Medicaid Eligibility Changes
Public Comments
Nov 12, 2013

Numb:	Date/ Commentor:	Comment:	Response:
1.	11/12/13 Ellen Katz William Morris Institute for Justice	R9-22-301 Need to define the words "applicants," "members" and "beneficiaries."	Agreed changes made, beneficiary not used. .
2.	11/12/13 Ellen Katz William Morris Institute for Justice	R9-22-302 This section does not refer to online applications and applications by telephone. Revise and reorganize to cover separately: (1) how someone can apply; (2) where someone can apply; (3) who can apply; and (4) what information must be provided. There appears to be no provision for an application by an emancipated minor.	The information about online applications is in Section 2. The rule draft is clear and concise and covers the noted subject areas. There isn't anything in rule that prohibits an emancipated minor from submitting an application.
3.	11/12/13 Ellen Katz William Morris Institute for Justice	R9-22-304 (F) Propose that persons have at least 20 days to respond to requests for information. While the agency is helping the person obtain a Social Security Number, the agency must provide Medicaid to an otherwise eligible person. See 42 C.F.R. § 435.910.	 The 10 day response time has been a long-standing practice (including in other states). In the event additional time is necessary, the applicant may request the additional time. These requests are routinely granted. The information about providing Medicaid while obtaining an SSN is covered under R9-22-305(2).
4.	11/12/13 Ellen Katz William Morris Institute for	R9-22-305 These rules fail to require compliance with federal requirements that the agency must affirmatively ensure that persons eligible for emergency medical services and persons applying for benefits on	 Although R9-22-1403 has been stricken consistent with A.R.S 41-1001, as it is redundant of federal law, this language has been restored to provide additional clarity.

	Justice	behalf of eligible children and adults are not deterred, based on national origin, from applying for benefits because the agency, in person or on applications, solicits or requires unnecessary information such as social security numbers and citizenship and immigration status. The rules need to explicitly state that AHCCCS will only seek and record information necessary to determine eligibility for a benefit and will not solicit or record information that is not necessary for that purpose. Paragraph 2. There are missing words. The rule must affirmatively state that a person applying for another household member or applying only for emergency medical assistance cannot be asked for a Social Security Number. Paragraph 3. The inclusion of the words "as of October 1, 2012" makes the sentence ambiguous and could be interpreted to mean that a person must reside in Arizona as of that date to be eligible for medical benefits which is not correct. Paragraph 4. The rule must affirmatively state that a person who is seeking only emergency medical assistance cannot be asked or required to sign a written declaration that they are a citizen, national or qualified alien. Paragraph 5. The list of documents to show immigration status is too restrictive. If more documents are not listed, the rule should reference the U. S. Department of Justice November 17, 1997, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 http://www.gpo.gov/fdsys/pkg/FR-1997-11-17/pdf/97-29851.pdf. Paragraph 6. The rule must affirmatively state that a person who is only applying for emergency medical assistance cannot be asked about their immigration status, asked to sign a declaration or asked to produce immigration documentation.	The rule does explicitly state the information that is required to determine eligibility. The direction to eligibility staff to not request unnecessary information is an internal procedure covered under policy. The Section has been revised for clarity. Section 3, has been updated to state "published on October 1, 2012". This concern is addressed under subsection (6) of R9-22-305. The listing of documents are an example, this does not restrict the submission of the documents to only those listed. The Administration has updated this section cross-referencing 45 CFR 435.406 and 435.408. This concern is addressed under subsection (6) of R9-22-305. The rule states the person does not have to comply with sections 4 and 5, it is not necessary to repeat verbiage and it also states that they will receive emergency services only.
5.	11/12/13 Ellen Katz William Morris	R9-22-306 Go through the rules to be sure "or its designee" is inserted in all places that "Administration" is used.	Agreed, updated where applicable.

