

MARYLAND REGISTER

## Proposed Action on Regulations

### Comparison to Federal Standards Submission and Response

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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

**COMAR Codification:** 10.09.24.05-4

**Corresponding Federal Standard:**

42 CFR 435.541

**Discussion/Justification:**

The proposed action is not more restrictive or stringent than the corresponding federal standard since the proposal is consistent with existing federal requirements.

### TO BE COMPLETED BY DBED

-Agree

-Disagree

**Comments:**

Name:

Date:

-Submit to Governor's Office

**Governor's Office Response**

**Comments:**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 4/29/2016**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 09 24 05-4

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator**

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**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: October 28, 2015.

Repeal of Existing Regulations

Recodification



## **10.09.24 Medical Assistance Eligibility**

Authority: Health-General Article, §§2-104(b), Annotated Code of Maryland

### **Notice of Proposed Action**

□

The Secretary of Health and Mental Hygiene proposes to amend Regulation .05-4 under COMAR 10.09.24 Medical Assistance Eligibility.

### **Statement of Purpose**

The purpose of this action is to provide clearer language for existing regulations regarding Medicaid eligibility disability decisions so that state regulations are consistent with existing federal regulations.

### **Comparison to Federal Standards**

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

### **Estimate of Economic Impact**

The proposed action has no economic impact.

### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to [dhmh.regs@maryland.gov](mailto:dhmh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through May 30, 2016. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2016

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

The proposed regulations have no economic impact under Part A because the proposed action is consistent with current Medicaid eligibility policy and procedures and provides clarification on existing policy.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

See E.

G. Small Business Worksheet:

Attached Document:

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## Title 10

# DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 09 MEDICAL CARE PROGRAMS

#### 10.09.24 Medical Assistance Eligibility

Authority: Health-General Article, §§2-104(b), Annotated Code of Maryland

*10.09.24.05-4 (10/13/15)*

##### **.05-4 [MAGI Exempt and other] Nonfinancial Criteria for MAGI Exempt Coverage Groups.**

A. (text unchanged)

B. Disability.

(1) (text unchanged)

(2) Procedure for Determination of Disability.

(a)—(b) (text unchanged)

(c) A Family Investment Administration review team shall review the medical report and other evidence obtained under [§C(2)(b)] §B(2)(b) of this regulation and determine whether the individual's condition meets the definition of disability. The review team shall be composed of a medical or psychological consultant, and another individual who is qualified to interpret and evaluate medical reports and other evidence relating to the individual's physical or mental impairments and, as necessary, to determine the capacities of the individual to perform substantial gainful activity as specified in 20 CFR Part 416, Subpart J.

(3) *Disability Determination made by the Social Security Administration.*

[(3)] (a) (text unchanged)

[(4)] (b) A determination by the Social Security Administration is binding on the Family Investment Administration until it is changed by the Social Security Administration. If the Social Security Administration determination is changed, the new determination is [also] binding on the Family Investment Administration.

[(5)] (c) The [local department of social services] *Department or its designee* shall refer to the Social Security Administration for reconsideration or reopening of the determination all applicants who allege new information or evidence affecting previous Social Security Administration determinations of ineligibility based on disability, *except as specified in §B(4)(d)(i) of this regulation.*

[(6)] (4) Disability Determination made by the [FIA] *Family Investment Administration*. The Family Investment Administration shall make a determination of disability if any of the following circumstances exists:

(a)—(b) (text unchanged)

(c) The individual has applied for both Medical Assistance and SSI benefits, and the Social Security Administration has not made a [Supplemental Security Income] *SSI* determination within 90 days from the date of the individual's application for Medical Assistance;

(d) The individual has applied for Medical Assistance and [alleges]:

(i) [A] *Alleges* a disabling condition different from, or in addition to, that considered by the Social Security Administration in making its determinations; *or*

(ii) [Not] *Alleges* more than 12 months after the most recent determination by the Social Security Administration denying disability[,] that the individual's condition has changed or deteriorated since that determination[,] and alleges a new period of disability[, which] *that* meets the durational requirements for disability, and has not applied to the Social Security Administration for a determination with respect to those allegations; *or*

(iii) [Less] *Alleges less* than 12 months after the most recent determination by the Social Security Administration denying disability[,] that the individual's condition has changed or deteriorated[,] *and* alleges a new period of disability [which] *that* meets the durational requirements for disability, and has applied to the Social Security Administration for reconsideration or reopening of its disability decision but the Social Security Administration has refused to consider the new allegations; *or*

[(e)] The individual has applied for Medical Assistance, and:

(i) (iv) *Alleges less* than 12 months after the most recent determination by the Social Security Administration denying disability that the individual's condition has changed or deteriorated[;] *and*

[(ii) *Alleges*] *alleges* a new period of disability [which] *that* meets the durational requirements for disability[;] *and*

[(iii) No] *no* longer meets the nondisability requirements for [Supplemental Security Income] *SSI*, but may meet the State's nondisability requirements for Medical Assistance eligibility.

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**