



The Advocate's Guide to MAGI

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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
CMS	Centers for Medicare & Medicaid Services
CSR	Cost Sharing Reductions
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
MAGI	Modified Adjusted Gross Income
MOE	Maintenance of Effort
QHP	Qualified Health Plan
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 eligibility for Insurance Affordability Programs (IAPs): Modified Adjusted Gross Income (MAGI).¹ MAGI will be used to evaluate available income for most Medicaid and Children’s Health Insurance Program (CHIP) applicants and enrollees beginning in 2014 (or earlier in a few states that have opted for early implementation). The MAGI methodology differs significantly from prior Medicaid rules. MAGI will also be used to determine eligibility for Advance Premium Tax Credits (APTCs) and Cost Sharing Reductions (CSRs) for applicants for financial assistance under the new insurance Exchanges (increasingly referred to as “Marketplaces”).² MAGI aims to introduce nationwide uniformity to a system of calculating income that previously varied considerably from state to state.

This Advocate’s Guide explains how MAGI works.³ It sets forth, in as much detail as possible, the guidelines that CMS has developed to implement and govern this new methodology.⁴ This Guide is similarly meant for national use, and we point out the few areas where states have leeway 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. As we are all making the transition to this new methodology and 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 currently used in Medicaid, which entail numerous income deductions and disregards that vary from state

¹ Insurance Affordability Programs (IAPs) include Medicaid, CHIP, Basic Health Plan (a state option not yet operational anywhere), 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>.

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. 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.
- **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).⁵
- **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 300% FPL in some states.⁶

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.

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

⁵ See Kaiser Family Foundation, *Adult Income Eligibility Limits at Application as a Percent of the Federal Poverty Level (FPL)* (Jan. 2013), <http://kff.org/medicaid/state-indicator/income-eligibility-low-income-adults/>.

⁶ 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. 2013), <http://kff.org/other/state-indicator/income-eligibility-separate-chip-prog/>.

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 current Medicaid and CHIP income counting rules. Some types of currently countable income will be excluded under MAGI, while MAGI includes other types of income not counted under current rules. Advocates accustomed to working with these programs will have to familiarize themselves with these changes.

Significantly, none of the previous Medicaid/CHIP income deductions and disregards will apply under the MAGI methodology.⁷ Rather, Medicaid and CHIP programs will apply an across-the-board 5% disregard when (as explained below) overall eligibility is at stake. As a result, some enrollees who most benefit from current deductions and disregards stand to lose eligibility in the switch to MAGI, despite the “conversion” of current income limits to higher levels to account for the removal of deductions and disregards. On the other hand, others who wouldn’t previously have been eligible will gain eligibility. This across-the-board disregard is not used for APTCs/CSRs.

Much more complex than the rules on countable income are the rules defining “household” size and whose income is counted. 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 a tax 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 across all IAPs.⁸ Many states already disregard 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.

⁷ 42 U.S.C. § 1396a(e)(14)(B).

⁸ See 42 C.F.R. § 435.603(g).

D. Limited Applicability of MAGI

Though the MAGI methodology will apply 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) will 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 existing rules, while at the same time learning 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.⁹

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 the President 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 I.R.C. § 36B (MAGI application to Marketplaces)
- 26 I.R.C. § 151 (allowance of deductions for personal exemptions)
- 26 I.R.C. § 152 (coverage of dependents)
- 26 I.R.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)

⁹ 42 U.S.C. § 1396d(y).

- 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 FR 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 FR 42160 (July 15, 2013)

4. Code of Federal Regulations

- 42 C.F.R. § 435.603 (Medicaid MAGI regulation)
- 42 C.F.R § 155.305 (Marketplace MAGI regulation)

II. Medicaid/CHIP Populations and Eligibility Categories Subject to or Exempted from MAGI

States must apply MAGI to many Medicaid populations and eligibility categories beginning in 2014. States may also implement MAGI for these population groups prior to 2014 through a § 1115 demonstration project.¹⁰

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.¹¹ MAGI applies to eligibility determinations for new applicants as well as recertifications. Some enrollees may lose Medicaid eligibility as a result of the loss of income disregards under MAGI. The ACA provides 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.¹² Medicaid coverage for these individuals must continue until March 31, 2014 or the next regularly scheduled redetermination.¹³

However, there are some populations and eligibility categories to which MAGI does not apply. Moreover, the ACA prohibits HHS from waiving MAGI except in limited circumstances.

A. Populations and Eligibility Categories Subject to MAGI

1. Newly eligible adults

MAGI applies to adults made newly eligible as a result of the ACA.¹⁴ The ACA expands 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).¹⁵ Beginning in January 2014, an adult qualifies for Medicaid with income up to \$15,856 a year.¹⁶

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

¹⁰ CMS, *Dear State Health Official & State Medicaid Director Letter* (May 17, 2013), at 3 (Facilitating Medicaid and CHIP Enrollment and Renewal in 2014).

¹¹ *Id.*

¹² 42 U.S.C. § 1396a(e)(14)(D)(v). See Section VII of this Guide for further discussion on state options for the transition to MAGI.

¹³ *Id.* CMS regulations also delay applicability of MAGI for eligibility redeterminations scheduled before December 31, 2013. See 42 C.F.R. § 435.603(a)(3).

¹⁴ 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).

¹⁵ 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.

¹⁶ This is based on the FPL for 2013. States will use the FPL in effect for 2013 until the new calculations for the Federal Poverty Level are released in January 2014.

allowing states to opt out of the adult Medicaid expansion.¹⁷ 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.¹⁸ Connecticut, Minnesota, and the District of Columbia are the only early expansion states. These states will have 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.¹⁹

Notably, while not directly affecting MAGI, HHS rulemaking recently simplified and consolidated eligibility for pregnant women in the myriad of statutory eligibility categories, including qualified pregnant women,²⁰ poverty-level related pregnant women,²¹ and institutionalized pregnant women.²² 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, Medicaid eligibility for pregnant minors is decided under the same rules used for adults. States consider the family income of a minor child, including parental income. States can use less restrictive income and resource methodologies.²³ Thus, a state can disregard a parent's income to make the pregnant teen eligible on her own.

Beginning in 2014 under MAGI, the income of every household member must be counted, and states will no longer be able to apply selective income disregards.²⁴ The loss of these income disregards could render some pregnant minors financially ineligible for Medicaid, if pregnancy is their only pathway to coverage.

¹⁷ *NFIB v. Sebelius*, 132 S. Ct. 2566, 2607 (2012). For additional discussion, see Jane Perkins et al., *Summary & Analysis of the ACA Supreme Court Decision*, NHeLP, June 29, 2012, available at http://www.healthlaw.org/index.php?option=com_content&view=article&id=695:nhelp-summary-a-analysis-of-the-aca-supreme-court-decision&catid=37:news-a-alerts&Itemid=123.

¹⁸ 42 U.S.C. § 1396a(k)(2).

¹⁹ 42 U.S.C. §§ 1396a(e)(5)-(6).

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

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

²² 42 U.S.C. § 1396a(a)(10)(ii)(IV).

²³ 42 U.S.C. § 1396a(r)(2)(A).

²⁴ 42 U.S.C. § 1396a(e)(14)(B).

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 parental income disregard after 2014.²⁵ 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.²⁶ 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.”²⁷ (See Section VI of this Guide for an explanation of conversion of current income thresholds for MAGI). The net result would be no income test at all.

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.²⁸ 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.²⁹ MAGI methodologies apply to parents and caretaker relatives beginning in 2014.

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. Under the ACA’s Maintenance of Effort provision, states may not impose more restrictive eligibility standards on adult groups until 2014.³⁰ After January 1, 2014, 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. See the discussion in Section VI for further information on the MAGI conversion.

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

²⁶ 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>.

²⁷ CMS, *Dear State Health Official & State Medicaid Director Letter* (Dec. 28, 2012) (Conversion of Net Income Standards to MAGI Equivalent Income Standards).

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

²⁹ See NHeLP, *The Advocate’s Guide to the Medicaid Program*, 3.4.

³⁰ 42 U.S.C. § 1396a(gg).

4. Children

States must 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.³¹ The ACA extends Medicaid coverage to all children younger than age 19 in families at or below 133% FPL.³² States have the option to cover additional groups of children whose incomes exceed these levels.³³ Beginning in 2014, states will apply MAGI income counting methodologies to determine Medicaid eligibility for most of these children.³⁴

a) Independent foster care adolescents

Since 2000 states have the option to provide Medicaid coverage to young adults known as “Independent Foster Care Adolescents.”³⁵ 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.³⁶ States may, but are not required to, establish income limits for this coverage.³⁷ For states that have established an income limit, proposed federal rules require a conversion to a MAGI based standard.³⁸ Note, however, that many young adults who 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).³⁹

³¹ See NHeLP, *The Advocate’s Guide to the Medicaid Program*, 3.4.

³² 42 U.S.C. § 1396a(l)(2)(C).

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

³⁴ 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).

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

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

³⁷ 42 U.S.C. § 1396d(w)(1)(C).

³⁸ 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.

³⁹ 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.

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.⁴⁰ States may disregard income for these classifications of children.⁴¹ However, states that have established an income test for this coverage will have to convert the income limits it to a MAGI based standard.⁴² When MAGI takes effect in 2014, some children may lose 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.⁴³ 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.”⁴⁴ 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.

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.”⁴⁵

⁴⁰ 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.

⁴¹ 42 U.S.C. § 1396a(r)(2).

⁴² See 78 Fed. Reg. at 4689.

⁴³ § 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>.

⁴⁴ CMS, *Dear State Health Official & State Medicaid Director* (Dec. 28, 2012) (Conversion of Net Income Standards to MAGI Equivalent Income Standards).

