

## UNDERSTANDING THE MEDICAID AND CHIP MAINTENANCE OF ELIGIBILITY REQUIREMENTS

States participating 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) requires states to maintain eligibility and enrollment standards for Medicaid and the Children's Health Insurance Program (CHIP). These maintenance of eligibility (MOE) provisions were designed to keep Medicaid and CHIP coverage stable until coverage expands under health reform. Under these MOE provisions, in order to continue to receive federal Medicaid funds, states cannot impose eligibility and enrollment policies that are more restrictive than those 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. An exception allows states with documented budget deficits that have expanded coverage to non-disabled adults above 133 percent of poverty to reduce eligibility to 133 percent of the poverty level.

### 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, and a new option in the ACA allows states to extend coverage to non-disabled adults. 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 REQUIREMENTS

The American Recovery and Reinvestment Act (ARRA), passed in February 2009, authorized 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. This fiscal relief was extended at lower levels through June 30, 2011. To be eligible for the enhanced matching rates, states could not adopt "eligibility standards, methodologies or procedures under its state [Medicaid program] or any waiver that are more restrictive than those in effect on July 1, 2008". Guidance issued by the Centers for Medicare and Medicaid Services (CMS) on August 19, 2009 provided examples of actions that would be considered restrictions.<sup>1</sup>

The ARRA enhanced funding as well as the ARRA MOE requirements expire on June 30, 2011, but the enactment of ACA in March 2010 imposed similar maintenance of eligibility (MOE) protections on CHIP as well as Medicaid. The Medicaid MOE in the ACA (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 states do not comply with either the Medicaid or CHIP MOE requirements, all federal Medicaid funds are at risk (unlike the ARRA MOE where states would risk the loss of only the enhanced matching funds). So, ACA extends the time period for the MOE requirements beyond the ARRA requirements and also imposes a more significant penalty for violation of the requirements.

### EXCEPTIONS TO THE MOE 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 including reductions in provider reimbursement rates or benefits.

The ACA provides an exception to the Medicaid MOE that allows states that cover non-disabled and non-pregnant adults with incomes above 133 percent of poverty (FPL) to scale back coverage for this population beginning in January 2011, if they are facing a documented budget deficit. To date, no state has used this option. This is likely because a reduction made prior to July 1, 2011 would result in a loss of the ARRA enhanced matching funds since the ARRA MOE does not include this exception. Twenty-two (22) states (AR, CA, CT, DC, HI, ID, IL, IN, IA, ME, MA, MN, NV, NJ, NM, NY, OK, OR, RI, UT, VT, WI) offer coverage to parents above 133% FPL; in 12 of these states, the coverage is more limited than Medicaid or premium assistance. Fourteen (14) states (AR, CA, DC, HI, ID, IN, IA, MA, NM, OK, OR, UT, VT, WI) offer coverage to other

non-disabled adults above 133% FPL; in 12 of these states, the coverage is more limited than Medicaid or premium assistance.<sup>ii</sup> States would not be permitted to restrict eligibility below the core federal minimum eligibility levels.

In February 2011, CMS issued guidance related to how the Medicaid and CHIP MOEs in ACA apply to states with adult coverage above 133% of poverty, waivers and premiums.<sup>iii</sup> The February 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 demonstration approval period since the MOE does not require a state to continue a waiver beyond the expiration date. 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, such as CHIP expansions. Except for clarifications made in that guidance, CMS stated that the MOE guidance for ARRA applies to the MOE in ACA.

Arizona is the only state that has implemented enrollment freezes or cuts in its Medicaid or CHIP program since the MOEs under ARRA and ACA went into effect. Arizona instituted a freeze on enrollment in its CHIP program, KidsCare on January 1, 2010, prior to the enactment of the ACA, it is the only state with an enrollment freeze in its CHIP program. Further, beginning May 1, 2011 the state froze enrollment in its Medically Needy program and has pending plans to close enrollment for all childless adults and certain parents. All of these populations are covered under the state's long-standing Medicaid waiver, which will expire on September 30, 2011. As noted, a state can modify or terminate its waiver at the end of its waiver approval period without violating the MOE. Arizona was allowed to close its Medically Needy program as part of a plan that would phase-out the coverage at the end of the waiver period. Other waiver changes, including closing enrollment for childless adults and parents, are still pending approval by CMS.

## IMPACT OF THE REPEAL OF THE MOE PROVISIONS

As ARRA funds come to an end and state fiscal pressures continue, a number of Governors have called for a repeal of the MOE requirements in the ACA which would allow states to roll-back eligibility standards and impose more restrictive enrollment procedures. Many states could tighten enrollment procedures making it more difficult for eligible individuals to obtain and maintain coverage without state legislation, resulting in reductions in caseload in a less visible way than cutting eligibility levels. Experience in Washington state shows significant reductions in caseload for children following the implementation of additional documentation requirements and more frequent renewal periods in 2003.

H.R. 1683, the State Flexibility Act, would repeal the MOE requirements in the ARRA and the ACA. According to estimates from the Congressional Budget Office (CBO), the bill would reduce federal deficits by \$2.1 billion over the 2012 to 2021 period. In the near term between 2012 and 2014, CBO estimates that states would tighten eligibility processes and procedures in Medicaid and CHIP resulting in a reduction of enrollment of 400,000 (two-thirds are children).<sup>iv</sup> In 2016, CBO estimates that half of the states would end their CHIP programs and that CHIP enrollment would fall by 1.7 million with 300,000 becoming uninsured. CBO expects that enrollment in exchanges and in employer-based coverage would each increase by 700,000, but CBO also notes that enrollees would be required to pay a larger share of the cost for insurance through exchanges compared to CHIP. This legislation is still under consideration in Congress.

Particularly during the recent and on-going economic downturn, Medicaid and CHIP have played a central role in providing coverage to millions of people who otherwise lack affordable coverage options. Without the eligibility protections imposed through ARRA, many more individuals would have been uninsured. With a repeal of the MOE provisions in the ACA, Medicaid and CHIP eligibility could 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.

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

<sup>ii</sup> Where Are States Today? Medicaid and CHIP Eligibility Levels for Children and Non-Disabled Adults, Kaiser Commission on Medicaid and the Uninsured, February 2011, <http://www.kff.org/medicaid/7993.cfm>

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

<sup>iv</sup> 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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