	Institute for Justice	Section A(6). The agency shall provide the person information explaining the requirement that the applicant or member obtain or provide a Social Security number. The rule must affirmatively state that this section does not apply to persons seeking emergency medical assistance.	SSN requirements are covered under R9-22-305(2).
		AHCCCS is required to assist a person to obtain a Social Security number. The actions AHCCCS must take pursuant to 42 C.F.R. § 435.910 should be listed as a subsection, possibly to A(5).	SSN requirements are covered under R9-22-305(2). Your concerns have been addressed in the revision of R9-22-305(2).
		Section A(12). Use of SAVE to verify eligible alien status. The rule must affirmatively state that this rule does not apply to persons seeking only emergency medical assistance.	The Administration has revised this section for clarity. .
		Section A(19)(a). Should include the words "without good cause."	The Administration disagrees because the federal regulations do not include an exception of "without good cause".
		Section A(19)(b). This section references 42 C.F.R §433.148 which is the assignment of rights federal regulation. This sentence needs to be revised so that it is clear.	The Administration has revised this section for clarity.
		Section B(2)©. Refers to a Social Security number, when the policy holder may not have one.	The Administration has revised this section for clarity.
6.	11/12/13 Ellen Katz William Morris Institute for Justice	R9-22-307 Section B(3). Includes "resources" but there are no resource limits for Medicaid beneficiaries under the ACA.	This section also applies to persons whose eligibility is determined using methodologies other than MAGI and that includes resource tests.
7.	11/12/13 Ellen Katz William Morris Institute for Justice	R9-22-312 Section A. Contents of Notices. Should include how the notice was served and the date of the notice.	The Administration has revised this section for clarity.
		Section C (3). For a person who cannot be located, this rule should include telephone and e-mail efforts and contacts with a person who the	An applicant or member has an affirmative responsibility to maintain a current address on file as described under 42 CFR 435.916(b). Neither state

		claimant has listed as someone who may know of his/her location.	nor federal law requires the agency to attempt to locate people who do not comply.
8.	11/12/13 Ellen Katz William Morris Institute for Justice	R9-22-314 Section B: This rule allows AHCCCS to discontinue eligibility for all household members if the notice of withdrawal does not identify a "specific person." If no one is listed then the notice of withdrawal is incomplete and cannot be action upon. If the rule means no one else in the household is listed, then no one else should be withdrawn. This rule should be revised to be clear. Section C. The notice should go to all household members that are affected by the withdrawal.	The Administration has revised this section for clarity. The notice provided will list all affected members.
9.	11/12/13 Ellen Katz William Morris Institute for Justice	R9-22-315 **Section B. Notice of Adverse Action.** (Relates to R9-22-312-Member Notices). Under the rules, a notice is sent 10 days prior to an action regarding eligibility or premiums. The date of the notice is the date personally served or the postmark date. These rules need to acknowledge that mailing can often take 5 business days and that time period should be added to the time to file an appeal.	This section complies with 42 CFR 431.211.
10.	11/12/13 Ellen Katz William Morris Institute for Justice	Article 14 Under the ACA, the adjusted gross income ("AGI") used in federal taxes with some modifications (called the Modified Adjusted Gross Income or "MAGI") replaces the current Medicaid rules to determine financial eligibility for many eligibility categories. In general, the Institute strongly suggests that the AHCCCS rules follow the federal MAGI regulations. The federal MAGI regulation is 42 C.F.R. § 435.603. The current draft consolidates and rearranges and ends up getting things wrong or leaving important concepts out. 1. The rule should affirmatively state there is no asset or resource limits tests for MAGI eligibility. *See* 42 C.F.R. § 435.603(g). 2. The rule should affirmatively state who is excluded from the MAGI-based methodology. Those include persons receiving Supplemental Security Income ("SSI"), persons 65 or older when age is a condition of	Since the proposed amendment to the rule do not include an asset resource test neither the Administration or its designee can use that as a basis for denying eligibility therefore it is not necessary to affirmatively state that there is no asset test. The proposed rule identifies the person who are included in MAGI at R9-22-1427. The persons whose eligibility is determined based on something other than MAGI methodologies are listed in other Articles.

