

§ 440.305

an approved State plan amendment, through enrollment in coverage that provides benchmark or benchmark-equivalent health care benefit coverage.

§ 440.305 Scope.

(a) *General.* This subpart sets out requirements for States that elect to provide medical assistance to certain Medicaid eligible individuals within one or more groups of individuals specified by the State, through enrollment of the individuals in coverage, identified as “benchmark” or “benchmark-equivalent.”

(b) *Limitations.* A State may only apply the option in paragraph (a) of this section for an individual whose eligibility is based on an eligibility category under section 1905(a) of the Act that could have been covered under the State’s plan on or before February 8, 2006.

(c) A State may not require but may offer enrollment in benchmark or benchmark-equivalent coverage to the Medicaid eligible individuals listed in § 440.315. States allowing individuals to voluntarily enroll must be in compliance with the rules specified at § 440.320.

(d) Prior to submitting to the Centers for Medicare and Medicaid Services for approval a State plan amendment to establish a benchmark or benchmark-equivalent benefit plan or an amendment to substantially modify an existing benchmark or benchmark-equivalent benefit plan, a State must have provided the public with advance notice of the amendment and reasonable opportunity to comment with respect to such amendment, and have included in the notice a description of the method for assuring compliance with § 440.345 of this subpart related to full access to EPSDT services, and the method for complying with the provisions of section 5006(e) of the American Recovery and Reinvestment Act of 2009.

§ 440.310 Applicability.

(a) *Enrollment.* The State may require “full benefit eligible” individuals not excluded in § 440.315 to enroll in benchmark or benchmark-equivalent coverage.

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(b) *Full benefit eligible.* An individual is a full benefit eligible if determined by the State to be eligible to receive the standard full Medicaid benefit package under the approved State plan if not for the application of the option available under this subpart.

§ 440.315 Exempt individuals.

Individuals within one (or more) of the following categories are exempt from mandatory enrollment in benchmark or benchmark-equivalent coverage.

(a) The individual is a pregnant woman who is required to be covered under the State plan under section 1902(a)(10)(A)(i) of the Act.

(b) The individual qualifies for medical assistance under the State plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for Supplemental Security Income benefits under title XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1902(e)(3) of the Act.

(c) The individual is entitled to benefits under any part of Medicare.

(d) The individual is terminally ill and is receiving benefits for hospice care under title XIX.

(e) The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and is required, as a condition of receiving services in that institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual’s income required for personal needs.

(f) The individual is medically frail or otherwise an individual with special medical needs. For these purposes, the State’s definition of individuals who are medically frail or otherwise have special medical needs must at least include those individuals described in § 438.50(d)(3) of this chapter, children with serious emotional disturbances, individuals with disabling mental disorders, individuals with serious and complex medical conditions, and individuals with physical and/or mental disabilities that significantly impair