⁴⁴ 42 U.S.C. § 1396a(a)(10)(A)(ii); 42 C.F.R. §435.222. Federal law provides a specific option for children with non-IV-E adoption assistance. 42 U.S.C. § 1396a(a)(10)(ii)(VIII); 42 C.F.R. § 435.227. Children who receive non-IV-E benefits can also be covered as medically needy. For a discussion of these options, see Evelyne P. Baumrucker *et al.*, Cong. Research Serv., R42378, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues*, 18-24 (2012). See Section II.B.1.b of this Guide for a discussion of children who receive IV-E benefits.

⁴⁵ 42 U.S.C. § 1396a(r)(2).

⁴⁶ See 78 Fed. Reg. 4689.

⁴⁷ 42 C.F.R. § 435.222. State Plan Amendments proposed to implement MAGI methodologies for applicable categories allow the disregard of all income for this category. See CMS, Form S52, *Eligibility Groups - Options for Coverage Reasonable Classification of Individuals under Age 21*, available at <http://medicaid.gov/State-Resource-Center/Medicaid-and-CHIP-Program-Portal/Medicaid-and-CHIP-PDF-Repository.html>.

⁴⁸ CMS, *Dear State Health Official & State Medicaid Director* (Dec. 28, 2012) (Conversion of Net Income Standards to MAGI Equivalent Income Standards).

MAGI does not apply where states do not consider income at all when determining eligibility of children in state foster care, adoption assistance, and kinship guardian assistance. According to CMS, “[k]ey to the application of the MAGI exception to such children is whether the State Medicaid agency is required to make a determination of income for a child in foster care to determine eligibility for Medicaid. The precise legal or custodial status of the child in relationship to the State is not material.”⁴⁹

c) CHIP

The CHIP program provides health coverage to children from higher income families who are not eligible for Medicaid.⁵⁰ The ACA makes MAGI applicable to CHIP eligibility determinations as of January 2014.⁵¹

CHILDREN ARE PROTECTED: Children who lose Medicaid eligibility as a result of MAGI will be eligible for CHIP in most cases. However, the ACA protects children who are not otherwise eligible for an existing Medicaid category by requiring states to enroll them in a separate CHIP program.⁵² CMS guidance outlines options available to states in implementing this coverage protection for children.⁵³

5. Limited scope Medicaid – TB

States have the option to provide limited-scope Medicaid services to treat individuals infected with tuberculosis.⁵⁴ Eligibility for the TB category follows Supplemental Security Income (SSI) calculations.⁵⁵ It is not expressly exempt from MAGI. In 2016 rulemaking, CMS determined that MAGI should apply to the limited-scope tuberculosis category.⁵⁶

⁴⁹ Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010, 77 Fed. Reg. 17144, 17158 (proposed Mar. 23, 2012) (codified at § 435.603(j)(1)).

⁵⁰ 42 U.S.C. § 1397aa-mm.

⁵¹ 42 U.S.C. §§ 1397bb(b)(1)(B)(v), 1396a(e)(14)(A); 42 C.F.R. § 457.315(a).

⁵² 42 U.S.C. § 1397jj (note); Patient Protection and Affordable Care Act, Pub. L. No. 111–148, § 2101(f), 124 Stat. 119, 287–88 (2010).

⁵³ CMS, *Answers to Frequently Asked Questions: Medicaid/CHIP Affordable Care Act Implementation* (Apr. 25, 2013), at 2-4.

⁵⁴ 42 U.S.C. § 1396a(z).

⁵⁵ CMCS Informational Bulletin, *State Option to Enroll Tuberculosis (TB) Infected Individuals into the Medicaid Program* (June 16, 2011).

⁵⁶ 81 Fed. Reg. 86413, 42 C.F.R. § 435.215. See also CMS, *Medicaid & CHIP PDF Repository* (Oct. 2013), <http://medicaid.gov/State-Resource-Center/Medicaid-and-CHIP-Program-Portal/Medicaid-and-CHIP-PDF-Repository.html>.

6. Family Planning

States can provide limited-scope family planning services to individuals at higher incomes either as a § 1115 demonstration project or through a state plan amendment.⁵⁷ Currently, 31 states have family planning expansions.⁵⁸ As of 2014, MAGI rules apply to limited-scope family planning services offered through either a state plan amendment or § 1115 demonstration.⁵⁹ The conversion to the MAGI rules may result in a loss of coverage for individuals who are losing the income disregards that have previously been applied when determining eligibility.

There are options available to states to ameliorate the loss in coverage. For family planning programs offered under a state plan amendment, the ACA provides states the option to consider only the income of the individual applying for family planning benefits, instead of that of the entire household.⁶⁰ In addition, states can employ eligibility rules applicable to pregnancy-related services when determining eligibility for limited scope family planning services, including counting a pregnant applicant as a household of two.⁶¹ Under rules finalized in 2016, states can consider only the applicant when determining the household composition, can consider only the applicant's income when determining household income, and may increase the family size by one.⁶²

RESOURCE: For a quick reference guide to MAGI populations, please see the chart in Appendix A – **Medicaid Eligibility Categories and Populations Subject to MAGI.**

⁵⁷ 42 U.S.C. § 1396a(a)(10)(A)(ii)(XXI); 42 U.S.C. § 1396a(ii); 42 U.S.C. § 1396a(a)(10)(G)(XVI) (there are two subclause XVIs, the first of which deals with family planning).

⁵⁸ Guttmacher Institute, *State Policies in Brief, Medicaid Family Planning Eligibility Expansions* (Oct. 1, 2013) available at https://www.guttmacher.org/statecenter/spibs/spib_SMFPE.pdf.

⁵⁹ 78 Fed. Reg. 4605.

⁶⁰ 42 U.S.C. § 1396a(ii)(3).

⁶¹ CMS, *Dear State Health Official & State Medicaid Director Letter* (July 2, 2010), at 2 (Family Planning Services Option and New Benefit Rules for Benchmark Plans).

⁶² 81 Fed. Reg. 86457 (Nov. 30, 2016) (codified at 42 C.F.R. § 435.603(k)). The pre-print state plan amendments implement this provision even though the regulations are not yet final. See CMS, *Medicaid & CHIP PDF Repository* (Oct. 2013) <http://medicaid.gov/State-Resource-Center/Medicaid-and-CHIP-Program-Portal/Medicaid-and-CHIP-PDF-Repository.html>.

B. Populations and Eligibility Categories Not Subject to MAGI

The ACA requires states to use MAGI methodologies when making income determinations “notwithstanding [...] any other provision” of the Medicaid Act, unless the individual is expressly exempted.⁶³ It also limits HHS’ authority to waive MAGI except in limited circumstances. The exceptions to MAGI generally fall into three—at-times overlapping—categories:

- Eligibility categories and populations expressly exempt from MAGI;
- Categories where the state does not conduct an income determination; and
- Medicaid categories where eligibility does not depend on income.

1. Eligibility categories and populations exempt from MAGI

The ACA exempts highly vulnerable Medicaid eligibility categories and populations from MAGI.⁶⁴ These include persons eligible on the basis of disability, elderly, and blind individuals, as well as Medicaid’s cost sharing supports for Medicare enrollees

a) Aged, Blind, and Disabled (ABD)

MAGI methodologies do not apply to Aged, Blind, and Disabled Medicaid eligibility categories.⁶⁵ These categories include: persons receiving mandatory state supplement payments, institutionalized individuals, disabled adult children, certain groups of working disabled individuals, and others.⁶⁶

However, if an individual who is aged, blind, or disabled seeks Medicaid eligibility in a category where MAGI does apply, then the state Medicaid agency will use MAGI methodologies to determine income.⁶⁷ An example of this would be when a person who is 65 or older applies for Medicaid as a parent or caretaker relative. Even though the individual is old enough to be exempt from MAGI, their eligibility in this situation can be determined under the parent/caretaker relative category using MAGI rules. However, the state Medicaid agency should also conduct an eligibility determination for such individuals on a basis other than MAGI.

⁶³ 42 U.S.C. § 1396a(e)(14)(A).

⁶⁴ 42 U.S.C. § 1396a(e)(14)(D).

⁶⁵ *Id.*

⁶⁶ For a comprehensive listing of ABD eligibility categories, see NHeLP, *The Advocates Guide to Medicaid*, 3.6 – 3.10.

⁶⁷ 42 C.F.R. § 435.603(j)(2-4).

i. SSI recipients

In most states, individuals who qualify for Supplemental Security Income (SSI) automatically qualify for Medicaid.⁶⁸ These populations are expressly exempt from MAGI because states that accept SSI for Medicaid do not conduct an income-eligibility determination.⁶⁹

SSDI: Some persons with disabilities who do not qualify for SSI because of their income and assets may be eligible for SSDI. Unlike SSI, SSDI recipients are not automatically eligible for Medicaid. However, SSDI recipients may be eligible for Medicaid under another ABD category, and will automatically become enrolled in Medicare two years after their SSDI determination. In the interim, some of these individuals may be eligible for Medicaid under a MAGI-based category, such as the new adult expansion, or as Medically Needy (see discussion in Section II.B.1.g below). Once an SSDI recipient becomes eligible for Medicare, that individual will no longer be qualified for the adult Medicaid expansion. He or she may, however, be able to qualify for Medicaid under an aged, blind or disabled category or for a program where Medicaid pays for Medicare cost-sharing (see Section II.B.1.d of this Guide).

ii. Section 209(b)

Section “209(b) states” (so called after the Social Security Act provision authorizing the option) have elected to use more restrictive requirements than SSI for deciding who qualified for Medicaid. In 209(b) states, an SSI recipient does not automatically qualify for Medicaid.⁷⁰ As of December 2017, there are nine 209(b) states: Connecticut, Hawaii, Illinois, Minnesota, Missouri, New Hampshire, North Dakota, and Virginia.⁷¹ These 209(b) states may continue to employ their more restrictive income and resource methodologies.⁷²

⁶⁸ 42 U.S.C. § 1396a(a)(10)(A)(i)(II)(aa); 42 C.F.R. § 435.120.

⁶⁹ 42 U.S.C. § 1396a(e)(14)(A).

⁷⁰ 42 U.S.C. § 1396a(f); 42 C.F.R. § 435.121. This option was created by Pub. L. No. 92-603, § 209(b).

⁷¹ MAPAC, MACStats: Medicaid and CHIP Data Book, Exhibit 37 (Dec. 2017), *available at* <https://www.macpac.gov/wp-content/uploads/2015/12/MACStats-Medicaid-CHIP-Data-Book-December-2017.pdf>.

⁷² 42 U.S.C. § 1396a(e)(14)(D)(i)(III).

b) Children receiving Title IV-E and certain non IV-E foster care, adoption assistance or kinship guardianship assistance

Title IV-E provides federal financial participation in foster care, adoption assistance, and kinship guardianship assistance expenditure for children who meet federal eligibility criteria. These children are also categorically eligible for Medicaid.⁷³ There is no income test for these children; therefore they are not subject to MAGI.

Additionally, some states have chosen to disregard all income for children who receive non-IV-E foster care, kinship guardianship assistance, or adoption assistance.⁷⁴ Accordingly, these eligibility determinations are not subject to MAGI.

c) Katie Beckett option

A child with a disability and receiving care in an institution (such as a hospital or nursing home) may qualify for SSI and Medicaid by counting only the child's income, and not the income and assets of the child's parents.⁷⁵ States have the option (often called the Katie Beckett option) to provide Medicaid to disabled children living at home who do not qualify for SSI or state supplemental payments because of their parent's income or resources.⁷⁶

States may exercise this option if: 1) the child would qualify for Medicaid if he or she were in a medical institution; 2) the child requires hospital or nursing home level of care; 3) the home care is medically appropriate; and 4) the cost of home care would not exceed the cost of appropriate institutional care.⁷⁷

Eligibility under this option is expressly exempt from MAGI rules.⁷⁸

⁷³ 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I), 673(b)(3).

⁷⁴ See Section II.A.4.b of this Guide.

⁷⁵ 42 U.S.C. § 1382c(a)(3)(C); 20 C.F.R. §§ 416.1161a, 416.1204a, 416.1165(i).

⁷⁶ 42 U.S.C. § 1396a(e)(3); CMS, State Medicaid Manual §§ 3500.2, 3589. A child must qualify as disabled under 42 U.S.C. § 1382c(a) (the SSI definition). Children whose parents' income or resources would place them above SSI limits if they lived at home often would be eligible for SSI, and thus, Medicaid, if they were institutionalized. This is sometimes referred to as the "Katie Beckett" option, named after an institutionalized ventilator-dependent child who was unable to live at home, not because of medical reasons but because she would have been financially ineligible for Medicaid. See Cong. Research Serv. for the Comm. on Energy & Commerce, Comm. Print 100-AA, *Medicaid Source Book: Background Data and Analysis* 69 (1988). If states exercise this option, all such eligible children in the state qualify. For further information, see NHeLP, *The Advocates Guide to Medicaid*, 3.11.

⁷⁷ 42 U.S.C. § 1396a(e)(3).

⁷⁸ 42 U.S.C. § 1396a(e)(14)(D)(III).

d) Individuals for whom Medicaid is paying Medicare cost-sharing

Medicaid will pay premiums and certain other costs for qualified low-income individuals enrolled in Medicare, the federal health program for persons 65 and older and those with disabilities.⁷⁹

- Qualified Medicare Beneficiaries (QMBs) – states cover Medicare Part A and Part B premiums and pay deductibles and coinsurance costs for disabled or elderly individuals who have countable income at or below 100% FPL for a family of the size involved, and have resources that do not exceed twice the Supplemental Security Income (SSI) resource-eligibility standard.⁸⁰
- Specified Low Income Medicare Beneficiaries (SLMBs) - states cover Medicare Part B premiums for individuals who have countable income from 101-120% of FPL, and whose resources do not exceed twice the SSI resource-eligibility standard.⁸¹
- Qualifying Individuals (QIs) - states provide payment of Medicare Part B premiums for individuals who have the same characteristics as QMBs except that their countable income is 121-135% of FPL.⁸²

These categories are statutorily exempt from MAGI methodologies.⁸³

e) Dually eligible individuals

The ACA provides that HHS may waive MAGI “to the extent necessary to permit a State to coordinate eligibility requirements for dual eligible individuals (as defined in section 1915(h)(2)(B)) under the State plan, under a waiver of the plan, under title XVIII, and individuals who require the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded.”⁸⁴

To date, HHS has not issued guidance regarding how it might apply the MAGI exception for dually eligible individuals. However, it appears that most dually eligible individuals will fall under another MAGI excepted category, such as over 65, blind and disabled individuals, SSI recipients, and those seeking long term care services.

⁷⁹ For a discussion of these Medicare-related programs, please see NHeLP, *The Advocates Guide to Medicaid*, 3.10.

⁸⁰ 42 U.S.C. § 1396d(p).

⁸¹ 42 U.S.C. § 1396a(a)(10)(E)(iii).

⁸² 42 U.S.C. § 1396u-3(b).

⁸³ 42 U.S.C. § 1396a(e)(14)(D)(i).

⁸⁴ 42 U.S.C. § 1396a(e)(14)(F).

f) Long term care

The ACA exempts from MAGI determinations of eligibility for “purposes of medical assistance for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, [and] home or community-based services . . .”⁸⁵ These include services available under a § 1115 demonstration waiver or state plan amendment options under Section 1915.⁸⁶

According to CMS, the exception “applies only in the case of individuals who request coverage for long-term care services and supports for the purpose of being evaluated for an eligibility group for which meeting a level-of-care need is a condition of eligibility or under which long term care services are not covered for individuals determined eligible using MAGI-based financial methods are covered.”⁸⁷ In other words, the MAGI exception does not apply to persons to determine eligibility under a MAGI category, such as children or pregnant women, who may then request long-term services and supports.

g) Medically Needy and spend down populations

The ACA exempts the Medically Needy from the application of MAGI-based methodologies.⁸⁸ Thus, the standard rule is that existing financial eligibility methodologies will apply to the Medically Needy category.

In 2016, CMS finalized rules which allow states to apply MAGI-based methodologies to count the income for the following Medically Needy eligibility groups:

- Individuals under the age of 21;
- Pregnant women; or
- Parents/caretakers.⁸⁹

Under the CMS-initiated requirement, MAGI for these Medically Needy groups would differ from typical MAGI-based methodologies in several ways. First, states need to ensure that there is no inappropriate deeming of income from relatives who should not count as part of that individual’s Medicaid household.⁹⁰ Also, the Medically Needy MAGI-option rule references regulations specifically related to MAGI countable income,

⁸⁵ 42 U.S.C. § 1396a(e)(14)(D)(iv); 42 C.F.R. § 435.603(j)(4).

⁸⁶ 42 U.S.C. §§ 1396a(e)(14)(D)(iv), 1396n; 42 C.F.R. § 435.603(j)(4). See also NHeLP, *The Advocates Guide to Medicaid*, 2.6 - 2.9.

⁸⁷ 78 Fed. Reg. 4626 (emphasis added).

⁸⁸ 42 U.S.C. § 1396a(e)(14)(D)(i)(IV).

⁸⁹ 781 Fed. Reg. 86416 – 86418.

⁹⁰ 42 C.F.R. § 435.602.

not the MAGI prohibition on asset tests.⁹¹ Thus, the final rule does not prohibit states from retaining an asset test for Medically Needy eligibility if they take up this MAGI option. Finally, in order to meet the ACA's Maintenance of Effort requirement, states applying the Medically Needy MAGI-option would need to ensure that the new methodology does not restrict "aggregate" eligibility for children (until 2019).⁹²

h) Express Lane Findings

The eligibility determinations of Express Lane Agencies are expressly exempt from MAGI.⁹³ In 2009, the Children's Health Insurance Program Reauthorization Act (CHIPRA) sought to facilitate enrollment of children by allowing state Medicaid and CHIP agencies to accept the eligibility findings of other authorized agencies.⁹⁴ These may include means-tested programs such as Temporary Aid to Needy Families (TANF), the National School Lunch Program (NSLP), and the Supplemental Nutrition Assistance Program (SNAP).⁹⁵ Congress continued Express Lane Eligibility in the CHIP extension passed in 2018.⁹⁶

i) Medicare prescription drug subsidies

Low-income Medicare recipients may qualify for assistance in purchasing prescription drugs through the Extra Help program, which provides up to \$4000 in assistance for purchasing medications through the Medicare Part D program.⁹⁷ Individuals generally apply for Extra Help through the Social Security Administration.⁹⁸ However, states have the option of conducting determinations to qualify individuals for the Extra Help program.⁹⁹ The ACA expressly exempts state-level eligibility determinations for Extra Help from MAGI.¹⁰⁰

⁹¹ 78 Fed. Reg. 4692. (Asset tests are forbidden by 42 U.S.C. § 1396a(e)(14)(C); 42 C.F.R. § 435.603(g)(1).

⁹² 42 U.S.C. § 1396a(gg).

⁹³ 42 U.S.C. § 1396a(e)(14)(D)(ii).

⁹⁴ 42 U.S.C. § 1396a(e)(13)(A)(i).

⁹⁵ CMS, *Dear State Health Official & State Medicaid Director Letter* (Feb. 4, 2010), at 2 (Express Lane Eligibility Option).

⁹⁶ *Fourth Continuing Appropriations for Fiscal Year 2018, Federal Register Printing Savings, Health Kids, Health-related Taxes, and Budgetary Effects*, Pub. Law 115-120, 132 Stat 34 (Jan. 22, 2018).

⁹⁷ Social Security Administration, *Understanding the Extra Help with Your Medicare Prescription Drug Plan* (2013) available at <http://www.ssa.gov/pubs/EN-05-10508.pdf>.

⁹⁸ CMS, Medicare Prescription Drug Benefit Manual, 13. 4.1 (Rev. 1, July 2, 2011), available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Downloads/Chapter13.pdf>.

⁹⁹ 42 U.S.C. § 1395w-114(a)(3)(B)(i).

¹⁰⁰ 42 U.S.C. § 1396a(e)(14)(D)(iii).

j) Limits on waivers

Section 1115 of the Social Security Act allows HHS to authorize “experimental, pilot or demonstration projects” which “are likely to assist in promoting the objectives” of the Medicaid Act.¹⁰¹ Using this § 1115 authority, HHS may waive state plan requirements in 42 USC § 1396a.¹⁰² However, the ACA requires MAGI to apply to all § 1115 demonstration projects for populations and eligibility groups subject to MAGI.¹⁰³ The ACA further prohibits HHS from waiving MAGI except in very limited circumstances.¹⁰⁴

HHS may only waive MAGI to the “extent necessary to permit a state to coordinate eligibility requirements for dual eligible individuals.”¹⁰⁵ To date, HHS has not issued guidance on how this waiver provision might be implemented. Moreover, it appears that most if not all of the individuals who would fall under this waiver provision are otherwise exempt from MAGI (e.g., as SSI recipients, people with disabilities eligible for home- and community based services through the state plan or waiver, or individuals over age 65).

The ACA contains a second waiver provision allowing HHS to waive Medicaid and CHIP provisions “as are necessary to ensure that States establish income and eligibility determination systems that protect beneficiaries.”¹⁰⁶ HHS cites to this waiver authority in guidance allowing states to delay Medicaid eligibility recertifications scheduled for the first quarter of 2014.¹⁰⁷ The delay in recertification does not expressly exempt populations from MAGI, but allows states to avoid running two eligibility systems simultaneously while maintaining protections for individuals who might otherwise lose coverage resulting from the switch to MAGI during the transition period. HHS has given no further indication on use of this waiver authority.

RESOURCE: A chart of the ACA’s express MAGI exceptions and their U.S. Code citations is in Appendix B - **ACA MAGI Exceptions.**

¹⁰¹ 42 U.S.C. § 1315(a).

¹⁰² 42 U.S.C. § 1315(a)(1).

¹⁰³ 42 U.S.C. § 1396a(e)(14)(A).

¹⁰⁴ 42 U.S.C. § 1396a(e)(14)(F).

¹⁰⁵ *Id.*

¹⁰⁶ 42 U.S.C. § 1396a(e)(14)(A).

¹⁰⁷ CMS, *Dear State Health Official & State Medicaid Director Letter* (May 17, 2013), at 4 (Facilitating Medicaid and CHIP Enrollment and Renewal in 2014). See also Section VII.B of this Guide.

