

12VAC30-30-20. Optional groups other than the medically needy.

The Title IV A agency determines eligibility for Title XIX services.

1. Caretakers and pregnant women who meet the income and resource requirements of AFDC but who do not receive cash assistance.
2. Individuals who would be eligible for AFDC, SSI or an optional state supplement as specified in 42 CFR 435.230, if they were not in a medical institution.
3. A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a NF or an ICF/MR, who but for the provision of home and community-based services under a waiver granted under 42 CFR Part 441, Subpart G would require institutionalization, and who will receive home and community-based services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the state's §1915(c) waiver under which this group(s) is covered. In the event an existing §1915(c) waiver is amended to cover this group(s), this option is effective on the effective date of the amendment.
4. Individuals who would be eligible for Medicaid under the plan if they were in a medical institution, who are terminally ill, and who receive hospice care in accordance with a voluntary election described in §1905(o) of the Act.
5. The state does not cover all individuals who are not described in §1902(a)(10)(A)(i) of the Act, who meet the income and resource requirements of the AFDC state plan and who

are under the age of 21. The state does cover reasonable classifications of these individuals as follows:

a. Individuals for whom public agencies are assuming full or partial financial responsibility and who are:

(1) In foster homes (and are under the age of 21).

(2) In private institutions (and are under the age of 21).

(3) In addition to the group under subdivisions 5 a (1) and (2) of this section, individuals placed in foster homes or private institutions by private nonprofit agencies (and are under the age of 21).

b. Individuals in adoptions subsidized in full or part by a public agency (who are under the age of 21).

c. Individuals in NFs (who are under the age of 21). NF services are provided under this plan.

d. In addition to the group under subdivision 5 c of this section, individuals in ICFs/MR (who are under the age of 21).

6. A child for whom there is in effect a state adoption assistance agreement (other than under Title IV-E of the Act), who, as determined by the state adoption agency, cannot be

placed for adoption without medical assistance because the child has special care needs for medical or rehabilitative care, and who before execution of the agreement:

- a. Was eligible for Medicaid under the state's approved Medicaid plan; or
- b. Would have been eligible for Medicaid if the standards and methodologies of the Title IV-E foster care program were applied rather than the AFDC standards and methodologies.

The state covers individuals under the age of 21.

7. Section 1902(f) states and SSI criteria states without agreements under §§1616 and 1634 of the Act.

The following groups of individuals who receive a state supplementary payment under an approved optional state supplementary payment program that meets the following conditions. The supplement is:

- a. Based on need and paid in cash on a regular basis.
- b. Equal to the difference between the individual's countable income and the income standard used to determine eligibility for the supplement.
- c. Available to all individuals in each classification and available on a statewide basis.
- d. Paid to one or more of the following classifications of individuals:

- (1) Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.
- (2) Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.
- (3) Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.
- (4) Individuals receiving a state administered optional state supplement that meets the conditions specified in 42 CFR 435.230.

The supplement varies in income standard by political subdivisions according to cost-of-living differences.

The standards for optional state supplementary payments are listed in 12VAC30-40-250.

8. Individuals who are in institutions for at least 30 consecutive days and who are eligible under a special income level. Eligibility begins on the first day of the 30-day period.

These individuals meet the income standards specified in 12VAC30-40-220.

The state covers all individuals as described above.

9. Individuals who are 65 years of age or older or who are disabled as determined under §1614(a)(3) of the Act, whose income does not exceed the income level specified in

12VAC30-40-220 for a family of the same size, and whose resources do not exceed the maximum amount allowed under SSI.

10. Individuals who may qualify for the Medicaid Buy-In program under 1902(a)(10)(A)(ii)(XV) of the Social Security Act (Ticket to Work Act), if they meet the requirements for the 80% eligibility group described in 12VAC30-40-220(D), as well as the requirements described in 12VAC30-40-105.

~~10~~ 11. Individuals required to enroll in cost-effective employer-based group health plans remain eligible for a minimum enrollment period of one month.

~~11~~ 12. Women who have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act in accordance with §1504 of the Act and need treatment for breast or cervical cancer, including a pre-cancerous condition of the breast or cervix. These women are not otherwise covered under creditable coverage, as defined in §2701(c) of the Public Health Services Act, are not eligible for Medicaid under any mandatory categorically needy eligibility group, and have not attained age 65.

**12VAC30-40-105. MEDICAID WORKS: Working individuals with disabilities
under the Ticket to Work and Work Incentive Improvement Act**

A. Working individuals with disabilities – Basic Coverage Group – Ticket to Work and
Work Incentive Improvement Act (Ticket Act) – Initial Eligibility.

1. In determining initial eligibility for working individuals with disabilities under this
provision, individuals must meet the following requirements in order to be eligible:

a. are disabled; for the purposes of this program, current participation in the
Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI)
program will satisfy the condition for disability. Any other prospective participant
without SSA documentation of disability will have to be evaluated by the Disability
Determination Services (DDS) unit at Department of Rehabilitative Services for this
determination of disability;

b. be employed or have documentation from an employer establishing the date when
employment will begin;

c. be at least 16 years of age and less than 65 years of age;

d. **Income Limit** -Individual's total countable income cannot exceed 80% of current
Federal Poverty Level guidelines.

e. **Resource Limit** - Individual's total countable assets cannot exceed \$2,000.

