Eligibility Appeals Proposed Rule: Overview of Medicaid/CHIP Eligibility Provisions

Center for Medicaid and CHIP Services

February 5, 2013

NPRM Overview

- On January 22, CMS published a notice of proposed rule making in the Federal Register
- Rule builds on final Medicaid/CHIP and Exchange rules released in March 2012
- 30 day public comment period
  - Comments are due by February 21, 2013

Medicaid and CHIP Overview

- Key Provisions
  - Medicaid, CHIP & Exchange Eligibility Appeals
  - Notices
  - Medicaid & CHIP eligibility changes
  - Open enrollment
  - CHIP-related changes
  - Cost sharing & premiums
  - Verification of citizenship and immigration status

Coordinating Eligibility Notices
Combined Notices

- **Combined Eligibility Notice**:
  - Single combined notice for MAGI-based eligibility across all insurance affordability programs and enrollment in a QHP
  - Single combined notice generated by the agency that completed the last step in making the eligibility determination (“last touch”)
  - Required by January 1, 2015

Coordinating Eligibility Notices
Combined Notice Scenarios

- **Scenario 1**: Individual applies to a state-based Exchange. Exchange authorized to make Medicaid/CHIP determinations. Individual eligible for Medicaid (MAGI).
  - Exchange issues a combined notice of eligibility informing individual of Medicaid approval and APTC/CSR denial.
- **Scenario 2:** Individual applies to the FFE. FFE is not authorized to make Medicaid/CHIP determinations. Individual is eligible for Medicaid (MAGI).
  - Exchange assesses individual as Medicaid eligible (MAGI) and transfers to Medicaid agency. Medicaid agency issues a combined notice of Medicaid approval and information that the individual is not eligible for APTC/CSR.

Coordinating Eligibility Notices Exceptions to a Combined Notice

- Combined notice is required to the “maximum extent feasible,” given the following exceptions:

    1. Eligibility determinations on non-MAGI basis
    2. Individual is determined eligible for one insurance affordability program but is still pending a decision from another program
    3. Members of the same household are eligible for different programs

- Coordinated content is required when combined notice is not feasible

Coordinating Eligibility Notices
Coordinated Content

- **Coordinated content**: Information on the transfer of an individual's account to another program for review
  - Required when a combined notice is not feasible or prior to implementation of a combined notice
- **Scenario:** A family applies to the CHIP agency. Children are eligible for CHIP and parents are eligible for APTC/CSR
  - CHIP issues a notice informing the family that the children are eligible for CHIP, with **coordinated content** informing the parents that they appear eligible for APTC/CSR and their account has been transferred to the Exchange for further review

Modernizing & Simplifying Notices Content Standards

- Proposes notices must be in plain language and accessible
- Proposes content must be included on how to request a determination on a basis other than MAGI (Medicaid eligibility notices)

Modernizing & Simplifying Notices Content Standards (cont.)

- Approval notice
  - Basis and effective date of eligibility
  - Change reporting requirement affecting eligibility
  - Information on benefits and services and required premiums/cost sharing (if applicable)
  - Medically needy (as appropriate)

- Adverse action notice
  - Proposed inclusion of the effective date of the action (42 CFR 431.210 and 42 CFR 457.340(1)(ii))

Modernizing & Simplifying Notices
Electronic Notices

- Current notice regulations require paper-based, mailed notices”
- Proposed rule requires Medicaid & CHIP agencies to offer beneficiaries and applicants the option to receive electronic notices
- Consumer protections must be in place
  - Opt-in and opt-out
  - Post notice to secure electronic account
  - If electronic alert/communication undeliverable, send notice by regular mail

Open Enrollment Medicaid and CHIP

- Initial open enrollment period for Exchange begins October 1, 2013
- Medicaid/CHIP agencies to accept:
  - Single streamlined application and application currently in use
  - Electronic accounts transferred from Exchange
- States to make timely eligibility determinations effective 1/1/14 based on single streamlined application
- Authority to delegate eligibility determinations to Exchange for purposes of open enrollment