2. Categories subject to separate or no income counting rules

a) Post-eligibility disregards of income and resources

When an individual has established eligibility for Medicaid coverage and is institutionalized, receiving home and community-based waiver services, or receiving hospice care, states disregard certain types of income and resources. These disregards include: a personal needs allowance (at least \$30 per month) for clothing and other personal needs of the individual while in an institution;¹⁰⁸ the maintenance needs for family members if an institutionalized individual has a spouse at home;¹⁰⁹ a reasonable amount toward the cost of medical and remedial care that is not covered by Medicare or third parties;¹¹⁰ and SSI and State Supplementary Payments (SSPs).¹¹¹ The remainder is then applied toward the cost of care.¹¹² Post-eligibility disregards are not subject to MAGI.

b) Former foster youth

Under the ACA, states are required to extend Medicaid coverage to individuals who age-out of foster care until age 26, regardless of their income.¹¹³ This new category for former foster youth is distinguishable from the “independent foster adolescents” group (discussed in Section II.A.4.a of this Guide). Although many of these young adults might have been eligible under the new adult Medicaid expansion, this coverage allows them to remain in the traditional Medicaid program with the full scope of benefits.¹¹⁴

c) Newborns of Medicaid-eligible mothers

MAGI does not apply to newborn infants born to Medicaid-eligible mothers. These infants are deemed to be Medicaid eligible for one year as long as the mother remains

¹⁰⁸ 42 U.S.C. §§ 1396a(a)(50), 1396a(q)(1)(A)(i), 1396r-5(d)(1)(A); 42 C.F.R. §§ 435.733(c)(1), 436.832(c)(1); CMS, State Medicaid Manual § 3703.2.

¹⁰⁹ 42 U.S.C. § 1396r-5(d)(1)(C); 42 C.F.R. §§ 435.725(c)(3), 435.733(c)(3), 435.832(c)(3) (institutionalized individuals); 42 C.F.R. §§ 435.726(c)(3), 435.735(c)(3) (individuals on home and community-based waivers).

¹¹⁰ 42 U.S.C. §§ 1396a(r)(1)(A), 1396r-5(d)(1)(D); 42 C.F.R. §§ 435.725(c)(4), 435.733(c)(4), 435.832(c)(4) (institutionalized individuals); 42 C.F.R. §§ 435.726(c)(4), 435.735(c)(4) (individuals on home and community-based waivers).

¹¹¹ 42 U.S.C. § 1396a(o) (requiring disregard of SSI benefits paid under 42 U.S.C. § 1382(e)(1)(E)).

¹¹² 42 U.S.C. §§ 1396a(r), 1396a(o); 42 C.F.R. §§ 435.725, 435.733, 435.832, 436.832; CMS, State Medicaid Manual §§ 3584.2, 3590.9, 3700-3708.

¹¹³ 42 U.S.C. § 1396a(a)(10)(A)(i)(IX).

¹¹⁴ See CMS, *Medicaid and CHIP FAQs: Funding for the New Adult Group, Coverage of Former Foster Care Children and CHIP Financing*, Dec. 27, 2013, available at <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/FAQ-12-27-13-FMAP-Foster-Care-CHIP.pdf>.

Medicaid-eligible and the infant remains part of the mother's household.¹¹⁵ Deemed newborns remain continuously eligible for Medicaid under new rules.¹¹⁶

d) Breast and Cervical Cancer Treatment Program (BCCTP)

States may extend Medicaid coverage to low income, uninsured women screened for breast or cervical cancer by the Centers for Disease Control and Prevention (CDC).¹¹⁷ There are no Medicaid income or resource limitations imposed by federal law for this Medicaid eligibility group.¹¹⁸ Therefore, MAGI does not apply.

RESOURCE: For a chart showing the non-MAGI Medicaid eligibility categories and their citations in the Medicaid Act, please see Appendix C - **Populations and Eligibility Categories Where MAGI Does Not Apply.**

III. Determination of Countable Income

A. General Principles

The primary building block for determining income for Medicaid/CHIP, APTCs/CSRs is adjusted gross income (AGI) as defined under the Internal Revenue Code. AGI is then adjusted slightly to become "modified adjusted gross income" (MAGI).

The IRS/MAGI rules apply to all APTC/CSR applications. However, Medicaid/CHIP MAGI rules will diverge in some areas, as set forth below.

The most significant change from previous Medicaid income-counting rules is the elimination of the many possible deductions or income disregards: no disregard for earned income, child support paid, or child care expenses (unless through a flexible spending account).¹¹⁹ Instead, there is only a uniform 5% FPL disregard applied to MAGI in situations where it would determine eligibility for Medicaid and CHIP.¹²⁰

¹¹⁵ 42 U.S.C. § 1396a(e)(4); 42 C.F.R. § 435.117 (revised in 78 Fed. Reg. 4686).

¹¹⁶ *Id.*

¹¹⁷ CMS, *Dear State Health Official & State Medicaid Director Letter* (Jan. 4, 2001), at 2 (Overview of the National Breast and Cervical Cancer Early Detection Program and New Medicaid Coverage Option).

¹¹⁸ 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XVIII), 1396a(aa).

¹¹⁹ 42 U.S.C. § 1396(a)(e)(14)(B).

¹²⁰ 42 C.F.R. § 435.603(d)(4).

REMINDER: Existing Medicaid income-counting rules will continue to apply for MAGI-exempt categories. Those rules are not covered in this manual. Refer to NHeLP's *The Advocate's Guide to the Medicaid Program* and your individual state's rules for income-counting rules for non-MAGI populations.

While the ACA's reliance on IRS rules may sound foreign and intimidating, the Single Streamlined Application that state agencies and Marketplaces must use should walk applicants and assisters through the process without requiring reference to IRS income tax schedules (see Section IX for discussion of the Single Streamlined Application).

It is also important to keep in mind that, while eligibility for APTCs/CSRs is calculated based on annual income, Medicaid/CHIP eligibility for applicants will still be based on current monthly income, i.e., "point in time," even in MAGI categories (see discussion below Section III.F). The Single Streamlined Application allows the applicant to report income based on the most convenient time period (e.g., hourly, weekly, monthly, etc.). The computer system (known as the "MAGI Rules Engine") conducts the necessary calculations to translate reported income into the appropriate time frame for the eligibility determination.

NOTE: This section of the Guide only addresses what income is to be included, not whose income is included. Please refer to Section VI "Calculating Household Income" to determine whether or not the income of a particular household member is to be included in the income calculation.

B. Adjusted Gross Income

The starting point for calculation of income is the amount of Adjusted Gross Income (AGI) reported on Line 37 of IRS Form 1040, U.S. Individual Income Tax Return (Line 21 of the IRS Form 1040A, and Line 6 from the IRS Form 1040EZ).

Form 1040 calculates AGI in two steps. First, the tax filer lists various types of income on Lines 7 through 21, and then combines them on Line 22 as Total Income. Next, the filer calculates various expenses and pre-tax, or "above the line," deductions on Lines 23 through 35. These amounts are totaled on line 36, and then removed ("adjusted out" of) the total income, leaving AGI on Line 37.¹²¹

¹²¹ These adjustments differ from "below the line" deductions, such as mortgage interest or charitable donations, which are reported on Schedule A and removed further down on the tax return.

RESOURCE: If there is a question about a particular type of income, reference to IRS Form 1040, and the Form 1040 Instructions, can be a helpful guide. For reference, we include Form 1040 as Appendix D, also available at: <http://www.irs.gov/pub/irs-pdf/f1040.pdf>. Form 1040 Instructions can be found at: <http://www.irs.gov/pub/irs-pdf/i1040gi.pdf>.

Any income not counted as income on lines 7 through 21 on Form 1040 will not be part of MAGI. Likewise, any “above the line” adjustments to income reported on Lines 23 through 35 will reduce the total MAGI income.

The following chart summarizes some of the most common types of income and adjustments for MAGI purposes that might be relevant for lower income persons. For the complete list, see the IRS documents referenced above.

Selected Income and Adjustments Included in AGI	
Type of Income	Form 1040 Line
Wages, salaries, tips (earned income)	Line 7
Interest and Dividends	Lines 8 and 9
State Income Tax Refunds	Line 10
Alimony Received	Line 11
Profit or Loss From Self-Employment (Schedule C)	Line 12
Rental Income	Line 17
Unemployment Compensation	Line 19
Taxable amount of Social Security Benefits	Line 20b
Type of Adjustment (Reduction)	Form 1040 Line
Deductible part of self-employment tax	Line 27
Student Loan Interest Deduction	Line 33

For most applicants whose sole income source is working for wages or a salary, the AGI (and the MAGI amount) consists of taxable wages/salary as reported on Line 7 of Form 1040 and on Line 1 of the W2 (or a pay stub) (i.e., income *before taxes*). This should not differ from the gross income figure (prior to deductions or disregards) currently used to calculate an applicant’s Medicaid eligibility. Besides wages/salaries, a number of other types of income will also be included in the AGI, such as self-

employment income, various types of “unearned income,” and state income tax refunds.¹²²

California’s Department of Health Care Services developed a chart of [MAGI Income and Deduction Types](#) for use of eligibility workers. While this chart is not official IRS guidance, it provides a useful reference showing various types of income and whether they are taxable and included in MAGI.

The following is a brief summary of specific types of income included in the AGI calculation for both APTCs/CSRs and Medicaid/CHIP.

1. Earned income

The term “earned income” means income from wages, tips and other forms of compensation.¹²³ It is counted as gross income, i.e., income before taxes. This does not, however, include such items as retirement plan or cafeteria plan (a.k.a. flexible spending account) deductions, which are removed from taxable gross income. This is the amount that would be reported as “Wages, Tips, Other Compensation” in Box 1 on a W-2; it might be described with various labels on employer weekly, or other periodic, wage stubs.

NOTE: Tax withholding and other deductions will not be accounted for with an “earned income deduction” under MAGI.

2. Social Security

Only a portion of Social Security is subject to federal income tax and only that taxable portion is included in AGI under IRS income tax rules.¹²⁴ However, under *Modified Adjusted Gross Income*, all Social Security income will be included.¹²⁵ It is important to

¹²² See IRS, Publication 525, *Taxable and Non-taxable Income* (Jan. 16, 2018) available at <https://www.irs.gov/pub/irs-pdf/p525.pdf>.

¹²³ *Id.*

¹²⁴ See IRS Publication 17, *Your Federal Income Tax* (Dec. 12, 2017) at 5, available at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

¹²⁵ 26 C.F.R. § 1.36B-1(e)(2)(iii).

note that any Medicare premiums deducted from an individual's Social Security benefit will be added back and included in the calculation of MAGI.¹²⁶

3. Temporary Assistance for Needy Families (TANF)

Under the former Medicaid rules, TANF benefits were counted in determining Medicaid eligibility. However under the revised rules that are based on MAGI, TANF is not counted as it is excluded from MAGI calculations.¹²⁷

4. Self-employment income

Unlike traditional Medicaid income counting rules that use the gross revenue received by a self-employed person (and then allow a deduction), the AGI generally counts only profit from a self-employed business (i.e. gross revenue minus expenses). Filers calculate such income using Schedule C of the U.S. Individual Income Tax Return.

Social Security vs. Supplemental Security

Social Security income provided under Title II of the Social Security Act (SSA) includes Social Security Disability Insurance (SSDI), retirement income, and survivor's benefits. These forms of income could be subject to federal income tax.

Supplemental Security Income (SSI) is provided under Title XVI of the SSA. It is designed to help persons who are aged, blind, or disabled, who are very low income and have limited assets. SSI is not taxed and does not count towards MAGI.

RESOURCE: For detailed instructions, see IRS Instructions for Schedule C, Profit or Loss From Business: <http://www.irs.gov/pub/irs-pdf/i1040sc.pdf>. Notably, to obtain self-employment income, the model Single Streamlined Application only asks for "profits once business expenses are paid," without referring to things like amortization of capital assets.

5. Child support

Under MAGI, child support does not count towards the income of the family unit that includes the child receiving support.¹²⁸ Rather, child support will count towards the

¹²⁶ See generally IRS Publication 915, *Social Security and Equivalent Railroad Retirement Benefits* (Jan. 3, 2018) available at <http://www.irs.gov/pub/irs-pdf/p915.pdf>.

¹²⁷ See IRS Publication 525, *Taxable and Nontaxable Income* (Jan. 16, 2018) at 27, available at <http://www.irs.gov/pub/irs-pdf/p525.pdf>.

¹²⁸ *Id.* at 29.

income of the payer of child support, as there is no deduction for child support in the calculation of AGI.

NOTE: This differs from traditional Medicaid rules that count child support as income for the family unit that includes the child receiving the support.

6. Alimony

Unlike child support, alimony counts towards the AGI of the person who receives it, and must be reported as income on Line 11 of the Form 1040.¹²⁹ The Republican tax plan enacted in December 2017 eliminates the deduction for those who pay alimony.¹³⁰ The elimination of the alimony deduction applies to divorce or separation judgments executed beginning January 1, 2019, and to modifications of earlier judgments if the modification expressly applies.¹³¹

7. Veteran's benefits

Some veteran's benefits are not part of AGI, though such income would be considered as countable income under traditional Medicaid rules. This rule excluding veteran's benefits from AGI applies to a variety of different Veteran's Benefits paid through the Veteran's Administration, including payments received as a service-related disability pension, annuity or similar allowance. However, military retirement pay that is based on age or years of service *is* taxable and will count toward MAGI.¹³² Note that a service-related disability may be only "partial," designated by a percentage, so that a VA pension may be partially taxable and partially excludable from gross income. For more information on veteran's benefits, see <http://www.irs.gov/Individuals/Information-for-Veterans-with-Disabilities>.

¹²⁹ See *IRS Publication 17, Your Federal Income Tax (Dec. 12, 2017)* at 133, available at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

¹³⁰ Public Law No. 115-97, Sec. 11051, 131 Stat 2054. "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," (codified at 26 U.S.C. §§ 71, 211, 681

¹³¹ *Id.* Codified at 26 U.S.C. § 61 note.

¹³² See discussions on Military and on Disability Pensions in Chapter 5, Wages, Salaries and Other Earnings in *IRS Publication 17* for a more detailed discussion of which types of veteran's and military benefits are taxable and which are not taxable. See also discussions on Military and on Military and Government Disability Pensions in *IRS Publication 525, Taxable and Nontaxable Income* (Jan. 16, 2018) at 27, available at <http://www.irs.gov/pub/irs-pdf/p525.pdf>. In addition to service-related disability pensions, certain other allowances, grants and other benefits are non-taxable.

RESOURCE: The tax implications of military pensions, disability, and veterans benefits can be complicated and are beyond the scope of this Guide. The IRS and the Veteran’s Administration provide information at

- <http://www.benefits.va.gov/benefits/>
- <http://www.irs.gov/Individuals/Military>
- <http://www.irs.gov/Individuals/Information-for-Veterans-with-Disabilities>

8. Foster Care Payments and Difficulty of Care Payments

a) Foster Care

Federal tax law excludes certain payments made to foster care providers from the care provider’s gross income.¹³³ To be excluded, the foster care payments must be paid by a state or municipal agency for the care of a qualified foster individual in the foster care provider’s home.¹³⁴ In addition, “difficulty of care” payments paid by state agencies as compensation for the additional care provided at home for a “qualified foster individual” living with “a physical, mental, or emotional handicap,” are likewise excluded from the provider’s gross income.¹³⁵ Excluding foster care and difficulty of care payments from gross income lowers MAGI for the care provider’s household and therefore affects eligibility for Medicaid, CHIP, or Marketplace subsidies determined under MAGI.

b) Home and Community Based Services

In January 2014, the IRS announced that payments received by in-home, individual care providers under Medicaid Home and Community Based Services (HCBS) waiver programs can be treated as “difficulty of care” payments and excluded from the care provider’s gross income.¹³⁶ However, the IRS Notice failed to address whether payments from non-waiver HCBS programs, including § 1915(i) State Plan Home and Community-Based Services, § 1915(j) Self-Directed Personal Assistance Services under State Plan, and § 1915(k) Community First Choice, can be treated as difficulty of care.

In a subsequent Q&A, the IRS clarified that payments from these other programs can be treated as difficulty of care payments, depending “on the nature of the payments and

¹³³ 26 U.S.C. § 131.

¹³⁴ *Id.* at (b)(1)(B)(i).

¹³⁵ *Id.* at (c)(1)(A)(i)

¹³⁶ IRS Notice 2014–7 *Foster care payment, Medicaid waivers* (Jan. 21, 2014) available at http://www.irs.gov/irb/2014-4_IRB/ar06.html.

the purpose and design of the program.”¹³⁷ However, neither the IRS Notice nor the Updated IRS Q&A provides a list of specific HCBS non-waiver programs or requirements to qualify as difficulty of care payments.

In the absence of further clarification from the IRS, advocates should consult with their state Medicaid agencies to determine when non-waiver HCBS program payments should be treated as difficulty of care payments.

RESOURCE: See NHeLP’s Fact Sheet – [IRS Updated Guidance on Home and Community Based Services and Excluding ‘Difficulty of Care’ Payments from Gross Income](#) – for more information on factors that will determine whether non-waiver HCBS payments should be treated as difficulty of care payments, as well as implementation and advocacy strategies.

9. Health Insurance Premiums

Self-employed individuals may take a deduction for health insurance paid for coverage for themselves, their spouses, their dependents, or their children under age 27.¹³⁸ Under this deduction, these health insurance premiums are **not** included in an individual’s adjusted gross income or their MAGI income.

However, deducting health insurance premiums from adjusted gross income may create a circularity for those receiving APTCs. A self-employed tax filer can deduct the amount of health insurance premiums paid, thereby lowering the tax filer’s total MAGI. With a lower MAGI, the tax filer is entitled to a greater amount of APTCs, which lowers the amount of health insurance premiums the individual pays. However, paying a reduced amount in premiums results in a lower amount that the tax filer can deduct, thereby raising the tax filer’s total MAGI, and reducing the amount of APTCs.

¹³⁷ IRS Q&A, *Certain Medicaid Waiver Payments May Be Excludable From Income* (updated Feb. 23, 2015) available at <http://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income>.

¹³⁸ 26 U.S.C. § 162(l)(1).

Rules from the IRS establish a limit on the deductions for health insurance premiums when a self-employed individual receives PTCs. This deduction allows self-employed individuals who obtain Marketplace coverage to claim this deduction, but the deduction is limited to the lesser of:

- The Marketplace premiums less the attributable premium tax credit; or
- The sum of the premiums less the APTC attributed to the premiums, plus the excess of any APTCs that exceed the amount of PTCs for which a taxpayer is eligible.¹³⁹

10. Private Disability Payments

Taxable and non-taxable Social Security Disability Insurance (SSDI) payments are included in MAGI. (See III.B.2 above and Sec. III.C below). However, disability payments that are not issued by Social Security, such as payments from private disability insurance policies, may not be taxable and not included in MAGI.

Whether an insurance company disability payment is included in MAGI depends on who made the premium payments for the policy, and on how the payments were made. According to the IRS:

- If the tax filer paid the entire cost of the disability insurance plan, none of the payments received are taxable.
- If both the tax filer and the tax filer's employer paid premiums for the disability insurance plan, only the amount received on account of the employer's premium payments is taxable.
- If tax filer paid the premiums through an employer's "cafeteria" (employee benefits) plan, and the amount of the premiums was not included in the filer's taxable wages, the premiums are considered paid by the employer, and the payments are fully taxable.¹⁴⁰

¹³⁹ 26 C.F.R. § 1.162(l)-1.

¹⁴⁰ IRS Publication 525, *Taxable and Nontaxable Income* (Jan. 16, 2018) at 17, available at <http://www.irs.gov/pub/irs-pdf/p525.pdf>.

C. From AGI to MAGI

Once Adjusted Gross Income (AGI) is defined and reported (see Line 37 of IRS Form 1040), *three adjustments* are made to AGI to transform it into *Modified Adjusted Gross Income (MAGI)*.¹⁴¹ These adjustments account for (1) foreign income, (2) tax exempt interest and (3) non-taxable Social Security benefits.

AGI
+ Excluded Foreign Income
+ Tax Exempt Interest
+ Non-taxable Social Security benefits =
MAGI

Few low income clients will have foreign income or tax-exempt interest, two of the ACA mandated “modifications” to the AGI. However, the modification that includes the non-taxable portion of Social Security benefits in MAGI will affect many applicants to insurance affordability programs. *All* Social Security benefits received by tax filers (including retirement benefits, disability benefits, widow’s benefits and survivors’ benefits) are included in MAGI.¹⁴²

When to count Social Security income

For tax filers - Social Security income will always count toward the total household MAGI.

For tax dependents – Social Security income will count toward the total household MAGI only if the dependent is required to file a federal income tax return. See Section V.B of this Guide for further explanation of when to count the Social Security income of dependents.

D. Further Modifications to MAGI for Medicaid

For Medicaid eligibility determinations, a few additional types of income are excluded or counted differently than they are for APTCs/CSRs. These are:

¹⁴¹ 26 U.S.C. § 36B(d)(2)(B); 42 C.F.R. § 435.603(e); 45 C.F.R § 155.305(f)(i).

¹⁴² 26 U.S.C. § 36B(d)(2)(B)(iii). Under the federal tax rules, if an individual’s only income is Social Security benefits, it is most likely that none of it will be taxable. If an individual has other income in addition to Social Security, then, depending on the amount of their income, a portion of the Social Security may be taxable. This must be calculated using a Worksheet in the Instructions to the Form 1040 or 1040A, but advocates will not need to know the details of such calculations since all Social Security will be counted for MAGI.

1. Certain scholarship and fellowship income

Under IRS rules, certain types of educational scholarships and grants (for example, work-study arrangements and other situations in which the individual has to provide a service) are included in AGI. Current Medicaid rules exclude a broader scope of scholarships, awards or fellowship grants, and these rules are maintained for Medicaid MAGI.¹⁴³ The funds must still be used only for educational purposes (i.e., not living expenses), but such income can be excluded even if services were provided in return.

Scholarships, awards, fellowship grants not used for living expenses, Pub. 970	Not Counted (Medicaid)	Count Taxable Portion
Scholarships, awards, fellowship grants used for living expenses, Pub, 970	Count Taxable Portion	Count Taxable

2. Certain American Indian and Alaska Native income

While many types of AI/AN income are excluded from the federal tax and Section 36B definitions of MAGI (in some instances more liberally than current Medicaid rules), there are some forms of AI/AN income that count for IRS tax purposes but are excluded under current Medicaid income counting rules. These types of AI/AN income will continue to be excluded under Medicaid MAGI. For a list of the specific types of AI/AN income excluded under Medicaid MAGI, in addition to those types of income already excluded for IRS purposes, see 42 C.F.R. § 435.603(e)(3).

RESOURCE: See the from the for more information on countable income and exceptions for AI/AN MAGI determinations, see American Indian Health Commission's [Indian Health Care Reform Manual](#); and [The ACA, the Service, and the Indian Health Care Delivery System](#) by Christine Speidel and Heather Erb in the ABA Section on Taxation NewsQuarterly (Summer 2015).

3. Lump sum income

In Medicaid, an amount received as a “lump sum” only counts as income in the month received. An example of a lump sum would be an inheritance. Medicaid MAGI maintains the existing Medicaid rules, where lump sums are treated as income in the month received. This contrasts with the income determination for APTCs, where taxable lump

¹⁴³ 42 C.F.R. § 435.603(e)(2). See also 45 C.F.R. § 233.20.

sums count towards the tax filer's total AGI and would thus affect the amount of the APTC an applicant could receive in the calendar year.

