



May 21, 2020

Gretchen Bell
RI Executive Office of Health and Human Services
3 West Rd.
Virks Building
Cranston, RI 02920

Via Email To Gretchen.bell@ohhs.ri.gov

Dear Ms. Bell:

Thank you for the opportunity to provide these comments to the proposed revision to 210-RICR-30-00-5, MAGI Deductions – Medicaid MAGI Financial Eligibility Determinations and Verification. RIPIN proposes two revisions to the draft rule, which we believe will better align State regulation with Federal law:

- Clarify that the \$600/week federal supplemental Unemployment Insurance payment is disregarded in determining income for Medicaid purposes; and
- Adjust language implementing the 2017 Tax Cuts and Jobs Act's modification of the tax deduction of alimony payments.

Pandemic Unemployment Compensation

In the CARES Act, the federal government established a temporary \$600/week federal supplement to many Unemployment Insurance recipients' state-established UI income (termed "Federal Pandemic Unemployment Compensation"). The CARES Act also established that this supplemental payment shall be disregarded when determining income for Medicaid. *See CARES Act, H.R. 748, § 2104 (116th Congress, 2020).*

We would propose adding a new subsection 5.5(B)(1)(e)(4) to state that "any Federal Pandemic Unemployment Compensation provided during a federally-declared public health emergency is excluded from consideration as income."

Alimony Payments

In the Tax Cuts and Jobs Act of 2017, Congress repealed the section of the Internal Revenue Code which previously allowed payers of alimony to deduct the alimony amount paid from their taxable income, and counted alimony received as taxable income to the recipient. That repeal was made effective on any divorce or separation instrument executed after December 31, 2018, and for

any divorce or separation agreement executed on or before such date and modified thereafter if the modification *expressly provides* that the amendments apply.*

The proposed 210-RICR-30-00-5.5(B)(1)(f) does not precisely reflect that change. The proposed version would allow payers of alimony to (incorrectly) deduct alimony paid pursuant to divorce or separation agreements executed before January 1, 2019 even when those agreements expressly provide that the 2017 amendments apply. It would also allow alimony recipients to (incorrectly) deduct alimony received pursuant to divorce or separation agreements executed before January 1, 2019 and thereafter modified even when those modifications do not expressly indicate that the 2017 amendments apply. *See* I.R.S. Publication 504 (2019) for illustrations of scenarios where the deduction is and is not shifted.

RIPIN would propose the following changes to help State regulation conform with federal law:

- In the "Treatment of Income" column next to "Alimony paid," state "Alimony payments under separation or divorce agreements finalized *after* December 31, 2018 are not deductible by the payer. Alimony payments under separation or divorce agreement finalized *on or before* December 31, 2018 continue to be deductible by the payer except when such agreement is modified and when such modification expressly states that alimony is not deductible to the payer or includible in the income of the recipient."
- In the "Treatment of Income" column next to "Alimony received," state "Alimony payments under separation or divorce agreements finalized *after* December 31, 2018 are not included in the income of the recipient. Alimony payments under separation or divorce agreements finalized *on or before* December 31, 2018 continue to be included in the income of the recipient for the duration of the agreement except when such agreement is modified, when such modification expressly states that alimony is not deductible to the payer or includible in the income of the recipient."

We appreciate the opportunity to provide these comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/

Shamus Durac
Staff Attorney
(401) 270-0101 ext. 125

* *See* Tax Cuts and Jobs Act of 2017, H.R. 1, § 11051 (115th Congress, 2017); I.R.S. Publication 504 (2019).