⁴⁵ Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010, 77 Fed. Reg. 17144, 17158 (proposed Mar. 23, 2012) (to be codified at § 435.603(j)(1)).

c) CHIP

The CHIP program provides health coverage to children from higher income families who are not eligible for Medicaid.⁴⁶ Beginning in 2014, MAGI applies to CHIP eligibility determinations.⁴⁷

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.⁴⁸ CMS guidance outlines options available to states in implementing this coverage protection for children.⁴⁹

5. Limited scope Medicaid – TB

States have the option to provide limited-scope Medicaid services to treat individuals infected with tuberculosis.⁵⁰ Eligibility for the TB category follows Supplemental Security Income (SSI) calculations.⁵¹ It is not expressly exempt from MAGI. While CMS has acknowledged that the TB category could fall under the MAGI exemption for persons who qualify for Medicaid on the basis of being blind or disabled, it has indicated that it favors applying MAGI to the TB category.⁵²

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.⁵³ Currently, 31 states have family planning expansions.⁵⁴ Beginning in 2014, MAGI rules will apply to limited-scope family planning services offered through either a state plan

⁴⁶ 42 U.S.C. § 1397aa-mm.

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

⁴⁸ 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).

⁴⁹ CMS, *Answers to Frequently Asked Questions: Medicaid/CHIP Affordable Care Act Implementation* (Apr. 25, 2013), at 2-4.

⁵⁰ 42 U.S.C. § 1396a(z).

⁵¹ CMCS Informational Bulletin, *State Option to Enroll Tuberculosis (TB) Infected Individuals into the Medicaid Program* (June 16, 2011).

⁵² 78 Fed. Reg. at 4610 (citing the exception at 42 U.S.C. § 1396a(e)(14)(D)(i)(III)). The pre-print state plan amendments to implement ACA provisions and revised regulations apply MAGI to the TB category, 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>.

⁵³ 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).

⁵⁴ 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.

amendment or § 1115 demonstration.⁵⁵ 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.⁵⁶ 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.⁵⁷ Under proposed rules, 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.⁵⁸

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

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. 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.

⁵⁵ 78 Fed. Reg. at 4605.

⁵⁶ 42 U.S.C. § 1396a(ii)(3).

⁵⁷ 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).

⁵⁸ 78 Fed. Reg. 4592 (proposed Jan. 22, 2013) (to be 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>.

1. Eligibility categories and populations exempt from MAGI

The ACA exempts highly vulnerable Medicaid eligibility categories and populations from MAGI.⁵⁹ 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.⁶⁰ These categories include: persons receiving mandatory state supplement payments, institutionalized individuals, disabled adult children, certain groups of working disabled individuals, and others.⁶¹

Notably, 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.⁶² 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.

i. SSI recipients

In most states, individuals who qualify for Supplemental Security Income (SSI) automatically qualify for Medicaid.⁶³ These populations are expressly exempt from MAGI because states that accept SSI for Medicaid do not conduct an income-eligibility determination.⁶⁴

⁵⁹ 42 U.S.C. § 1396a(e)(14)(D).

⁶⁰ *Id.*

⁶¹ For a comprehensive listing of ABD eligibility categories, see NHeLP, *The Advocates Guide to Medicaid*, 3.6 – 3.10.

⁶² 42 C.F.R. § 435.603(j)(2-4).

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

⁶⁴ 42 U.S.C. § 1396a(e)(14)(A).

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 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.⁶⁵ There are currently eleven 209(b) states: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia.⁶⁶ In 2014, 209(b) states may continue to employ their more restrictive income and resource methodologies.⁶⁷

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.⁶⁸ 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.⁶⁹ Accordingly, these eligibility determinations are not subject to MAGI.

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

⁶⁶ See NHeLP, *The Advocates Guide to Medicaid*, 3.7, note 57.

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

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

⁶⁹ See Section II.A.4.b of this Guide.

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.⁷⁰ 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.⁷¹

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.⁷²

Eligibility under this option is expressly exempt from MAGI rules.⁷³

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.⁷⁴

- 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.⁷⁵
- Specified Low Income Medicare Beneficiaries (SLMBs) - states cover Medicare Part B premiums for individuals who have countable income from 101-120% of

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

⁷¹ 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.

⁷² 42 U.S.C. § 1396a(e)(3).

⁷³ 42 U.S.C. § 1396a(e)(14)(D)(III).

⁷⁴ For a discussion of these Medicare-related programs, please see NHeLP, *The Advocates Guide to Medicaid*, 3.10.

⁷⁵ 42 U.S.C. § 1396d(p).

FPL, and whose resources do not exceed twice the SSI resource-eligibility standard.⁷⁶

- 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.⁷⁷

These categories are statutorily exempt from MAGI methodologies.⁷⁸

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.”⁷⁹

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.

f) Long term care

The ACA exempts from MAGI determinations of eligibility “purposes of medical assistance for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, home or community-based services . . .”⁸⁰ These include services available under a § 1115 demonstration waiver or state plan amendment under Section 1915.⁸¹

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.*”⁸² In other words, the MAGI exception does not apply to persons to determine eligibility under a MAGI category,

⁷⁶ 42 U.S.C. § 1396a(a)(10)(E)(iii).

⁷⁷ 42 U.S.C. § 1396u-3(b).

⁷⁸ 42 U.S.C. § 1396a(e)(14)(D)(i).

⁷⁹ 42 U.S.C. § 1396a(e)(14)(F).

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

⁸¹ 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.

⁸² 78 Fed. Reg. at 4626 (emphasis added).

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.⁸³ Thus, the standard rule is that existing financial eligibility methodologies will apply to the Medically Needy category.

However, in a proposed rulemaking, CMS allows 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.⁸⁴

Under the CMS-initiated requirement, MAGI for these Medically Needy groups would differ from typical MAGI-based methodologies in several ways. First, states would 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.⁸⁵ Also, the proposed Medically Needy MAGI-option rule references regulations specifically related to MAGI countable income, not the MAGI prohibition on asset tests.⁸⁶ Thus, the proposed rule does not appear to 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).⁸⁷ CMS proposes that states calculate an average of current disregards for Medically Needy children, such as expenses for childcare, and adjust current income standards to account for that average disregard.⁸⁸ This approach mimics, but does not explicitly reference, the MAGI-conversion methodology guidance described below at Section VI.⁸⁹

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

⁸⁴ 78 Fed. Reg. at 4692.

⁸⁵ 42 CFR § 435.602.

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

⁸⁷ 42 U.S.C. § 1396a(gg).

⁸⁸ 78 Fed. Reg. at 4612.

⁸⁹ States with Medically Needy or 209(b) spend down programs that include adults who may be eligible for Medicaid Expansion, such as parents and caretakers or pregnant women, may need to convert their 2009 income standard to establish a MAGI-converted threshold for receiving enhanced FMAP for newly eligible beneficiaries.

h) Express Lane Findings

The eligibility determinations of Express Lane Agencies are expressly exempt from MAGI.⁹⁰ 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.⁹¹ 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).⁹²

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.⁹³ States have the option of conducting income determinations to qualify individuals for the Extra Help program.⁹⁴ The ACA expressly exempts state-level eligibility determinations for Extra Help from MAGI.⁹⁵ No state has yet exercised this option.

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.⁹⁶ Using this § 1115 authority, HHS may waive state plan requirements in 42 USC § 1396a.⁹⁷ However, the ACA requires MAGI to apply to all § 1115 demonstration projects for populations and eligibility groups subject to MAGI.⁹⁸ The ACA further prohibits HHS from waiving MAGI except in very limited circumstances.⁹⁹

HHS may only waive MAGI to the “extent necessary to permit a State to coordinate eligibility requirements for dual eligible individuals.”¹⁰⁰ 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

⁹⁰ 42 U.S.C. § 1396a(e)(14)(D)(ii).

⁹¹ 42 U.S.C. § 1396a(e)(13)(A)(i).

⁹² CMS, *Dear State Health Official & State Medicaid Director Letter* (Feb. 4, 2010), at 2 (Express Lane Eligibility Option).

⁹³ 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>.

⁹⁴ 42 U.S.C. § 1395w-114(a)(3)(B)(i).

⁹⁵ 42 U.S.C. § 1396a(e)(14)(D)(iii).

⁹⁶ 42 U.S.C. § 1315(a).

⁹⁷ 42 U.S.C. § 1315(a)(1).

⁹⁸ 42 U.S.C. § 1396a(e)(14)(A).

⁹⁹ 42 U.S.C. § 1396a(e)(14)(F).

¹⁰⁰ *Id.*

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.”¹⁰¹ HHS cites to this waiver authority in guidance allowing states to delay Medicaid eligibility recertifications scheduled for the first quarter of 2014.¹⁰² 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**.

2. Categories subject to separate or no income counting rules

a) Early expansion

The ACA allows states the option to implement the adult Medicaid expansion through a state plan amendment prior to the 2014 effective date¹⁰³ According to guidance issued by CMS, states are not required to use MAGI for early expansions, but they are prohibited from using assets tests.¹⁰⁴ Rather, early expansion states must use reasonable income counting methodologies for this new group that are consistent with the objectives of the Medicaid program, simple to administer, and in the best interests of the beneficiary.¹⁰⁵ Only three states (Connecticut, District of Columbia, and Minnesota) expanded their Medicaid programs to childless adults using the ACA state plan option.¹⁰⁶ In January 2014, all these early expansion groups will transition to MAGI rules.

¹⁰¹ 42 U.S.C. § 1396a(e)(14)(A).

¹⁰² 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.

¹⁰³ 42 U.S.C. § 1396a(k)(2).

¹⁰⁴ CMS, *Dear State Health Official & State Medicaid Director Letter* (April 9, 2010), at 2 (New Option for Coverage of Individuals under Medicaid).

¹⁰⁵ *Id.* at 3.

