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UNDERSTANDING THE MEDICAID AND CHIP MAINTENANCE OF ELIGIBILITY REQUIREMENTS

States that elect to participate in Medicaid must cover core groups of low-income individuals up to minimum income levels, but many states have expanded coverage above these minimum levels, particularly for children. The Patient Protection and Affordable Care Act (ACA) prohibits states from imposing eligibility and enrollment standards for Medicaid and the Children's Health Insurance Program (CHIP) that are more restrictive than those that were in place at the time the ACA was enacted (March 23, 2010). These requirements apply until 2014 for adults and until 2019 for children in Medicaid and CHIP, with some limited exceptions.

The maintenance of eligibility (MOE) provisions have helped to maintain access to affordable coverage and stem the increase in the uninsured during the recent recession when demand for public programs rose and state revenues fell. Without these requirements, more states would have made coverage reductions due to budget pressures. Following the last recession, many states made eligibility restrictions and also imposed barriers to enrollment and renewal (such as adding additional documentation requirements) that resulted in significant declines in coverage. Looking ahead, these protections help to keep Medicaid and CHIP coverage stable until coverage expands under health reform. Proposals to repeal the MOE are being considered as part of the House Budget Reconciliation process. Under the proposal, an estimated 300,000 individuals (mostly children) could lose coverage and many more Medicaid enrollees are at risk.

CORE FEDERAL REQUIREMENTS AND STATE OPTIONS FOR MEDICAID AND CHIP ELIGIBILITY

To fulfill Medicaid's statutory purpose of providing medical assistance to certain individuals, states that elect to participate in the program are required to cover core groups of low-income individuals up to minimum income levels. These core groups include pregnant women, children, parents, elderly individuals, and individuals with disabilities. States can choose to extend eligibility for core groups above federal minimum levels and receive federal matching funds for the costs of coverage of those additional beneficiaries. Under the ACA, states also have a new option to extend coverage to non-disabled adults prior to coverage expanding to a minimum eligibility floor of 133% of the federal poverty level (FPL) for nearly all individuals in 2014. States also have broad discretion to determine enrollment and renewal procedures, which have a substantial impact on enrollment. States can opt to cover low-income uninsured children who are not eligible for Medicaid through separate CHIP programs, Medicaid programs, or both.

MAINTENANCE OF ELIGIBILITY (MOE) REQUIREMENTS

Under the ACA, a state cannot adopt eligibility standards, methodologies or procedures under its state Medicaid program or any waiver that are more restrictive than those in effect when the ACA was enacted. The Medicaid MOE in the ACA or Section 1902(gg) applies for adults until the new health insurance exchanges are fully operational (required by January 1, 2014) and for children through September 30, 2019. The CHIP MOE in the ACA (Section 2105(d)(3)) applies for children in CHIP through September 30, 2019 (although children in families with incomes under 133% FPL will transition to Medicaid effective January 1, 2014). If a state does not comply with either the Medicaid or CHIP MOE requirements, it puts some or all of its federal Medicaid funds at risk.

Similar MOE requirements were in place under the American Recovery and Reinvestment Act (ARRA). Under that law, federal fiscal relief for states in the form of a temporary increase in the federal matching rate (FMAP) for Medicaid between October 2008 and December 2010 (and extended through June 2011) were contingent upon states complying with the MOE requirements. Guidance issued by the Centers for Medicare and Medicaid Services (CMS) on August 19, 2009 provided examples of actions that would be considered restrictions.¹ This guidance was largely adopted for the ACA requirements.

The MOE provisions do not prohibit states from expanding eligibility or simplifying enrollment or renewal procedures in either Medicaid or CHIP. The MOE provisions also do not prohibit states from making cuts to Medicaid or CHIP outside of eligibility and enrollment including reductions in provider reimbursement rates or benefits or from implementing policies to control fraud and abuse in Medicaid.

MOE REQUIREMENT EXCEPTIONS AND WAIVER AND PREMIUM POLICIES

The ACA provides an exception to the Medicaid MOE that allows states that cover non-disabled and non-pregnant adults with incomes above 133% FPL to scale back coverage for this population beginning in January 2011, if they are facing a documented budget deficit. Twenty-one (21) states (AR, CA, CT, DC, HI, ID, IL, IN, IA, ME, MA, MN, NJ, NM, NY, OK, OR, RI, UT, VT, WI) offer coverage to parents above 133% FPL; in 11 of these states, the coverage is more limited than Medicaid or premium assistance. Sixteen (16) states (AR, CA, DC, HI, ID, IN, IA, MA, MN, NM, OK, OR, UT, VT, WA, WI) offer coverage to other non-disabled adults above 133% FPL.² States would not be permitted to restrict eligibility below the core federal minimum eligibility levels. To date, Hawaii is the only state to receive approval to restrict eligibility for adults from 200% to 133% FPL under the MOE exception, effective July 1, 2012.³ Wisconsin has also received approval to impose some restrictions on adults with incomes above 133% FPL. In addition, the proposed budget in Illinois is seeking to cut coverage for some adults with incomes above 133% FPL. The governor's proposed supplemental budget in Maine also sought to roll back coverage above 133% FPL, but these eligibility cuts were not passed by the legislature.