Open Enrollment

- For 2013 eligibility --
  - Use information on single streamlined application; or
  - Notify applicant how to apply using 2013 application
- Solicit comments on provisions in both eligibility rules needed to be effective October 1, 2013

Provisions for Separate CHIPs Limits on Waiting Periods

- States are allowed (not required) to impose a waiting period after disenrollment from group coverage to prevent substitution of coverage
- Currently 38 states have waiting periods that range from 1 to 12 months – and employ a variety of exemptions
- At § 457.805 we propose to limit CHIP WPs to no more than 90 days
  - ACA prohibits waiting periods greater than 90 days for health plans – so CHIP eligible children could be the only population subject to longer periods
  - ACA applies the requirement to maintain "minimum essential coverage" to both adults and dependents so families could face penalties
- States retain the ability to establish exemptions from WPs but certain exemptions (most commonly employed by states today) will be required

Waiting Period Exemptions

- Proposed exemptions:
  - Cost of former insurance for child exceeds 5% of household income
  - Cost of former family coverage exceeds 9.5% of household income
  - Employer stopped offering dependent care coverage
  - Loss of access to employer sponsored coverage other than COBRA
  - Child has special health care needs
  - Coverage lost due to death or divorce of parent
  - Parent ended unaffordable ESI when determined eligible for APTC (comments requested)

Limits on Waiting Periods

- Children moving from other insurance affordability programs are not subject to a waiting period
- Children in waiting period may be eligible for APTC for Exchange coverage so states would need to track the child and notify Exchange when APTC should end and the child enrolled in CHIP
- The FFE will not determine final CHIP eligibility for a child subject to a waiting period but will transfer the case to the state to determine if exemptions apply
- § 457.810 waiting periods for premium assistance programs must be applied to the same extent as for direct coverage under CHIP

Premium Lock-Out Periods

- Some states employ “lock out periods” for unpaid premiums or enrollment fees – they vary in length and policy for reenrollment
- § 457.10 proposes to define a premium lock out period as no more than 90 days
- Lock–out periods would not be applicable to a child who has paid outstanding premiums or fees
- § 457.570 would prohibit the collection of past due premiums or fees as a condition of eligibility for reenrollment once the lock out period has expired (in alignment with Exchange practice)

Medicaid & CHIP Eligibility

- Completes the process of streamlining the eligibility rules that will be in effect in 2014
- Codifies remaining family and children's groups and eligibility pathways in the Affordable Care Act and prior legislation
  - Deemed Newborns, Breast and Cervical Cancer, Tuberculosis, lawfully residing children/pregnant women
- MAGI income methods for medically needy
- Eliminates obsolete categories and regulations
- Technical changes to reflect shift to MAGI

Presumptive Eligibility

- Clarifies existing rules for PE for children; adds comparable rules for PE options for pregnant women and individuals needing treatment for breast or cervical cancer
- Adds rules for new PE options offered by the Affordable Care Act:
  - Parents/caretaker relatives,
  - Adults with incomes up to 133% FPL
  - Former foster care children
- If a state elects to cover the new groups, PE may also be elected for that group--family planning option and individuals under age 65 with income over 133% FPL
- Amends existing rule for PE for CHIP children at § 457.355, consistent with Medicaid PE for children

Presumptive Eligibility

- States may:
  - Require attestation of citizenship or satisfactory immigration status and/or state residency as additional conditions of PE
  - Establish oversight mechanisms to ensure PE is determined by each qualified entity consistent with requirements

- States may not:
  - Impose additional requirements for PE not specified in Federal statute and regulation
  - Require verifications of PE factors (e.g., pregnancy)

Hospital-Based Presumptive Eligibility

PE Determined by Hospitals (Medicaid only)