¹⁰⁶ Kaiser Comm. on Medicaid and the Uninsured, *How is the Affordable Care Act Leading to Changes in Medicaid Today? State Adoption of Five New Options* (May 30, 2012), at 4, available at <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8312.pdf>. Another five states (California, Colorado, Missouri, New Jersey, and Washington state) received approval for early adult expansions using § 1115 demonstration project authority. *Id.*

b) 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, the state must 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;¹⁰⁷ the maintenance needs for family members if an institutionalized individual has a spouse at home;¹⁰⁸ reasonable amount toward the cost of medical and remedial care that is not covered by Medicare or third parties;¹⁰⁹ and SSI and State Supplementary Payments (SSPs).¹¹⁰ The remainder is then applied toward the cost of care.¹¹¹ Post-eligibility disregards are not subject to MAGI.

c) 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.¹¹² 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 would likely also be eligible under the new adult Medicaid expansion, this coverage allows them to remain in the traditional Medicaid program with the full scope of benefits.

d) 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 Medicaid-eligible and the infant remains part of the mother’s household.¹¹³ Deemed newborns remain continuously eligible for Medicaid under new rules.¹¹⁴

¹⁰⁷ 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.

¹⁰⁸ 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).

¹⁰⁹ 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).

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

¹¹¹ 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.

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

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

¹¹⁴ *Id.*

e) 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).¹¹⁵ There are no Medicaid income or resource limitations imposed by federal law for this Medicaid eligibility group.¹¹⁶ 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.**

¹¹⁵ 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).

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

III. Determination of Countable Income

A. General Principles

The primary building block for determining income for both Medicaid/CHIP and 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, no deduction for child support paid, no deduction for child care expenses (unless through a flexible spending account), etc. Instead, there is only a uniform 5% FPL disregard applied to MAGI in situations where it would determine eligibility for Medicaid and CHIP.

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 easily walk applicants and assisters through the process without requiring reference to IRS income tax schedules (see Section VIII for discussion of the Single Streamlined Application).

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/i1040.pdf>.

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 methodologies (See discussion below Section III.F). The Single Streamlined Application will allow 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”) will

do 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 IV “Household Composition” to determine whether or not the income of a particular family 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.

Form 1040 calculates AGI in two major 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 37.¹¹⁷

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. IRS instructions for calculating Adjusted Gross Income are available at: http://www.irs.gov/file_source/pub/irs-pdf/i1040.pdf.

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
Social Security Benefit	Line 20a

¹¹⁷ 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.

Selected Income and Adjustments Included in AGI	
Type of Adjustment (Reduction)	Form 1040 Line
Moving Expenses (Form 3903)	Line 26
Deductible part of self-employment tax	Line 27
Alimony Paid	Line 31a
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) will be 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.

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. 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. However, under *Modified Adjusted Gross Income*, all Social Security income will be included.

3. Self-employment income

Unlike current 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.

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.

4. Child support

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

5. Alimony

Unlike child support, alimony counts towards the AGI of the person who receives it. Thus, if a non-custodial, divorced parent pays alimony to the custodial parent, the amount of the alimony counts toward the AGI of the custodial parent, but “adjusts out” of the non-custodial parent’s AGI. (“Alimony Received” must be reported as income on Line 11 of Form 1040, whereas “Alimony Paid” is adjusted out of income on Line 31a. On the Single Streamlined Application, Alimony Received is one of the specific types of income that must be reported.)

6. Veteran’s benefits

Some veteran’s benefits are not part of AGI, though such income would be considered as countable income under existing 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 service-related disability compensation or pension benefits paid to veterans or their families. This change may allow some veterans to gain Medicaid eligibility. However, military retirement pay that is based on age or years of service *is* taxable and will count toward MAGI.¹¹⁸

¹¹⁸ See discussion on Military and 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.

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).¹¹⁹ These adjustments account for (1) foreign income, (2) tax exempt interest and (3) non-taxable Social Security benefits.

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. Advocates will not need to decipher what portion of Social Security is taxable and not taxable: *All* Social Security benefits (including retirement benefits, disability benefits, widow’s benefits and survivors’ benefits) are included in MAGI.¹²⁰

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

D. Further Modifications to MAGI for Medicaid

For Medicaid eligibility determinations, a few additional types of income are excluded when determining MAGI that, by contrast, are included for APTCs/CSRs. These are:

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.¹²¹ 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.

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

¹²⁰ 26 I.R.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.

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

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).

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 lottery winnings. Medicaid MAGI maintains the existing Medicaid rules, where lump sums are treated as income in the month received, and then as a resource in future months (even though resources are not part of the MAGI eligibility determination). This contrasts with the income determination for APTCs, where taxable lump 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.

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). Therefore, under MAGI rules for both Medicaid and APTCs, gifts and inheritances will not be counted at all.

E. Summary of Differences Between Current Medicaid Rules 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 current 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.

Income - Traditional Medicaid v. Medicaid/CHIP MAGI v. Marketplace			
Issue	Traditional Medicaid¹²²	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)
Alimony Paid	Not Included in income for AFDC-related Medicaid, but may be included for ABD Medicaid	Not included (not taxable to person paying alimony)	Not included (not taxable to person paying 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)

¹²² 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 Medicaid¹²²	Medicaid/CHIP MAGI	Marketplace MAGI
Veteran's Benefits Paid On the Basis of Service-Related Disability	Included as income	Not included as income	Not included as income
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 (e.g., lottery winnings)	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)

CMS regulations require states to determine Medicaid/CHIP eligibility for new applicants based upon their current monthly household income and family size.¹²³

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.¹²⁴ 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.

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

¹²³ 42 C.F.R. § 435.603(h)(1).

¹²⁴ 42 C.F.R. § 435.603(h)(2).

seasonal work, to help reduce churning resulting from fluctuations in income.¹²⁵ States can also use a prorated portion of income of a predictable change of income, and they can elect to use both methods.¹²⁶ States must indicate on its SPA implementing MAGI which income calculation it will use.

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.¹²⁷ Instead, the ACA eliminated asset tests for MAGI categories and introduced a standard disregard of 5% FPL.¹²⁸ 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).¹²⁹ 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).¹³⁰ 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.¹³¹ 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

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

¹²⁶ *Id.*

¹²⁷ 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).

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

¹²⁹ 45 C.F.R. § 233.20(a)(11)(D).

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

¹³¹ 42 C.F.R. § 435.603(d)(4).

render them eligible. This disregard explains the common reference that Medicaid expansion will go to 138% FPL.

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 Health Insurance 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].¹³² 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.¹³³

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.¹³⁴ Many states already disregard assets for children’s eligibility, and nearly half the states have eliminated asset tests for parents

¹³² 42 U.S.C. § 1396a(e)(14)(I).

¹³³ 42 C.F.R. §§ 435.603(d)(1), 435.603(d)(4). See 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).

¹³⁴ See 42 C.F.R. § 435.603(g).

and caretakers. In those states that continued to use asset tests for those categories now subject to MAGI, a number of 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 v. Medicaid/CHIP

A. Introduction

Eligibility for insurance affordability programs is based upon household income and family size. Generally, the total household income is the sum of MAGI income for all household members.¹³⁵ 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.

In the world of Medicaid and Marketplaces, a household is not necessarily the people you live with and are related to. 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.¹³⁶ The total number of individuals in the Marketplace or Medicaid household constitutes the family size.¹³⁷

Therefore, eligibility and enrollment systems must 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. This yields each individual’s family size. 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.

Once an individual’s MAGI household is clear, 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.

For Medicaid, CHIP and APTCs/CSRs, the general rule is that household income equals the sum of each member’s MAGI. This might be just the income the tax filer expects to report on his or her tax return, but it might also include income from other household members whose income is not included on the tax filer’s return.

¹³⁵ 26 I.R.C. § 36B(d)(2).

¹³⁶ 26 I.R.C. § 36B; 42 C.F.R. § 435.603(b).

¹³⁷ Unlike in the Medicaid program, a pregnant woman cannot count as more than one person under IRS rules.

NOTE: There is a specific rule pertaining to the income of children who are claimed as dependents by their parents.¹³⁸ If the dependent child has enough income to *require* that the child file a tax return, then the income will be counted in the household.¹³⁹ For 2012, the minimum filing requirements for a dependent child are as follows:

- Unearned income, more than \$950
- Earned income, more than \$5950
- Gross income, the larger of \$950 or earned income (up to \$5950) plus \$300.¹⁴⁰

None of the child's income counts if the dependent child is not required to file, even if the dependent child chooses to file a separate tax return.¹⁴¹

A similar rule pertains 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 if the dependent's income remains below the threshold requiring them to file a separate tax return, regardless of whether the dependent chooses to file his or her own tax return.¹⁴²

EXAMPLE: Adult Dependents

If tax filer Joe claims his Aunt Betty as a dependent on his federal tax return because Aunt Betty lives with him and meets the requirements as a qualifying relative, Aunt Betty will nonetheless be in her own household for Medicaid purposes. Suppose that Joe, in addition to providing Aunt Betty room and board, also gives her \$200 cash every month. States will have an option under Medicaid/CHIP MAGI to count the \$200 given to her by Joe as part of Aunt Betty's monthly household income (assuming the State has defined \$200 as more than nominal and that the family actually reports this to the Medicaid agency).

¹³⁸ 42 C.F.R. § 435.603(d)(2)(i).

¹³⁹ See 26 I.R.C. § 6012(a)(1).

¹⁴⁰ See IRS, Publication 501, *Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2012 Returns* (Jan. 10, 2013), available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>. The IRS publishes updated income filing requirements every January for the preceding tax year.

¹⁴¹ The child may file a return in order to get a refund of taxes that were withheld, even if not required to file a return. Note that, as explained below, a person may file his own tax return and still be claimed as a dependent on someone else's return, if he meets the requirements as a qualifying child or qualifying relative.