For example, any taxable capital gain from the sale of a home would be treated as lump sum income for MAGI Medicaid in the month of the sale.¹⁴⁴

NOTE: Gifts and Inheritances

Other common examples of "lump sums" are one-time gifts or inheritances. Gifts and inheritances are NOT included in MAGI (because gifts and inheritances are taxed to the donor or the estate, not to the receiver).¹⁴⁵ Therefore, under MAGI rules for both Medicaid and APTCs, gifts and inheritances will not be counted at all (but under traditional Medicaid they are treated as income in the month received).

4. Lottery winnings

Under legislation enacted in early 2018, states must consider "qualified lottery winnings" and/or "qualified lump sum income" received by an individual on or after January 1, 2018, when determining eligibility for Medicaid based on MAGI.¹⁴⁶ The statute defines qualified lottery winnings as a lump sum payment from a state-conducted sweepstakes or lottery, or a lottery operated by a multistate or multijurisdictional lottery. Winnings in an amount less than \$80,000 are considered in the month that such winnings are received. Amounts greater than or equal to \$80,000, but less than \$90,000, are prorated over a period of two months. Amounts greater than or equal to \$90,000, but less than \$100,000, are prorated over a period of three months. For winnings in amounts greater than or equal to \$100,000, one additional month is added for each increment of \$10,000 received, not to exceed 120 months (or 10 years) for winnings of \$1,260,000 or more. Winnings and/or income greater than or equal to \$80,000 are counted in equal monthly installments over the applicable time period.

States may establish a hardship exemption in cases where denial of Medicaid eligibility would lead to undue medical or financial hardship. As of August, 2018, HHS has not

¹⁴⁴ 42 CFR 435.603(e) calculates income as defined by 26 U.S.C. § 36B. Any taxable capital gain on the sale of a home is included in AGI and must be entered on IRS Form 1040, line 13, capital gains (IRS Form 8949 and schedule D).

¹⁴⁵ 26 U.S.C. § 102(a). See also IRS Publication 525 *Taxable and Non Taxable Income* (Jan. 16, 2018) available at <http://www.irs.gov/pub/irs-pdf/p525.pdf>.

¹⁴⁶ The Bipartisan Budget Act of 2018, Sec. 53103 (BBA 2018, P.L. 115-123), Feb. 2018 (codified at 42 U.S.C. § 1396a(e)(14)(K)).

issued guidance to states as required by the statute States must provide notice to persons who lose Medicaid eligibility as well as a referral to Marketplace coverage.

5. Compensation for participation in a clinical trial

Congress has excluded the first \$2,000 received by individuals over age 18 as compensation for participating in a clinical trial for a rare disease or condition.¹⁴⁷ This income exclusion applies to financial eligibility determinations for both MAGI and non-MAGI eligibility determinations, including waivers.¹⁴⁸

6. Parent mentor compensation

Nominal amounts received as compensation by individuals participating as a parent mentor are not included when determining financial eligibility for MAGI and non-MAGI categories.¹⁴⁹ Parent mentors are the parents of at least one child currently enrolled in Medicaid or CHIP who are trained under a CMS-funded grant program to assist families in enrolling and accessing health coverage.¹⁵⁰

E. Countable Income - Differences in Traditional Medicaid and MAGI

While MAGI income counting rules will now apply to most Medicaid eligibility categories (and to eligibility for CHIP, APTCs and CSRs), advocates will still need to know the traditional Medicaid rules for income counting. These will continue to apply to income calculations for non-MAGI Medicaid categories (See Section II.B). The following chart compares certain types of income that are treated differently under the two methodologies.

¹⁴⁷ 42 U.S.C. § 1396a(e)(15).

¹⁴⁸ *Id.*

¹⁴⁹ 42 U.S.C. § 1396a(e)(14)(J).

¹⁵⁰ 42 U.S.C. § 1397mm(f)(5).

Income - Traditional Medicaid v. Medicaid/CHIP MAGI v. Marketplace			
Issue	Traditional Medicaid¹⁵¹	Medicaid/CHIP MAGI	Marketplace MAGI
Consider current monthly income or annual income?	Point-in-time income calculation based on current monthly income, with State option to consider predictable changes in income at initial determination.	Applicants: Current Month. Recipients: State option for current month or projected annual income for remainder of year. Applicants & Recipients: State option to adopt method to account for predictable decreases or increases in income.	Projected Annual Income
Social Security Benefits	Included as income	Included as income	Included as income
Child Support Received	Included (subject to small disregard)	Not included	Not included
Child Support Paid	Generally not included in income of payer under AFDC-related Medicaid	Included in taxpayer's income (taxable to person paying the child support)	Included in taxpayer's income (taxable to person paying the child support)
Alimony Received	Included in income	Included (taxable to person receiving alimony)	Included (taxable to person receiving alimony)
Gifts and Inheritances	Treated as lump sum income; monetary gifts received regularly each month would be treated as income	Not included (gifts and inheritances are taxable to the donor or the estate, not to the person who receives them)	Not included (gifts and inheritances are taxable to the donor or the estate, not to the person who receives them)
Veteran's Benefits Paid On the Basis of Service-Related Disability	Included as income	Not included as income	Not included as income

¹⁵¹ Note: These are general rules, subject to exceptions in particular situations, and which may vary by Medicaid category and by state.

Income - Traditional Medicaid v. Medicaid/CHIP MAGI v. Marketplace			
Issue	Traditional Medicaid¹⁵¹	Medicaid/CHIP MAGI	Marketplace MAGI
Scholarships, fellowship grants and awards used for education purposes	Excluded from income, including work-study income if used for educational costs	Excluded from income, including work-study income if used for educational costs	Excluded from income, but narrower definition than Medicaid rules (work-study income is taxable)
American Indian and Alaska Native (AI/AN) income derived from distributions, payments, ownership interests, and real property usage rights	Most types of AI/AN Income Excluded	Most of types of AI/AN Income Excluded	Some types of AI/AN Income Excluded, but narrower definition than Medicaid rules
Lump Sums Received	Included as income in month received; treated as resource in following months	Included as income in month received only	Included in annual income

F. Annual Income (Marketplaces) v. Point-in-time Income (Medicaid)

Eligibility for Marketplace subsidies is determined according to an individual's projected annual income.¹⁵² However, the ACA continues Medicaid's point-in-time income determination.¹⁵³

CMS regulations require states to determine Medicaid/CHIP eligibility for new applicants based upon their current monthly household income and family size.¹⁵⁴

However, when conducting eligibility redeterminations for current Medicaid enrollees, states can opt to use either the current monthly household income and size or a projected annual household income and size for the remaining months of the calendar year.¹⁵⁵ The Medicaid and household size projection for the current calendar year may be different from the Marketplace projected household income and size, which requires the applicant to predict income and household size for the tax year.

¹⁵² 45 C.F.R. § 155.305(f)(i).

¹⁵³ 42 U.S.C. § 1396(a)(e)(14)(H).

¹⁵⁴ 42 C.F.R. § 435.603(h)(1).

¹⁵⁵ 42 C.F.R. § 435.603(h)(2).

States must also use “reasonable methods” when conducting income determinations based on either monthly or annual projected income. These “reasonable methods” include accounting for predictable increases or decreases in income, such as from seasonal work, to help reduce churning resulting from fluctuations in income.¹⁵⁶ States can also use a prorated portion of income of a predictable change of income, and they can elect to use both methods.¹⁵⁷ A state must indicate on its SPA implementing MAGI which income calculation it will use.

When differences in Marketplace and Medicaid income determinations result in ineligibility for either program

The Medicaid “point-in-time” income determination and the Marketplace “projected annual income” may lead to a situation where an individual is ineligible for either program. For example, an individual with fluctuating income, such as a seasonal worker, may report monthly income over the state’s Medicaid eligibility threshold. However, that individual’s projected annual income may be less than 100% FPL, which is below the eligibility threshold for APTCs for most people.¹⁵⁸

To remedy this situation, federal MAGI regulations stipulate that the Marketplace projected annual income must be used to determine Medicaid eligibility.¹⁵⁹

For more information on the Medicaid MAGI gap filling provision, see NHeLP’s [Q&A - When Differences Between Marketplace and Medicaid MAGI Result in Ineligibility for Either Program](#)

¹⁵⁶ 42 C.F.R. § 435.603(h)(3); 77 Fed. Reg. 17157.

¹⁵⁷ *Id.*

¹⁵⁸ 26 U.S.C. § 36B(c)(1)(A). Note, the ACA includes an exception that allows lawfully present immigrants who are not eligible for Medicaid to receive PTCs if their income is below 100% FPL. 26 U.S.C. § 36B(c)(1)(B).

¹⁵⁹ 42 C.F.R. § 435.603(i).

G. Disregards and Asset Test

One of the key changes under the Medicaid MAGI methodology is the elimination of various deductions and disregards currently applied to income for Medicaid and CHIP eligibility.¹⁶⁰ Instead, the ACA eliminated asset tests for MAGI categories and introduced a standard disregard of 5% FPL.¹⁶¹ However, as explained below, this 5% FPL disregard is not used in all cases where MAGI applies.

NOTE: Deductions for child care expenses

One of the most commonly used income deductions under current non-MAGI rules is child care expenses, for which federal rules require states to provide deductions of at least \$175 per month (\$200 per month for a child under age 2).¹⁶² This deduction will no longer be allowable under MAGI rules. While IRS rules do allow a credit for child and dependent care expenses (see IRS Pub. 503), this credit is taken on Line 48 of Form 1040 and thus has no impact on reducing AGI. However, employees may be able to reduce their AGI for dependent care expenses if their employer provides for a qualified Flexible Spending Arrangement (FSA).¹⁶³ Income deposited into such an account is not included in wages on Line 7 of Form 1040 and thus will be excluded from AGI. This benefit is not available to self-employed persons.

1. Calculating the 5% FPL disregard

The simplest way to conceive of the new 5% disregard is to convert the individual's household income into an FPL percentage, subtract five FPL percentage points, and then, if necessary convert back to a dollar amount.¹⁶⁴ For example, if an individual's monthly income, calculated in accordance with MAGI rules, is 135% FPL, then the individual's income for Medicaid purposes would be 130%FPL. If the upper income limit for that individual's eligibility for Medicaid is 133% FPL, then the 5% FPL disregard will render them eligible. This disregard explains the common reference that Medicaid expansion will go to 138% FPL.

¹⁶⁰ 42 U.S.C. § 1396a(e)(14)(B): “[N]o type of expense, block, or other income disregard shall be applied by a State to determine income eligibility for medical assistance under the State plan or under any waiver of such plan or for any other purpose applicable under the plan or waiver for which a determination of income is required”); See also 42 C.F.R. § 435.603(g)(2).

¹⁶¹ 42 U.S.C. §§ 1396a(e)(14)(C), 1396a(e)(I)(1).

¹⁶² 45 C.F.R. § 233.20(a)(11)(D).

¹⁶³ 26 U.S.C. § 129; 26 C.F.R. § 1.125-5(i).

¹⁶⁴ 42 C.F.R. § 435.603(d)(4).

2. Applying the 5% FPL disregard

a) Health Insurance Marketplaces

The 5% FPL disregard does *not* apply to eligibility determinations for APTCs/CSRs in the Marketplaces.

b) Medicaid and CHIP

While the statutory language might appear on its face to provide for application of the 5% FPL disregard in all income determinations for Medicaid and CHIP, CMS has determined that it will not apply in all cases. CMS has focused on the statutory directive that the 5% FPL disregard applies “[f]or purposes of *determining the income eligibility* of an individual for medical assistance...” [emphasis added].¹⁶⁵ CMS interprets this to mean that the 5% disregard should apply *only* in situations where the individual would otherwise not be eligible for Medicaid, i.e., only when they are slightly above the highest FPL percentage that would make them eligible for Medicaid.¹⁶⁶

EXAMPLE: Applying the 5% FPL Standard MAGI Disregard

George Michael lives in a state that has adopted the Medicaid expansion. The state’s income threshold for § 1931 eligibility is 100% FPL. If George’s MAGI income is 103% FPL, he would not qualify under § 1931 unless the 5% FPL disregard applied. However, George does qualify under the Medicaid expansion which provides eligibility up to 133% FPL. Because he would qualify for Medicaid under the adult expansion group, the 5% disregard will not apply to his MAGI income.

Eligibility determinations on a basis other than MAGI will continue to use existing deductions and disregards.

3. Elimination of Asset Test

In addition to the income counting rules, the ACA prohibits consideration of assets when determining MAGI-based eligibility.¹⁶⁷ Many states already disregard assets for children’s eligibility as well as asset tests for parents and caretakers. In those states that continued to use asset tests for those categories now subject to MAGI, a number of

¹⁶⁵ 42 U.S.C. § 1396a(e)(14)(I).

¹⁶⁶ 42 C.F.R. §§ 435.603(d)(1), 435.603(d)(4). See also discussion in the Preambles to the Proposed Rule at 78 Fed. Reg. 4594, 4625-26 (Jan. 22, 2013) and to the Final Rule at 78 Fed. Reg. 42160, 42186-88 (July 15, 2013).

¹⁶⁷ See 42 C.F.R. § 435.603(g).

individuals stand to gain eligibility due to the elimination of asset tests. This change, which applies across all insurance affordability programs for MAGI-based eligibility, also greatly simplifies the income determination and verification process.

IV. Household Composition - Marketplaces vs. Medicaid/CHIP

A. Introduction

In the world of Medicaid and Marketplaces, a household is not necessarily the people with whom you live with and to whom you are related. Instead, the household is determined by the tax relationship among individuals, as well as their living arrangements, legal status, and other factors. Rules for determining who is in the “household” differ between the Marketplace and Medicaid.¹⁶⁸ In addition, household composition (e.g., who is in the household) is not necessarily the same as household size. For example, and as explained below, for Marketplace determinations a pregnant woman is counted as just one person; whereas in Medicaid a pregnant woman could be counted as one person, two people, or one plus the number of children expected to deliver.¹⁶⁹

Therefore, eligibility and enrollment systems should conduct a person-by-person analysis for each individual seeking an eligibility determination for insurance affordability programs. This analysis applies Medicaid and Marketplace MAGI rules separately to determine who counts as a member of each individual’s household for which program. While Marketplace family size and Medicaid family size will often be the same, because of differences in the rules, an individual’s Marketplace family size may differ from the Medicaid family size.¹⁷⁰

Once an individual’s Marketplace and Medicaid MAGI household is established, a second determination must be made as to whether or not to include the income of each household member in the calculation of total household income.

¹⁶⁸ 26 U.S.C. § 36B; 42 C.F.R. § 435.603(b).

¹⁶⁹ 42 C.F.R. § 435.603(b).

¹⁷⁰ The ACA and MAGI regulations use the term “family size.” Note, however, that individuals need not be related to be members of the same MAGI household under both Medicaid and Marketplace MAGI.

B. Household composition in the Marketplace

In the Marketplace, the household size will almost always be the same as the tax filer's household.¹⁷¹ The Marketplace household is comprised of the tax filer(s) and those they expect to claim as dependents. A tax filer can be an individual or spouses (if filing jointly) who file federal income taxes *and* claim a personal exemption.¹⁷² Under the ACA, the household size consists of the tax filer (or filers for married couples filing jointly) and any person the tax filer can claim as a dependent.¹⁷³

In order to be claimed as a tax dependent, an individual must meet the requirements of either a “qualifying child” or a “qualifying relative” (explained in Section IV.B.4 below). Only one tax filer (or spouses filing jointly) can claim an individual as a dependent.¹⁷⁴ Tax filers may claim an exemption for a dependent, even if the dependent files his or her own federal tax return.¹⁷⁵

Each individual counted as a member of the Marketplace household will have the same family size. Because APTC/CSRs are administered through the federal income tax system, they can be provided only to individuals and families who file or are claimed on federal income tax returns. Marketplace determinations for APTCs/CSRs and cost sharing assistance are forward-looking, based upon the projected household size and income for the tax year in which eligibility begins.

REPORTING CHANGES: Significant life changes such as marriage, divorce, birth, death, and changes in income must be reported to the Marketplace and may affect eligibility for APTCs/CSRs.

1. What is a tax filer?

Under MAGI, a tax filer is someone who files federal income taxes and who claims the personal exemption amount.¹⁷⁶ A dependent who files federal income taxes cannot claim the personal exemption amount and is not a “tax filer” for MAGI-based

¹⁷¹ Individuals who are not lawfully present are not counted as members of a tax household. See 26 U.S.C. § 36B(e)(1)(B)(i)(I) *and* Section IV.B.9 of this Guide for a discussion of individuals who are not lawfully present.

¹⁷² 26 U.S.C. §§ 151, 152. See generally IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2017 Returns* (Jan. 2, 2018), available at <http://www.irs.gov/pub/irs-pdf>.

¹⁷³ 26 U.S.C. § 36B(d)(1),

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ 26 U.S.C. §§ 36B(d)(2)(A), 5000A(c)(4)(B); 42 C.F.R. § 435.603(d)(2).

determinations.¹⁷⁷ Similarly, the term “tax payer” should be avoided when making MAGI determinations because dependents may also be taxpayers.

The Republican tax reform plan zeros out the exemption amount beginning in the 2018 tax year, however, the IRS will still need to publish the exemption amount, adjusted for inflation, to determine dependents (e.g., persons for whom the exemption may be claimed).¹⁷⁸

The tax plan also establishes a new filing threshold tied to the standard deduction amount.¹⁷⁹ The law increases the standard deduction to \$12,000 for single filers, \$18,000 for heads of household, and \$24,000 for joint filers, while eliminating the additional standard deduction and the personal exemption. These provisions apply to the 2018 tax year and sunset at the end of 2025.¹⁸⁰

The situation typically arises when a young adult is claimed by her parents as a dependent. If she works a summer job and has federal income taxes withheld, she may file her own federal income tax return to receive a tax refund. Since her parents claim her as a dependent, she would not be considered a “tax filer” for Marketplace or Medicaid MAGI purposes. Instead, she is counted as a member of the tax filing household which claims her as a dependent.

2. What is a dependent?

IRS rules govern who can be claimed as a dependent on an income tax return. A dependent can be a “qualifying child” or a “qualifying relative.” One spouse may not claim another spouse as a dependent.¹⁸¹ Under IRS rules, if a taxpayer claims an individual as a dependent, that individual cannot claim someone else as a dependent in that calendar year.¹⁸²

For example, if an 18 year old student who is claimed as a dependent on her parents’ tax return has a baby, she cannot claim that baby as her dependent for that calendar year. However, her parents may claim the baby as a dependent on their tax return.

¹⁷⁷ 26 U.S.C. § 36B(d)(1).

¹⁷⁸ “For purposes of any other provision of this title, the reduction of the exemption amount to zero ...shall not be taken into account in determining whether a deduction is allowed or allowable, or whether a taxpayer is entitled to a deduction, under this section.” Public Law No. 115-97, Sec. 11041, 131 Stat 2054. “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” (codified at 26 U.S.C. §151(d)(5)(B)).

¹⁷⁹ Id. a § 11041(e).

¹⁸⁰ Id. at § 11021.

¹⁸¹ IRS Publication 17, *Tax Guide 2017 for Individuals* (Dec. 12, 2017) available at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

¹⁸² 26 U.S.C. § 152(b)(1).

a) Qualifying child

The term “qualifying child” includes a biological child, adopted, step child, or an eligible foster child.¹⁸³ A child’s descendant can also be a qualifying child and claimed as a dependent by a tax filer. However, the relationship to the tax filer is just one requirement to be a qualifying child. Any “qualifying child” must also:

- Be a US citizen or legal resident of the US, Canada, or Mexico;
- Live with the taxpayer for more than one-half of the taxable year;
- Be under age 19, or if a full-time student, age 24;
- Not provide more than one half of his or her own financial support during the taxable year (note this does not place a requirement on the tax filer’s level of support for the child to claim that child as a dependent); and
- Not have filed a tax return with the tax filer’s spouse.¹⁸⁴

If a child’s parents are married but separated and file separate tax returns, the child may be claimed as a dependent by the parent with whom the child resides for the longest period of time in a tax year.¹⁸⁵ If the child lives with both parents an equal amount of time in the tax year, the parent with the highest adjusted gross income can claim the child as a dependent.¹⁸⁶

NOTE: Child claimed by a non-custodial parent

Generally, the custodial parent in a divorced couple will claim any children as dependents. However, the IRS Code has a special rule for divorced parents allowing a non-custodial parent to claim a child as a dependent if certain conditions are met, including the agreement of the custodial parent.¹⁸⁷

¹⁸³ 26 U.S.C. §§ 152(c),(f).

¹⁸⁴ 26 U.S.C. §§ 152(c)(1)(A)-(E).

¹⁸⁵ 26 U.S.C. § 152(c)(4)(B)(i).

¹⁸⁶ 26 U.S.C. § 152(c)(4)(B)(ii).

¹⁸⁷ 26 U.S.C. § 152(e).

Tests to Be a Qualifying Child

- The child must be your son, daughter, stepchild, foster child, brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant of any of them.
- The child must be (a) under age 19 at the end of the year and younger than you (or your spouse if filing jointly), (b) under age 24 at the end of the year, a student, and younger than you (or your spouse if filing jointly), or (c) any age if permanently and totally disabled.
- The child must have lived with you for more than half of the year.
- The child must not have provided more than half of his or her own support for the year.
- The child is not filing a joint return for the year (unless that joint return is filed only to claim a refund of withheld income tax or estimated tax paid).
- The child must be a U.S. citizen, U.S. resident alien, U.S. national, or a resident of Canada or Mexico (except for certain adopted children).

If the child meets the rules to be a qualifying child of more than one person, only one person can actually treat the child as a qualifying child.

b) Qualifying relative

A tax filer's child who is too old to be a "qualifying child" may nonetheless be claimed as a dependent as a "qualifying relative." The rules for qualifying relative resemble those for qualifying children in that they both define specific relationship and support parameters. To claim a "qualifying relative" as a dependent:

- The relative must be an offspring, parent, sibling, in-law, or other qualified relation, or living with the tax filer for the full year and a member of the household;
- The relative must be a US citizen or legal resident of the US, Canada, or Mexico;
- The tax filer must provide more than one half of the relative's financial support;

- The relative's gross income must not exceed the exemption amount (\$4,050 for the 2018 tax year).¹⁸⁸

3. Married, separated, and divorced couples

Married couples who file joint tax returns are each considered to be “tax filers;” and one spouse does not claim the other as a dependent.¹⁹⁰ Under tax law, marital status is determined at the close of the calendar year.¹⁹¹ Except for certain circumstances described below, married couples must file a joint tax return to receive APTCs/CSRs.¹⁹² Couples who are separated, but not yet divorced, are still considered married, and therefore must, in most circumstances, file jointly to be eligible for APTCs/CSRs.¹⁹³

NOTE: Under Medicaid MAGI rules, married couples who live together are counted in the same household regardless of whether they file joint or separate federal income tax returns (See discussion in Section IV.C.2.d of this Guide.)

