

# Implementation Guide:

## Medicaid State Plan Eligibility

### Less Restrictive Resource Methodologies under 1902(r)(2)

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#### Table of Contents

POLICY CITATION .....	2
BACKGROUND .....	2
INSTRUCTIONS.....	6
REVIEW CRITERIA .....	9

## Less Restrictive Resource Methodologies Under 1902(r)(2)

### POLICY CITATION

**Statute:** 1902(r)(2)

**Regulation:** 42 C.F.R. §§435.601 and 436.601

### BACKGROUND

#### Overview

This screen is used by states to provide information about their use of less restrictive resource methodologies under section 1902(r)(2) of the Social Security Act (the Act). It is displayed within an individual eligibility group RU when the option is selected to use less restrictive resource methodologies for that group under section 1902(r)(2) of the Act. A separate screen, **Less Restrictive Income Methodologies Under 1902(r)(2)**, is used to provide information about the use of less restrictive income methodologies for a specific eligibility group.

Section 1902(r)(2) of the Act, as implemented at 42 C.F.R. §§435.601(d) and 436.601(d) of the federal regulations, allows states to apply less restrictive resource methodologies than those of the supplemental security income (SSI) or AFDC programs (or the relevant territory-specific cash assistance program described under titles I, X, XIV, and XVI, and original XVI of the Act) when determining eligibility for specific Medicaid eligibility groups or for specific populations covered by an eligibility group. This means that states can elect to disregard certain amounts or types of resources that the SSI or AFDC programs would count when determining eligibility. Some eligibility groups have specific limitations related to the use of less restrictive methodologies established under section 1902(r)(2) authority; any group-specific limitations are described in the implementation guide for that eligibility group.

#### General Disregards of Resources

Using section 1902(r)(2) authority, states may elect to disregard all or a certain portion of household resources that would otherwise be counted when determining eligibility. If all resources are disregarded, the eligibility group (or population within an eligibility group) will effectively have no resource test. When disregarding a specific portion of resources, the state may elect to disregard a specific dollar amount (such as \$100) in excess of the resource standard.

Additionally, states may elect to disregard resources from certain household members. Section 1902(a)(17), as implemented at 42 C.F.R. §435.602, describes the deeming requirements for eligibility in a non-MAGI group and prohibits the deeming of resources from any individual other than a spouse or parent to a Medicaid applicant or beneficiary.

However, states may utilize section 1902(r)(2) authority to disregard the resources of an individual's spouse or parent, which would otherwise be counted under the requirements of 42 C.F.R. §435.602.

### **Disregards of Specific Types of Resources**

States may choose to disregard specific types of resources using section 1902(r)(2) authority. Some resources are already excluded under the SSI methodology, such as the individual's principal place of residence and one vehicle used for transportation. In these cases, section 1902(r)(2) authority could be used to expand the SSI disregards to include other property owned by the individual or a second motor vehicle used for employment. States may also choose to establish new resource disregards. For example, a state may disregard interest or dividends that would otherwise be countable as resources under the SSI methodology.

### **Disregard of Resources Based on Long Term Care Partnership Insurance Payments**

States may establish a disregard of resources equal to the coverage provided by a long-term care insurance policy that meets the requirements of the state's Long-Term Care Insurance Partnership program (Partnership program). When elected, resource disregards are made on a dollar-for-dollar basis, based on how much a Partnership program-approved policy has paid in benefits on behalf of the individual. For example, if a Partnership-approved long-term care insurance policy has paid \$100,000 in benefits on behalf of the individual, the state will disregard the individual's resources up to \$100,000 when determining his or her eligibility for Medicaid. (This amount will also be excluded from the individual's estate under the Medicaid estate recovery provisions.)

The Medicaid statute sets forth extensive rules for what constitutes an approved Partnership program in a state, and what constitutes a Partnership-approved long-term care insurance policy. In electing to disregard resources under this option, a state is agreeing that the following requirements are met:

- The policy is a qualified long-term care insurance policy as defined in section 7702(B)(b) of the Internal Revenue Code of 1986.
- The policy meets the requirements of the long-term care insurance model regulation and long-term care insurance model Act, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000) as those requirements are set forth in section 1917(b)(5)(A) of the Social Security Act.
- The policy was issued no earlier than the effective date of this state plan amendment.
- The insured individual was a resident of a Partnership state when coverage first became effective under the policy. If the policy is later exchanged for a different long-term care policy, the individual was a resident of a Partnership state when coverage under the earliest policy became effective.