¹⁴² 42 C.F.R. § 435.603(d)(2)(ii).

Adult dependents will be in their own household under Medicaid MAGI rules. (They would, however, be part of the household of the tax filer who claims them as a dependent for APTCs/CSRs. See discussion of Marketplace household composition (family size) below). For Medicaid/CHIP determinations, states have an option to count any actually available cash support, exceeding nominal amounts, that is provided to such individuals by the person claiming them as a tax dependent.¹⁴³

B. Family Size in the Marketplace

In the Marketplace, the family size will almost always be the same as the tax filer's household.¹⁴⁴ 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.¹⁴⁵

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.¹⁴⁶ Tax filers may claim an exemption for a dependent, even if the dependent files his or her own federal tax return.¹⁴⁷

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.

¹⁴³ 42 C.F.R. § 435.603(d)(3).

¹⁴⁴ Individuals who are not lawfully present are not counted as members of a tax household. See 26 I.R.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.

¹⁴⁵ 26 I.R.C. §§ 151,152. See generally IRS, Publication 501, *Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2012 Returns* (Jan. 10, 2013), available at <http://www.irs.gov/pub/irs-pdf/p501.pdf> (tax rules that affect every person who may have to file a federal income tax return).

¹⁴⁶ See 26 I.R.C. §§ 151,152. See generally IRS, Publication 501, *Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2012 Returns* (Jan. 10, 2013), available at <http://www.irs.gov/pub/irs-pdf/p501.pdf> (tax rules that affect every person who may have to file a federal income tax return).

¹⁴⁷ *Id.*

NOTE: Individuals who fall below certain income thresholds are not required to file federal income taxes (see the chart below). These individuals may not claim a personal exemption if they can be claimed as a dependent by another tax filer. 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 may not take a personal exemption and thus would not be considered a “tax filer” for Marketplace or Medicaid MAGI purposes. Instead, she would be counted as a member of the tax filing household which claims her as a dependent.

Who Must File a Federal Income Tax Return¹⁴⁸

IF your filing status is...	AND at the end of 2012 you were...*	THEN file a return if your gross income was at least...**
single	under 65	\$9,750
	65 or older	\$11,200
head of household	under 65	\$12,500
	65 or older	\$13,950
married, filing jointly***	under 65 (both spouses)	\$19,500
	65 or older (one spouse)	\$20,650
	65 or older (both spouses)	\$21,800
married, filing separately	any age	\$3,800
qualifying widow(er) with dependent child	under 65	\$15,700
	65 or older	\$16,850

* If you were born before January 2, 1948, you are considered to be 65 or older at the end of 2012.

**Gross income means all income you received in the form of money, goods, property, and services that is not exempt from tax, including any income from sources outside the United States or from the sale of your main home (even if you can exclude part or all of it). Do not include any social security benefits unless (a) you are married filing a separate return and you lived with your spouse at any time during 2012 or (b) one-half of your social security benefits plus your other gross income and any tax-exempt interest is more than \$25,000 (\$32,000 if married filing jointly). If (a) or (b) applies, see the Form 1040 instructions to figure the taxable part of social security benefits you must include in gross income. Gross income includes gains, but not losses, reported on Form 8949 or Schedule D. Gross income from a business means, for example, the amount on Schedule C, line 7, or Schedule F, line 9. But in figuring gross income, do not reduce your income by any losses, including any loss on Schedule C, line 7, or Schedule F, line 9.

*** If you did not live with your spouse at the end of 2012 (or on the date your spouse died) and your gross income was at least \$3,800, you must file a return regardless of your age.

¹⁴⁸ IRS, Publication 501, *Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2012 Returns* (Jan. 10, 2013), available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>. For additional situations where someone must file a federal income tax return, see Publication 501 or consult with a tax attorney.

1. Married couples

Married couples who file joint tax returns are each considered to be “tax filers.”¹⁴⁹ Generally, married couples must file a joint tax return to receive APTCs/CSRs.¹⁵⁰ However, a married individual may be considered “unmarried” under federal tax law if certain conditions are met, including living apart from his or her spouse and maintaining a household for a dependent child.¹⁵¹ Such an individual could use a separate filing status – head of household - and could therefore be eligible for APTCs/CSRs even if the married couple files separately.¹⁵²

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.)

Same sex married couples are now permitted to file joint federal tax returns and are therefore able to receive APTCs and CSRs together if eligible. Recent guidance from the IRS establishes that same sex couples who were legally married in a state that permits same sex marriage are eligible to receive APTCs/CSRs, regardless of whether the state in which they reside recognizes their marriage.¹⁵³

NOTE: Although all state Marketplaces must recognize same sex marriages for APTC/CSR eligibility, under CMS guidance states have flexibility in deciding whether to recognize same sex marriage for Medicaid/CHIP eligibility. See Section IV.C.2.f of this Guide for further discussion of same sex marriage and Medicaid/CHIP.

¹⁴⁹ 26 I.R.C. § 36B(d)(1); 26 I.R.C. § 151; 26 I.R.C. § 152(b)(2).

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

¹⁵¹ 26 I.R.C. § 7703(b).

¹⁵² See IRS Publication 501, Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2012 Returns (Jan. 10, 2013), available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>, for additional information on alternate filing statuses available to married couples, including “married, filing separately” and “head of household.”

¹⁵³ 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 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>.

2. Divorced and separated couples

Under tax law, marital status is determined at the close of the calendar year.¹⁵⁴ If a married couple receives a final divorce decree from a court on December 31, then they are considered unmarried during that year for tax filing purposes and may be eligible for subsidies by filing as individuals.

Couples who are married, but separated may continue to file joint tax returns and would therefore be entitled to APTCs and CSRs. Married couples who are separated may file separate federal income tax returns, but are generally not eligible for APTCs/CSRs.¹⁵⁵ However, under IRS rules, an individual who is married could be considered unmarried if the individual lives apart from his or her spouse and meets certain other requirements.¹⁵⁶ (See discussion above) Such an individual could be eligible for APTCs/CSRs.

REPORTING CHANGES: Marketplace eligibility determinations are based upon prospective tax filing status, family size, and income. Therefore, changes in marital status, such as a final divorce decree, could affect eligibility for Marketplace subsidies and therefore must be reported.

3. 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).

4. Who 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.¹⁵⁷ Under IRS rules, if a taxpayer claims an individual as a dependent, that individual cannot claim someone else as a dependent in

¹⁵⁴ I.R.C. § 7703(a).

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

¹⁵⁶ 26 I.R.C. § 7703(b). See also IRS, Publication 501, *Exemptions, Standard Deduction, and Filing Information for Use in Preparing 2012 Returns* (Jan. 10, 2013), available at <http://www.irs.gov/pub/irs-pdf/p501.pdf>.

¹⁵⁷ IRS, Publication 17, *Tax Guide 2012 for Individuals* (Jan. 31, 2013), at 27, available at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

that calendar year.¹⁵⁸ 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.

a) Qualifying child

The term "qualifying child" includes a biological child, adopted, step child, or an eligible foster child.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹ 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.¹⁶²

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 that allows a non-custodial parent to claim a child as a dependent if certain conditions are met, including the agreement of the custodial parent.¹⁶³

¹⁵⁸ 26 I.R.C. § 152(b)(1).

¹⁵⁹ 26 I.R.C. §§ 152(c), (f).

¹⁶⁰ 26 I.R.C. §§ 152(c)(1)(A)-(E).

¹⁶¹ 26 I.R.C. § 152(c)(4)(B)(i).

¹⁶² 26 I.R.C. § 152(c)(4)(B)(ii).

¹⁶³ 26 I.R.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 amount¹⁶⁴ (\$3,900 for 2013).¹⁶⁵

A qualifying relative need not be related to the tax filer at all, but must be living in the tax filer's household and meet the requirements for a "qualifying relative."¹⁶⁶

¹⁶⁴ 26 I.R.C. § 152(d).

¹⁶⁵ IRS, *Annual Inflation Adjustments for 2013* (Jan. 11, 2013), available at <http://www.irs.gov/uac/Newsroom/Annual-Inflation-Adjustments-for-2013>.

Tests to Be a Qualifying Relative

- The person cannot be your qualifying child or the qualifying child of any other taxpayer.
- The person either (a) must be related to you in one of the ways listed under IRS rules (relatives do not have to live with you), or (b) must live with you all year as a member of your household (and your relationship must not violate local law).¹⁶⁷
- The person's gross income for the year must be less than the exemption amount (currently \$3,800).
- You must provide more than half of the person's total support for the year.¹⁶⁸

5. Foster children

In most cases, foster children automatically qualify for Medicaid and will not need private insurance purchased through the Marketplace.¹⁶⁹ The ACA expressly exempts children in the federal foster care program under Title IV-E, from MAGI.¹⁷⁰ 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.¹⁷¹

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.¹⁷² 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.

¹⁶⁶ 26 I.R.C. § 152(d).

¹⁶⁷ *Id.* Relationships that may meet the criteria for a qualifying relative include: a child of the taxpayer or a descendent of a child of the taxpayer; a brother, sister, or step-sibling/in law of the taxpayer; a son, daughter, brother, or sister in law of the taxpayer; a niece, nephew, aunt, or uncle of the taxpayer; a father, mother, stepfather, stepmother, or father or mother in law of the taxpayer; or an individual who has the same place of abode and is a member of the taxpayer’s household.

¹⁶⁸ There are exceptions for multiple support agreements, children of divorced or separated parents (or parents who live apart), and kidnapped children.

¹⁶⁹ 42 C.F.R. § 435.145.

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

¹⁷¹ 77 Fed. Reg. at 17158.

¹⁷² 26 I.R.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.

