



OBBBA Piece-by-Piece: A Closer Look at the Caregiver Exclusion

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On June 1, 2026, the Centers for Medicare & Medicaid Services (CMS) [released a major Interim Final Rule](#) (IFR) implementing key Medicaid eligibility and enrollment provisions enacted under the so-called [One Big Beautiful Bill Act \(OBBBA\)](#), also known as H.R. 1. The rule established the federal framework for new Medicaid work requirements, which states must implement for individuals enrolled in the Medicaid Expansion group or certain 1115 waiver demonstrations beginning January 1, 2027. Our ["Piece-by-Piece" series](#) takes a closer look at specific elements of the IFR so state advocates know the right questions to ask, even as we recognize that ultimately the best harm mitigation strategy for work requirements is repeal.

This piece focuses on the [caregiver exclusion](#), one of the categories of "specified excluded individuals" (SEI) for whom, once identified, the work requirements do not apply. States are expected to identify SEIs first, so reliable data processes and screening questions are important to ensure these SEIs are not incorrectly asked to comply with work requirements. Community education to encourage qualifying caregivers to ask for the exclusion is also important.

Identifying Excluded Caregivers

The regulation as written for this exclusion can be confusing, but the following questions bring together the pieces in a way that provides some clarity. Although it may seem logically inconsistent, the easiest way to identify a caregiver exclusion is to establish a qualified care recipient before moving to the caregiver analysis:

- Does the person receiving care meet the qualifying definition? Are they either:
 - ? A child under the age of 14 who relies on another individual for care;¹ or
 - ? A "disabled individual" as defined under the Americans with Disabilities Act (ADA)
 - This does **not** require meeting a Social Security definition of disabled, an institutional level of care, or eligibility for Medicaid under a disability-related category.
 - The caregiver does not have to reveal the name of the care recipient to be eligible for the exclusion.

- Does the care recipient have a qualifying relationship with the caregiver? Are they
- ? Mother or father who provides care;
 - ? Legally appointed guardian; or a
 - ? “Relative” who either lives with the care recipient, or if they live separately, provides more than “incidental care.” A relative is an individual who by blood, adoption, or marriage (even after death or divorce) assumes primary responsibility for the child or individual with a disability and is:
 - A relative as listed in the IFR;² or
 - A relative added through the state option to expand the list³

In either case, a “relative” does **not** have to live with the care recipient, but does need to provide more than incidental care on a regular basis. Although the IFR uses the “primary responsibility” language, the preamble focuses the question on more than incidental care.

If the caregiver is not one of the above, they may still qualify for the exclusion as a “family caregiver” in the following ways:

- ? Do they live with the care recipient and provide more than incidental care, OR
- ? Do they live separately but can show they provide at least 80 hours of care per month.
 - Note: Under the IFR, a “relative” living separately is classified as a family caregiver but for practical purposes it may be easier to think of “relatives” who provide more than incidental care as qualifying regardless of where they live.

What Identifies a Caregiving Relationship?

The IFR uses language about primary responsibility, but the preamble to the rule in the Federal Register states that “co-residence and familial relationship are [sufficient indicators](#) to establish an ongoing significant care relationship.” It also says that family caregivers who live with or are related to qualifying care recipients “for whom they provide assistance that occurs on a regular basis and is not solely incidental in nature are not required to demonstrate provision of a minimum number of caregiving hours.”

Advocacy Tip: Advocates should carefully examine caregiver exclusion policies for narrow interpretations of qualifying relatives, particularly around strict readings of “primary responsibility” and who has to show the minimum number of qualifying hours.

A few things to remember when looking at caregiver exclusion scenarios:

- A care recipient can have multiple qualifying caregivers. If the relationship is such that caregivers have to document 80 hours to be excluded, each caregiver must document 80 hours. If they work less than 80, they may count those as “work activity” hours towards compliance. A care recipient could have a mix of caregivers who do and do not have to submit hour documentation, such as a mix of relative caregivers and non-relative caregivers living separately
- A care recipient with disabilities who is eligible under Medicaid expansion is not excluded from work requirements under the caregiver exclusion. However, they will likely meet an exclusion or exception based on their care needs.
- States may accept self-attestation (with physical, telephonic, or electronic signature) through 2027. States are expected to have more data sources by January 1, 2028 and require additional documentation, with a process for accepting attestation as verification when documentation is not available.

Advocacy Tips

- **Data:** A state’s ability to identify eligible care recipients will likely vary on whether the caregiver and recipient are in the same Medicaid household, reside at the same address, or the state can otherwise identify the relationship. Asking your state to include all adults living with the care recipient as “relatives” will help your state more readily identify and exclude Medicaid expansion enrolled adults as caregivers; if your state has already expanded the list of qualifying relatives for the parent/caretaker eligibility category this step may not be necessary since that list will be used.⁴ CMS has not publicly said much about data for this exclusion, but identifying recipients receiving HCBS as disabled for the purpose of the exclusion and those in the household as caregivers could potentially exclude all the adults in the household or at least flag them for evaluation. Data will likely less readily identify caregiving relationships when a non-Medicaid recipient is involved.
- **Restrictive Manuals/Scripts & Documentation:** Examine manuals, scripts, and forms related to the caregiver exclusion to determine if they are asking the wrong questions, requiring excessive documentation (such as an attestation from the care recipient or revealing their name), or requiring 80 hours of documentation when it should not be required given the relationship. Manuals and scripts used by eligibility workers might, in an effort to simplify, encourage improper interpretations or requirements, such as requiring caregivers to identify the “primary caregiver” and then only allowing one caregiver per recipient.

ENDNOTES

¹ 42 C.F.R. § 435.554(a). CMS explicitly said they were not incorporating the deprivation requirement required of a “dependent child” for other Medicaid definitions, such 42 C.F.R. § 435.4 and that the requirement is simply one of age and reliance on another individual. CMS makes no mention of tax households as part of this requirement. See, IFR, 91 Fed. Reg. 33348, [33368-69](#).

² Recognized relatives under the IFR are: Father, mother, grandmother, grandfather, brother, sister, son, or daughter (include step relationships); uncle, aunt, first cousin, nephew or niece; husband, wife, grandson or granddaughter. This includes the spouse of such parent or relative, even after the marriage is terminated by death or divorce. 42 C.F.R. § 435.554; *see also* 91 Fed. Reg. [33366-71](#) (June 3, 2026).

³ A state may opt to include in its definition other relatives based on blood (including half-relations), adoption or marriage; the domestic partner of the parent or other caretaker relative; or an adult with whom the qualified care recipient is living and who assumes primary responsibility for the recipients’ care. 42 C.F.R § 435.554(a)(iv) (defining caretaker relative for the purposes of the exclusion. If a state has added relationships for purposes of caretaker eligibility under § 435.110, those elections apply to the caretaker definition for the caregiver exclusion. *Id.*; *see also* 91 Fed. Reg. at [33366](#).

⁴ *Id.*