- The policy meets the inflation protection requirements set forth in section 1917(b)(1)(C)(iii)(IV) of the Social Security Act.
- The Commissioner requires the issuer of the policy to make regular reports to the Secretary that include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.
- The state does not impose any requirement affecting the terms or benefits of the partnership policy that the state does not also impose on non-partnership policies.
- The state Insurance Department assures that any individual who sells a partnership policy receives training, and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.

### **Targeting of income disregards**

As described in the Non-MAGI Based Methodologies implementation guide, states may apply different income and resource disregards to different eligibility groups and to different populations covered within an eligibility group. However, within each eligibility group, the less restrictive methodologies must be comparable for all persons within a population (e.g., people who are 65 years old and older, people who have blindness or a disability, pregnant women, and children). For example, for an eligibility group which may serve the populations of people who are 65 years old and older and people with disabilities, a state may apply an income or resource disregard exclusively to people 65 years old and older in the eligibility group. But the state may not target the disregard exclusively to select members of the 65-and-older population (based on, for example, living arrangement or diagnosis).

Section 1902(a)(10)(A)(ii) permits states to establish reasonable classifications of children within optional eligibility groups (including the medically needy), and states may include multiple reasonable classifications within a single eligibility group. If a state does include multiple reasonable classifications of children in a single eligibility group, it may target a disregard at one reasonable classification to the exclusion of another, but it could not target the disregard at select members of a particular reasonable classification.

Additionally, states cannot apply less restrictive methodologies differently for Medicaid applicants and Medicaid recipients. Disregards authorized under section 1902(r)(2) also may not be applied to income in the post-eligibility treatment of income (PETI) process. PETI is a calculation made after eligibility is determined, and is separate from determining eligibility.

The less restrictive methodologies (specific income and resource disregards) applied to a particular eligibility group are selected and described on the eligibility group RU. Any limitations on the use of less restrictive methodologies, which are specific to a particular

eligibility group, are discussed in the implementation guide pertaining to that eligibility group RU.

## INSTRUCTIONS

Certain eligibility groups have the following **Yes/No** statement: “Less restrictive methodologies are used in calculating countable income.” If **Yes** is selected, the eligibility group RU presents an **Add/Modify Less Restrictive Methodologies** button. Clicking the button displays a selection screen that offers three options:

1. *Start with an existing set of less restrictive methodologies to use as is,*
2. *Start with an existing set of less restrictive methodologies to modify, or*
3. *Start with a blank form to enter less restrictive methodologies.*

If you select either option 2 or option 3, and click the **Describe New Methodology** button, this screen will appear for you to enter or modify a set of methodologies to be used in the eligibility group RU.

You may select one or more of the less restrictive income methodologies presented. The options are divided into different categories for ease of use. Please note that the category headings will not display in the eligibility group RU. Instructions specific to each available option are described below.

*Screen Validation:* At least one option in the screen must be selected.

### **General Disregards of Resource**

- If **A dollar amount of resources in excess of the resource standard is disregarded** is selected, enter the amount of resources disregarded in the text box provided.
- If **Resources from household members are disregarded** is selected, choose one or both of the two options presented.
  - If either option is selected, enter a description of the option in the text box provided.
- If **General resource disregard** is selected, provide additional information as follows:
  - Enter the name of the general resource disregard in the text box provided.
  - Enter a description of the general resource disregard in the text box provided.
  - To add additional disregards, select the **Add Disregard Name** link and repeat the above steps.
  - To delete a general resource disregard, click the **Delete** link below the disregard’s name and description.