6. 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 below). Thus, a pregnant woman expecting twins could be counted as one person under Marketplace rules and as three people under Medicaid rules.

7. 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.¹⁷³ 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.”¹⁷⁴ 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.¹⁷⁵ Thus, a 22-year-old full-time student could be counted as a child under Marketplace rules, but would be an adult under Medicaid MAGI.

¹⁷³ 26 I.R.C. § 152(c)(3)(A)(i).

¹⁷⁴ 26 I.R.C. § 152(c)(3)(A)(ii).

¹⁷⁵ 42 C.F.R. § 435.603(f)(3)(iv).

8. 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.¹⁷⁶ 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.¹⁷⁷ 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.¹⁷⁸ 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.¹⁷⁹ 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.

9. 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).¹⁸⁰ This is because the IRS requires anyone who resides and earns income in the U.S. to file taxes regardless of immigration status.¹⁸¹

Yet, even if they file federal taxes, individuals who are not lawfully present are not eligible for APTCs/CSRs.¹⁸² However, in a mixed status family, there may be family 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

¹⁷⁶ See 42 U.S.C. § 18032(f); 45 C.F.R. § 155.305(a)(1) (defining “qualified individual”). See also 26 I.R.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).

¹⁷⁷ 26 I.R.C. § 36B(e)(2).

¹⁷⁸ 26 I.R.C. § 36B(c)(1)(B); 26 C.F.R. § 1.36B-2(b)(5).

¹⁷⁹ 26 C.F.R. § 1.36B-2(b)(7).

¹⁸⁰ 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) available at [http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-\(TIN\)](http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-(TIN)).

¹⁸¹ 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>.

¹⁸² 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.”).

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.¹⁸³ 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.

According to a guide issued by the U.S. Immigration and Customs Enforcement (ICE), authorities will not use information provided for IAP eligibility determinations in immigration enforcement actions.¹⁸⁴

10. 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.¹⁸⁵ 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.¹⁸⁶ 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.¹⁸⁷ A complex mathematical formula is then used to calculate the household income for APTCs in relation to the Federal Poverty Level.¹⁸⁸ The ACA also allows the use of a “comparable method” to calculate household income for APTCs in this situation.¹⁸⁹ To date, the IRS has not promulgated further guidance to implement this special income counting rule for mixed status families.

¹⁸³ 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.”).

¹⁸⁴ U.S. Immigration and Customs Enforcement, *Clarification of Existing Practices Related to Certain Health Care Information*, Oct. 25, 2013, available at <http://www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf>.

¹⁸⁵ 26 I.R.C. § 36B(e)(1)(B)(i)(II); 26 CFR 1.36B-3(l)(2).

¹⁸⁶ 26 I.R.C. § 36B(e)(1)(B)(i)(I); 26 CFR 1.36B-3(l)(1).

¹⁸⁷ 26 I.R.C. § 36B(e)(1)(B)(i)(II); 26 CFR 1.36B-3(l)(2).

¹⁸⁸ 26 I.R.C. § 36B(e)(1)(B)(i)(II)(aa)-(bb).

¹⁸⁹ 26 I.R.C. § 36B(e)(1)(B)(ii); 26 CFR §1.36B-3(l)(2)(ii).

EXAMPLE: Family with mixed immigration status

Mike and Nancy have two children, Oscar and Priscilla and live in the state of Westonia. 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 Westonia'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. Family Size 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 has not counted toward a child's Medicaid eligibility.¹⁹⁰

¹⁹⁰A 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 *Sneede* Court 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.

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?

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. Is the individual a U.S. citizen or lawfully present?
4. Who lives in the household at least half the year, or 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 to other?
10. 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.¹⁹¹

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** – as well as several flow charts prepared by state advocates.

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 requirements for individuals and families for the preceding year.¹⁹² For example, individuals under 65 whose gross income was less than \$9,750 in 2012 were not required to file an income tax return in 2013.¹⁹³

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.

¹⁹¹ 42 C.F.R. § 435.603(f).

¹⁹² See e.g. IRS, Publication 17, *Tax Guide 2012 for Individuals* (Jan. 31, 2013), available at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

¹⁹³ *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.

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.¹⁹⁴ Under IRS rules, a "qualifying relative" can be claimed by a tax filer as a dependent if certain requirements are met (e.g., low income, depends on tax filer for at least one half of financial support, is a relative, or can be a non-relative who lives with the taxpayer year round).

A separate set of Medicaid/CHIP rules allow some such individuals to be treated as their own household for purposes of Medicaid/CHIP eligibility.¹⁹⁵ 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).¹⁹⁶

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

¹⁹⁴ 42 C.F.R. § 435.603(f)(2)(i).

¹⁹⁵ 42 C.F.R. § 435.603(f)(2)(i).

¹⁹⁶ 42 C.F.R. § 435.603(f)(3)(iv).

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.¹⁹⁷

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.¹⁹⁸ (A child is someone under age 19 or age 21 for full time students at state option.)¹⁹⁹

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:

¹⁹⁷ 77 Fed. Reg. at 17152.

¹⁹⁸ 42 C.F.R. § 435.603(f)(2)(ii).

¹⁹⁹ 42 C.F.R. § 435.603(f)(3)(iv).

- 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.²⁰⁰

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.²⁰¹

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.²⁰²

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.

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 19.²⁰³

²⁰⁰ 42 C.F.R. § 435.603(f)(2)(i).

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

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

²⁰³ 42 C.F.R. § 435.603(f)(3).

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.²⁰⁴ And, 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.²⁰⁵ 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.

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.²⁰⁶

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).²⁰⁷

²⁰⁴ See 42 C.F.R. § 435.603(f)(2)(iii).

²⁰⁵ See 42 C.F.R. § 435.603(f)(2)(ii).

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

²⁰⁷ 42 C.F.R. § 435.603(f)(3)(iii).

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.²⁰⁸

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.

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.²⁰⁹ (As explained above, for Marketplace purposes, they *must* file a joint tax return in order to be eligible for APTCs/CSRs).

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.²¹⁰

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.

²⁰⁸ 42 C.F.R. § 435.603(f)(3)(iv).

²⁰⁹ 42 C.F.R. § 435.603(f)(4).

²¹⁰ 42 C.F.R. § 435.603(b).

EXAMPLE: Marketplace v. 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.

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).²¹¹ 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.²¹² 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.²¹³

²¹¹ 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).

²¹² See 42 C.F.R. §§ 435.603(f)(2)(i), 435.603(f)(3).

²¹³ See 42 C.F.R. §§ 435.603(f)(1), 435.603(f)(a).

f) Same sex marriages

In June 2013, the Supreme Court overturned Section 3 of the “Defense of Marriage Act” which previously prohibited the federal government from recognizing same sex marriages.²¹⁴ Accordingly, the IRS issued guidance requiring recognition of same sex marriages for purposes of APTC/CSR eligibility, even if the couple lives in a state that does not recognize their marriage (see discussion in Section IV.B.1 of this Guide). However, CMS issued guidance allowing states to decide whether to recognize same sex marriages for purposes of determining eligibility for Medicaid and CHIP.²¹⁵ This state flexibility applies to all MAGI categories and populations, where marital status plays a key factor in determining household size.

However, for non-MAGI eligibility determinations, same sex marriages will be recognized if marital status is determined according to federal rules. For example, Medicaid eligibility on the basis of SSI does not require the state to consider the marital status or household size of an applicant.²¹⁶ CMS stated it will provide further guidance once the Social Security Administration issues its own guidance in the wake of *Windsor*.²¹⁷

EXAMPLE: Medicaid/CHIP household for same sex marriage

Christine and MaryBeth married in the District of Columbia, where same sex marriage is legal. They moved to suburbs in Virginia to raise their two children, Ike and Spike. Virginia does not recognize their marriage. Christine and MaryBeth file joint federal income tax returns and claim both children as tax dependents.

When they apply for IAPs, their Marketplace household is the tax household including all four of them. However, their Medicaid household composition is the following:

- Christine’s Medicaid household is 3, including herself (as a tax filer) and the two children she claims as dependents
- MaryBeth’s Medicaid household is also 3, including herself (as a tax filer) and the two children she claims as dependents
- Ike and Spike’s Medicaid household is 4, including both of them and both parents.

²¹⁴ *U.S. v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013).

²¹⁵ CMS, *Dear State Health Official & State Medicaid Director Letter* (Sept. 27, 2013) (United States v. Windsor).

²¹⁶ CMS, *Dear State Health Official & State Medicaid Director Letter* (Sept. 27, 2013), at 4 (United States v. Windsor) (Note that it is unclear whether a 209(b) state could apply its own marriage definition).

²¹⁷ *Id.*

V. 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)

VI. MAGI Conversion for Medicaid and CHIP

One consequence of switching to the new MAGI-based income counting methodology is that some individuals stand to lose Medicaid or CHIP eligibility due to the transition. The ACA requires that states use an income equivalency test to ensure the transition to MAGI does not result in a net loss of eligibility.²¹⁸ CMS has interpreted this to mean that the conversion of current income limits to MAGI-equivalent thresholds should not result in an “aggregate” loss of eligibility. Because conversion applies in aggregate, rather than on an individual basis, not everyone will be protected by the conversion of the thresholds.²¹⁹ Some individuals will lose eligibility, but, if the methodology is sound, on average an equal number of individuals should stand to gain eligibility. In other words, the conversion should “not systematically increase or decrease the number of eligible individuals within a given eligibility group.”²²⁰

MAGI conversion must be implemented on a state-by-state basis, since states have varying eligibility categories and varying rules about deductions and disregards. However, CMS has developed a uniform conversion methodology for State Medicaid agencies to measure the “effective” income standard for each eligibility category. States were required to either use that approach to convert current income standards into equivalent MAGI-based standards or seek CMS approval to use a variation of that methodology.²²¹

A. Eligibility Categories Subject to MAGI-conversion

States will not convert every Medicaid eligibility category or threshold, but categories in some way connected to the transition to MAGI will require conversion. These state thresholds include:

- All current mandatory, optional and § 1115 demonstration categories subject MAGI in 2014;

²¹⁸ 42 U.S.C. § 1396a(e)(14)(A) (“A State shall establish income eligibility thresholds for populations to be eligible for medical assistance under the State plan or a waiver of the plan using modified adjusted gross income and household income that are not less than the effective income eligibility levels that applied under the State plan or waiver on the date of enactment of the Patient Protection and Affordable Care Act.”).

