

Table 1: Key Requirements and Options for Medicaid Presumptive Eligibility

Requirements and Options	Hospital Presumptive Eligibility	Regular Presumptive Eligibility
<p>Populations</p>	<p>States are required to establish a hospital PE program in which qualified hospitals make PE determinations for the following groups of people (if covered in the state):</p> <ul style="list-style-type: none"> • Children • Pregnant women • Parents and other caretaker relatives • Former foster care children • Affordable Care Act (ACA) New Adult Group (if covered) • Individuals above 133% of the federal poverty level (FPL) under age 65 (if covered) • Individuals needing treatment for breast or cervical cancer or eligible for family planning services (if covered) <p>States may add through a state plan amendment (SPA) any additional eligibility groups, including:</p> <ul style="list-style-type: none"> • Elderly (65 or older) • Blind/disabled • Medically needy • Those covered under a Section 1115 demonstration • Optional uninsured people who are newly eligible, for purposes of COVID-19 testing¹ <p>States may use the new Medicaid Disaster SPA to temporarily allow hospitals to conduct PE determinations for any of the optional populations above.</p>	<p>States may establish PE for some or all of the eligibility groups required to be included for hospital PE. <i>Note: States must provide PE for pregnant women or for children (or both) before establishing PE for any other eligibility group.</i></p> <p>States may add additional eligibility groups (individuals who are 65 or older, individuals with disabilities, medically needy individuals, individuals eligible for coverage through a Section 1115 demonstration, and the optional uninsured group for COVID-19 testing) but will need to request 1115 demonstration authority.</p> <p>At this time, the Medicaid Disaster SPA cannot be used to expand populations allowable through a SPA or to initially adopt regular PE.</p>
<p>Scope of Potential Applicants</p>	<p>Hospital PE is not limited to hospital patients. Hospitals can assist with PE determinations for family members and may also enroll eligible individuals from the broader community.²</p>	<p>Although CMS has not issued specific guidance on this point, PE does not appear to be limited to clients or patients of qualified entities.</p>
<p>Entities That May Conduct PE</p>	<p>A qualified hospital is a hospital that:</p> <ul style="list-style-type: none"> • Participates as a provider under the state plan or a Section 1115 demonstration; • Notifies the agency of its election to make PE determinations; 	<p>States have broad discretion to identify qualified entities. A qualified entity is an entity determined by the state to be capable of making PE determinations based on an individual’s household income and other requirements.</p>

¹ See Families First Coronavirus Response Act, H.R. 6201, Pub. L. 116-127 (2020).

² See CMS, Medicaid and CHIP FAQs: Implementing Hospital Presumptive Eligibility Programs (Jan. 2014), <https://www.medicare.gov/state-resource-center/faq-medicare-and-chip-affordable-care-act-implementation/downloads/faqs-by-topic-hospital-pe-01-23-14.pdf> (“CMS Hospital PE FAQs”).

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	<ul style="list-style-type: none"> • Agrees to make PE determinations consistent with state policies and procedures; and • Has not been disqualified by the Medicaid agency for failure to make PE determinations in accordance with applicable state policies and procedures, or to meet standards established by the Medicaid agency. <p>States may require qualified hospitals to assist individuals who want to submit a full application. If the state elects this option, a qualified hospital would need to make assistance available for completing and submitting a full application and for understanding any documentation requirements. States may also establish reasonable performance standards for qualified hospitals that elect to make PE determinations. States may use the new Medicaid Disaster SPA to temporarily adjust these performance standards.</p> <p>Qualified hospitals determining PE must be appropriately trained on the state’s PE screening process and requirements for PE.</p>	<p>Qualified entities can include state and local health departments as well as healthcare providers, schools, community-based organizations, agencies that determine eligibility for other health or social services programs, jails, and entities of the courts.³ States may add entities through a SPA without limitation, as long as the federal government approves and the entity is properly trained.</p> <p>States may use the new Medicaid Disaster SPA to designate new qualified entities—including the state Medicaid agency itself—on a temporary basis. A state may indicate whether a designated entity is permitted to make PE determinations only for specified populations. At this time, the Medicaid Disaster SPA cannot be used to opt in to regular PE.</p> <p>As with hospital PE, qualified entities must be appropriately trained on the state’s PE screening process and requirements for PE.</p>
Third-Party Contracting	Hospitals can contract with third parties to carry out PE activities as long as a qualified hospital retains the authority to determine presumptive eligibility. ⁴	CMS does not appear to have addressed this issue specifically for regular PE, but the reasoning underlying CMS’s guidance on hospital PE likely applies.
Off-site Activities	There is no restriction on conducting PE activities off-site, as long as a qualified hospital does not delegate its authority for the PE determination. CMS guidance suggests that off-site PE activities are permitted. ⁵	CMS does not appear to have addressed this issue specifically for regular PE, but the reasoning underlying CMS’s guidance on hospital PE likely applies.