		eligibility, persons who are blind or disabled, persons requesting long term services and supports, persons requesting Medicare and persons claiming they are medically needy. 42 C.F.R. § 435.603(g)(1-5). 3. The definition "dependent child" is incorrect. Under 42 C.F.R. § 435.603(f)(iv), the state can elect age 19, or in the case of full-time students, age 21. Age 18 is not relevant.	 The definition of a "dependent" child is used to determine if a person meets the definition of caretaker relative under 42 CFR 435.4. The commenter seems to confuse this definition with the definition of "child".
11.	11/12/13 Ellen Katz William Morris Institute for Justice	R9-22-1420 Section A: This is the traditional Medicaid income calculation, and there is no resemblance or reference to the MAGI-based income counting federal regulation at 42 C.F.R. § 435.603(e). There are special regulations for excluding some income to Native Americans that are not in the rules. 42 C.F.R § 435.603(e)(3). **Section B. MAGI Income Group:** Throughout the rules, the rules refer to "applicant" and "taxpayer." Without clear definitions, these are ambiguous terms. 1. By "applicant" AHCCCS seems to mean the individual seeking coverage. However, there are situations where an individual may fill out an application for coverage of a family member. In such cases, the term "applicant" is ambiguous. As noted previously, the rules should specifically define "applicant." 2. We believe "tax filer" is a more appropriate term than "taxpayer." In this case the key action is the person who expects to "file" a return. But we also understand that the federal MAGI regulations use the term "tax payer." We suggest inclusion of a reference that taxpayer is a person who expects to file a tax return. 3. Our understanding is that there are 3 general categories of individuals: (1) Those who file taxes and are not claimed as a dependent by someone else; (2) those who file taxes and are claimed as a dependent by someone else; and (3) those who do not file taxes and are not claimed as a dependent by someone else. 42 C.F.R §435.603(f). Suggest that AHCCCS draft a "flow chart" that shows how MAGI household size is determined. Section B(1): This subsection seems to mimic 42 C.F.R. § 435.603(f)(1), but leaves out a key part. The federal regulation (f)(1) refers to a tax filer "who does not expect to be claimed as a tax dependent by another taxpayer." Without this clause, the rule creates an ambiguity for dependents who also file taxes, who could then fit under	 This subsection merely provides a definition of "income". It is not intended to include detail on specific types of income and treatment. That is covered by the CFR, which is referenced in the definition of MAGI-based income in R9-22-1401. Agree. Added definitions of applicant and taxpayer for clarity. Agreed. Added definition of taxpayer to R9-22-1401. Added language to subsection (B)(6) to address regulation at 42 CFR 435.603(f)(5)

		subsection B(1) or (2). Also, the federal regulation refers to an exception if a tax filer cannot reasonably establish that someone is her dependent (f)(5). The rule makes no mention of that eventuality. Section B(2): This subsection deals with dependents living with a custodial parent. Again, it differs from the federal regulation and creates a potential problem. In this case, the problem is best exemplified in the case of families where a dependent child lives with both parents, but the parents are not married and file separately. By the federal regulation, the child in this situation would have a family of three (the child, the tax filer claiming them, and the second live-in parent) (see federal regulation exception at 42 C.F.R. § 435.603(f)(2)(ii).) But according to the draft rules, the MAGI household would only include the child and the custodial parent, because paragraph (c) refers to "The taxpayer's spouse," and in this case the second parent is not a spouse. Also, any live-in minor siblings of the child in this scenario should be included, regardless of whether they are claimed by the tax filer who claims the child. The draft rule does not seem to account for non-dependent live-in siblings. (*see* federal regulation 42 C.F.R. § 435.603(f)(3)(iii).) Section B(3): There appear to be drafting errors that make this paragraph difficult to decipher. It seems to want to cover both the exception for determining household of individuals claimed by a non-custodial parent [*see* federal regulation 42 C.F.R. § 435.603(f)(2)(iii)) and the exception for individuals claimed by someone who is not their spouse or parent (42 C.F.R. § 435.603(f)(2)(i)]. We suggest the concepts be separated. In any case, the reference to counting income should be deleted. This section is about determining the MAGI household for the individual seeking coverage, not whose income counts, which is dealt with in the draft rule, Section C. The rule should read: "…determine the applicant's MAGI income group as described in subsection 4(a) or 4(b), based on the applicant's age." Section B(4): This parallels federal regulation (f)(3) for non-tax filers, but there are again discrepancies. 1. First, it again refers inappropriately to counting income, when it should only refer to determining the household size (the "MAGI income group.") Household size and household income should be separate calculations. Also, there are cases where dependents should be counted in the household, but their income should *not* count.	. Agree. Revised for clarity Revised for clarity Revised for clarity