### **Disregard of Specific Types of Resources**

- If ***Real property not otherwise excluded is disregarded*** is selected, enter a description in the text box provided.
- If ***The state uses a less restrictive methodology with respect to resources set aside for burial*** is selected, choose one or both of the two options presented.
  - If ***A higher amount is disregarded*** is selected, enter the dollar amount of the disregard in the text box provided.
  - If ***Specified methodology for the treatment of resources set aside for burial*** is selected, provide additional information as follows:
    - Enter the name of the specified methodology in the text box provided.
    - Enter a description of the specified methodology in the text box provided.
    - To add additional specified methodologies, select the ***Add Methodology Name*** link and repeat the above steps.
    - To delete a specified methodology, click the ***Delete*** link below the methodology's name and description.
- If ***The value of a countable life insurance policy is disregarded*** is selected, enter a description in the text box provided.
- If ***The state uses a less restrictive methodology with respect to the treatment of motor vehicles*** is selected, select one or more of the three options presented.
  - If ***The value of a countable motor vehicle is totally disregarded, without limits or conditions*** is selected, choose one of the two options presented to indicate how many motor vehicles are disregarded.
  - If ***The value of a countable motor vehicle is disregarded, up to a limit*** is selected, enter the amount and a description of the disregard in the text boxes provided.
  - If ***A motor vehicle is disregarded under specific conditions*** is selected, choose one or both of the options presented to identify the conditions.
    - If ***Specified conditions*** is selected, enter a description of the specified condition in the text box provided.
- If ***The state uses a less restrictive methodology with respect to the treatment of otherwise countable refunds*** is selected, choose one or more of the four options presented.
  - If ***State tax refunds*** is selected, enter a description of the methodology in the text box provided.
  - If ***Federal tax refund*** is selected, enter a description of the methodology in the text box provided.
  - If ***Refunds of benefit payments*** is selected, enter a description of the methodology in the text box provided.
  - If ***Specified refunds*** is selected, provide additional information as follows:
    - Enter the name of the refund in the text box provided.

- Enter a description of the refund in the text box provided.
  - To add an additional refund, select the **Add Refund Name** link and repeat the above steps.
  - To delete a refund, click the **Delete** link below the refund's name and description.
- If *The state uses a less restrictive methodology with respect to the treatment of resources set aside in specified types of accounts* is selected, choose one or more of the four options provided.
  - If *Resources set aside for retirement* is selected, choose one or both of the two options presented to identify the type of account.
    - For each option selected, enter a description of the account in the text box provided.
  - If *Resources set aside in an Assets for Independence Act (IDA) account* is selected, enter a description in the text box provided.
  - If *Resources set aside in Independence/Freedom accounts* is selected, enter a description in the text box provided.
  - If *Specified types of accounts* is selected, provide additional information as follows:
    - Enter the name of the account in the text box provided.
    - Enter a description of the account in the text box provided.
    - To add an additional account, select the **Add Account Name** link and repeat the above steps.
    - To delete an account, click the **Delete** link below the account type's name and description.
- If *Dividends are disregarded as a resource* is selected, enter a description in the text box provided.
- If *Interest is disregarded as a resource* is selected, enter a description in the text box provided.
- If *Household goods and services are disregarded as a resource* is selected, enter a description in the text box provided.
- If *Oil, mineral or timber rights are disregarded as a resource* is selected, enter a description in the text box provided.
- If *Lump sums are disregarded as a resource* is selected, select one or both of the two options presented.
  - If *Specified type of lump sum* is selected, provide additional information as follows:
    - Enter the name of the lump sum type in the text box provided.
    - Enter a description of the lump sum type in the text box provided.
    - To add an additional lump sum type, select the **Add Lump Sum Name** link and repeat the above steps.

- To delete a lump sum type, click the **Delete** link below the lump sum type's name and description.
- If *A specified type of resource is disregarded* is selected, provide additional information as follows:
  - Enter the name of the resource type in the text box provided.
  - Enter a description of the resource type in the text box provided.
  - To add an additional resource type, select the *Add Resource Name* link and repeat the above steps.
  - To delete a resource type, click the **Delete** link below the resource type's name and description.

### **Long Term Care Partnership Resource Disregards**

If selected, there is a statement that a beneficiary of a qualified state long-term care insurance partnership policy receives a resource disregard equal to the amount of the insurance benefit payments made.

### **Other Less Restrictive Methodologies**

If *The following less restrictive methodologies are used* is selected, provide additional information as follows:

- Enter the name of the methodology in the text box provided.
- Enter a description of the methodology in the text box provided.
- To add an additional methodology, select the *Add Methodology Name* link and repeat the above steps.
- To delete a methodology, click the **Delete** link below the methodology's name and description.

## **REVIEW CRITERIA**

*The less restrictive methodologies entered must be sufficiently clear, detailed and complete to permit the reviewer to determine that the state's description meets applicable federal statutory, regulatory and policy requirements.*

*The selections entered must not conflict with one another. For example, if "All income is disregarded" is selected, "A specified amount of income is disregarded" may not also be selected.*