

NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.291.430, *Medicaid Eligibility - Affordable Care, Financial Responsibility Requirements*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 11, 2020

Hearing Date: September 11, 2020

Adoption Date: Proposed as December 1, 2020

Technical Citations: Section 53103 and 40203 of the Bipartisan Budget Act of 2018 (BBA of 2018), 1902(e)(14) of the Social Security Act (SSA), Section 2113 of the SSA, Section 3004 of the HEALTHY KIDS Act, Section 11051, 11031, 11049 of the Tax Cuts and Jobs Act (TCJA)

The Department is proposing to amend the rule as follows:

Background

The Centers for Medicare and Medicaid Services (CMS) issued guidance on August 22, 2019 regarding the counting of qualified lottery and gambling winnings in Modified Adjusted Gross Income (MAGI)-based methods. Per 42 CFR 435.603(e)(1), found at 8.291.430.15(B)(1) NMAC, an amount received as a lump sum is counted as income only in the month received and a resource in subsequent months. Section 53103 of the BBA of 2018 supersedes the regulatory rule found at 42 CFR 435.603(e)(1) in the case of “qualified lottery winnings” and “qualified lump sum income” (i.e. gambling) of \$80,000 or greater. Section 53103 requires that covered lottery and gambling winnings of \$80,000 or greater, which are received in a single payout, be counted not only in the month received, but over a period of up to 120 months. Section 53103 provides a formula for determining this period, depending on the amount of the winnings. States are required to apply this formula to qualified lottery or gambling winnings received beginning on or after January 1, 2018.

Section 1902e(14)(K)(v) of the SSA included in this rule defines “qualified lottery winnings” as winnings from a sweepstakes, lottery, or pool or winnings from “a lottery operated by a multistate or multijurisdictional lottery association.” Multijurisdictional lotteries include those that include multiple entities of government.

While lottery winners generally have a choice between receiving a single payment or an annuity that pays out in installments over a period of time, the definition of “qualified lottery winnings” per the SSA applies to the single payout option. Lottery winnings paid out in installments are not required to be considered as “qualified lottery winnings.” Lottery winnings paid in installments would be treated the same as other types of recurring income per 42 CFR 435.603(e). Non-cash prizes continue to be counted as lump sum income in the month in which they are received and are not counted as “qualified lottery winnings.”

Section 1902(e)(14)(K)(vi) of the SSA defines “qualified lump sum income” as “income that is received as a lump sum from monetary winnings from gambling. Gambling activities include: betting pools; wagers placed through bookmakers; slot machines; roulette wheels; dice tables, lotteries; and bolita or numbers games, or the selling of chances therein.” Non-cash prizes are not counted as qualified lump sum income.

For qualified winnings from lotteries or gambling activities occurring on or after January 1, 2018, states must count the winnings according to the following formula:

Winnings less than \$80,000 are counted in the month received. Winnings of \$80,000 but less than \$90,000 are counted as income over two months, with an equal amount counted in each month. For every additional \$10,000 one month is added to the period over which total winnings are divided, in equal installments, and counted as

income. The maximum period of time over which winnings may be counted is 120 months, which would apply to winnings of \$1,260,000 and above.

Under section 53103(b)(2) of the BBA of 2018 the requirement to count qualified lottery and gambling winnings in household income over multiple months applies only to the individuals receiving the winnings. The determination of household income for other members of the individual's household is not affected. Thus, for example, the total amount of qualified lottery or gambling winnings of a spouse or parent continues to count only in the month received in determining the eligibility of the other spouse and children.

States may accept self-attestation or require other verification of lottery and gambling winnings. If a state requires other verification, per regulations at 42 CFR 435.952(c), the agency will access electronic data sources (such as a state lottery) winner database, if available, and may accept self-attestation of lottery and gambling winnings before requesting documentation from the individual.

Section 1902(e)(14)(K)(iii) of the SSA requires that states establish an "undue medical or financial hardship" exemption through a procedure and based on a standard established by the state for individuals impacted by the new treatment of lottery and gambling winnings. States should develop a procedure and establish a reasonable standard for this hardship exemption.

Applicants and beneficiaries affected by the counting of lottery or gambling winnings maintain their ability to request a determination on a non-MAGI basis. The SSA specifies that the state agency provide notice to affected individuals of the date on which the lottery or gambling winnings no longer will be counted for the purpose of Medicaid or CHIP eligibility. States are required to notify affected individuals of the hardship exemption.