²¹⁹ See CMS, *Conversion of Net Income Standards to Equivalent Modified Adjusted Gross Income Standards and Solicitation of Public Input* (June 21, 2012), at 4-5 (“The intent is for States to establish MAGI-equivalent standards that protect individuals eligible for medical assistance under the State Plan or under a waiver prior to 2014. The reference in the statute to ‘populations’ means that the analysis regarding ‘not losing coverage’ should be in the aggregate. It would be virtually impossible to ensure that not one individual loses coverage due to the elimination of income disregards without substantially raising income standards beyond the current standards, which would significantly expand coverage beyond the intent of the Affordable Care Act”) (internal citations omitted).

²²⁰ CMS, *Dear State Health Official & State Medicaid Director Letter* (Dec. 28, 2012), at 2 (Conversion of Net Income Standards to MAGI Equivalent Income Standards).

²²¹ *Id.* at 4-5

- Maximum eligibility thresholds for newly consolidated eligibility groups for parents and other caretaker relatives (§ 435.110), pregnant women (§ 435.116), children under age 19 (§ 435.118), and the new adult group (§ 435.119);
- Minimum statutory thresholds for pregnant women and parents and caretaker relatives;
- December 1, 2009 thresholds for mandatory, optional and § 1115 demonstration categories connected to the new adult group (§ 435.119) to determine who is newly eligible and qualifies for enhanced FMAP;
- Income thresholds for charging premiums under 42 U.S.C. § 1396o-1.²²²

Current income thresholds for non-MAGI categories are not affected by the MAGI conversion requirement.

B. The Mechanics of MAGI Conversion

After considering more than one possible conversion method and seeking public comment, CMS adopted a standardized MAGI conversion approach for every state Medicaid program: the Marginal Disregard Method.²²³ Using this method, CMS calculated MAGI-converted eligibility thresholds for all states using national survey data, from the Survey of Income and Program Participation Data (SIPP), weighted for each state. States choosing this method could either rely on the SIPP data as calculated by CMS or use their own state-specific data, with CMS approval. States were also given the flexibility to propose alternative methodologies, but again only with Secretary approval.

NOTE: Due to limitations in the SIPP database, the methodology may not take into account every single potential disregard, but does include earned and unearned income, work expenses, child support paid and received, interest and dividend income, SSDI income, student income and dependent care expenses.²²⁴

The Marginal Disregard Method adjusts the applicable Medicaid income eligibility standard for each current eligibility group (e.g., § 1931 parents and caretaker relatives) by calculating the average size of disregards (under current income counting rules) for a representative sample population. The sample for any given category consists of all individuals in the SIPP database who meet the non-income eligibility criteria and whose household income is in a “marginal band” within 25% FPL below a state’s net income

²²² CMS, *Dear State Health Official & State Medicaid Director Letter* (Dec. 28, 2012), at 3 (Conversion of Net Income Standards to MAGI Equivalent Income Standards). See 42 U.S.C. § 1396o-1 for the provisions on alternative premiums and cost-sharing.

²²³ *Id.* at 4.

²²⁴ ASPE, *Data Sources for Modified Adjusted Gross Income (MAGI) Conversions* 7, 10 (Feb. 2013) <http://aspe.hhs.gov/health/reports/2013/sipp/ib.cfm>.

standard for that eligibility category.²²⁵ For example, a category with a 100% FPL eligibility standard under current rules would have a marginal band from 75% to 100% FPL. CMS calculates the value of disregards for each individual in the SIPP sample for that category, converted to percent FPL. Next, it totals these individuals' disregards and finds the average. Assuming the average disregard across the sample amounts to 9% FPL in this example, the converted MAGI standard would be 109% FPL.²²⁶

EXAMPLE: MAGI-conversion winners

As of Nov. 2013: Joe, Sally and their two children live in the state of Westonia. Sally is the only parent working, and she makes \$1000 per month. Joe recently lost his job and has an unemployment benefit of \$1500 per month. He stays home with the kids, so the family has no qualified childcare disregard. After disregarding 20% of Sally's gross earned income as per current state rules in Westonia (\$200), the family's effective income is \$2300 (117% FPL). Under current rules, the family's income is over Westonia's § 1931 limit of 116% FPL, so neither parent is Medicaid eligible under § 1931.

In 2014: In preparation for MAGI-based eligibility, Westonia converts its § 1931 parent group to a MAGI-equivalent standard. The average disregard comes to 12% FPL, so the MAGI-converted standard becomes 116% + 12% = 128% FPL. The family's MAGI-based income is \$2500 (127% FPL.) Joe and Sally have become eligible as § 1931 parents and will receive traditional state plan Medicaid benefits.²²⁷

EXAMPLE: MAGI-conversion losers

As of Nov. 2013: Enoch, his wife Susannah and his two children also live in the state of Westonia. In this case, both parents work and together they earn \$2800/month (143% FPL). Westonia's § 1931 Parent eligibility is 116% FPL, but state rules allow Enoch and Susannah to disregard 20% of their gross earned income (\$560) and \$400 per month for childcare for their two children. Their countable income is thus \$1840, or 94% FPL, and they are both currently eligible for Medicaid.

In 2014: When MAGI rules go into effect, Westonia's converted § 1931 standard will be 128% FPL (using the above example). Unfortunately, Enoch and Susannah are no longer allowed to disregard any childcare expenses or earned income, so their MAGI-based income is 138% FPL (143% - 5% FPL standard MAGI disregard.)²²⁸ Both parents will lose their Medicaid eligibility, though they will qualify for tax credits to pay for coverage on Westonia's Health Marketplace.²²⁹

²²⁵ To better understand why this method was selected and how the calculations were performed, see ASPE, Research Brief, *Modified Adjusted Gross Income (MAGI) Income Conversion Methodologies* (Mar. 1, 2013), available at <http://aspe.hhs.gov/health/reports/2013/MAGIConversions/rb.pdf>.

²²⁶ The 5% FPL standard MAGI disregard is not part of the MAGI-conversion process.

According to CMS' timeline, CMS was supposed to issue final approval of the conversion plans, including any alternative state plans, by June 15, 2013. While it appears that deadline was not met for many states, CMS has now posted most states' MAGI conversion plan and results on the Medicaid.gov website.²³⁰ Advocates may want to confirm the accuracy of these posted documents directly with their state, as there have been discrepancies in some cases. Presumably CMS will have approved and posted all state MAGI conversion plans before January 2014.

EXAMPLE: MAGI Conversion and Working Parents in Non-Expansion States

Leticia, Julio and their daughter live in the state of South Ebida. Together the parents make just \$800/month (49% FPL). State Medicaid rules allow them to disregard the first \$200 of earned income plus half of the remainder (\$300). Their effective income is thus $\$800 - \$200 - \$300 = \300 /month, just under South Ebida's threshold for a family of three, which is 19% FPL (\$303/month).

In 2014: Once MAGI-based rules go into effect, the relevant eligibility thresholds will change. Assume that MAGI conversion raises the South Ebida's § 1931 eligibility from 19% to 39% FPL. Unfortunately, under MAGI rules Leticia and Julio can no longer disregard such a large portion of their earned income. The state has decided not to implement adult Medicaid expansion. The standard 5% FPL MAGI income disregard applies because the parents' Medicaid eligibility hangs in the balance. This gets them from 49% FPL down to 44%, which is still too high to qualify under South Ebida's MAGI-converted standard (39%).

Leticia and Julio will lose Medicaid eligibility in 2014. Because they make less than 100% FPL, they will not qualify for subsidies on South Ebida's health insurance exchange either.

²²⁷ For this family, the 5% FPL standard MAGI disregard would not apply because it is not needed to make them eligible.

²²⁸ Childcare expenses count towards MAGI income except for expenses paid through an employer-sponsored childcare flexible spending arrangement (FSA). Access to an FSA is rare for lower-income employees.

²²⁹ The 5% FPL standard MAGI disregard only applies to Medicaid eligibility, so for the purposes of the Marketplace this family's income would be 143% FPL.

²³⁰ CMS, *State Medicaid & CHIP Policies for 2014* (Oct. 2013), <http://medicaid.gov/Medicaid-CHIP-Program-Information/By-State/By-State.html>.

VII. State Options for the 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.²³¹ 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.

After January 1, pre-MAGI household composition and income counting rules will no longer apply (for 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.²³² 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 MAGI-equivalent income threshold) may access coverage immediately, while those eligible under an ACA Medicaid expansion category have to wait until January 1, 2014

²³¹ CMS, *Dear State Health Official & State Medicaid Director* (May 17, 2013) (Facilitating Medicaid and CHIP Enrollment and Renewal in 2014).

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

to gain coverage.²³³ 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.²³⁴

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 2014.²³⁵ 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 eligibility determination systems that protect beneficiaries.”²³⁶ Because the statute does not specify any public process requirements, HHS developed a streamlined approval process for states to request such waivers.

²³³ 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.

²³⁴ 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>.

²³⁵ 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).

²³⁶ 42 U.S.C. § 1396a(e)(14)(A).

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 eligibility after becoming ineligible due to an increase in employment hours, earned income or child/spousal support payments. Current law requires 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, though many states have taken up the option to extend coverage to 12 months or even longer.