		2. Second, it begins with "when the applicant is not a taxpayer," which seems to exclude individuals who expect to be claimed as a dependent but *also* file their own taxes. It should have language to include dependent exceptions from sections B(1) & (2) who may actually file their own taxes. 3. The words "siblings" and "parents" are undefined, though they have very specific definitions in 42 C.F.R. § 435.603(b). Those words should be defined. 4. It fails to specify that "children" refers only to children under the age of 19 (or 21 for full time students, if the state so chooses). Without that reference, the exceptions could include adult children. Section B(5). Pregnant women: This rule is correct, but it fails to account for how the state will count pregnant women for the purposes of determining household size for *other* members of her family. In those cases, the state has the option to count her as 1, 2, or the mother + the total expected babies. This should be specified. Section C. MAGI-based Household Income: This is roughly parallel to 42 C.F.R. § 435.603(d). Section C(1): For specificity, it may be good to add "the [MAGI-based] income of an individual…." Otherwise, this roughly parallels 42 C.F.R. § 435.603(d)(2). Section C(2): To more closely parallel the federal regulation and avoid potential confusion, this section should read: "The income of a tax dependent [other than the tax filer's spouse or biological, adopted or stepchild] who is included in the MAGI income group of the tax[filer]…is not counted [included in the household income of the taxfiler] whether or not…".	Revised for clarity. This concern is addressed in the introductory sentence of subsection C. Revised for clarity
12		R9-22-1421 Section A. Insert "…excess [MAGI-based] income…from the [MAGI-based] household income."	Clarified title of rule. Income determinations for all persons under this article are based on MAGI methodologies. Therefore it is not necessary to repeat it every time the word "income" is used.
13		R9-22-1422 This appears to be the methodology under the traditional Medicaid rules. This rule seems to parallel 42 C.F.R § 603(h)(3). While there is flexibility in this process, there does not appear to be much connection to tax-based MAGI income or deductions.	This rule outlines methodology for determining income as of a point in time. It is not intended to include detail on specific types of income and treatment.
14		R9-22-1423	

		In general in this and the next two sections, the Institute has concerns about how deduction and adjustments to income that often are not known until the end of the tax year will be handled. Section A: This section concerns lump sum payments but some of the examples are not counted as income under the MAGI calculation such as Veterans' Benefits and child support as explained in response to Section R9-22-1420.	Clarified rule and struck veterans benefits and child support arrearages, as these were only examples.
15		R9-22-1424 Section B(1). This is apparently a run-on sentence that currently makes no sense.	Clarified rule.
16		R9-22-1427 Section A(2). The rule does not explain what 106% refers to. Is it a MAGI converted eligibility threshold? Section B(1). The cross references to (B)(3)(a) and (b) seem incorrect as there are no subsections B(3)(a) or (b)). Perhaps AHCCCS means (B)(1)(c)(i) and (ii). Section B(1)(c). The reference to "increased" earned income does not mesh with 42 U.S.C. § 1396r-6(a), which specifically dropped the word "increased" in its definition of income (compare to §1396a(e)(1), which includes "increased.") If § 1396r-6 gets extended at the e-nd of the year, the deletion of "increased" will be important in addressing the question of whether individuals who lose their eligibility due to the MAGI transition will be eligible for Transitional Medical Assistance ("TMA"). That is, their MAGI-based income may change even if their "earned income" does not. Section E(2). This refers to not being eligible under one of the other mandatory groups. It appears to conflict with 42 C.F.R. § 436.404 that directs the agency to allow an individual eligible for different groups to select which group to have his/her eligibility determined.	Yes Updated references. The language in 1396 r-6a is no longer applicable after December 31, 2013. See 42 USC 1396a(e)(1)(B). 42 USC 1396a(a)(10)(A)(i)(VIII) and 42 CFR 435.119(b)(4) requires that the individual not be eligible under any of the other mandatory groups.
17		R9-31-1402 Section B. The rule provides that a premium is imposed if the household income is greater than 100% of the federal poverty level. A household with MAGI up to 133% (138% with the 5% income disregarded) is eligible for Medicaid and no premiums are	Clarified rule.

		allowed for these persons. In addition, a younger child is eligible for AHCCCS when the household income exceeds 138%. *See* R9-22-1427C. Effective January 1, 2014, 42 C.F.R. § 447.55 sets forth the premiums that are allowed for different categories of eligible persons whose incomes exceed 150%. In addition, 42 C.F.R § 447.56 sets forth the limitations on premiums and cost sharing. All the income and premium amounts need to be revised to reflect the increased Medicaid eligibility and the ACA regulations on cost-sharing cited above. Finally, state law only allows for premiums for children whose household income exceeds 150%, A.R.S. 36-2982(E), but even that law appears to conflict with the heightened income eligibility for Medicaid children as noted above	
		In several sections, the proposed rule refers to Article 9, Chapter 22 and our comments above apply here as well.	Our responses to comments from Chapter 22 apply here as well.
		Finally, the federal Children's Health Insurance Program Reauthorization Act, 42 U.S.C. §1397cc(e)(3), provides for a 30 day grace period for non-payment of a premium and at least a 7 day notice at the end of the grace period that failure to pay the premium will result in termination from the program. We could not find that provision in the rules.	The grace period concern is addressed in the current R9-31-1418.