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**SHO# 15-005**

**RE: Obergefell v. Hodges and  
Eligibility for Medicaid/CHIP**

December 1, 2015

Dear State Health Official:  
Dear State Medicaid Director:

On September 27, 2013, and May 30, 2014, the Centers for Medicare & Medicaid Services (CMS) issued guidance to states on recognition of marriages between same-sex couples for purposes of Medicaid and the Children's Health Insurance Program (CHIP), following the Supreme Court's decision in U.S. v. Windsor, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013). On June 26, 2015, the Supreme Court, in Obergefell v. Hodges, 576 U.S. \_\_\_ (2015), ruled that states are required to issue marriage licenses to same-sex couples and to recognize marriages between same-sex couples that are lawfully performed in another state. Therefore, the guidance we provided in SHO # 13-006 (<http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-006.pdf>) and # 14-005 (<http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-005.pdf>) is superseded by the Obergefell decision, under which state Medicaid and CHIP agencies must now recognize marriages between same-sex couples.

### **CMS Guidance after the Windsor Decision**

The Windsor decision invalidated section 3 of the Defense of Marriage Act (DOMA), which mandated that the definition of "marriage" or "spouse" in any provision of federal law or regulation be limited to a legal union between two individuals of the opposite sex. We issued guidance to states on the implications of the Windsor decision for Medicaid and CHIP in a State Health Official and State Medicaid Director letter dated September 27, 2013, with respect to individuals whose Medicaid/CHIP eligibility is based on Modified Adjusted Gross Income (MAGI) (SHO #13-006) and in a State Health Official letter dated May 30, 2014, with respect to individuals excepted from MAGI-based methodologies (SHO #14-005). These letters are referred to collectively as the "Windsor guidance." In the Windsor guidance, we explained that states and territories had the flexibility to apply their own choice-of-law rules in deciding whether their law or the laws of another state or territory in which a couple was married would apply in recognizing marriages of same-sex couples for purposes of Medicaid and CHIP.

We also provided state plan amendment (SPA) templates, on which we required states to indicate their choice regarding how they would treat Medicaid and CHIP applicants and beneficiaries in marriages between same-sex couples.

## **The Obergefell Decision**

The Supreme Court held in Obergefell that state laws that exclude same-sex couples from civil marriage are unconstitutional. In light of this decision, the Windsor guidance is no longer operative. In accordance with the Obergefell decision, Medicaid and CHIP agencies must now recognize marriages between same-sex couples to the same extent as marriages between opposite-sex couples, and must afford the same rights and responsibilities to spouses in such marriages, regardless of where the marriage was performed.

Accordingly, states must treat spouses in a marriage between a same-sex couple the same as spouses in a marriage between an opposite-sex couple for all purposes under titles XIX and XXI of the Social Security Act (the Act) and implementing regulations, including, but not limited to: determining financial eligibility for Medicaid and CHIP; determining income for purposes of premiums and cost-sharing charges under sections 1916 and 1916A of the Act and implementing regulations at 42 CFR section 447.50 et seq.; applying post-eligibility treatment of income rules under section 1902(a)(17) of the Act and implementing regulations at 42 CFR sections 435.700 et seq. and 435.832; applying the “spousal impoverishment” rules under section 1924 of the Act; and applying the liens, adjustments and recoveries, and transfer of assets requirements described in section 1917 of the Act.

## **Implementation Considerations**

We expect that states will begin making the necessary policy and systems changes as quickly as possible. Additionally, because Medicaid and CHIP agencies must recognize lawfully married same-sex couples in the same way they recognize opposite-sex couples, we no longer require that states submit a state plan amendment indicating how they treat spouses in a marriage between same-sex couples. We will work with states that have already received approval for such SPAs to remove these pages from their state plans.

If you have questions about this guidance, please contact Gene Coffey at 410-786-2234 or [gene.coffey@cms.hhs.gov](mailto:gene.coffey@cms.hhs.gov).

Sincerely,

/s/

Vikki Wachino  
Director

cc:

National Association of Medicaid Directors

National Academy for State Health Policy

American Public Human Services Association

National Governors Association

Council of State Governments

Association of State and Territorial Health Officials