The structure of TMA will change with the transition to MAGI. First, MAGI will no longer include child support as countable income, so that pathway for receiving TMA will no longer apply. Furthermore, the statute authorizing extended TMA, 42 U.S.C. § 1396r-6, sunsets at the end of 2013.²³⁷ If Congress fails to extend it, a different section, 42 U.S.C. § 1396a(e)(1)(A), will control and it requires only four months of transitional coverage. CMS has not clarified whether all or some subset of individuals who lose their eligibility due to the transition to MAGI-based methodologies will qualify for TMA.

²³⁷ 42 U.S.C. § 1396r-6(f).

VIII. 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. 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.²³⁸

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.²³⁹ Paper documentation is to be used as a last resort.

²³⁸ 45 C.F.R. § 155.405.

²³⁹ 45 C.F.R. § 155.320.

IX. 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)²⁴⁰ • 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

²⁴⁰ “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)	Persons eligible under state plan or waiver where state does not conduct an income determination Examples: <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)	People who qualify for state plan or waiver program on the basis of disability regardless of SSI; Example: <ul style="list-style-type: none"> • Medicaid recipients in 209(b) states that do not rely on SSI determinations when determining eligibility Individuals who would be eligible for SSI (and thus Medicaid) if they were not institutionalized. Example: <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>
SSI recipients	§ 1396a(a)(1)(A)(i)(II)
Individuals aging out of foster care (new ACA mandatory category)	§ 1396a(a)(10)(A)(i)(IX)

Populations and Eligibility Categories Where MAGI Does Not Apply	
Eligibility category	Medicaid Act citation: 42 U.S.C.
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 (QMBs, SLMBs 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. IRS Form 1040

For the year Jan. 1–Dec. 31, 2013, or other tax year beginning _____, 2013, ending _____, 20 _____ See separate instructions.

Your first name and initial _____ Last name _____ Your social security number _____

If a joint return, spouse's first name and initial _____ Last name _____ Spouse's social security number _____

Home address (number and street). If you have a P.O. box, see instructions. _____ Apt. no. _____ **▲** Make sure the SSN(s) above and on line 6c are correct.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions). _____ **Presidential Election Campaign**

Foreign country name _____ Foreign province/state/county _____ Foreign postal code _____ Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. You Spouse

Filing Status 1 Single 4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. **2** Married filing jointly (even if only one had income) **3** Married filing separately. Enter spouse's SSN above and full name here. **5** Qualifying widow(er) with dependent child

Exemptions 6a Yourself. If someone can claim you as a dependent, do not check box 6a. 6b Spouse. **Boxes checked on 6a and 6b** _____ **No. of children on 6c who:** • lived with you _____ • did not live with you due to divorce or separation (see instructions) _____ **Dependents on 6c not entered above** _____ **Add numbers on lines above**

c Dependents:		(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if child under age 17 qualifying for child tax credit (see instructions)
(1) First name	Last name			
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

If more than four dependents, see instructions and check here

d Total number of exemptions claimed _____

Income 7 Wages, salaries, tips, etc. Attach Form(s) W-2 7 _____ 8a Taxable interest. Attach Schedule B if required 8a _____ b Tax-exempt interest. Do not include on line 8a 8b _____ 9a Ordinary dividends. Attach Schedule B if required 9a _____ b Qualified dividends 9b _____ 10 Taxable refunds, credits, or offsets of state and local income taxes 10 _____ 11 Alimony received 11 _____ 12 Business income or (loss). Attach Schedule C or C-EZ 12 _____ 13 Capital gain or (loss). Attach Schedule D if required. If not required, check here 13 _____ 14 Other gains or (losses). Attach Form 4797 14 _____ 15a IRA distributions 15a _____ b Taxable amount 15b _____ 16a Pensions and annuities 16a _____ b Taxable amount 16b _____ 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E 17 _____ 18 Farm income or (loss). Attach Schedule F 18 _____ 19 Unemployment compensation 19 _____ 20a Social security benefits 20a _____ b Taxable amount 20b _____ 21 Other income. List type and amount _____ 21 _____ 22 Combine the amounts in the far right column for lines 7 through 21. This is your total income **▶** 22 _____

Adjusted Gross Income 23 Educator expenses 23 _____ 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ 24 _____ 25 Health savings account deduction. Attach Form 8889 25 _____ 26 Moving expenses. Attach Form 3903 26 _____ 27 Deductible part of self-employment tax. Attach Schedule SE 27 _____ 28 Self-employed SEP, SIMPLE, and qualified plans 28 _____ 29 Self-employed health insurance deduction 29 _____ 30 Penalty on early withdrawal of savings 30 _____ 31a Alimony paid b Recipient's SSN **▶** 31a _____ 32 IRA deduction 32 _____ 33 Student loan interest deduction 33 _____ 34 Tuition and fees. Attach Form 8917 34 _____ 35 Domestic production activities deduction. Attach Form 8903 35 _____ 36 Add lines 23 through 35 36 _____ 37 Subtract line 36 from line 22. This is your adjusted gross income **▶** 37 _____

Tax and Credits

38 Amount from line 37 (adjusted gross income) 38
39a Check [] You were born before January 2, 1949, [] Blind. Total boxes checked 39a []
[] Spouse was born before January 2, 1949, [] Blind.

Standard Deduction for -

• People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions.
• All others: Single or Married filing separately, \$6,100 Married filing jointly or Qualifying widow(er), \$12,200 Head of household, \$8,950

b If your spouse itemizes on a separate return or you were a dual-status alien, check here 39b []

40 Itemized deductions (from Schedule A) or your standard deduction (see left margin) 40

41 Subtract line 40 from line 38 41

42 Exemptions. If line 38 is \$150,000 or less, multiply \$3,900 by the number on line 6d. Otherwise, see instructions 42

43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- 43

44 Tax (see instructions). Check if any from: a [] Form(s) 8814 b [] Form 4972 c [] 44

45 Alternative minimum tax (see instructions). Attach Form 6251 45

46 Add lines 44 and 45 46

47 Foreign tax credit. Attach Form 1116 if required 47

48 Credit for child and dependent care expenses. Attach Form 2441 48

49 Education credits from Form 8863, line 19 49

50 Retirement savings contributions credit. Attach Form 8880 50

51 Child tax credit. Attach Schedule 8812, if required 51

52 Residential energy credits. Attach Form 5695 52

53 Other credits from Form: a [] 3800 b [] 8801 c [] 53

54 Add lines 47 through 53. These are your total credits 54

55 Subtract line 54 from line 46. If line 54 is more than line 46, enter -0- 55

Other Taxes

56 Self-employment tax. Attach Schedule SE 56

57 Unreported social security and Medicare tax from Form: a [] 4137 b [] 8919 57

58 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required 58

59a Household employment taxes from Schedule H 59a

b First-time homebuyer credit repayment. Attach Form 5405 if required 59b

60 Taxes from: a [] Form 8959 b [] Form 8960 c [] Instructions; enter code(s) 60

61 Add lines 55 through 60. This is your total tax 61

Payments

If you have a qualifying child, attach Schedule EIC.

62 Federal income tax withheld from Forms W-2 and 1099 62

63 2013 estimated tax payments and amount applied from 2012 return 63

64a Earned income credit (EIC) 64a

b Nontaxable combat pay election 64b

65 Additional child tax credit. Attach Schedule 8812 65

66 American opportunity credit from Form 8863, line 8 66

67 Reserved 67

68 Amount paid with request for extension to file 68

69 Excess social security and tier 1 RRTA tax withheld 69

70 Credit for federal tax on fuels. Attach Form 4136 70

71 Credits from Form: a [] 2439 b [] Reserved c [] 8885 d [] 71

72 Add lines 62, 63, 64a, and 65 through 71. These are your total payments 72

Refund

73 If line 72 is more than line 61, subtract line 61 from line 72. This is the amount you overpaid 73

74a Amount of line 73 you want refunded to you. If Form 8888 is attached, check here 74a

Direct deposit? See instructions.

b Routing number c Type: [] Checking [] Savings

d Account number

75 Amount of line 73 you want applied to your 2014 estimated tax 75

Amount You Owe

76 Amount you owe. Subtract line 72 from line 61. For details on how to pay, see instructions 76

77 Estimated tax penalty (see instructions) 77

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? [] Yes. Complete below. [] No

Designee's name Phone no. Personal identification number (PIN)

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See instructions. Keep a copy for your records.

Your signature Date Your occupation Daytime phone number
Spouse's signature. If a joint return, both must sign. Date Spouse's occupation If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

Paid Preparer Use Only

Print/Type preparer's name Preparer's signature Date Check [] if self-employed PTIN
Firm's name Firm's EIN
Firm's address Phone no.