Under the IRS code, persons who are divorced or a party to a “decree of separate maintenance” are unmarried.” In some cases, state courts may render a final ruling on marital status, which renders the parties “unmarried” for tax purposes, but still retain jurisdiction to handle disputes about property or custody.¹⁹⁴ In regard to decrees of separate maintenance, IRS regulations and recent case law indicate that a written separation agreement between parties is not considered a “decree of separate maintenance” and that the decree of separation must be issued by a court.¹⁹⁵

¹⁸⁸ IRS Publication 501, Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2017 Returns (Jan. 2, 2018), available at <http://www.irs.gov/pub/irs-pdf>. Note, the Republican tax plan eliminates the personal exemption, but the IRS is still expected to publish an updated amount for the 2019 tax year for use in determining dependents.

¹⁸⁹ 26 U.S.C. § 152(d).

¹⁹⁰ 26 U.S.C. § 36B(d)(1); 26 U.S.C. § 151; 26 U.S.C. § 152(b)(2).

¹⁹¹ 26 U.S.C. § 7703(a).

¹⁹² 26 U.S.C. § 36B(c)(1)(C); 45 C.F.R. §§ 155.300, 155.310(d)(2)(ii)(B).

¹⁹³ See *Argyle v. Commissioner*, 397 Fed. Appx. 823 (3d Cir. 2010) (affirming tax court decision that living “separate and apart” does not confer single filing status).

¹⁹⁴ See, e.g., California Family Code § 2337, which allows the court, in a dissolution proceeding, to have an early and separate trial on the dissolution of the status of the marriage, apart from other issues.

¹⁹⁵ 26 U.S.C. § 7703(a). A “decree of separate maintenance” is a rarely used legal status conferred by a court that in some states changes marital status. See *Boyer v. C.I.R.*, 732 F.2d 191, 194 (C.A.D.C., 1984) finding that “the proper inquiry is whether an order of separate maintenance affects marriage status in such a way that it is deemed a legal separation under applicable state law.” See also 26 C.F.R. § 1.7703(a), example 1.

a) Considered unmarried

Under certain circumstances, a married taxpayer who is separated from his/her spouse may be “considered unmarried,” and thus not required to file jointly in order to qualify for APTCs/CSRs. To be “considered unmarried,” an individual must meet the following requirements:

1. File a separate return;
2. Pay more than half the cost of keeping up his/her home for the tax year;
3. The individual’s spouse did not live in the individual’s home during the last 6 months of the tax year. (The individual’s spouse is considered to live in the individual’s home even if he or she is temporarily absent due to special circumstances);
4. The individual’s home was the main home of the individual’s child, stepchild, or foster child for more than half the year; and
5. The individual must be able to claim an exemption for the child.¹⁹⁶

b) Head of Household

Persons who are “considered unmarried” commonly use the tax filing status “Head of Household, which provides a lower tax rate and higher deduction than “married, filing separately” or “single.”

The following are the requirements for filing as “Head of Household:”

1. The individual is unmarried or considered unmarried on the last day of the year;
2. Paid more than half the cost of keeping up a home for the year;
3. A qualifying person (child or relative) lived with the individual in the home for more than half the year (except for temporary absences, such as school). However, if the qualifying person is the individual’s dependent parent, he or she does not have to live with the individual.¹⁹⁷

¹⁹⁶ 26 U.S.C. § 7703(b). See also IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2014 Returns* (Dec. 20, 2014), available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>.

¹⁹⁷ 26 U.S.C. § 7703(b). Maintaining a household includes paying for property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. Such expenses do not include the cost of clothing, education, medical treatment, vacations, life insurance, and transportation. 26 C.F.R. § 1.7703-1(b)(4).

Individuals who meet the requirements for “considered unmarried” will also qualify for Head of Household filing and can be eligible for APTCs/CSRs even if the married couple does not file a joint federal income tax return.¹⁹⁸ However, the remaining spouse will not be treated as “unmarried,” and thus not eligible for APTCs/CSRs, unless he/she separately meets the requirements to file as Head of Household.

You’re married to me, but I’m not married to you

Individuals who meet the requirements for “considered unmarried” will qualify for Head of Household filing status and can be eligible for PTCs/CSRs even if the married couple does not file a joint federal income tax return.

However, the remaining spouse will not be treated as “unmarried,” and thus not eligible for PTCs/CSRs, unless he/she separately meets the requirements to file as Head of Household.

c) Decree of Separate Maintenance

A “decree of separate maintenance” is a rarely used legal status available in some states that allows married individuals to file as “single” even if the couple has not yet obtained a final divorce decree.¹⁹⁹ IRS will look to state law to determine if a decree of separate maintenance affects marital status.²⁰⁰

The following states do not provide for a “decree of separate maintenance” or legal separation action in court: Delaware, Florida, Georgia, Maryland, Mississippi, New Jersey, Pennsylvania, and Texas.

¹⁹⁸ See IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2017 Returns* (Jan. 2, 2018), available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>, for additional information on alternate filing statuses available to married couples, including “married,” “married, filing separately” and “head of household.”

¹⁹⁹ 26 U.S.C. § 7703(a)(2).

²⁰⁰ *Boyer v. C.I.R.*, 732 F.2d 191, 194 (C.A.D.C., 1984).

A temporary order does not qualify; it must be a final order of legal separation.

EXAMPLE – Al and Peggy are married with two children. Peggy lives with the children and pays more than one half of the costs for rent and food to provide them a home. Peggy and Al have lived apart for more than six months. Peggy, though still married to Al, is “considered unmarried” under the IRS definition. She files federal income taxes using the “head of household” filing status and claims the children as dependents. She is determined eligible for APTCs based upon her income and household size. However, Al is still considered married under the IRS definition, and must file his federal income taxes as “married, filing separately.” He is therefore not eligible for APTCs/CSRs.

4. Domestic violence survivors and abandoned spouses

An individual who is married and in a domestic violence situation can obtain APTCs and CSRs without having to file a joint federal tax return. Under IRS regulations, those who meet certain requirements can be deemed to have satisfied the joint filing requirement. To qualify, the person must:

- file federal income taxes using the “married filing separately” filing status;
- be living apart from the abuser at the time of the tax filing; and
- must certify on the return that the person qualifies for this domestic violence (DV) exception.²⁰¹

The temporary regulations provide a broad definition of “domestic violence,” including physical, emotional and psychological abuse.²⁰² They also allow an individual to qualify if the abuse targets a child or other family member living in the house.²⁰³ Under the temporary regulations an individual can use this exceptions process no more than three years in a row.²⁰⁴

Due to operational limitations with healthcare.gov, individuals seeking the domestic violence exception should list themselves as unmarried and filing taxes as single when applying for coverage through the Federally Facilitated Marketplace, according to

²⁰¹ 26 C.F.R. § 1.36B-2(b), 82 Fed. Reg. 34601 - 34611 (July 26, 2017). See also U.S. Dept. of Treasury, *Fact Sheet: Addressing the Needs of Victims of Domestic Abuse under the Affordable Care Act*, March 26, 2014, available at <http://www.treasury.gov/press-center/press-releases/Pages/jl2334.aspx>.

²⁰² *Id.* at (b)(2)(ii)(C).

²⁰³ *Id.*

²⁰⁴ *Id.* at (v).

guidance from HHS.²⁰⁵ Therefore, those seeking the domestic violence exception should check “single” on their FFM applications for health insurance assistance, and “married, filing separately” on their actual federal income tax filing.²⁰⁶

State Based Marketplaces can chose the latter approach, or can adjust their systems to allow such individuals to check “married, filing separately” on their application for health insurance coverage.²⁰⁷

Temporary IRS rules also allow certain abandoned spouses to use the “married, filing separately” tax filing status and still qualify for APTCs/CSRs. To qualify, the individual must be unable to locate his or her spouse after “reasonable diligence.”²⁰⁸ The abandoned spouses exception is also limited to just three consecutive years.²⁰⁹

Relief from the joint filing requirement

Individuals claiming relief from the joint filing requirement can file their federal income taxes as “married, filing separately” and must check the box marked “exception” located at the top of IRS Form 8962.²¹⁰

5. Same sex married couples

In June 2015, the Supreme Court ruled that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed outside the state.²¹¹ Same sex married couples may now file joint federal tax returns and must do so to receive APTCs and CSRs. Prior to the ruling, same sex couples were eligible to receive APTCs/CSRs if their marriage were legal in the state where it was celebrated.²¹²

²⁰⁵ CMS, Victims of Domestic Abuse, March 31, 2014, *available at* <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/victims-domestic-violence-guidance-3-31-2014.pdf>.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ 26 C.F.R. § 1.36B-2T(b)(iv).

²⁰⁹ 26 C.F.R. § 1.36B-2T(b)(2)(ii)(C).

²¹⁰ See IRS, *Instructions for IRS Form 8962* (Nov. 27, 2017) at 5, *available at* <http://www.irs.gov/pub/irs-pdf/i8962.pdf>.

²¹¹ *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

²¹² IRS, Rev. Rul. 13-17, 2013-38 I.R.B. 201 (Aug. 30, 2013), *available at* <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf> (explaining that for federal income tax purposes, the IRS recognizes marriages based on the laws of the state in which they were entered into without regard to subsequent changes in

6. Unmarried couples

Couples who are living together but who are not married may not file joint federal income tax returns, and they are therefore not eligible for APTCs as a single family unit. They may, however, file taxes separately and could be eligible for APTCs as individuals or as a household comprised of a single tax filer plus dependents. A tax filer could claim his or her partner as a tax dependent if the income and other requirements for a “qualifying relative” are met (discussed below in Section IV.B.4.b).

7. Pregnant women

IRS rules do not allow unborn children to be claimed as tax dependents. Therefore, for purposes of calculating the Marketplace household size, a pregnant woman is counted as one person. However, Medicaid has special rules for counting pregnant women that include the number of babies expected (see discussion in Section IV.2.(e) of this Guide). Thus, a pregnant woman expecting twins could be counted as one person under Marketplace rules and as three people under Medicaid rules.

8. Foster children

In most cases, foster children automatically qualify for Medicaid and will not need private insurance purchased through the Marketplace.²¹³ The ACA expressly exempts children in the federal foster care program under Title IV-E, from MAGI.²¹⁴ Such children are automatically eligible for Medicaid with no income test. The ACA also exempts children enrolled in state-only funded foster care if the state similarly makes those children automatically eligible for Medicaid.²¹⁵

However, under IRS rules, a “qualifying child” can include a foster child placed in the tax filer’s household by an authorized agency or by court decree.²¹⁶ As such, a tax filer can claim her foster child as a dependent if other requirements for a “qualifying child” or “relative” are met (e.g., living in the household for at least one half of the year). Thus, a foster child would be considered a member of the tax household for purposes of calculating the family’s eligibility for APTCs/CSRs for plans purchased in the Marketplace.

domicile). See also Gary Cohen, CMS Deputy Administrator and Director, Center for Consumer Information and Insurance Oversight, *Guidance on Internal Revenue Ruling 2013-17 and Eligibility for Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions* (Sept. 27, 2013) available at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/marketplace-guidance-on-irs-2013-17.pdf>.

²¹³ 42 C.F.R. § 435.145.

²¹⁴ 42 U.S.C. § 1396a(e)(14)(D)(i)(I). See also Section II.B.1.b of this Guide.

²¹⁵ 77 Fed. Reg. 17158.

²¹⁶ 26 U.S.C. § 152(f)(1)(C).

EXAMPLE: Foster child joins the tax household

A family of four with a total income of \$60,000 (255% FPL) qualifies for APTCs, but not cost sharing assistance which is limited to those making less than 250% FPL. If that family took in a foster child for at least six months and expected to claim the child as a dependent on the family's tax return, the family size would increase from 4 to 5 people, and their income as an FPL percentage would decrease to 218% FPL for a family of 5. As a result, the family would qualify for cost sharing subsidies and increased premium assistance, even if the foster child were enrolled in Medicaid.

Remember, an individual does not have to qualify for assistance in order to be counted as a member of the household.

9. Students

Under IRS rules, an individual must be under age 19 to be a “qualifying child” unless he or she is a full time student.²¹⁷ A student is an individual who, in at least five months of a calendar year, was enrolled full-time at a qualified educational organization or training institution. IRS regulations allow students younger than 24 to be considered “qualifying children.”²¹⁸ Students may also be claimed as tax dependents if they meet the requirements for “qualifying relatives.”

Under Medicaid/CHIP MAGI, generally, children must be under age 19, though MAGI regulations allow states to extend that age limit to 21 for full time students.²¹⁹ Thus, a 22-year-old full-time student could be counted as a “qualifying child” under Marketplace rules, but would be an adult under Medicaid MAGI.

²¹⁷ 26 U.S.C. § 152(c)(3)(A)(i).

²¹⁸ 26 U.S.C. § 152(c)(3)(A)(ii).

²¹⁹ 42 C.F.R. § 435.603(f)(3)(iv).

10. Individuals who are lawfully present

Individuals who are lawfully present in the U.S. can qualify for APTCs and cost sharing assistance in the Marketplace.²²⁰ In order to qualify for APTCs, an applicant must be lawfully present for the entire period of enrollment, generally a year, in which the tax credit is being claimed.²²¹ The ACA also includes a special rule for APTC eligibility for lawfully present individuals who would otherwise be eligible for Medicaid but for their immigration status.²²² These low-income individuals can qualify for APTCs and cost sharing assistance in the Marketplace, even if their household income would otherwise meet the state's Medicaid eligibility thresholds and is below the statutory threshold of 100% FPL. The amount of their APTC would be calculated based on their actual income.²²³ This rule applies to all lawfully present individuals who are ineligible for Medicaid solely due to their immigration status, even in states that chose not to expand Medicaid.

Lawfully present individuals can be tax filers or tax dependents. As a result, these persons will be counted as members of the Marketplace tax household, and income they earn will be counted when calculating APTCs/CSRs.

11. Individuals who are not lawfully present

Under existing IRS rules, individuals who are not lawfully present and who do not have a valid Social Security Number can file federal taxes using an Individual Taxpayer Identification Number (ITIN).²²⁴ This is because the IRS requires anyone who resides and earns income in the U.S. to file taxes regardless of immigration status.²²⁵

²²⁰ See 42 U.S.C. § 18032(f); 45 C.F.R. § 155.305(a)(1) (defining “qualified individual”). See also 26 U.S.C. § 36B(e)(2); 42 U.S.C. § 18071(e)(2) (defining “lawfully present” generally); 26 C.F.R. § 1.36B-1(g) (APTCs); 45 C.F.R. § 155.20 (CSRs).

²²¹ 26 U.S.C. § 36B(e)(2).

²²² 26 U.S.C. § 36B(c)(1)(B); 26 C.F.R. § 1.36B-2(b)(5).

²²³ 26 C.F.R. § 1.36B-2(b)(7).

²²⁴ See generally IRS, *General ITIN Information* (July 10, 2013) available at <http://www.irs.gov/Individuals/General-ITIN-Information>; IRS, *Taxpayer Identification Numbers* (May 13, 2013).

²²⁵ See generally IRS, *Classification of Taxpayers for U.S. Tax Purposes* (June 25, 2013) available at <http://www.irs.gov/Individuals/International-Taxpayers/Classification-of-Taxpayers-for-U.S.-Tax-Purposes>; IRS, *Taxation of Resident Aliens* (Apr. 17, 2013) available at <http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Resident-Aliens>.

Yet, even if they file federal taxes, individuals who are not lawfully present are not eligible for APTCs/CSRs.²²⁶ However, in a mixed status family, there may be members who are lawfully present or U.S. citizens and those who are not lawfully present. Individuals in a mixed status family who are lawfully present or U.S. citizens remain eligible for APTCs/CSRs. As a result, the ACA allows a tax filer who is not lawfully present to apply for APTCS/CSRs on behalf of eligible tax dependents who are U.S. citizens or lawfully present.²²⁷ A typical example would be a head of household who is not lawfully present and files taxes under an ITIN and who claims tax dependents (spouse, children) who are U.S. citizens or are lawfully present (and who have SSNs). The spouse and dependents who are citizens or lawfully present may be eligible for APTCs/CSRs even though the tax filer is ineligible.

RESOURCE: The [National Immigration Law Center](#) (NILC) provides fact sheets and other resources on the ACA and immigrants, including mixed status families.

12. Special income counting rule for APTCs for mixed status families

There is a special income counting rule for calculating the APTCs of eligible individuals in a mixed status family to account for ineligible family members.²²⁸ First, when determining who in the household shall be counted as members of the tax household, those who are not lawfully present are *excluded* as members of the tax household.²²⁹ Second, when determining whose income in the household is counted, the income earned by family members who are not lawfully present must be *included* in the sum total of the household income.²³⁰ A mathematical formula is then used to calculate the household income for APTCs in relation to the Federal Poverty Level.²³¹ The ACA also allows the use of a “comparable method” to calculate household income for APTCs in this situation.²³² To date, the IRS has not promulgated further guidance to implement this special income counting rule for mixed status families or to explain what types of comparable methods may be used by state Marketplaces.

²²⁶ 42 U.S.C. § 18082(d) (“Nothing in this subtitle or the amendments made by this subtitle allows Federal payments, credits, or cost-sharing reductions for individuals who are not lawfully present in the United States.”).

²²⁷ 26 C.F.R. § 1.36B-2(b)(4) (stating that an individual who is not lawfully present “may be an applicable taxpayer if a family member is eligible to enroll in a qualified health plan.”).

²²⁸ 26 U.S.C. § 36B(e)(1)(B)(i)(II); 26 C.F.R. § 1.36B-3(l)(2).

²²⁹ 26 U.S.C. § 36B(e)(1)(B)(i)(I); 26 C.F.R. § 1.36B-3(l)(1).

²³⁰ 26 U.S.C. § 36B(e)(1)(B)(i)(II); 26 C.F.R. § 1.36B-3(l)(2).

²³¹ 26 U.S.C. § 36B(e)(1)(B)(i)(II)(aa)-(bb).

²³² 26 U.S.C. § 36B(e)(1)(B)(ii); 26 C.F.R. § 1.36B-3(l)(2)(ii).

EXAMPLE: Family with mixed immigration status

Mike and Nancy have two children, Oscar and Priscilla, and live in Oklahoma. Mike, a Canadian, is not lawfully present, but still works and earns income in the U.S. Nancy, Oscar and Priscilla are U.S. citizens. Mike files federal income taxes jointly with Nancy, using his ITIN, and claims the children as tax dependents. The family's household income is above Oklahoma's Medicaid eligibility threshold.

Mike applies for IAPs for his family, but he is not eligible for APTCs/CSRs because he is not lawfully present. He is not counted as a member of the tax household, even though he is the tax filer.

The tax household for Nancy, Oscar, and Priscilla is comprised of the three of them. The household income for the tax household of 3 will include Mike's income, adjusted according to a formula prescribed by the ACA or comparable method.

C. Household composition in Medicaid/CHIP

1. General principles

Under MAGI rules, the tax household and the Medicaid/CHIP household will in many cases be the same. However, there are a number of differences in the calculation of family size and income for Medicaid and CHIP eligibility that differ from the Marketplace MAGI rules.

Medicaid rules include several important exceptions designed to help facilitate eligibility and enrollment for certain vulnerable populations, such as children in single parent households and very low income individuals being cared for by others. Medicaid rules also give states flexibility to decide how certain individuals, such as pregnant women and students, will be counted. Finally, new Medicaid/CHIP MAGI rules require states to count the income of certain individuals, such as stepparents, whose income traditionally was not counted toward a child's Medicaid eligibility.²³³

²³³ A series of court decisions enjoined state policies that allowing deeming from individuals other than spouses and parents to children. See NHeLP, *The Advocate's Guide to the Medicaid Program*, 3.63-3.64, n. 273-75 (collecting cases). The MAGI rules could affect continued application of these injunctions. For example, since the early 1990's, states in the Ninth Circuit have been subject to an injunction issued in *Sneede v. Kizer*, 951 F.2d 362 (9th Cir. 1990), which prohibited Medicaid from deeming income or resources from a stepparent, stepchild, a natural child and/or a sibling or half-sibling. The injunction in *Sneede* was based on a provision in 42 U.S.C. § 1396a(a)(17) that prohibited such deeming of income. Under the ACA, 42 U.S.C. § 1396a(e)(14), Section (a)(17) will not apply to income determinations using MAGI. Thus, there is no longer a legal prohibition for counting the income of stepparents, etc. The court

Sneede

Since the early 1990's, states in the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington) have been subject to an injunction issued in *Sneede v. Kizer*, 951 F.2d 362 (9th Cir. 1990), which prohibited Medicaid from deeming income or resources from a stepparent, stepchild, a natural child and/or a sibling or half-sibling. The injunction in *Sneede* was based on a provision in 42 U.S.C. § 1396a(a)(17) that prohibited such deeming of income.

Under the ACA, 42 U.S.C. § 1396a(e)(14), section (a)(17) does not apply to income determinations using MAGI. Thus, there is no longer a legal prohibition for counting the income of stepparents, etc.

The *Sneede* Court granted a modification due to this change in the law, but the *Sneede* injunction remains in effect in regard to all non-MAGI eligibility determinations.

In Medicaid and CHIP, different members of the same household may have a different family size, while in the Marketplace the family size is the same for each member of the household. Determining a Medicaid household requires a person-by-person analysis that asks:

- Who is seeking an eligibility determination?
- With whom does the individual live?
- What are the relationships among individuals in the household?

granted a modification of *Sneede* due to this change in the law, but the *Sneede* injunction remains in effect in regard to all non-MAGI eligibility determinations.

An analysis to determine who is in the Medicaid household begins with the tax filer and his or her claimed dependents. Some of the questions used to determine an individual's family size in Medicaid/CHIP include:

1. Does the individual expect to file taxes?
2. Does the individual expect to be claimed as a dependent by someone else?
3. Who lives in the household at least half the year?
4. Is anyone a full time student?
5. Is anyone pregnant? How many children are expected to deliver?
6. Is anyone married? Are they in a same sex or opposite sex marriage?
7. Is anyone under age 19?
8. How are individuals related to each other?
9. What are the state's Medicaid rules for same sex marriage and for counting pregnant women?

RESOURCE: See Appendix E for a quick reference chart summarizing the rules for counting the **Marketplace and Medicaid/CHIP Household**, as described below.

2. Rules for counting the Medicaid/CHIP household

As explained above, the household composition and size for APTCs/CSRs is the tax household, which includes the tax filer(s) and dependents. Only tax filers and household dependents can be eligible for APTCs/CSRs.

The same basic rules apply to determine Medicaid household size, with some key differences. In addition, because some low income individuals and families are not required to file federal income taxes, several special Medicaid rules for non-filers also apply.

Generally, the Medicaid household rules divide individuals who are seeking an eligibility determination into the following three categories:

- Those who file taxes and are not claimed as dependents by someone else;
- Those claimed by someone else as a dependent; and
- Non-filers who do not file taxes and are not claimed as a dependent by someone else.²³⁴

²³⁴ 42 C.F.R. § 435.603(f).

Medicaid household counting rules also contain special provisions to account for pregnant women, unmarried couples with children, multi-generational and extended families, parents who are separated or divorced, and individuals whom the taxpayer expects to claim as a dependent but cannot reasonably establish so according to the state's eligibility verification systems.