In February 2011, CMS issued guidance related to the MOE and adult coverage above 133% of poverty, waivers and premiums.⁴ The guidance specified that a state can modify or terminate a demonstration waiver that was in effect on March 23, 2010 at the end of the approval period. The guidance also specified that states could increase premiums based on language in approved state plans or demonstration waivers or adopt inflation-related adjustments to premiums that were in effect as of July 1, 2008 for Medicaid and March 23, 2010 for CHIP. States could also adopt premiums for new coverage. Both Arizona and Nevada made eligibility changes when their waivers expired. Arizona froze enrollment in its waiver program for childless adults⁵ and Nevada discontinued its limited coverage for some parents and pregnant women. A few states have proposed waivers of the MOE requirements; however, CMS has not approved any of these waivers to date and the Secretary of Health and Human Services has indicated that she will not approve such waivers.⁶

IMPACT OF THE REPEAL OF THE MOE PROVISIONS

Legislation to repeal the MOE is moving forward in the House. In a preliminary estimate, the Congressional Budget Office (CBO) estimated that the repeal would result in \$1.4 billion in reduced federal spending for Medicaid and CHIP over the 2012 to 2022 period. The largest share of savings is related to cuts in CHIP (\$2.8 billion) and \$.3 billion in Medicaid over the ten year period. These savings are offset by an increase in spending for subsidies in the exchanges and a loss in federal revenues for a net federal savings of \$.6 billion. CBO estimates that by 2015, 300,000 would lose coverage.⁷

An earlier CBO estimate about the repeal of the MOE provided more details about the assumptions behind the cost estimates. They assumed that between 2012 and 2014 states would tighten eligibility processes and procedures in Medicaid and CHIP and that half of the states would end their CHIP programs in 2016 resulting in more uninsured as well as increases in coverage under Medicaid and the exchanges; however CBO noted that enrollees would be required to pay a larger share of the cost for insurance through exchanges compared to CHIP.⁸

During the recent recession, Medicaid and CHIP have played a central role in providing affordable coverage to millions, particularly for children. Without the eligibility protections in place through ARRA, many more individuals would have been uninsured. With a repeal of the MOE provisions in the ACA, Medicaid and CHIP eligibility would likely be scaled back or states could tighten enrollment procedures to reduce state spending. This could help ease state budget pressures, but it would also result in a loss of federal matching funds and more uninsured prior to the implementation of the coverage expansions under ACA in 2014. Debate about the federal deficit is expected to intensify leading up to the November elections and beyond as automatic reductions included in the Budget Control Act are scheduled to go into effect in January 2013. Medicaid cuts, including a repeal of the MOE, could be part of those discussions.

¹ State Medicaid Director Letter, August 19, 2009, Enclosure B at <http://www.cms.gov/SMDL/downloads/SMD081909Att2.pdf>

² Where are States Today? Medicaid and CHIP Eligibility Levels for Children and Non-Disabled Adults, Updated March 2012.

<http://www.kff.org/medicaid/7993.cfm>. Enrollment is closed for parents in UT and NM, for parents > 133% FPL in NJ, and for childless adults in IN, NM and WI.

³ <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/hi/hi-quest-expanded-fs.pdf>

⁴ State Medicaid Director Letter, February 25, 2011, <http://www.cms.gov/smdl/downloads/SMD11001.pdf>

⁵ Arizona instituted a freeze on enrollment in its CHIP program, KidsCare on January 1, 2010, prior to the enactment of the ACA and the CHIP MOE.

⁶ "Sebelius: HHS will not waive maintenance of effort requirements for any state," Wisconsin Health News, April 12, 2012,

<http://wisconsinhealthnews.com/topstories/sebelius-hhs-will-not-waive-maintenance-of-effort-requirements-for-any-state>.

⁷ Preliminary Estimate of Repealing the Maintenance of Effort Requirements Under the ACA, Congressional Budget Office. April 23, 2012

⁸ Congressional Budget Office Cost Estimate for H.R. 1683, the State Flexibility Act, May 11, 2011 <http://www.cbo.gov/ftpdocs/121xx/doc12184/hr1683.pdf>

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