³ See Medicaid and CHIP (MAC) Learning Collaboratives, Inventory of Medicaid and CHIP Flexibilities and Authorities in the Event of a Disaster (Aug. 20, 2018), <https://www.medicaid.gov/state-resource-center/downloads/mac-learning-collaboratives/medicaid-chip-inventory.pdf>.

⁴ CMS Hospital PE FAQs, *supra* note 2. See 42 CFR 435.1102(b)(2)(vi), prohibiting delegation of the authority to determine PE.

⁵ CMS Hospital PE FAQs, *supra* note 2. The guidance discusses this flexibility in the context of third-party contracting: “Hospitals that conduct off-site, targeted outreach may also employ third party contractors to reach out to individuals who may be Medicaid eligible and assist them with a presumptive application and the single streamlined application at the individual’s request. Hospitals must oversee off-site outreach to ensure hospital accountability for the PE determinations, including hospital review and approval of the PE recommendations made by non-hospital employees. States should not unduly limit a hospital’s ability to rely on third-party contractors as

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Application	States have options for developing and administering the PE application process used by hospitals; however, states must establish a standardized screening process for determining PE. States are not required to use a written application for PE; they may utilize verbal screening questions, a written application, or an online portal. Whichever process is used, the qualified hospital is responsible for collecting and recording all information necessary to make a PE determination. If the state requires a written application, either the single, streamlined application or a PE-specific application may be used.	Same as hospital PE.
Children’s Health Insurance Program (CHIP)	Hospital PE is just for Medicaid state plan and 1115 groups and does not apply to separate CHIP state plan or CHIP 1115 groups. However, hospitals can determine PE for CHIP under the regular PE authority if a state designates a hospital as a qualified entity. ⁶	States may elect to provide PE for children or pregnant women under CHIP. ⁷
Public Charge	<p>Enrolling noncitizens through PE will likely not have <i>direct</i> public charge consequences for individuals who are eligible for Medicaid. This is because most Medicaid-eligible immigrants are either not subject to public charge assessments by the Department of Homeland Security (DHS) or will have their Medicaid benefits excluded from the evaluation (e.g., pregnant women, individuals under 21, and immigrants receiving emergency Medicaid).</p> <p>There could be negative impacts for noncitizens who are <i>ineligible</i> for Medicaid and subject to public charge. Generally, DHS asks individuals subject to public charge to report whether they ever applied for a benefit; DHS has not clarified whether PE determinations qualify as an application for this purpose. Noncitizens subject to public charge who are aware that a PE application was filed on their behalf may report it to DHS, and could be penalized on the</p>	Same as hospital PE.

long as the hospital is not delegating its authority to determine PE to a third party and is meeting appropriate state-established performance standards.”

⁶ *Id.*

⁷ See 42 CFR 457.355 (children), citing 435.1101 and 435.1102; Social Security Act § 2112(c) (pregnant women).

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	grounds that they applied for benefits—even if they were not provided PE coverage.	