- New rule at 435.1110 for PE elected by hospitals (not by the state), otherwise consistent with other PE options
- State' tools/options:
  - For which groups, if any, in addition to those specified at § 435.1102 and § 435.1103 the hospitals may determine PE (e.g., disabled individuals, 1115)
  - May require attestation of citizenship/immigration status and/or State residency
  - May impose performance standards on hospitals electing to determine PE – e.g., based on number of regular applications submitted and/or approved
  - May take corrective action for hospitals not following state policies or meeting established standards

Medicaid & CHIP Eligibility

- State Option to Cover Lawfully Residing Non-Citizen Children & Pregnant Women
  - A child or pregnant woman must be lawfully present in the U.S., and otherwise eligible for Medicaid, including meeting state residency standard
  - Definition of “lawfully present” essentially codifies July 2010 SHO guidance
  - Minor modifications promote simplification of administration and also alignment with the Exchange

Verifying Citizenship and Immigration Status

- Codifies requirement to verify citizenship and immigration status through the data services hub before resorting to other verification processes
- Applies the citizenship and immigration status documentation requirements to CHIP applicants
- Simplifies existing citizenship documentation process
- Codifies CHIPRA citizenship documentation provisions
- Includes a reasonable opportunity period to align with the Exchange

Enrollment Assistance

- Application Counselors:
  - Provisions are designed to address security and confidentiality of information and aligns with Exchange rule
  - Agency may certify application counselors to provide assistance with applications and renewals. This includes:
    - Providing information on programs and QHPs, helping to complete/submit applications and renewals, gathering/submitting documents, responding to requests and managing their cases

Application Counselors

- To be certified counselors must be:
  - Registered
  - Trained in the rules of the insurance affordability programs and QHP
  - Trained in and subject to safeguarding & confidentiality of information and conflict of interest provisions of regulations and law
- If an agency elects to certify application counselors it must have a designated web portal and procedures to ensure that applicants and beneficiaries are informed of the functions of counselors and can authorize counselors to receive information. Agencies cannot disclose information unless counselor is authorized to receive.

Authorized Representatives

- The agency must permit an applicant or beneficiary to designate an individual to act on their behalf
  - Designation must be in writing (which can be provided at application or any time). Legal documentation may serve in place of written authorization
  - Authorization is valid until applicant/beneficiary modifies/cancels authorization. Authorized representative can also change arrangement. Notice must be in writing.
- The representative may be authorized to:
  - Sign an application, complete a renewal, receive notices/communications, act on all other matters with the agency
- Authorized representative must:
  - Fulfill all responsibilities, maintain confidentiality of information, an organization/staff must adhere to additional regulations related to confidentiality, conflict of interest and reassignment of claims

Ensuring Accessibility

- Accessibility for Individuals who are Limited English Proficient:
  - Aligns with Exchange rule to clarify that language services includes oral interpretation, written translations, and taglines and requires notice of services.
  - Accessibility standards apply to fair hearings and notices

• Cooperation with Medical Child Support

- Cooperation in establishing paternity and obtaining medical support payments (Medicaid only)
  - General requirements unchanged
  - To achieve coordination with other insurance affordability programs and maximize online experience
    - Agreement to cooperate at application
    - Steps to effectuate cooperation done post-eligibility

Medicaid Cost Sharing and Premiums

- Replaces all the current premium and cost-sharing rules at 42 CFR 447.50-82 with new § 447.50-57 to consolidate and coordinate the rules outlined in sections 1916 and 1916A of the Act
- Clarifies rules for individuals with income under 100 percent of the FPL as well as state flexibility to impose premiums and cost sharing on individuals with higher income.

Cost Sharing and Premiums

- Updates the maximum allowable nominal cost-sharing levels to be a flat $4 for outpatient services

- Allows states to charge up to $8 for non-preferred drugs and non-emergency use of the ED for individuals with income at or below 150% of the FPL

More information

The NPRM is available at:

- https://www.federalregister.gov/articles/2013/01/22/2013-00659/essential-health-benefits-in-alternative-benefit-plans-eligibility-notices-fair-hearing-and-appeal