2. individuals who must spend down resources in order to qualify for Medicaid enrollment are not eligible for Medicaid Buy-In under 1902(a)(10)(A)(ii)(XV):

3. individuals who are an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility are not eligible for the Medicaid Buy-In program under 1902(a)(10)(A)(ii)(XV).

4. individuals who reside in a nursing facility or who are receiving services through a home and community-based care waiver program are not eligible for the Medicaid Buy-In program under 1902(a)(10)(A)(ii)(XV).

B. Working individuals with disabilities – Basic Coverage Group – Ticket to Work and Work Incentive Improvement Incentive Act (Ticket Act) – Continuing Eligibility.

1. In determining continuing eligibility for working individuals with disabilities under 1902(a)(10)(A)(ii)(XV), individuals must meet the following requirements in order to continue their eligibility:

a. continue to meet the disability, age and employment criteria described in section (A)(1) above; individuals who are unable to maintain employment due to illness or unavoidable job loss may remain in the program as unemployed for up to six months with the continued payment of monthly premiums, if required;

b. have enrollee countable earned income of no more than 200% FPL;

(1) the standard SSI methodology shall be used to determine "countable" income;

(2) the enrollee shall be treated as a “household of one” and spousal income shall be disregarded for ongoing enrollee eligibility;

c. In determining whether an individual meets the income standard described above, the agency uses more liberal income methodologies than the SSI program. More liberal income methodologies are described in 12VAC30-40-280.

d. have resources or assets up to the annual SSI “threshold amount” {Social Security Act, § 1619(b)} as established for Virginia by the Social Security Administration (SSA), if such resources or assets are accumulated solely from enrollee earnings after the individual is enrolled with Medicaid Buy-In under 1902(a)(10)(A)(ii)(XV);

e. The agency disregards funds in retirement accounts in a manner other than those described above. The agency’s resource disregards are specified in 12VAC30-40-290.

f. The agency uses resource methodologies in addition to any indicated above that are more liberal than those used by the SSI program. More liberal resource methodologies are described in 12VAC30-40-290.

2. Routine nominal co-payments for services will be required. A premium schedule shall be established on a sliding scale that is based on applicant or enrollee income and shall be periodically updated;

12VAC30-40-280. More liberal income disregards

A. For children covered under §§ 902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§1902(a)(10)(A)(ii)(VIII), (IX); §1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed \$5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the Federal Poverty Level (as revised annually in the Federal Register) is disregarded.

D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.

E. For all categorically needy and medically needy children covered under the family and children covered groups, (§§1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 who is a student.

F. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

G. Working individuals with disabilities eligible for assistance under

1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their earnings while maintaining eligibility for Medicaid must establish Work Incentive (WIN) Accounts (see 12VAC30-40-290). The Commonwealth shall disregard earned income up to 200% of the Federal Poverty Level for workers with disabilities eligible for assistance under

1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this earned income disregard, the income is subject to the following provisions:

a. Only earnings that are deposited into a Work Incentive Account can be disregarded for eligibility purposes.

b. All funds deposited and their source will be identified and registered with the Department, for which prior approval has been obtained from the Department, and for which the owner authorizes regular monitoring and/or reporting of these earnings and other information deemed necessary by the Department for the proper administration of this provision.

c. A spouse's income will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

12VAC30-40-290. More liberal methods of treating resources under §1902(r)(2) of the Act: §1902(f) states

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for individuals, disregarded from countable resources

is an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.

C. Life rights. Life rights to real property are not counted as a resource.

D. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

(1) It is listed at a price at current market value; and

(2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions;

poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

(1) Subject his property to a realtor's listing agreement at price or below current market value; or

(2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds \$1,500, the cash surrender value of the policies is counted as a resource.

G. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§1902(a)(10)(A)(ii)(VIII), (IX); §1902(a)(10)(C)(i)(III)). For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed \$5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-

sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

H. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(ii)(VIII), and 1905(n) of the Social Security Act.

I. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.

J. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.

K. Working individuals with disabilities eligible for assistance under 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their personal resources while

maintaining eligibility for Medicaid shall establish Work Incentive (WIN) Accounts. The Commonwealth will disregard up to the current annual SSI {Social Security Act, §1619(b)} threshold amount (as established for Virginia by the Social Security Administration) held in WIN Accounts for workers with disabilities eligible for assistance under 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this resource disregard, WIN Accounts are subject to the following provisions:

1. Deposits to this account shall derive solely from the individual's income earned after electing to enroll in the Medicaid Buy-In (MBI) program.
2. The balance of this account shall not exceed the current annual SSI {Social Security Act §1619(b)} threshold amount (as established for Virginia by the Social Security Administration).
3. This account will be held separate from non-exempt resources in accounts for which prior approval has been obtained from the Department, and for which the owner authorizes regular monitoring and/or reporting including deposits, withdrawals, and other information deemed necessary by the Department for the proper administration of this provision.
4. A spouse's resources will not be deemed to the applicant when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.
5. Resources accumulated in the Work Incentive Account shall be disregarded in determining eligibility for Aged, Blind and Disabled Medicaid covered groups for one year after the individual leaves the Medicaid buy-in program.

6. In addition, excluded from the resource and asset limit include amounts deposited in the following types of IRS-approved accounts established as WIN accounts: retirement accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts. Assets retained in these WIN accounts shall be disregarded for all future Medicaid eligibility determinations for Aged, Blind and Disabled Medicaid covered groups.