The August 22, 2019 CMS guidance letter references other changes to countable income regarding the exclusion of parent mentor compensation, alimony received, and discharged student loan debt. Changes to deductions are referenced regarding moving expenses, alimony paid, and tuition and fees. These changes have been incorporated into the proposed rules.

Section 8

The current mission statement is being added.

Section 10

Section 10 is revised to reflect the new Federal Poverty Level amounts that go into effect on April 01, 2020.

Section 15 Changes to Countable Income

Paragraph (1) of Subsection B is revised to reference qualified lottery and gambling winnings as an exception to lump sum counted as income only in the month received.

Section 15 is revised to add a new Subsection D regarding counting qualified lottery and gambling winnings in MAGI-based income in accordance with the CMS guidance. The Department will require verification of lottery winnings, but will access electronic data sources, if available, before requesting documentation. In terms of a hardship exemption the Department will apply a medical exemption if the individual can demonstrate that the counting of lottery or gambling winnings may deprive the individual of medical care such that the individual's health or life would be endangered. A medical exemption request must be made in writing and submitted to the Medical Assistance Division for review. Exemption request details will be included in the Notice of Case Action (NOCA) along with the other notice requirement to provide the date on which the lottery or gambling winnings will no longer be counted.

Section 15 is revised to add a new Subsection E regarding the exclusion of a nominal amount of Parent Mentor Compensation. A "parent mentor" is a parent or guardian of a Medicaid or CHIP-eligible child who is "trained to assist families with children who have no health insurance coverage with respect to improving the social determinants of the health of such children." Section 3004 of the HEALTHY KIDS Act amends section 1902(e)(14) of the SSA to exclude parent mentor compensation from their MAGI-based household income. Any nominal amount received by an individual as compensation, including a stipend, for participation as a "parent mentor" in a grant-funded program under section 2113 of the SSA shall be disregarded for purposes of determining income eligibility of such individual for medical assistance. The disregard of parent mentor income applies only in the case

of parent mentors working with a grantee organization under section 2113 of the SSA. The Department is defining a nominal amount as \$1,600 per month. Parent mentor income above \$1,600 per month is counted in the MAGI calculation.

Section 15 is revised to add a new Subsection F regarding discharged student loan debt. Student loan debt that is discharged, forgiven or cancelled is generally treated as taxable income to the borrower, and therefore the amount of discharged debt is included in MAGI-based income. Under section 11031 of the TCJA discharged student loan debt is not included in the income (and not counted in the MAGI-based income) of a borrower for tax years 2018 through 2025 if the debt is discharged on account of the death or the permanent and total disability of the student. The borrower and the student may or may not be the same person. Student loan debt discharged under the foregoing circumstances is not counted as income in determining household income for other members of the borrower's household.

Section 15 is revised to add a new Subsection G regarding alimony received. Section 11051 of the TCJA modified the alimony rules. Under the TCJA, alimony payments received under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not included in the income of the recipient. For individuals with alimony agreements finalized on or before December 31, 2018, alimony continues to be included in the income of the recipient for the duration of the agreement or until the agreement is modified. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision of alimony.

Section 15 Changes to Deductions

Section 15 is revised to add a new Subsection H regarding alimony paid. Under the TCJA, alimony payments under separation or divorce agreements finalized after December 31, 2018 or pre-existing agreements modified after December 31, 2018, are not deductible by the payer. For individuals with alimony agreements finalized on or before December 31, 2018 alimony payments continue to be deductible. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision of alimony.

Section 15 is revised to add a new Subsection I regarding moving expenses. Section 11049 of the TCJA eliminates the deduction for qualified moving expenses for tax years 2018 through 2025. Moving expenses, including expenses incurred by the individual as well as reimbursements from an employer, should no longer be deducted in calculating MAGI. This change does not apply to active duty members of the military who are ordered to move or change duty station.

Section 15 is revised to add a new Subsection J regarding the payment of tuition and fees for qualified education expenses for postsecondary education. Amounts paid for these expenses for the taxpayer, spouse or tax dependent typically could be deducted in computing adjusted gross income. Section 40203 of the BBA of 2018 eliminates this deduction effective January 1, 2018. Such tuition and fees paid are no longer deductible in calculating MAGI, effective January 1, 2018.

The register for these proposed amendments to this rule will be available August 11, 2020 on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective December 1, 2020. A public hearing will be held **via conference call** on September 11, 2020 at 9:00 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on September 11, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the

HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.