RESOURCE: See Appendix F for NHeLP's one-page quick reference guide - **MAGI Household Composition.**

a) Tax filers who are not claimed as dependents

The first step in determining Medicaid household size is to ask if the individual seeking an eligibility determination expects to file a federal tax return.

Income, age, and filing status all factor into whether an individual must file a tax return. Every January, IRS publishes filing threshold requirements for individuals and families for the preceding year.²³⁵ For example, individuals under 65 whose gross income was less than \$10,150 in 2014 are not required to file an income tax return for the tax year.²³⁶

The second step is to determine if the tax filer is expected to be claimed as a dependent by another taxpayer.

An individual can file taxes, yet still be claimed as a dependent on the tax return of another if that individual meets the specifications to be a qualifying child or qualifying relative. For example, an 18 year old daughter with a part time job could be claimed as a dependent by her parents if her income does not provide her with more than one half of her annual support. The daughter may want to file her own tax return to obtain a refund if taxes were taken out of her paycheck. She would still count as a member of her family's tax household, and her income may or may not count toward the total household income under both Marketplace and Medicaid MAGI rules.

²³⁵ See e.g. IRS Publication 17, *Tax Guide 2017 for Individuals* (Dec. 12, 2017) available at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

²³⁶ *Id.*

If the individual is a tax filer who does not expect to be claimed as a dependent by another, then the Medicaid household for the tax filer will be the tax filer and his or her dependents. In this scenario, the Marketplace household is the same as the Medicaid household for the tax filer. Note that the Medicaid household for the tax filer will not necessarily be the same as the Medicaid household for his or her dependents.

What definition of “child” applies?

The term “child” has different meanings, depending on the context, when determining eligibility for health coverage through Medicaid or the Marketplaces. Even within the Medicaid program, different definitions of “child” exist. Make sure you know which definition applies in a given situation.

- **Qualifying child** - describes one of two ways an individual can be claimed as a dependent by a tax filer (a “qualifying relative” can also be claimed as a dependent). A “qualifying child” does not necessarily have to be the child of the tax filer. A grandchild, brother and sister, even a niece and nephew of the tax filer can be a “qualifying child” if certain conditions are met. A “qualifying child” does not even have to be a minor. A fifty year old man could be a “qualifying child” “if permanently and totally disabled.” Use the IRS definition of “qualifying child” to determine if a tax filer can claim this type of tax dependent.
- **Dependent child** - the Medicaid term “dependent child” derives from the now-defunct federal welfare program Aid To Families With Dependent Children (AFDC).²³⁷ Use “dependent child” to see if someone meets non-financial eligibility criteria for Parents or Caretaker Relatives.
- **Child** - In Medicaid MAGI, the word “child” means a natural or biological, adopted, or step child. Similarly, a “parent” in Medicaid MAGI is a “natural or biological, adopted, or step parent.”²³⁸ Use the MAGI definition of child when applying MAGI methodologies to determine household composition and income.
- **Child (with age limits)**. Separate rules apply to determine the Medicaid MAGI household composition of individuals who do not file federal income taxes nor are claimed as dependents. Under these rules, determining when a child is part of a household can depend on whether the child is under age 19 (or 21 at state option for full time students).

²³⁷ 42 C.F.R. § 435.4.

²³⁸ 42 C.F.R. § 435.603(b).

b) Individuals expected to be claimed as a dependent by a taxpayer

Generally, Medicaid rules count individuals claimed as dependents by a taxpayer as members of that taxpayer's tax household. In this respect, the Medicaid household and the Marketplace household are often the same. There are, however, three significant exceptions:

i. Individuals other than a spouse or a child who expect to be claimed as a tax dependent by a tax filer

Individuals who expect to be claimed as a tax dependent by a tax filer, but who are not a spouse or child of that tax filer, are subject to an exception to the Marketplace MAGI household rules.²³⁹

NOTE: There is no age requirement or limit used when deciding whether or not this exception applies. However, the age limit does apply when determining household composition under the non-filer/non-dependent rules.

A separate set of Medicaid/CHIP rules allow some such individuals to be treated as their own household for purposes of Medicaid/CHIP eligibility.²⁴⁰ This situation would most commonly arise where there are multiple generations or extended family members who are very low income and living in the same household. Under the rules for non-filers and non-dependents, the Medicaid/CHIP MAGI household consists of:

- The individual;
- The individual's spouse, if living with the individual;
- The individual's children, if living with the individual and under age 19 (or 21 if a full-time student).²⁴¹

²³⁹ 42 C.F.R. § 435.603(f)(2)(i). Note, however, that a tax filer will never claim a spouse as a tax dependent. Married persons either file jointly or as "married, filing separately."

²⁴⁰ 42 C.F.R. § 435.603(f)(2)(i).

²⁴¹ 42 C.F.R. § 435.603(f)(3)(iv).

CMS provides the following example of how the Medicaid/CHIP MAGI household can diverge from the Marketplace MAGI household size:

[C]onsider Taxpayer Joe, an adult (not himself expected to be claimed as a tax dependent) who claims Uncle Harry as a tax dependent. Harry is not expected to be required to file a tax return. Consistent with the 36B definitions, Harry is included in Joe's family size for purposes of Joe's eligibility per § 435.603(f)(1), but Harry's income is not counted in Joe's household income under § 435.603(d)(2)(ii). Under § 435.603(f)(2)(i) and (f)(3) of our regulations, Harry will be considered for Medicaid eligibility as a separate household, and under § 435.603(d)(1), Harry's income will be counted in determining his own eligibility.²⁴²

Harry's Marketplace household

Under Marketplace rules, Joe and Harry are considered members of the same tax household because Joe claims Harry as a dependent. However, because Harry's income is so low (below the threshold requiring filing of a tax return), it does not count toward the total household MAGI income.

Harry's Medicaid/CHIP household

Under Medicaid/CHIP rules, Harry is in his own, separate household, because, although Joe claims Harry as a dependent, Harry is neither Joe's spouse nor his child. Therefore, Harry falls under the special Medicaid rule that requires him to count as his own household. Harry's income will be considered for purposes of his own Medicaid eligibility, but Joe's income will not. Moreover, if Harry were living with his spouse, Harry and his spouse would be counted as members of their own household. Joe's Medicaid household consists of himself and Harry.

ii. A child claimed by one parent as a dependent and who is living with both parents who do not file a joint tax return

The second special Medicaid household rule applies to a child claimed by one parent as a dependent and who is living with both parents who do not file a joint tax return.²⁴³ (Here, child means a natural/biological, step, or adopted child under age 19 or age 21 for full time students at state option).²⁴⁴

²⁴² 77 Fed. Reg. 17152.

²⁴³ 42 C.F.R. § 435.603(f)(2)(ii).

²⁴⁴ 42 C.F.R. § 435.603(f)(3)(iv).

Under the Marketplace rules, married couples must file a joint tax return to receive APTCs. Unmarried couples, even those with children, may not file a joint tax return, and therefore cannot qualify for APTCs as a family unit (although they could qualify individually or as separate tax households).

In Medicaid, eligibility has long been based upon the income of those legally responsible for a minor, including parents who are not married. Therefore, Medicaid has carved out a special rule that counts the household and income of unmarried parents when determining the eligibility of a minor child. The Medicaid household for a minor child is determined according to the special rules for non-filers and non-dependents, and not the general rule for dependents, if the following conditions are met:

- The child must be claimed as a dependent by a parent;
- The child must be living with both parents; and
- The parents are not expected to file a joint income tax return.²⁴⁵

If all three conditions are met, the Medicaid household is comprised of the child and each of the following who are living with the child:

- The child's parents;
- The child's spouse;
- The child's children (under age 19 or 21 for full time students); and
- The child's siblings (under age 19 or 21 for full time students) and parents.²⁴⁶

iii. A child claimed as a dependent by a parent that the child does not live with

Noncustodial parents may claim a child as a dependent if the legal requirements for a qualifying child are met. However, Medicaid has special rules to allow a child to be counted as a member of the household of the custodial parent or the parent with whom the child spends the most nights.²⁴⁷

The Medicaid household for child who is claimed as a tax dependent by a non-custodial parent is determined according to the same rules that apply to non-filers who are not claimed as a dependent by anyone.

²⁴⁵ 42 C.F.R. § 435.603(f)(2)(i).

²⁴⁶ 42 C.F.R. §§ 435.603(f)(3)(i)-(iv).

²⁴⁷ 42 C.F.R. § 435.603(f)(2)(iii)(B).

Under the rules for non-filers and non-dependents, the household consists of:

- The child;
- The child's parent and siblings who live with the child;
- The child's spouse, if living with the child;
- The child's children, if living with the child and under age 19.²⁴⁸

EXAMPLE: Child claimed as a dependent by a non-custodial parent

Mike and Carol are divorced and have one child, Marcia. Marcia lives with Carol, who has primary custody, but spends every other weekend with Mike. Mike and Carol agreed that Mike can claim Marcia as a dependent because she meets the requirements of a qualifying child. Marcia's Marketplace household is comprised of Mike and Marcia. However, Marcia's Medicaid household is determined under the rules for non-tax filers because she is claimed as a dependent by a non-custodial parent. Marcia's Medicaid household is Marcia and Carol.²⁴⁹ Note that, if Mike is paying child support, it will NOT be counted as income in Marcia's Medicaid household under MAGI rules.

If Carol files taxes and is not claimed as a dependent by someone, then her Medicaid and tax household would be the same – just her. If Carol does not expect to file taxes nor be claimed as a dependent, then her Medicaid household would be determined under the rules for non-filers who are not claimed as a dependent by someone else. In that case, Carol's Medicaid household would be two – Carol and Marcia.²⁵⁰ If Carol does not file federal income taxes and is not claimed as a tax dependent by anyone, she would not be eligible for APTCs.

²⁴⁸ 42 C.F.R. § 435.603(f)(3).

²⁴⁹ See 42 C.F.R. § 435.603(f)(2)(iii).

²⁵⁰ See 42 C.F.R. § 435.603(f)(2)(ii).

c) Non-filers who do not file taxes and who are not claimed as a dependent by someone else

For individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, the Medicaid/CHIP household consists of:

- The individual;
- The individual's spouse if living with the individual; and
- The individual's children if living with the individual and if the children meet the age requirements specified by the state.²⁵¹

If the individual is a minor as specified by the state, the Medicaid household includes:

- The individual;
- The individual's parents (if living with the individual); and
- The individual's siblings (if living with the individual and if the siblings meet the age requirements specified by the state).²⁵²

Children must be under age 19 to be counted as Medicaid household members under the preceding provisions. However, states have the option to count full time students under age 21 as children.²⁵³

NOTE: Medicaid MAGI rules do not specify what it means to be “living with” someone for determining the household of non-filers and non-dependents. A typical example would be a child who splits time evenly with parents who live separately when neither of them files a tax return. The child's Medicaid household should be determined under 435.603(f)(3)(iii), since the child would be an individual who is neither filing a tax return nor claimed as a dependent on another's tax return. Under this rule, the child is in the household with the parent(s) with whom the child is living. But, the rule does not seem to indicate how to determine the parent with whom the child is living if time is split. Under (f)(2), this is determined according to the parent with whom the child spends the most nights. Presumably that rule would apply under (f)(3) also.

²⁵¹ 42 C.F.R. §§ 435.603(f)(3)(i), (iv).

²⁵² 42 C.F.R. § 435.603(f)(3)(iii).

²⁵³ 42 C.F.R. § 435.603(f)(3)(iv).

d) Married couples living together

A married couple living together will be counted as members of the same Medicaid household regardless of whether they expect to file a joint tax return.²⁵⁴ (As explained above, for Marketplace purposes, they *must* file a joint tax return in order to be eligible for APTCs/CSRs).

NOTE - CMS acknowledges that federal regulations do not account for situations whereby spouses may file jointly, but may live apart, for example, in instances where one spouse is in an institutional care setting or in incarcerated. States have flexibility in household composition in the absence of clarifying guidance from CMS. [See CMS All-State SOTA: MAGI 2.0: Building MAGI Knowledge, Part 1: Household Composition \(July 21, 2016\)](#).

e) Pregnant women and Medicaid

States have flexibility to decide how they count pregnant women for the purposes of Medicaid eligibility. If a pregnant woman is seeking an eligibility determination, a state counts her as one, plus the number of children she expects to have, when determining her household size.²⁵⁵

However, when determining eligibility for other individuals who have a pregnant woman in their household, the state can elect to count the pregnant woman as either one person, two persons, or one person plus the number of children she is expected to deliver. Thus, for the purposes of her own eligibility, a pregnant woman expecting twins would be counted as three people. If other individuals in her household apply for coverage, she would, at state option, be counted as one, two, or three people.

EXAMPLE: Marketplace vs. Medicaid rules for counting pregnant women

Jesse and Tara are married and file a joint tax return. Tara is pregnant and expecting twins. Their combined MAGI income is \$30,000 per year. The state's Medicaid program covers pregnant women up to 150% FPL, and counts pregnant women as one person plus the number of babies expected when determining eligibility of someone else in her household.

²⁵⁴ 42 C.F.R. § 435.603(f)(4).

²⁵⁵ 42 C.F.R. § 435.603(b).

The Marketplace household size for both Tara and Jesse would be two, which places them at 193% FPL.

However, using the Medicaid household counting rules, Tara's family size is four (herself, Jesse, and two unborn children). Tara qualifies for Medicaid because her household income is 127% FPL, well under the state's maximum for pregnant women. Jesse's Medicaid household would also be four under the state's rules, qualifying him for the new Medicaid adult group, if available.

EXAMPLE: Medicaid rules for pregnant women and household size

Jesse and Tara are unmarried and live with Tara's mother. Tara is 18, pregnant and expecting twins. Tara's mother claims both Tara and Jesse as dependents because they meet the requirements as a qualifying child and a qualifying relative. Their Marketplace household is three. The state where they live has opted to count a pregnant woman as two people, regardless of how many babies she is expecting, when the state determines eligibility for individuals with a pregnant woman in the household. For Tara's mother, the Medicaid household size would be four, including her, Jesse, and Tara counted as two people (mother plus one baby).²⁵⁶ Jesse's Medicaid household size is one, because, although he is claimed by Tara's mother as a dependent, he is determined under the rules for non-filers because he is neither Tara's mother's spouse nor child.²⁵⁷ Tara's Medicaid household size is five, including her mother, Jesse, and herself, counted as three people because the eligibility determination is being made for her.²⁵⁸

f) Same sex marriages

In June 2015, the Supreme Court voted 5-4 that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed outside the state.²⁵⁹ Before the ruling, CMS allowed states to decide whether to recognize same sex marriages for purposes of determining eligibility

²⁵⁶ See 42 C.F.R. § 435.603(f)(1) (For tax filers who are not claimed as tax dependent, the filer's household consists of the filer and all persons whom the filer expects to claim as tax dependent).

²⁵⁷ See 42 C.F.R. §§ 435.603(f)(2)(i), 435.603(f)(3).

²⁵⁸ See 42 C.F.R. §§ 435.603(f)(1), 435.603(f)(a).

²⁵⁹ *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

for Medicaid and CHIP.²⁶⁰ (See Sec. IV.B.5 of this Guide). As a result, some same sex couples were considered married for Marketplace eligibility determinations, but unmarried for Medicaid eligibility determinations. Under *Obergefell*, all states must recognize same sex marriages.

²⁶⁰ CMS, *Dear State Health Official & State Medicaid Director Letter* (Sept. 27, 2013) (*United States v. Windsor*).

V. Calculating Total Household Income

Eligibility for insurance affordability programs is based upon the total household income as a percentage of the Federal Poverty Level (FPL) for a household of that size. Income and family size together are then compared to the various eligibility thresholds, expressed as FPL percentages, to determine the program for which an individual qualifies, if any.

The total household income for Marketplace eligibility determinations consists of the MAGI for each member of the household who is required to file a federal income tax return.²⁶¹ Under MAGI, total household size and total household income are based upon those individuals who could be claimed as tax dependents – whether or not the tax filer actually claims the individuals as dependents.²⁶²

Household income for Medicaid MAGI determinations follows the same general rule – total household income equals the income of every household member who is required to file federal income taxes. However, there are several exceptions (see Section III.D of this Guide) where certain income is included for Marketplace determinations, but excluded for Medicaid determinations. Moreover, because Medicaid MAGI households may be comprised entirely of individuals who are not required to file federal income taxes, income may be counted for Medicaid MAGI that would not be counted for Marketplace MAGI determinations.

A. When to count dependent's income

If a dependent has enough income to *require* the dependent to file an income tax return,²⁶³ then the dependent's income will be counted in the household's income.²⁶⁴

The tax law enacted by Republicans last year establishes a new filing threshold tied to the standard deduction amount.²⁶⁵ The law increases the standard deduction to \$12,000 for single filers, \$18,000 for heads of household, and \$24,000 for joint filers, while eliminating the additional standard deduction and the personal exemption. These provisions apply to the 2018 tax year and sunset at the end of 2025.²⁶⁶

None of the dependent's income counts toward household income if the dependent is not required to file, even if the dependent chooses to file a separate tax return. A dependent may file a return to get a refund of taxes withheld, even if not required to file.

²⁶¹ 26 U.S.C. § 36B(d)(2).

²⁶² 26 U.S.C. § 36B(d)(1).

²⁶³ 42 C.F.R. § 435.603(d)(2)(i); 26 U.S.C. §§ 36B(d)(2)(A)(ii)(II), 5000A(c)(4)(B).

²⁶⁴ See 26 U.S.C. § 6012(a)(1).

²⁶⁵ Id. a § 11041(e).

²⁶⁶ Id. at § 11021.

Note however, that a person may file his own tax return and still claimed as a dependent on someone else's return if she or he meets the requirements as a qualifying child or qualifying relative.

EXAMPLE: Jenny is a teenager with a summer job and earns \$6,100. She is properly claimed as a tax dependent by her parents. Jenny files a federal income tax return to obtain a refund of taxes withheld from her paycheck. Because she is not required to file a federal income tax return, her \$6,100 in annual income does not count towards her family's total household MAGI.

B. When to count the Social Security income of dependents

A major source of confusion with the new MAGI rules is when to count the Social Security income of dependents. The "M" part of MAGI modifies 'Adjusted Gross Income' by adding the **non-taxable** portion of Social Security income to the taxable portion.

However, a dependent's Social Security income, such as survivor's benefits, is counted towards the household income **only if** the dependent is required to file a federal income tax return.

Once you identify who is in the "household," count the income of each household member. The MAGI income for each household member required to file a federal income tax return gets counted toward the total household income.

Who must file a federal income tax return is based upon filing status and income amounts that change every year. The minimums for filing requirement for most dependents in 2015 are as follows:

- Unearned income of \$1,050 or more;
- Earned income of \$12,000 or more; or
- For people who have both earned and unearned income, where the total is more than the larger of \$1,050 or earned income (up to \$12,000) plus \$350.²⁶⁷

Only taxable Social Security income is included when determining whether an individual has a tax filing requirement. Although Social Security income is considered unearned income, separate IRS rules govern whether or not that income is taxable. Therefore, in

²⁶⁷ IRS Publication 501, Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2017 Returns (Jan. 2, 2018), available at <https://www.irs.gov/pub/irs-pdf/p501.pdf>. Note – these numbers may change for the 2018 tax year.

most cases, if a dependent's sole source of income is Social Security income, that dependent will not have a tax filing requirement.

In general, a person has taxable Social Security income only if one-half the Social Security income plus other income exceeds \$25,000 (assuming the person is single). Thus, a dependent's Social Security income is taxable only if half their Social Security income plus all other taxable income exceeds \$25,000 per year. Since that is a high amount for someone claimed as a dependent, in most cases, the dependent's Social Security income will likely not be taxable.

EXAMPLE #1: A dependent receives \$600 per month in Social Security benefits (\$7,200 per year) and has no other income. The dependent is not required to file federal income taxes because the dependent's Social Security income is not taxable and does not count toward the \$1,050 unearned income threshold. Therefore none of the dependent's income would be included in the taxpayer's household income under the MAGI rules.

EXAMPLE #2: A dependent receives \$600 per month in Social Security benefits (\$7,200 per year) and has a summer job earning \$12,000 for the year. The dependent is required to file federal income taxes because her earned income exceeds the filing threshold amount (more than \$6,300 in earned income). However, her Social Security income is not taxable because $\frac{1}{2}$ of her benefits plus the other income (\$3,600 plus \$6,200) is less than \$25,000, the required threshold amount, needed to make the Social Security benefits taxable. As a result, none of her Social Security benefits are taxable and are not included in her AGI. However, her total MAGI income will be \$19,200, because non-taxable Social Security is one of the modifications to AGI. Her whole income will be added to the MAGI income of her household.

EXAMPLE #3: A dependent receives \$600 a month in Social Security benefits (\$7,200 per year) and \$22,000 annually from a job. The earned income of \$22,000 plus $\frac{1}{2}$ of the Social Security income (\$3,600) is \$25,600. The dependent is required to file a federal income return and include part of the Social Security income. The entire amount of Social Income (\$7,200) will be added to the MAGI income of the dependent for a total MAGI income of \$29,200, which will be included as part of the total household MAGI income.

Remember, for tax filers, Social Security income will count towards the total household Modified Adjusted Gross Income. However, for tax dependents, Social Security income is counted towards the total household Modified Adjusted Gross Income only if the dependent is **required** to file a federal income tax return.

C. How to count income for non-filers

Under the general rule for Marketplace and Medicaid MAGI, total household income is the sum of income from the tax filer(s) plus any dependents who are required to file federal income taxes. However, two situations exist where the income of individuals who do not file federal income taxes is counted.

1. Persons who are not required to file federal income taxes and who are not claimed as dependents

As discussed above, persons with very low incomes are not required to file an income tax return. However, to determine financial eligibility for a Medicaid MAGI-based category, state agencies must consider the income from non-filers using the same MAGI-based methodologies as if the applicant filed federal income taxes.²⁶⁸

EXAMPLE: Suze applies for Medicaid. Her income is \$300 per month in Social Security survivor's benefits and \$200 per month in tax exempt "difficulty of care" payments. She is not required to file a federal income tax return. Her state Medicaid agency determines that her monthly income is \$300 per month. Since the "difficulty of care" payments are tax exempt, they are not included in calculating her Adjusted Gross Income (AGI). However, the non-taxable Social Security payments are included (Modified AGI) to determine her total household income.

2. Dependents who are neither the spouse nor the child of the tax filer

A similar rule applies to individuals other than a spouse or a child who expect to be claimed as a tax dependent. The income of such individuals will not count toward the household income of the tax filer regardless of whether the dependent chooses to file his or her own tax return.²⁶⁹ However, the dependent's income will count towards her own total household income when determining her eligibility for a Medicaid MAGI category.

²⁶⁸ 42 C.F.R. § 435.603(e).

²⁶⁹ 42 C.F.R. § 435.603(d)(2)(ii).

EXAMPLE: Andy claims his Aunt Bea as a tax dependent. Andy earns \$5,000 per month. Aunt Bea earns \$200 per month baking pies, and does not file her own federal income tax return.