Appendix E. 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

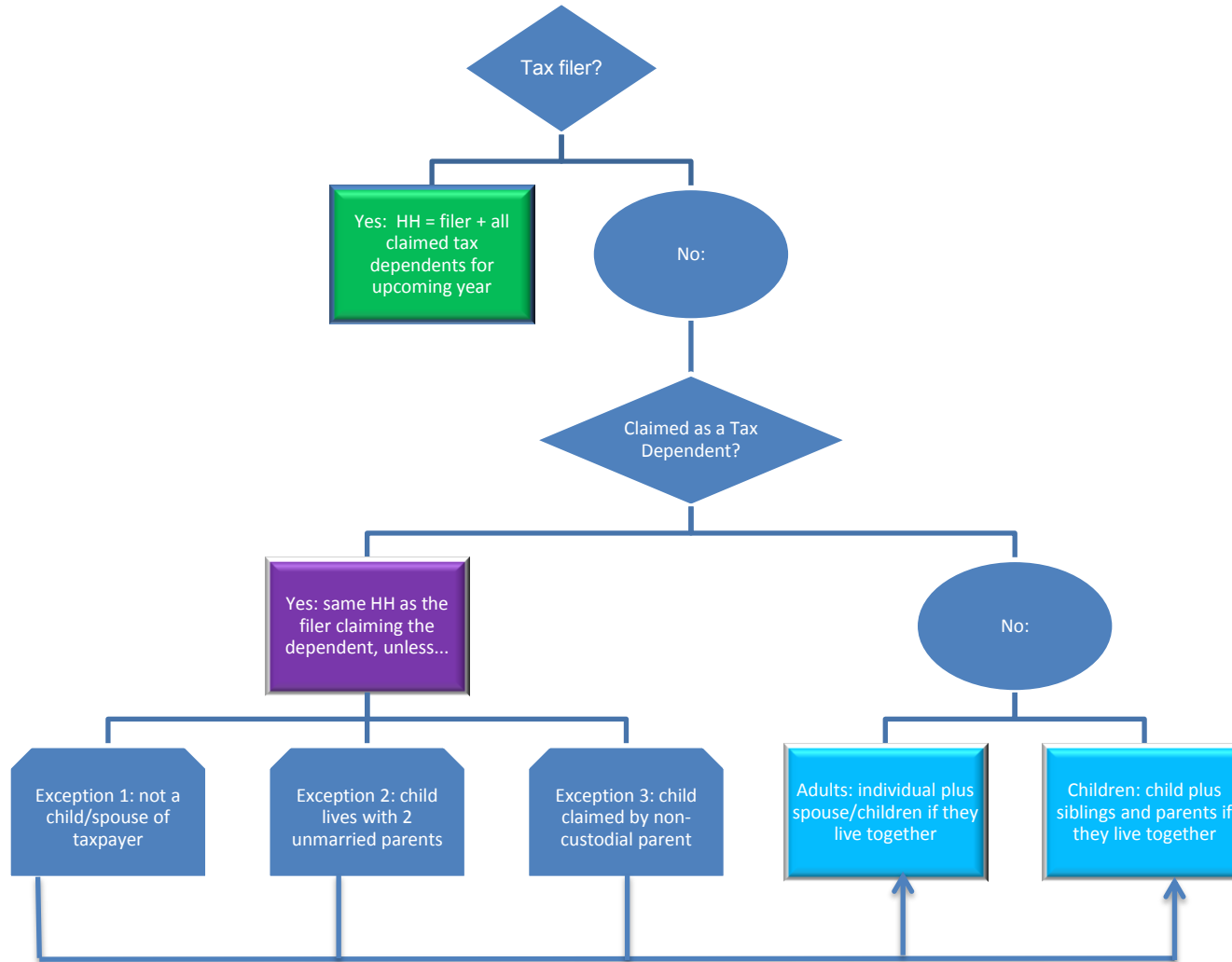
Individual seeking an eligibility determination	Household	Regulation citation: 42 C.F.R.
<p>Exception B: A child who is under the age specified by the state, and who lives with both parents, but where only one parent claims the child as a tax dependent. Use the rules for non-filers.</p>	<p>The child's 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>
<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>

Appendix F. Household Composition Quick Reference

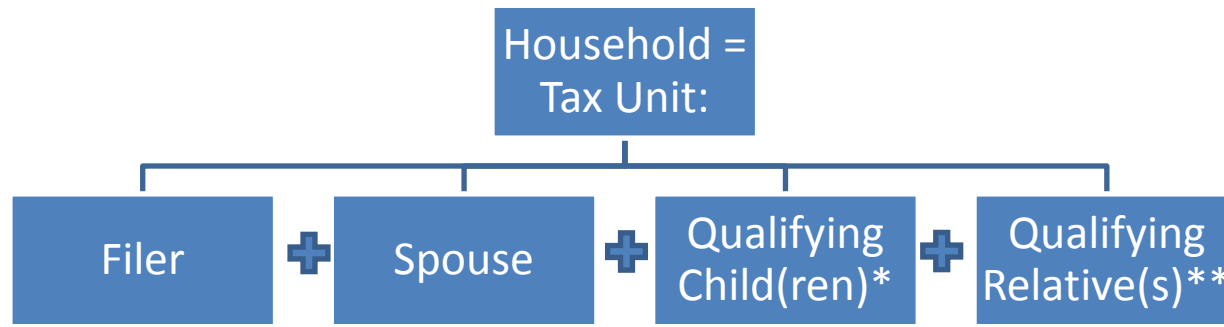
MAGI Household Composition

1. Marketplace Household	2. Medicaid household	3. Rules for non-filers/non-dependents <i>(also applies to dependent relatives and child claimed by one parent)</i>
<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 APTCs/CSRs • Same sex marriages are recognized • 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"> ▪ They are in the same Medicaid household if they live together 5. Same sex marriages <ul style="list-style-type: none"> ➢ Medicaid programs can decide whether to recognize them 6. Pregnant women <ul style="list-style-type: none"> ▪ Counted as one plus the number of babies expected when she seeks an eligibility determination ▪ At state option, counted as one, two, or one plus the number of babies when she is in the household of someone else 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 means under 19, or under 21 for full time students (at state option); this applies to the child's siblings too. A child can be natural/biological, adopted, or step child.</p>

Quick Reference Guide for



Household Size for APTC



* US citizen or resident of US, Canada, or Mexico; lives with filer for more than half the year; under 19 at end of year or under 24 if a student; child doesn't provide more than half of her own support

** US citizen or resident of US, Canada, or Mexico; filer provides more than half of her support; must be related to the filer OR live in the home all year; earned less than \$3,900 in 2013 (generally excludes Social Security)

Quick Comparison: Household Counting Rules

Medicaid

HH is not always
tax unit

HH size may vary
across family
members

State options in
defining children,
pregnant women

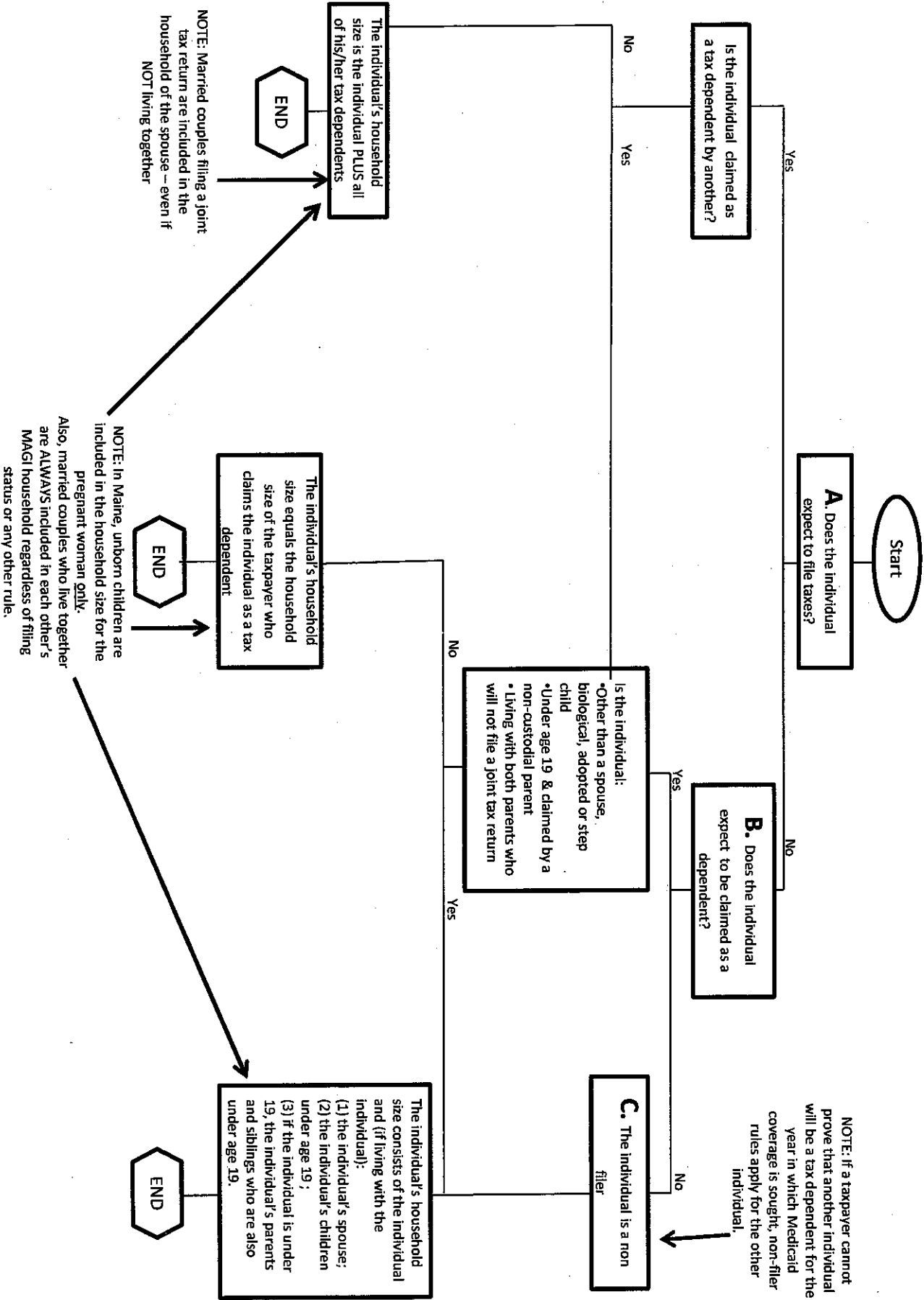
APTC

HH equals tax
unit

Members of tax
unit have same
HH size

Consistent rules
across states

Determining MAGI Household Size



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 to 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?

NHeLP

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