- For her Marketplace MAGI eligibility determination, Aunt Bea's total household income is \$60,000 per year (\$5,000 per month) for a household of two.
- For her Medicaid MAGI eligibility determination, Aunt Bea's total household income is \$200 per month for a household of one.

For Medicaid/CHIP determinations, states have an option to count any actually available cash support, exceeding nominal amounts, that is provided to an individual by the person claiming them as a tax dependent.²⁷⁰

D. When to count self-employment income

Under the ACA, only dependents who have an income tax filing requirement under 26 U.S.C. § 6012(a)(1) have their income included in the total household MAGI.²⁷¹ If dependents have a tax filing requirement under other sections of the tax code, their income will not be counted as part of the total household MAGI.

The most common scenario where this situation arises is self-employment income. Individuals who have \$400 or more in net earnings from self-employment income are required to file income tax returns.²⁷² However, the filing requirement for self-employment income is under 26 U.S.C. § 6017 not 26 U.S.C. § 6012(a)(1). Therefore, if a dependent is required to file federal income taxes solely due to self-employment requirement in 26 U.S.C. § 6017, that income will not count toward the total household MAGI.

EXAMPLE: If a dependent child makes \$1,500 mowing lawns, that income is not counted in total household MAGI. Although the child is required to file a federal income tax return, the child does not have an income tax filing requirement under 26 U.S.C. § 6012(a)(1).

However, if a dependent child makes \$12,000 mowing lawns, that income will be counted towards the total household MAGI. In this case, the child is required to file a federal income tax return pursuant to 26 U.S.C. § 6012(a)(1), because her earned income is over the threshold amount.

²⁷⁰ 42 C.F.R. § 435.603(d)(3).

²⁷¹ 26 U.S.C. §§ 36B(d)(2)(A), 5000A(c)(4)(B); 42 C.F.R. § 435.603(d)(2).

²⁷² 26 U.S.C. § 6017.

VI. Applicable Federal Poverty Levels

Once the composition and number of the household and the amount of modified adjusted gross income are determined, the MAGI amount is compared to the relevant eligibility limit which is based on the Federal Poverty Level (“FPL”) for the particular household size. For example, the MAGI for a single non-pregnant, non-disabled adult applying for Medicaid coverage in an expansion state would be compared to 138% FPL (i.e., the 133% limit plus the 5% income disregard); if the MAGI is at or lower than 138%, then the individual is eligible. For other eligibility categories, there will be MAGI-converted amounts, particular to each state that will be the limits for eligibility.

Note, however, that the FPLs are updated and changed every year, so that it is necessary to know which year’s FPLs are being used for an eligibility determination. The new annual FPLs are published in the Federal Register early in each calendar year.²⁷³ Because the rules for determining which FPL to use differ between Medicaid/CHIP and the Marketplaces, there may be different sets of FPLs in use at the same time for the different insurance affordability programs during certain times of the year.

For the Marketplaces, FPL is defined as “the most recently published Federal poverty level, updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. § 9902(2), as of the first day of the annual open enrollment period for coverage in a QHP through the Exchange.”²⁷⁴ Thus, Marketplaces determined eligibility for APTCs during the 2019 calendar year based on the 2018 FPLs (which were in effect on November 1, 2018). Note, that the FPL in effect for Marketplace eligibility determinations, including Special Enrollment Periods (SEPs) remains the same for the full year.

For Medicaid and CHIP, FPL is defined as “the Federal poverty level updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. § 9902(2), as in effect for the applicable budget period used to determine an individual’s eligibility in accordance with § 435.603(h) of this part.”²⁷⁵ While this might indicate that the new FPLs for Medicaid/CHIP go into effect almost immediately after being published, in fact there has always been some delay before states update their IT systems to incorporate the new FPLs. (For example, California has usually not implemented the updated FPLs until April each year.)

²⁷³ HHS, Annual Update of HHS Poverty Guidelines, 83 Fed. Reg. 2642 (Jan. 18, 2018), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2018-01-18/pdf/2018-00814.pdf>.

²⁷⁴ 42 C.F.R. § 155.300(a).

²⁷⁵ 42 C.F.R. § 435.4.

Regardless of any delay, the most current FPLs will be put into use for Medicaid at some point during the early part of each year for Medicaid, while the FPLs from the prior year, that were in effect on the first day of open enrollment for the Marketplaces, will still be in use for determinations of APTC eligibility. Thus, for a substantial part of the year, two different sets of FPLs will be in use.

VII. ACA Tax Filing and Reconciling APTCs

Individuals whose annual income falls between 100% - 400% FPL (or lawfully present immigrants whose annual income falls between 0% - 400% FPL) may qualify for health insurance subsidies in the form of PTCs if they enroll in QHPs purchased through the Marketplaces, and meet certain requirements discussed below.

Everyone enrolled in Marketplace coverage who receives APTCs must file federal income taxes, even if their household income falls below the mandatory filing threshold.²⁷⁶

The IRS has developed two new tax forms for claiming and reconciling APTCs – Form 1095-A and Form 8962.²⁷⁷ The Marketplaces issue Form 1095-A to everyone who purchases and enrolls in a QHP, just as an employer issues a W-2 for each worker. The 1095-A lists the coverage household (everyone who was covered under the same health plan), the total cost of the monthly premium, the cost of the Second Lowest Cost Silver Plan (SLCSP) used to calculate the proper PTC amount, and the APTC amount, if any, actually paid for each month of the year.

Using the information provided on Form 1095-A, tax filers must complete Form 8962 to claim the PTC and account for APTCs received – a process called reconciliation. Those who over-estimated their projected income at enrollment may be entitled to a higher PTC amount, which the tax filer may receive as an income tax refund. Those who are eligible for PTCs, but did not elect to take APTCs (or elected an amount that is less than their eligible PTCs), will receive their credit through a tax refund or reduction in tax liability.

²⁷⁶ See 26 C.F.R. § 1.6011-8.

²⁷⁷ The IRS developed additional forms – Form 1095-B and 1095-C – for reporting Minimum Essential Coverage through employer sponsored coverage (ESI) and public programs such as Medicaid and CHIP.

A. Eligibility

To be eligible for PTCs in a given month an individual must: (1) be enrolled in a QHP; (2) be ineligible for minimum essential coverage (MEC) outside of the Marketplace; (3) meet income requirements; (4) be ineligible to be claimed as a dependent; and (5) meet filing status requirements.

B. Enrollment in a QHP

Premium tax credits are only available for months in which an individual or someone in the individual's tax family is enrolled in a qualified health plan purchased through the Marketplace.²⁷⁸

C. Minimum Essential Coverage

Individuals who are eligible for MEC outside of the Marketplace are ineligible for PTCs.²⁷⁹ Minimum essential coverage offered outside of the Marketplace includes: government-sponsored plans (e.g. Medicare, Medicaid, TRICARE, or CHIP); grandfathered plans; eligible employer sponsored plans; and certain other health coverage.²⁸⁰ Individuals who are eligible for government-sponsored MEC must complete any administrative steps that are required to receive coverage.²⁸¹ For example, if an individual is eligible for Medicaid but has not enrolled, that individual cannot get PTCs through the Marketplace. If, as in the case of Medicaid, the government-sponsored program uses retroactive eligibility, individuals who retroactively are determined eligible will not be considered eligible for government-sponsored MEC until the first day of the month that follows the approval.²⁸²

EXAMPLE: In 2017, Howard enrolls in a QHP for coverage that takes effect January 1, 2018. Howard is eligible for and elects to receive APTCs. In June, Howard loses his job and applies for Medicaid. His application is approved on July 8, 2018 with coverage effective June 1, 2018. Howard is considered eligible for non-Marketplace MEC as of August 1, 2018, and thus would be eligible for APTCs through the end of July 2018.

²⁷⁸ 26 C.F.R. § 1.36B-2(a)(1).

²⁷⁹ 26 C.F.R. § 1.36B-2(a)(2).

²⁸⁰ 26 U.S.C. § 5000A(f).

²⁸¹ 26 C.F.R. § 1.36B-2(c)(2)(ii).

²⁸² 26 C.F.R. § 1.36B-2(c)(iv).

D. Income

In general, to receive PTCs an individual's income must be between 100% - 400% of the Federal Poverty Level (or lawfully present immigrants up to 400% FPL).²⁸³ However, individuals whose income ends up below 100% FPL at the end of the year will generally be treated as eligible for the tax credit if, at the time of enrollment, the taxpayer estimated annual income to be between 100% - 400% FPL and the individual elected to receive APTCs.²⁸⁴ However, if the person's actual income at the time of tax filing is above 400% FPL, that person is required to repay APTCs.

Additionally, lawfully present immigrants whose income falls below 100% FPL may be eligible for APTCs if they are ineligible for Medicaid due to their immigration status.²⁸⁵

E. Claiming PTCs & reconciling APTCs received

Individuals who receive APTCs or who wish to claim PTCs must use the information found on Form 1095-A (sometimes supplemented by information from the Marketplace) to complete Form 8962. Individuals must submit Form 8962 with their federal income tax return. These forms help individuals claim PTCs as well as reconcile any APTCs received with the amount of PTCs an individual tax family was eligible to receive. Differences in the amount of APTCs received and the amount of PTCs an individual is eligible for may affect an individual's tax liability or refund amount.

Individuals whose APTCs exceed their final PTCs, as determined when filing the income tax return, will have an increased tax liability and will either receive a reduced refund or owe money when they file their federal tax return. Those whose APTCs were less than the amount of PTCs for which they were eligible may receive an increased tax refund. Liability for repaying excess APTCs received may be capped, depending on income and filing status.²⁸⁶

²⁸³ 26 C.F.R. § 1.36B-2(b); 26 C.F.R. § 1.36B-2(c)(1)(B) .

²⁸⁴ 26 C.F.R. § 1.36B-2(b)(6). Under this provision a tax filer will be considered an applicable taxpayer, but to determine eligibility for PTCs eligibility for minimum essential coverage should also be considered.

²⁸⁵ 26 C.F.R. § 1.36B-2(b)(5).

²⁸⁶ 26 C.F.R. § 1.36B-4(a)(3).

RESOURCE: Repayment Limit Table		
Income as a percentage of Federal Poverty Level	Filing Status	
	Single	Anything other than Single
Less than 200%	\$300	\$600
At least 200% but less than 300%	\$750	\$1,500
At least 300% but less than 400%	\$1,250	\$2,500
400% or more	No repayment limitation	

Reconciliation is fairly straight-forward for most, but may be complicated for those who failed to report mid-year changes in income and family size. The rules governing reconciliation and PTC computation are found in 26 C.F.R. §§ 1.36B-3 to 1.36B-4 and are discussed in more detail below.

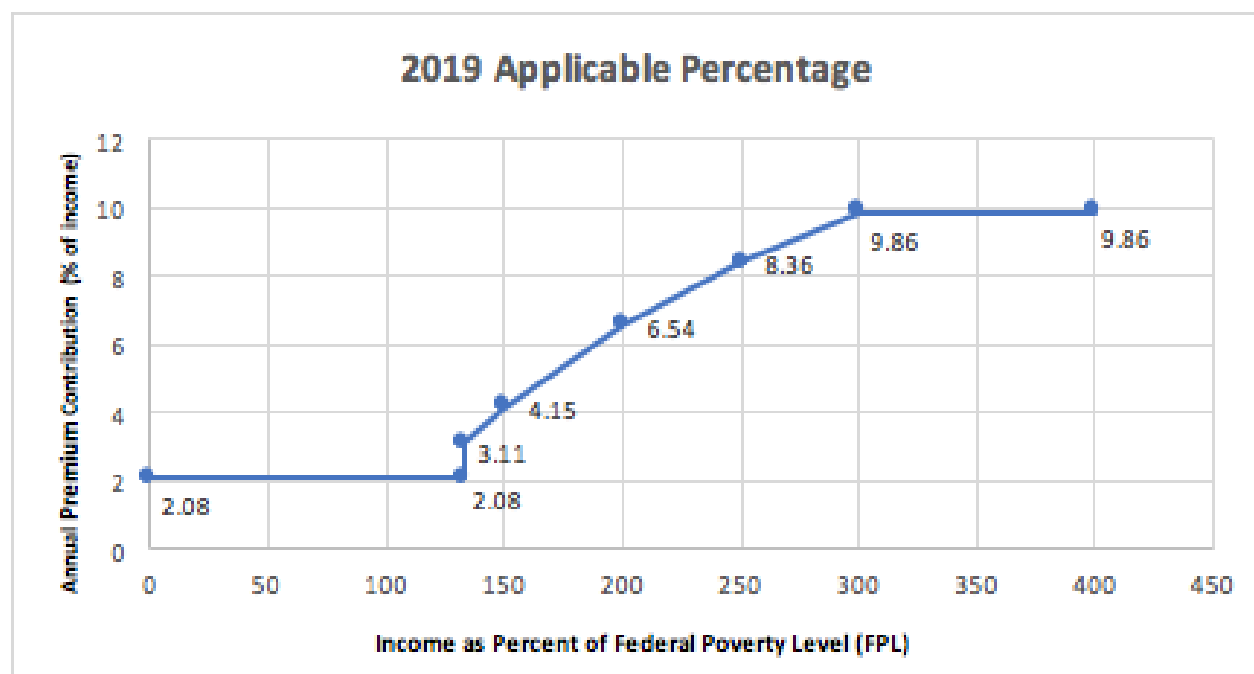
F. Calculating PTC

The amount of PTC that an individual or family receives is calculated according to a sliding scale. Those with higher incomes are expected to pay more towards their health care than those with lower incomes. Accordingly, the ACA establishes a range for how much of total income an individual or family is expected to contribute toward health insurance premiums – called the applicable percentage.

Applicable Percentage 2019²⁸⁷		
Household Income	Minimum contribution towards premiums	Maximum contribution towards premiums
Less than 133% (FPL)	2.08%	2.08%
At least 133%, but less than 150%	3.11%	4.15%
At least 150%, but less than 200%	4.15%	6.54%
At least 200%, but less than 250%	6.54%	8.36%

²⁸⁷ IRS Rev. Proc. 2017-36 (Sept. 5, 2017) available at <https://www.irs.gov/pub/irs-drop/rp-17-36.pdf>.

At least 250%, but less than 300%	8.36%	9.86%
At least 300%, but not more than 400%	9.86%	9.86%



Generally, in a given coverage month, the amount of PTCs an individual or family is eligible for will be the lesser of:

- the monthly premium costs of the QHP, or
- the monthly cost of the second lowest cost silver plan (SLCSP) minus 1/12 of the product of the applicable percentage multiplied by the household's income.²⁸⁸

Several factors may affect reconciliation and the amount of PTCs a tax household may claim, such as income fluctuations, changes in marital status, changes in family size, and changes in eligibility for other sources of coverage. These changes should be

²⁸⁸ 26 C.F.R. § 1.36B-3(d). Note that if the silver plans in the Marketplace do not offer one policy that covers everyone in the coverage family, then the applicable benchmark plan may either be the premium for a single policy or the sum of premiums for multiple policies, whichever is the SLCSP. See 26 C.F.R. § 1.36B-3(f)(3). The applicable percentage is based on income as a percentage of federal poverty level. Guidelines for the applicable percentage can be found at 26 C.F.R. § 1.36B-3(g), and the specific amounts are found on Page 6 of the instructions for Form 8962.

promptly reported to the Marketplace. The Marketplace will then recalculate and, if necessary, adjust the amount of APTCs received, helping individuals avoid having to repay excess APTCs received during reconciliation.

RESOURCE: For more information about reconciliation, IRS Form 8962, and the Form 8962 Instructions, can be a helpful guide. For reference, we include Form 8962 in Appendix D, also available at: <http://www.irs.gov/pub/irs-pdf/f8962.pdf>. Form 1040 Instructions can be found at: <http://www.irs.gov/pub/irs-pdf/i8962.pdf>.

G. Income Changes

Changes in income over the course of the year can lead to changes in amount of PTCs a tax filer is eligible to receive. Income changes should be reported to the Marketplace promptly so the Marketplace can adjust the amount of APTCs received. The reconciliation process identifies overpayments and underpayments of APTCs.

EXAMPLE – Income increases, repayment limit does not apply

Bobby and Cassandra are married and jointly enroll in a Marketplace plan that takes effect on January 1, 2014. At enrollment, they estimated their income for 2014 would be \$31,020 (200% FPL, with an applicable percentage of 6.3%).²⁸⁹ The QHP that they enrolled in has a monthly premium that is higher than the \$600/month premium of the SLCS in their area. At enrollment, it is estimated that Bobby and Cassandra should receive \$437.14/month in APTCs, calculated as follows: $\$600 - 1/12 \times (\$31,020 \times 0.063)$ or \$5,245.74/year.

When Bobby and Cassandra filed their 2014 taxes, it turns out that their actual income for 2014 was \$35,000 (226% FPL with an applicable percentage of 7.21%). Using their actual 2014 income, they are eligible for PTCs equal to \$389.71/month, calculated as follows: $\$600 - 1/12 \times (\$35,000 \times 0.0721)$ or \$4,676.50/year.

Thus they received \$569.24 in excess PTCs during 2014 calculated by subtracting the amount of APTCs for which they actually qualified from the amount of APTCs they received ($\$5,245.74 - \$4,676.50$).

²⁸⁹ The applicable percentages and federal poverty levels used in the examples contained in this section of the Guide are taken from the 2014 IRS Form 8962, which can be found in Appendix D.

The repayment limit for families with incomes between 200% and 300% FPL is \$1,500. Since the amount they received in excess APTCs is less than the repayment limit, Bobby and Cassandra will have their tax liability increased by the entire \$569.24.

PTC eligibility can also be affected by decreases in income.

EXAMPLE – Income decreases

Courtney and Thomas are married and jointly enroll in a Marketplace plan that takes effect on January 1, 2014. At enrollment, they estimated their income for 2014 would be \$31,020 (200% FPL, with an applicable percentage of 6.3%). The QHP they enroll in has a monthly premium that is higher than the \$600/month premium of the SLCS in their area. At enrollment, the Marketplace estimates that Courtney and Thomas should receive \$437.14/month in APTCs, calculated as follows: $\$600 - 1/12 \times (\$31,020 \times 0.063)$ or \$5,245.74/year.

When Courtney and Thomas file their 2014 taxes, it turns out that their actual income for 2014 was \$25,000 (161% FPL, with an applicable percentage of 4.51%). Using their actual 2014 income, they are eligible for \$506.04/month in PTCs, calculated as follows: $\$600 - 1/12 \times (\$25,000 \times 0.0451)$ or \$6,072.50/year.

Thus they were eligible for \$826.76 more in PTCs than they received, calculated by subtracting the amount of PTCs they received from the PTCs they were eligible for ($\$6,072.50 - \$5,245.74$). Their tax refund will be increased or their tax liability will be reduced by this amount.

H. Changes in household size and sharing policies across multiple households

Household size is used to determine PTC eligibility. Many common life events may affect the size of a tax household, like marriage, divorce, etc. These changes should be promptly reported to the Marketplace. Additionally a tax filer's household size may change for other reasons, and a tax filer may not know the size of his or her tax household until tax time. Changes in the size of a tax household will be accounted for during reconciliation.

EXAMPLE: Justin and Jasmine are married with three children whom they have claimed as dependents in the past: Sylvia, Paul, and Patrick. They enroll in a plan for all five of them that takes effect on January 1, 2014. At enrollment they estimated their income for 2014 would be \$65,000 (236% FPL, with an applicable percentage of 7.56%). The QHP they enrolled in has a monthly premium that is higher than the \$1,200/month premium of the SLCSP in their area. At enrollment it is estimated that they should receive \$790.50/month in APTCs, calculated as follows: $\$1,200 - 1/12 \times (\$65,000 \times 0.0756)$ or \$9,486.00/year.

When they file their 2014 taxes, it turns out that their actual income is \$65,000, but Justin and Jasmine do not claim Paul as a dependent and no other tax filer takes a personal exemption for him. Justin and Jasmine's family size drops from five to four. Their income is now 276% FPL, with an applicable percentage of 8.8%. Using this information they are eligible for PTCs equal to \$723.33/month, calculated as follows: $\$1,200 - 1/12 \times (\$65,000 \times 0.088)$ or \$8,680.00/year.

Justin and Jasmine received \$806 in excess APTCs during 2014, calculated by subtracting the amount of APTCs they were entitled to, from the amount of APTCs they received (\$9,486.00- \$8,680.00).

The repayment limit for families with incomes between 200% and 300% FPL is \$1,500. Since the amount they received in excess APTCs is less than the repayment limit, Justin and Jasmine will have their tax liability increased by the entire \$806.00.

1. Marriage

Marriage is a common life event that will affect APTC eligibility. For the purpose of calculating an individual's monthly APTCs, the Marketplace will use an individual's marital status as of the beginning of the month.²⁹⁰

Individuals who marry during the year have the option of calculating their APTCs under either the traditional calculation or under the alternative marriage calculation. Under the traditional calculation, the PTCs a couple is eligible for is calculated by using their actual income for the year, and the household size at the end of the year. This amount is compared to the APTCs the couple actually received (the sum of the APTCs the couple received prior to marriage and the APTCs the couple received after marriage). The amount of PTCs a household is eligible for is then subtracted from the APTCs received throughout the year.

²⁹⁰ 26 C.F.R. § 1.36B-4(b).

EXAMPLE – Traditional calculation

Bianca is single at the beginning of the year and enrolls in a Marketplace plan that takes effect on January 1, 2014. At the time of enrollment, she estimates her income for 2014 to be \$35,000 (305% FPL, with an applicable percentage of 9.5%). The QHP that she enrolled in has a monthly premium of \$550, which is more than the \$416.67/month premium of the SLCSP in her area. At enrollment, the Marketplace estimates that Bianca should receive \$139.58 month in APTCs, calculated as follows: $\$416.67 - 1/12 \times (\$35,000 \times 0.095)$ or \$1,675/year.

Larry is single with one dependent, his son Colin, at the beginning of the year. Larry enrolls in a Marketplace plan for himself and his son that takes effect on January 1, 2014. At the time of enrollment, he estimates that his income for 2014 will be \$22,000 (142% FPL, with an applicable percentage of 3.53%). The QHP he enrolled in has a monthly premium of \$650, which is more than the \$583.33/month premium of the SLCSP in his area. At enrollment, it is estimated that Larry should receive \$518.61/month in APTCs, calculated as follows $\$583.33 - 1/12 \times (\$22,000 \times 0.0353)$ or \$6,223.36/year.

Bianca and Larry get married in September and enroll in a plan for the 3 of them that is effective October 1, 2014. At the time of enrollment, they estimate their income for 2014 to be \$57,000 (292% FPL, with an applicable percentage of 9.27%). The QHP that they enrolled in has a monthly premium of \$1,250, which is more than the \$1,041.67/month premium of the SLCSP in their area. At enrollment, the Marketplace estimates that Bianca and Larry should receive \$601.34 in APTCs for the last three months of the year, calculated as follows: $\$1,041.67 - 1/12 \times (\$57,000 \times 0.0927)$ or \$7,216.10/year.

In 2015, Bianca and Larry file a joint tax return for 2014. It turns out that their actual income for the year was the amount they estimated, \$57,000. They elect to use the general rule for computing their additional tax, calculated as:

- Bianca's APTC (Jan-Sept) = $\$139.58 \times 9 = \$1,256.22$
- Larry's APTC (Jan-Sept) = $\$576.86 \times 9 = \$5,191.74$
- Bianca and Larry's APTC after marriage (Oct-Dec) = $\$601.34 \times 3 = \$1,804.02$

Total APTCs received: $\$1,256.22 + \$5,191.74 + 1,804.02 = \$8,251.98$

- Bianca's Benchmark plan premiums (Jan-September) = $\$5,000 \times 9/12 = \$3,750$
- Larry's Benchmark plan premiums (Jan-Sept) = $\$7,000 \times 9/12 = \$5,250$
- Bianca and Larry's marriage benchmark premiums (Oct-Dec) = $\$12,500 \times 3/12 = \$3,125$

Total Benchmark plan premium: $\$3,750 + \$5,250 + \$3,125 = \$12,125$

Eligible Monthly APTCs: $\$1,041.67 - 1/12 \times (57,000 \times 0.0927) = \$601.35/\text{month}$ or $\$7,216.20/\text{year}$

Excessive APTCs received: $\$8,251.98 - \$7,216.20 = \$1,035.78$

Bianca and Larry's tax liability would increase $\$1,035.88$, which is less than their applicable repayment limitation of $\$1,500$, thus they would have to repay the entire $\$1,035.88$.

Tax filers who marry during the year can instead elect the alternative calculation for the months prior to their marriage. Under the alternative marriage calculation, the household income for the family is divided in half and that amount is used to calculate the PTC eligibility for each individual during the pre-marriage months (both individuals will use the same income for the pre-marriage months, but they may have different applicable percentages due to different pre-marriage household sizes). The couple's eligibility for PTCs for the year is the sum of the pre-marriage eligibility for each individual plus the household's eligibility for the post-marriage months.

EXAMPLE 2: Same facts as above, except Bianca and Larry elect the alternative marriage calculation. Because of differences in family sizes at the beginning of the year, the \$28,500 (1/2 of the sum of Bianca's \$35,000 and Larry's \$22,000 estimated incomes) will have Bianca at 248% FPL, with an applicable percentage of 7.98% and Larry at 183% FPL, with an applicable percentage of 5.52%.

Alternative premium assistance for pre-marriage months:

Bianca's Pre-marriage PTCs (Jan-Sept): $\$416.67 - 1/12 \times (\$28,500 \times 0.0798) = \$227.15/\text{month} \times 9 \text{ months} = \$2,044.30$

Larry's Pre-marriage PTCs (Jan-Sept): $\$583.33 - 1/12 \times (\$28,500 \times 0.0552) = \$452.23/\text{month} \times 9 \text{ months} = \$4,070.07$

Bianca & Larry's marriage PTCs (Oct-Dec): $\$1041.67 - 1/12 \times (\$57,000 \times 0.0927) = \$601.35/\text{month} \times 3 \text{ months} = \$1,804.03$

PTC eligibility under alternative marriage calculation = $\$2,044.30 + \$4,070.07 + \$1,804.03 = \$7,918.40$

Alternative Marriage Tax liability:

APTCs received (see prior example) – PTC eligibility under alternative marriage calculation = $\$8,251.98 - \$7,918.40 = \$333.58$

Bianca and Larry's tax liability would increase \$333.58, which is less than their applicable repayment limitation of \$1,500, thus they would have to repay the entire \$333.58.

2. The shared policy allocation

The shared policy allocation is used to share the APTCs received, benchmark premiums, and/or the premiums paid across multiple tax households. This often occurs when tax filers divorce, are married but file separate returns, or when a dependent is enrolled in a QHP by one tax filer but claimed as a dependent by another (this is called a shifting enrollee).²⁹¹ The shared policy allocation may be required if a:

- Tax filer divorces or becomes legally separated during the year and at any point in the year the tax filer (or someone in the tax filer's household) was enrolled under the same policy (e.g., a family plan) as the tax filer's former spouse;
- Tax filer is married at the end of the year, but files a separate return and, at any point in the year, the tax filer (or someone in the tax filer's household) was enrolled in the same policy as the tax filer's spouse;
- Tax filer (or someone in the tax filer's household) shared a policy with someone (i.e., his child) who is claimed as a dependent by another tax filer. This is the shifting enrollee situation; or
- Tax filer and another tax household were enrolled in a shared plan (e.g., an adult and her parents share a family health plan and file their federal incomes taxes separately).

The instructions for Form 8962 indicate whether or not tax filers in the above situations are required to use the shared policy allocation. Depending on the situation, different percentages may be used to allocate the costs and credits associated with the shared policy.

²⁹¹ In general, married individuals who file separate returns are ineligible for PTCs. For more information about exceptions to this rule, see Section IV on Household Composition. Married taxpayers who do not qualify for an exception and who told the Marketplace they would file joint returns, but ultimately filed as married filing separately, will need to use the shared policy allocation to determine tax liability for any APTCs received.

Premium Tax Credit Allocation Rules

Situation	What is allocated?	Can taxpayers change the default?	Default allocation	Regulation
Divorce	<ul style="list-style-type: none"> Premiums paid APTCs Benchmark premiums 	<p>Yes.</p> <p>Taxpayers may agree on any percentage.</p>	50% (or 100% if the plan only covered one individual)	Treas. Reg. § 1.36B-4T(b)(3)
Separate returns	<ul style="list-style-type: none"> Premiums paid APTCs 	No.	50% (or 100% if the plan only covered one individual)	Treas. Reg. § 1.36B-4T(b)(4)
Shifting Enrollee	<ul style="list-style-type: none"> Premiums paid <p>Only if APTCs were paid, then also allocate:</p> <ul style="list-style-type: none"> APTCs Benchmark premiums 	<p>Yes.</p> <p>Taxpayers may agree on any percentage.</p>	# of shifting enrollees claimed divided by # of individuals enrolled in the QHP with the shifting enrollees	Treas. Reg. § 1.36B-4T(a)(1)(ii)(B)

a) Divorce

Tax filers who divorce during the tax year and are required to use the shared policy allocation must allocate benchmark premiums, plan premiums, and advanced tax credits received. Tax filers can choose to use any allocation percentage, but if the tax filer and former spouse cannot agree on a percentage, 50% will be used. The same percentage must be used to allocate benchmark premiums, enrolled plan premiums, and APTCs.²⁹²

²⁹² 26 C.F.R. §1.36B-4(b)(3).

EXAMPLE: Bobby and Erica are married with two dependent children, Mark and Jane. They enroll in a plan for all four of them that took effect January 1, 2014. At the time of enrollment, they estimated their income for the year to be \$60,000 (255% FPL, with an applicable percentage of 8.20%). The QHP that they enrolled in has a monthly premium of \$1,250 which is more than the \$1,125/month premium of the SLCSP in their area. At enrollment it is estimated that they should receive \$715/month in APTCs, calculated as follows: $\$1,125 - 1/12 \times (\$60,000 \times 0.082) = \$715/\text{month}$ or \$8,580/year.

On April 31, Bobby and Erica divorce and Erica buys a new policy for May through December for her and the two children. Her projected income is now \$35,000 (179% FPL, with an applicable percentage of 5.33% for a family of three). Erica's new plan has a monthly premium of \$950 which is more than the \$833.33/month premium of the SLCSP in their area. At enrollment, it is estimated that she should receive \$677.86/month in APTCs, calculated as $\$833.33 - 1/12 \times (\$35,000 \times 0.0533) = \$677.86/\text{month}$ in APTCs, calculated as \$833.33 – 1/12 x (\$35,000 x 0.0533) = \$8,134.50/year or \$677.86/month or \$8,134.50/year.

Bobby enrolls in a plan for May through December based on a family size of one. His projected income is now \$28,000 (240% FPL with an applicable percentage of 7.7%). He enrolled in a QHP that costs \$550/month which is more than the \$500/month premium of the SLCSP in his area. At enrollment, it is estimated that he should receive \$320/month in APTCs calculated as follows: $\$500 - 1/12 \times (\$28,000 \times .077) = \$320.33/\text{month}$ or \$3,844 year.

Bobby and Erica agree to use a 50% allocation to allocate the APTCs, benchmark premiums, and enrolled plan premiums for the four months they were married.

Benchmark premium for marriage months = $\$1,125/\text{month} \times 4 \text{ months} = \$4,500$
APTCs for marriage months = $\$715/\text{month} \times 4 \text{ months} = \$2,860$

Since they chose a 50% allocation, they each use \$2,250, calculated as $\$4,500/2$, for the marriage months' benchmark premium and \$1,430, calculated as $\$2,860/2$, for the marriage months' APTCs.

At the end of the year Erica's income is her predicted \$35,000 and Bobby's income is his predicted \$28,000. They reconcile their APTCs as follows:

	Bobby	Erica
Allocated APTCs (Jan-April)	\$1,430	\$1,430
APTC (May-Dec)	\$2,562.64, calculated as \$320.33/month x 8 months	\$5,422.88, calculated as \$677.86/month x 8 months
Total APTCs received	\$3,992.64	\$6,852.88
Allocated benchmark plan premium (Jan-April)	\$2,250	\$2,250
Actual benchmark premium (May-Dec)	\$4,000, calculated as \$500/month x 8 months	\$6,666.64, calculated as \$833.33/month x 8 months
Total Benchmark premiums	\$6,250.00	\$8,916.64
Contribution amount (income *applicable percentage)	\$2,156, calculated as \$28,000 x 0.077	\$1,855, calculated as \$35,000 x 0.053
Credit (benchmark premium less contribution)	\$4,094	\$7,061.67
Difference in allowed credit and APTC	\$101.36, calculated as \$4,094 – \$3,992.64	\$208.79, calculated as \$7,061.67 – \$6,852.88

Bobby is thus allowed an additional credit of \$101.36 and Erica is allowed an additional credit of \$208.79.

b) Separate returns

Generally, married tax filers must file jointly to be eligible for PTCs. Exceptions to this rule are discussed in greater detail in the Section IV on Household Composition. However, there may be situations where married tax filers who file separate returns may receive APTCs. For example a married tax filer may indicate to the Marketplace that the tax filer intends to file a joint return, but when tax time comes the tax filer may file a separate return. Married tax filers who do not file jointly must allocate any APTCs received.²⁹³

²⁹³ 26 C.F.R. § 1.36B-4T(b)(4).

Tax filers who do not fall into an exception that allows married tax filers to file separate returns and maintain eligibility for PTCs will only allocate APTCs, which must all be repaid, subject to any applicable repayment limit. Tax filers who fall into an exception and are eligible for PTCs, must also allocate the premiums paid. However, the benchmark premiums are not allocated, and instead a new benchmark will be used. Married tax filers who file separate returns must use an allocation percentage of 50% (unless only one tax filer and his or her dependents are covered by the plan, in which case 100% will be used).

c) Shifting enrollees

The shifting enrollee situation occurs when someone (the shifting enrollee) is enrolled in a plan by one tax filer but claimed as a dependent by another tax filer. This situation often occurs in the case of separated or divorced parents, if one parent enrolls the child and another parent claims the child as a dependent. However, shifting enrollees are not limited to separated or divorced parents and their children. For example, a child who is enrolled in a plan with her aunt, but claimed as a dependent by her grandmother may also be a shifting enrollee. When there is a shifting enrollee, and the shared policy allocation applies, premiums paid must be allocated among the tax filers. If APTCs were received, then the APTCs and the benchmark premiums must also be allocated. If no APTCs were received, then a new benchmark will be used.

The tax filers can use any agreed upon allocation percentage, but if they cannot agree then the default allocation percentage will be calculated by adding together the total number of shifting enrollees and dividing that number by the total number of people enrolled in the QHP in which the shifting enrollee is a participant.

EXAMPLE: Shifting enrollees

Robert and Julia are divorced with two children, Bobby and Wendy. Julia enrolls in a plan for Bobby, Wendy, and herself. At the time of enrollment Julia estimates that her income for the year will be \$55,000 (282% FPL for a household size of three, with an applicable percentage of 9.01%). They enroll in a QHP that has a monthly premium that is more expensive than the \$1,200/month of the SLCS in the area. At enrollment it is estimated that they should receive \$787.04/month in APTCs, calculated as follows: $\$1,200 - 1/12 \times (\$55,000 \times 0.0901)$ or \$9,444.50/year.

Wendy lives with Robert for more than half of the year and Robert claims Wendy as a dependent. Robert and Julia agree to an allocation percentage of 30% for Robert and 70% for Julia (if they did not agree on a percentage, the allocation percentage it would be the number of shifting enrollees divided by the number of individuals enrolled in the QHP with the shifting enrollee, which would be 1/3 or 33%).

Julia's tax household size for 2014 is two and her actual income is \$55,000 (355% FPL with an applicable percentage of 9.5%). Her benchmark premium used to calculate her eligibility for PTCs is adjusted to consider the premium allocation for Wendy (the monthly premium of \$1,200 is reduced by 30%, thus the benchmark used is \$840 ($\$1,200 \times 0.70$) making her eligible for \$404.58/month in premium tax credits calculated as: $\$840 - 1/12 \times (\$55,000 \times 0.095)$ or \$4,855/year.

Julia's APTCs are also adjusted. The shared policy allocation will adjust Julia's APTCs, so that after taking the shared policy allocation into account Julia will be considered to have received \$6,611.15 in APTCs ($\$9,444.50 \times 0.70$). Thus Julia received \$2,021.61 in excess tax credits, calculated as $\$6,611.15 - \$4,855$. Julia's tax filing status is single and based on her income as a percentage of FPL her repayment is limited to \$1,250.

VIII. Transition to MAGI-based Eligibility Systems

In May 2013 guidance, CMS outlined five targeted enrollment strategies for states designed to streamline the administration of eligibility determinations.²⁹⁴ Two of these five strategies relate directly to the transition to MAGI-based methodologies:

- Implementing MAGI-based methodologies before January 1, 2014 through § 1115 demonstration;
- Delaying or rescheduling current beneficiary redeterminations until after March 31, 2014.

Both of these time-limited options attempt to address the problem of running two eligibility determinations at the same time during the transition to MAGI. Starting October 1, individuals began applying for coverage using MAGI-based methodologies for all insurance affordability programs, though coverage through QHPs or Medicaid expansion begins January 1. Prior to 2014, states also have to evaluate new applicants for eligibility based on current Medicaid rules to see if they could access Medicaid or CHIP coverage right away. Similarly, state Medicaid agencies need to conduct eligibility redeterminations using both MAGI-based and pre-MAGI income counting rules during the transition period.

As of January 1, 2014, pre-MAGI household composition and income counting rules no longer apply (or applicable categories subject to MAGI, so the transition to MAGI will be complete for new applicants. However, eligibility redeterminations will still require pre-MAGI rules. This is because the statute requires states to allow current beneficiaries who lose eligibility solely due to the transition to MAGI to retain their eligibility through March 31, 2014 or the date of their next scheduled redetermination, whichever is later.²⁹⁵ The only way to identify such individuals is to compare the results from both current and MAGI-based eligibility methodologies. Thus, absent any use of CMS options, states must use both eligibility systems simultaneously from October 1, 2013 through at least March 31, 2014. However, states that implement these two time-limited options, independently or together, can limit or even eliminate the period during which both eligibility systems would overlap.

A. Early MAGI implementation

Under this option, states may implement MAGI-based methodologies beginning October 1, 2013. In such states, current income counting rules would no longer apply for new applicants. Those individuals eligible for existing categories (converted to a

²⁹⁴ CMS, *Dear State Health Official & State Medicaid Director* (May 17, 2013) (Facilitating Medicaid and CHIP Enrollment and Renewal in 2014).

²⁹⁵ 42 U.S.C. § 1396a(e)(14)(D)(v); 42 C.F.R. § 435.603(a)(3).

MAGI-equivalent income threshold) may access coverage immediately, while those eligible under an ACA Medicaid expansion category have to wait until January 1, 2014 to gain coverage.²⁹⁶ States implement this option through § 1115 demonstration authority. CMS offered an expedited request and approval process for states with existing § 1115 demonstrations, while states with no such demonstrations had to conform to the standard transparency and stakeholder participation requirements. As of September 2013, CMS approved 14 states plus the District of Columbia to implement early MAGI.²⁹⁷

Importantly, this option alone does not completely eliminate the need to apply both eligibility systems simultaneously during the transition to MAGI. Early MAGI states still have to apply current eligibility rules for existing beneficiaries renewing their eligibility to determine who loses eligibility solely because of the transition to MAGI. To address redeterminations, states have to use the second option.

B. Delaying and rescheduling eligibility redeterminations

This option allows states to delay regularly scheduled Medicaid redeterminations that would otherwise occur in the first three months of 2014.²⁹⁸ This eliminates the need to identify individuals who lose eligibility solely due to the transition to MAGI-based methodologies by temporarily extending eligibility for everyone until after March 31. Consequently, participating states could dispense with pre-MAGI eligibility systems as early as January 1, when MAGI-based enrollment coverage begins. CMS will work with participating states to develop reasonable approaches to rescheduling redeterminations so they remain relatively evenly distributed throughout the year.

Authority for this option stems from statutory language allowing HHS to waive Medicaid and CHIP provisions “as are necessary to ensure that States establish income and

²⁹⁶ Relevant expansions include coverage for children 6-19 to 133% FPL, adults 19-64 to 133% FPL, and certain adolescents who age out of foster care.

²⁹⁷ Colorado, the District of Columbia, Hawaii, Illinois, Kansas, Louisiana, Missouri, Nevada, New Jersey, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, and West Virginia were scheduled to implement early MAGI on October 1, 2013. CMS, *Targeted Enrollment Strategies* (Oct. 2013), <http://medicaid.gov/AffordableCareAct/Medicaid-Moving-Forward-2014/Targeted-Enrollment-Strategies/targeted-enrollment-strategies.html>.

²⁹⁸ This delay applies to regularly scheduled determinations. Enrollees who report a change in circumstance during this period would still be protected under 42 U.S.C. § 1396a(e)(14)(D)(v). That provision requires states to identify enrollees who lose coverage due solely to MAGI and extend their coverage until at least March 31, 2014. States will need to redetermine any individual who reports a change in circumstance using both pre-MAGI and MAGI income rules to identify: 1) if she will remain eligible under MAGI; and 2) if not, whether her ineligibility is due to the MAGI transition (and not just her change in circumstance).

eligibility determination systems that protect beneficiaries.”²⁹⁹ Because the statute does not specify any public process requirements, HHS developed a streamlined approval process for states to request such waivers.

Current guidance does not clearly indicate whether states that implement MAGI early will also be able to delay redeterminations scheduled between October 1, 2013 and January 1, 2014.

C. Eligibility for Transitional Medical Assistance (TMA)

TMA allows § 1931 parents and caretakers to extend their Medicaid eligibility after becoming ineligible due to an increase in employment hours, earned income or child/spousal support payments.³⁰⁰ Congress made permanent the law requiring states to offer at least six months of extended eligibility for anyone who was Medicaid eligible for at least three of the previous six months.³⁰¹ Many states have taken up an option to extend coverage to 12 months or even longer.

The structure of TMA changed with the transition to MAGI. First, MAGI does not include child support as countable income, so that pathway for receiving TMA is no longer relevant. The first six months of TMA eligibility does not include an income test, so it is not affected by the transition to MAGI. States have two options to extend TMA eligibility to 12 months. One simply extends the initial period to 12 months, applying no income test.³⁰² Alternatively, a state may set an upper income limit at 185% FPL for the second 6-month period. It is unclear how MAGI applies to this second optional extension. CMS’s MAGI conversion template did not include a line item for converting optional TMA. The TMA provision itself details a specific non-MAGI income test based on the average gross income over a three month period after disregarding child care costs necessary for employment.³⁰³ Over the years, a number of states have added additional disregards to further extend eligibility or reduce enrollee reporting requirements in the optional period.³⁰⁴ A review of several states indicates that some continue to treat TMA as a non-MAGI category, while others now apply MAGI methodologies to the second extension but have not converted prior disregards (such as for child care expenses) into a new MAGI-equivalent limit.³⁰⁵

²⁹⁹ 42 U.S.C. § 1396a(e)(14)(A).

³⁰⁰ 42 U.S.C. §1396r-6.

³⁰¹ Public Law 114-10. “Medicare Access and CHIP Reauthorization Act of 2015” (Apr. 16, 2015) § 212.

³⁰² 42 U.S.C. § 1396r-6(a)(5).

³⁰³ 42 U.S.C. § 1396r-6(b)(3)(A).

³⁰⁴ April Grady, CONG. RES. SERV., *Transitional Medical Assistance (TMA) under Medicaid*, 9 (July 24, 2008) available at

<http://congressionalresearch.com/RL31698/document.php?study=Transitional+Medical+Assistance+TMA+Under+Medicaid>.

³⁰⁵ Non-MAGI: NE, WA, IN MAGI with no conversion: MO, AZ.

IX. MAGI and the Single Streamlined Application

As noted, the ACA requires all states to implement a Single Streamlined Application for all IAPs. States may adopt the federal model application, or develop their own, subject to HHS approval.³⁰⁶ The single application is used for multiple IAPs, including Medicaid, CHIP, and APTC/CSRs in the Marketplaces. States can also use the Single Streamlined Application for other public benefits programs, such as SNAP.

All members of a household can apply for all IAPs on the same application. The Single Streamlined Application must be offered in multiple formats, including online, paper, and over the telephone.³⁰⁷

The Single Streamlined Application implements the ACA's "no wrong door" policy that aims to allow individuals to apply at a Marketplace, Medicaid or CHIP agency without being turned away.

The Application features questions and data points to identify MAGI income, as well as the composition of the Medicaid and Marketplace households. Updated state eligibility systems are designed to conduct an initial MAGI screening to determine an applicant's eligibility for APTCs/CSRs in the Marketplace and for MAGI-based Medicaid/CHIP eligibility.

The applications also include questions to help identify those who may be eligible for Medicaid on a basis other than MAGI. These include questions about disabilities, as well as questions asking if any applicant requires assistance with activities of daily living.

The ACA requires states to leverage and maximize electronic data sources to verify information provided on the application.³⁰⁸ Paper documentation is to be used as a last resort.

³⁰⁶ 42 U.S.C. § 18083(b)(1); 42 C.F.R. § 435.907(b)(1).

³⁰⁷ 45 C.F.R. § 155.405.

³⁰⁸ 45 C.F.R. § 155.320.

X. Appendices

Appendix A. Medicaid Eligibility Categories and Populations Subject to MAGI

Medicaid Eligibility Categories and Populations Subject to MAGI	
Category	Medicaid Act citation: 42 U.S.C.
Non-disabled, non-elderly adults	18-64 (ACA expansion) - <ul style="list-style-type: none"> • § 1396a(10)(A)(i)(VIII)
Most children	<ul style="list-style-type: none"> • Low-income children in TANF - § 1396u-1 • Mandatory poverty level children age 1-5 - § 1396a(10)(A)(i)(VI) • Qualified Children – § 1396a(10)(A)(i)(III) • Mandatory poverty-level infants - 42 U.S.C. § 1396a(10)(A)(i)(IV) • Mandatory poverty-level children age 6-18 - 42 U.S.C. § 1396a (10)(A)(i)(VII) • Optional institutionalized children – § 1396a(10)(A)(ii)(IV)³⁰⁹ • Optional poverty level infants – § 1396a(10)(A)(ii)(IX) • Optional poverty level children under 19
Pregnant women	<ul style="list-style-type: none"> • Qualified Pregnant Women - § 1396a(a)(10)(A)(i)(III) • Mandatory poverty level pregnant women - § 1396a(a)(10)(A)(i)(IV) • Optional poverty level pregnant women § 1396a(a)(10)(A)(ii)(X) • AFDC criteria pregnant women – § 1396a(a)(10)(A)(ii)(I) • Institutionalized pregnant women – § 1396a(a)(10)(A)(ii)(IV)
Parents and caretaker relatives	§ 1396u-1
Independent foster care adolescents (optional)	§ 1396a(a)(10)(A)(ii)(XVII)
State adoption assistance agreements (optional)	§ 1396a(a)(10)(A)(ii)(XVIII)
Limited scope Medicaid –TB	§ 1396a(z)
Family Planning	§ 1396a(a)(10)(A)(ii)(XXI) § 1396a(ii) § 1396a(a)(10)(G)(XVI)(XVI)
CHIP	§ 1397aa

³⁰⁹ “Institutionalized children” refers to children who would be eligible under AFDC levels if they were not institutionalized (see 42. C.F.R. § 435.211). CMS consolidated this and other children’s eligibility categories under 42 C.F.R. § 435.118 (see 77 Fed. Reg. 17205).

Appendix B. ACA MAGI Exceptions

ACA MAGI Exceptions	
Medicaid Act citation: 42 U.S.C.	Category or population
§ 1396a(e)(14)(D)(i)(I)	<p>Persons eligible under state plan or waiver where state does not conduct an income determination</p> <p>Examples:</p> <ul style="list-style-type: none"> • SSI recipients (where states automatically provide Medicaid because of SSI) • Children IV-E foster care
§ 1396a(e)(14)(D)(i)(II)	Individuals who have attained age 65 (where age is a condition of eligibility)
§ 1396a(e)(14)(D)(i)(III)	<p>People who qualify for state plan or waiver program on the basis of disability regardless of SSI;</p> <p>Example:</p> <ul style="list-style-type: none"> • Medicaid recipients in 209(b) states that do not rely on SSI determinations when determining eligibility <p>Individuals who would be eligible for SSI (and thus Medicaid) if they were not institutionalized.</p> <p>Example:</p> <ul style="list-style-type: none"> • Katie Beckett option
§ 1396a(e)(14)(D)(i)(IV)	Medically needy
§ 1396a(e)(14)(D)(i)(V)	QMBys SLMBys QIs
§ 1396a(e)(14)(D)(ii)	Express Lane Agency findings under state plan or waiver
§ 1396a(e)(14)(D)(iii)	Medicare subscription drug subsidies
§ 1396a(e)(14)(D)(iv)	Long term care determinations
§ 1396a(e)(14)(F)	Limited HHS authority to waive MAGI for certain dually eligible individuals to facilitate coordination

Appendix C. Populations and Eligibility Categories Where MAGI Does Not Apply

Populations and Eligibility Categories Where MAGI Does Not Apply	
Eligibility category	Medicaid Act citation: 42 U.S.C.
Early adult expansions (but no asset test)	§ 1396a(k)(2)
Adults 65 and over	<p>Mandatory: (receiving state supplements) § 1396a</p> <p>Optional coverage: 1396d(a)(iii)</p> <p>Individuals eligible for assistance except for institutional status: § 1369a(a)(10)(A)(ii)(IV); § 1396b(f)(4)(C)</p>
Persons eligible due to disability	<p>Mandatory: (receiving state supplements) § 1396a</p> <p>Qualified Severely Impaired Individuals (Section 1619), § 1396a(a)(10)(A)(i)(II)</p> <p>Qualified Disabled and Working Individuals: § 1396a(10)(E)(ii)</p> <p>Grandfathered 1973 recipients: § 1396a</p> <p>Disabled Adult Children who lost SSI benefits: § 1383(c)</p> <p>Optional disability coverage: § 1396d(a)(v)-(vii);</p> <p>Working-disabled individuals: Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-107 § 201, 113 Stat. 1860, 1891 (1999).</p> <p>Medically improved working disabled individuals: § 1396a(a)(10)(A)(ii)(XVI); § 1396d(v)</p>

Populations and Eligibility Categories Where MAGI Does Not Apply	
Eligibility category	Medicaid Act citation: 42 U.S.C.
SSI recipients	§ 1396a(a)(1)(A)(i)(II)
Individuals aging out of foster care (new ACA mandatory category)	§ 1396a(a)(10)(A)(i)(IX)
209(b) state eligibility determinations	§ 1396a(f)
Long term care patients (both community-based and institutional)	
Breast and Cervical Cancer Program (no Medicaid income determination necessary)	§ 1396a(a)(10)(A)(ii)(XVIII); § 1396a(aa)
Medically Needy (but with some CMS options to use MAGI)	§ 1396a(a)(10)(C)(i); § 1396a(a)(17)
Children in foster care and Title IV-E adoption assistance	§ 1396a(a)(10)(A)(i)(I)
Individuals for whom Medicaid is paying Medicare cost sharing (QMBYs, SLMBYs and QI)	§ 1396a(a)(10)(E) § 1396d(p) § 1396a(a)(10)(E)(iii) § 1396u-3(b)
Individuals determined eligible through Express Lane Eligibility	§ 1396a(a)(14)
Medicare prescription drug subsidies	§ 1395w-114
Newborns born to women who are eligible to receive Medicaid (for one year)	§ 1396a(e)(4)
Post-eligibility income disregards (hospice, institutionalized individuals, HCBS waivers)	§ 1396a(r); § 1396a(o)

Appendix D. The Marketplace and Medicaid/CHIP Household

The Marketplace and Medicaid/CHIP Household		
Individual seeking an eligibility determination	Household	Regulation citation: 42 C.F.R.
<p>1. Tax filers: An individual who is a tax filer who claims a personal exemption and is not claimed as a dependent by someone else</p>	<p>The individual's Medicaid/CHIP household is the same as the Marketplace household, consisting of:</p> <ul style="list-style-type: none"> • The tax filer(s) • Claimed dependents 	§ 435.603(f)(1)
<p>2. Tax dependents: An individual who is claimed as a tax dependent by someone else (and does not fall into an exception)</p>	<p>The individual's Medicaid/CHIP household is the same as the Marketplace household, consisting of:</p> <ul style="list-style-type: none"> • The individual who is claimed as a dependent • The tax filer(s) • Other dependents claimed by the tax filer(s) 	§ 435.603(f)(2)
<p>Exception A: An individual who is claimed as a tax dependent by someone else but is not a child or a spouse of the tax filer (e.g., a grandmother who is low income and living with the family). Use the rules for non-filers.</p>	<p>The individual's Marketplace household consists of the tax filer and all dependents claimed by the filer, including the individual seeking an eligibility determination.</p> <p>The individual's Medicaid/CHIP household consists of:</p> <ul style="list-style-type: none"> • The individual seeking an eligibility determination who is claimed as a dependent by a tax filer • The individual's spouse if living with the individual • The individual's children if living with the individual and who meet the state's age requirements • The individual's siblings if living with the individual, but only if the individual is under the age specific by the state • The individual's parents if living with the individual, but only if the individual is under the age specified by the state 	<p>§ 435.603(f)(2)(i) § 435.603(f)(3)</p>

The Marketplace and Medicaid/CHIP Household

Individual seeking an eligibility determination	Household	Regulation citation: 42 C.F.R.
<p>Exception B: A child who is under the age specified by the state, and who lives with both parents, but where only one parent claims the child as a tax dependent. Use the rules for non-filers.</p>	<p>The child's Marketplace household consists of the child, the parent who claims the child as a tax dependent, and any other tax dependents who are claimed by the parent.</p> <p>The child's Medicaid/CHIP household consists of:</p> <ul style="list-style-type: none"> • The child • Both of the child's parents who are living with the child • The child's children if living with the applicant and meeting the state's age requirements • The child's siblings if living with the applicant and meeting the state's age requirements 	<p>§ 435.603(f)(2)(ii) § 435.603(f)(3)</p>
<p>Exception C: A child who is under the age established by the state, and who lives with a custodial parent, but who is claimed as a tax dependent by the non-custodial parent. Use the rules for non-filers.</p>	<p>The child's Marketplace household consists of the child, the non-custodial parent who claims the child as a tax dependent, and any other tax dependents who are claimed by the parent.</p> <p>The child's Medicaid/CHIP household consists of:</p> <ul style="list-style-type: none"> • The child • The custodial parent living with the individual • The child's children if living with the child and meeting the state's age requirements • The child's siblings, if they live with the child and meet the state's age requirements 	<p>§ 435.603(f)(2)(iii) § 435.603(f)(3)</p>

The Marketplace and Medicaid/CHIP Household

Individual seeking an eligibility determination	Household	Regulation citation: 42 C.F.R.
<p>3. Non-filers and non-dependents: An individual who does not file a federal tax return and who is not claimed as a dependent by someone else.</p>	<p>There is no Marketplace household for individuals who do not file taxes or who are not claimed as a tax dependent.</p> <p>The individual's Medicaid/CHIP household consists of:</p> <ul style="list-style-type: none"> • The individual • The individual's spouse if living with the individual • The individual's children if living with the individual and meeting the state's age requirements • The individual's siblings if living with the individual and meeting the state's age requirements, but only if the individual meets the state's age eligibility requirements • The individual's parents if living with the individual, but only if the individual meets the state's age eligibility requirements 	<p>§ 435.603(f)(3)</p>



MAGI Household Composition

1. Marketplace Household	2. Medicaid household	3. Rules for non-filers/non-dependents (also applies to dependent relatives and child claimed by one parent)
<p>General rule: Marketplace household = tax filer(s) + dependents</p> <ul style="list-style-type: none"> • Tax filer(s) <ul style="list-style-type: none"> ➢ Includes spouses filing jointly • Dependents <ul style="list-style-type: none"> ➢ Qualifying Child ➢ Qualifying Relative • Not lawfully present excluded • Married couples must file jointly to be eligible for PTCs/CSRS <ul style="list-style-type: none"> ➢ Domestic violence survivors, abandoned spouses, and those who qualify for "head of household" can file separately • Household is the same for every member 	<p>General rule: The Medicaid household is the same as the Marketplace household = tax filer(s) + dependents</p> <ol style="list-style-type: none"> 1. Who is seeking an eligibility determination? 2. Is this person a tax filer or claimed as a dependent? <ul style="list-style-type: none"> ➢ If neither, apply the special rules for non-filers/non-dependents 3. If a dependent, do any exceptions apply? <ul style="list-style-type: none"> ▪ Dependent relatives (someone other than a spouse or a child of the tax filer) ▪ Children claimed by only one parent (including non-custodial parent) ➢ If yes, use the rules for non-filers/non-dependents 4. Married couples filing separately <ul style="list-style-type: none"> ▪ If they live together, they are in the same Medicaid household 5. Pregnant women <ul style="list-style-type: none"> ▪ Counted as one plus the number of children expected to deliver when she seeks an eligibility determination ▪ At state option, counted as one, two, or one plus the number of children expected to deliver when she is in the household of someone seeking an eligibility determination 	<p>For adults, the Medicaid household consists of:</p> <ul style="list-style-type: none"> • The individual; • The individual's spouse if living with the individual; • The individual's children* if living with the individual. <p>For children,* the Medicaid household consists of:</p> <ul style="list-style-type: none"> • The child; • The child's parent(s) if living with the child; • The child's sibling(s)* if living with the child; • The child's spouse, if living with the child; • The child's children,* if living with the child. <p>*Child here means under 19, or under 21 for full time students (at state option); age limit applies to the child's siblings too.</p> <p>Child can be natural/biological, adopted, or step child.</p>

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Appendix E. Household Composition Quick Reference

Appendix F. Household Scenarios

The following are typical household scenarios. They demonstrate how the different rules for Medicaid and Marketplaces can result in different household sizes for the same person.

REOURCE: NHeLP developed a **Household Composition Worksheet**, available in Appendix G, to help sort complex family situations.

Household #1 – Married couple

Ann and Bob are married and live together. They file a joint federal income tax return and have no dependents.

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann	Married to Bob	Files joint tax return with Bob	Ann, Bob § 36B(d)(1)	Ann, Bob § 435.603(f)(1)
Bob	Married to Ann	Files joint tax return with Ann	Ann, Bob § 36B(d)(1)	Ann, Bob § 435.603(f)(1)

Household #2 – Unmarried couple

Ann and Bob are unmarried and live together. They file separate federal income tax returns, and have no dependents.

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann, lives with Bob	Unmarried	Files separate tax return	Ann § 36B(d)(1)	Ann § 435.603(f)(1)
Bob, lives with Ann	Unmarried	Files separate tax return	Bob § 36B(d)(1)	Bob § 435.603(f)(1)

Household #3 – Married couple expecting twins

Ann and Bob are married and live together. They file a joint federal income tax return and have no dependents. Ann is pregnant and expecting twins. The state where they live counts pregnant women as two, regardless of how many babies she is expecting, when determining eligibility of someone with a pregnant woman in the household.

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann, lives with Bob	Married to Bob, pregnant (2 babies expected)	Files joint tax return with Bob	Ann, Bob § 36B(d)(1)	Ann, 2 unborn children, Bob § 435.603(f)(1) § 435.603(b)
Bob, lives with Ann	Married to Ann	Files joint tax return with Ann	Ann, Bob § 36B(d)(1)	Ann, 1 unborn child, Bob § 435.603(b) § 435.603(f)(1)

Household #4 – Divorced couple with children

Ann and Bob are divorced and live apart. Ann has custody of the twins Corey and Didi. Ann claims Corey as a dependent, while Bob claims Didi.

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann, lives with Corey and Didi	Divorced	Files separate tax return, claims Corey as a dependent	Ann, Corey § 36B(d)(1)	Ann, Corey § 435.603(f)(1) § 435.603(f)(2)
Bob, lives alone	Divorced	Files separate tax return, claims Didi as a dependent	Bob, Didi § 36B(d)(1)	Bob § 435.603(f)(1) § 435.603(f)(2)(iii)
Corey, lives with Ann	Child of Ann, Bob	Claimed by Ann	Ann, Corey § 36B(d)(1)	Ann, Corey § 435.603(f)(2)
Didi, lives with Ann	Child of Ann, Bob	Claimed by Bob	Bob, Didi § 36B(d)(1)	Ann, Corey, Didi § 435.603(f)(2)(iii) § 435.603(f)(3)(iii)

Household #5 – Married with children who file taxes

Ann and Bob are married and living together. They file a joint federal income tax return. They have two children, Corey and Didi, whom they claim as dependents. Didi has a summer job, earning \$3000 for college. Didi will file her own separate federal income tax return to obtain a refund of the taxes withheld from her paychecks. She may not claim a personal exemption because Ann and Bob claim her as a dependent.

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann, lives with Bob, Cory, Didi	Married to Bob; mother to Corey and Didi	Files joint tax return with Bob; claims Corey, Didi	Ann, Bob, Corey, Didi § 36B(d)(1)	Ann, Bob, Corey, Didi § 435.603(f)
Bob, lives with Ann, Corey, Didi	Married to Ann; father to Corey and Didi	Files joint tax return with Ann; claims Corey, Didi	Ann, Bob, Corey, Didi § 36B(d)(1)	Ann, Bob, Corey, Didi § 435.603(f)
Corey, lives with Ann, Bob, Didi	Child of Ann and Bob; sibling to Didi	Claimed as a dependent by Ann and Bob	Ann, Bob, Corey, Didi § 36B(d)(1)	Ann, Bob, Corey, Didi, § 435.603(f)(2)
Didi, lives with Ann, Bob, Corey	Child of Ann and Bob, sibling to Corey	Files her own tax return but is claimed as a dependent by Ann and Bob	Ann, Bob, Corey, Didi § 36B(d)(1)	Ann, Bob, Corey, Didi § 435.603(f)(2)

Household #6 – Married with children who file taxes and claim a personal exemption

Ann and Bob are married and living together. They file a joint federal income tax return. They have two children, Corey and Didi. Ann and Bob claim Corey as a dependent. Didi lives at home and has a summer job, earning \$10,000 for college. Didi files her own separate federal income tax return and claims a personal exemption on her taxes.

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann, lives with Bob, Corey, Didi	Married to Bob; mother to Corey and Didi	Files joint tax return with Bob; claims Corey	Ann, Bob, Corey § 36B(d)(1)	Ann, Bob, Corey § 435.603(f)
Bob, lives with Ann, Corey, Didi	Married to Ann; father to Corey and Didi	Files joint tax return with Ann; claims Corey	Ann, Bob, Corey § 36B(d)(1)	Ann, Bob, Corey § 435.603(f)
Corey, lives with Ann, Bob, Didi	Child of Ann and Bob; sibling to Didi	Claimed as a dependent by Ann and Bob	Ann, Bob, Corey § 36B(d)(1)	Ann, Bob, Corey § 435.603(f)(2)
Didi, lives with Ann, Bob, Corey	Child of Ann and Bob, sibling to Corey	Files her own tax return and claims her own personal exemption	Didi § 36B(d)(1)	Didi § 435.603(f)(1)

Household #7 – Family with dependent relative

Ann and Bob are married and live together. They file a joint federal income tax return. They have two children, Corey and Didi, whom they claim as dependents. They live with Ann's Aunt Ellen, who takes care of the twins and has no income source. Ellen does not file federal income taxes. Ann and Bob claim Ellen as a dependent because she meets the requirements for a "qualifying relative."

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann, lives with Bob, Corey, Didi, Ellen	Married to Bob; mother to Corey and Didi	Files joint tax return with Bob; claims Corey, Didi	Ann, Bob, Corey, Didi, Ellen § 36B(d)(1)	Ann, Bob, Corey, Didi, Ellen § 435.603(f)
Bob, lives with Ann, Corey, Didi, Ellen	Married to Ann; father to Corey and Didi	Files joint tax return with Ann; claims Corey, Didi	Ann, Bob, Corey, Didi, Ellen § 36B(d)(1)	Ann, Bob, Corey, Didi, Ellen § 435.603(f)

Household #7 (Continued)

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Corey, lives with Ann, Bob, Didi, Ellen	Child of Ann and Bob; sibling to Didi	Claimed as a dependent by Ann and Bob	Ann, Bob, Corey, Didi, Ellen § 36B(d)(1)	Ann, Bob, Corey, Didi, Ellen § 435.603(f)(2)
Didi, lives with Ann, Bob, Corey, Ellen	Child of Ann and Bob, sibling to Corey	Files her own tax return but is claimed as a dependent by Ann and Bob	Ann, Bob, Corey, Didi, Ellen § 36B(d)(1)	Ann, Bob, Corey, Didi, Ellen § 435.603(f)(2)
Ellen, lives with Ann, Bob, Corey, Didi	Aunt to Ann	Claimed as a dependent by Ann and Bob	Ann, Bob, Corey, Didi, Ellen § 36B(d)(1)	Ellen § 435.603(f)(2)(i) § 435.603(f)(3)

Household #8 – Estranged couple with children filing jointly

Ann and Bob are in the process of getting a divorce and live apart. They have two children, Corey and Didi, living with Ann, and whom they claim as dependents. Although living apart, they intend to continue to file a joint tax return for the coming tax year.

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann, lives with Cory, Didi	Married to Bob; mother to Corey and Didi	Files joint tax return with Bob; claims Corey, Didi	Ann, Bob, Corey, Didi § 36B(d)(1)	Ann, Bob, Corey, Didi § 435.603(f)
Bob	Married to Ann; father to Corey and Didi	Files joint tax return with Ann; claims Corey, Didi	Ann, Bob, Corey, Didi § 36B(d)(1)	Ann, Bob, Corey, Didi § 435.603(f)
Corey, lives with Ann, Didi	Child of Ann and Bob; sibling to Didi	Claimed as a dependent by Ann and Bob	Ann, Bob, Corey Didi § 36B(d)(1)	Ann, Bob, Corey, Didi, § 435.603(f)(2)
Didi, lives with Ann, Corey	Child of Ann and Bob, sibling to Corey	Claimed as a dependent by Ann and Bob	Ann, Bob, Corey, Didi § 36B(d)(1)	Ann, Bob, Corey, Didi § 435.603(f)(2)

Household #9 – Estranged couple with children filing separately

Ann and Bob are in the process of getting a divorce but still live together. They have two children, Corey and Didi. Ann and Bob still live together, but intend to file separate tax returns. Bob claims both children as dependents

Who's who? Lives here? All year?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?
Ann, lives with Bob, Corey, Didi	Married to Bob; mother to Corey and Didi	Files own tax return	Ann (not eligible for APTCs because she is married, filing separately) § 36B(d)(1) § 36B(c)(1)(C)	Ann, Bob § 435.603(f)(4)
Bob, lives with Ann, Corey, Didi	Married to Ann; father to Corey and Didi	Files own tax return; claims Corey, Didi	Bob, Corey, Didi (not eligible for APTCs because he is married, filing separately) § 36B(d)(1) § 36B(c)(1)(C)	Ann, Bob, Corey, Didi § 435.603(f)(1) § 435.603(f)(4)
Corey, lives with Ann, Bob, Didi	Child of Ann and Bob; sibling to Didi	Claimed as a dependent by Bob	Bob, Corey, Didi, (not eligible for APTCs because married parents file separately) § 36B(d)(1) § 36B(c)(1)(C)	Ann, Bob, Corey, Didi, § 435.603(f)(4)
Didi, lives with Ann, Bob, Corey	Child of Ann and Bob, sibling to Corey	Claimed as a dependent by Bob	Bob, Corey, Didi (not eligible for APTCs because married parents file separately) § 36B(d)(1) § 36B(c)(1)(C)	Ann, Bob, Corey, Didi § 435.603(f)(4)

Appendix G. Household Composition Worksheet

Ten questions to determine household size for Marketplaces and Medicaid/CHIP				
1. Who is seeking an eligibility determination for an Insurance Affordability Program? 2. Who expects to file federal income taxes and/or be claimed as a dependent by someone else? 3. Is the individual a US citizen or lawfully present? 4. Who lives in the household at least half the year and year round? 5. Is anyone a full time student? 6. Is anyone pregnant? How many babies are expected? 7. Is anyone married? Are they in a same sex or opposite sex marriage? 8. Is anyone under age 19? 9. How are individuals related to each other? 10. What are the state's Medicaid rules for same sex marriage, full time students, and for counting pregnant women?				
Who's who? Lives here? How long?	Relationship? Marital Status? Pregnant?	Tax filer? Dependent? Exception?	Who is in this person's Marketplace household?	Who is in this person's Medicaid/CHIP household?

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