State Flexibilities to Determine Financial Eligibility for Individuals in Need of HCBS

Overview of New Options Available to States

March 2022

Introduction

- This presentation provides information on state authority to target less restrictive financial methodologies to Medicaid applicants and beneficiaries in need of home and community-based services (HCBS).
- This authority gives states an additional tool to use in efforts to "rebalance" their Medicaid coverage of long-term services and supports (LTSS) from institutional to community-based care.

Overview

1. General rules regarding state authority to disregard income and resources
2. New flexibilities for individuals who need HCBS enacted 2019
3. Potential applications of this new authority:
   a. Targeting those in need of HCBS
   b. The “217” group
   c. Intersection with spousal impoverishment rules

Basics of section 1902(r)(2)-based disregard authority

- Section 1902(r)(2)(A) of the Social Security Act (the Act) directs that states use financial methodologies that are no more restrictive, and which may be less restrictive, than those applied under non-MAGI methodologies (e.g., SSI-based methodologies).

  Reminder: Disregards may not be applied in MAGI-based eligibility determinations.

- "Less restrictive" methodologies typically involve disregarding a certain amount or type of income or resources.

  For example:
  - $100 in monthly unearned income
  - An amount of income above an income eligibility threshold (e.g., countable income between 100 percent and 150 percent of the federal poverty level)
  - Census Bureau income
  - $5,000 in countable resources
  - A second vehicle

General limits on 1902(r)(2)-based disregard authority

- Federal regulations require that such less restrictive methodologies be comparable for all individuals in an eligibility group. 42 C.F.R. § 435.601(d)(4).
- Targeting of disregards at selected individuals within an eligibility group is not generally permitted.
  - For example, if a state elects to disregard $100 in monthly income for an eligibility group for individuals 65 years old and older, $100 must be disregarded in determining eligibility for all 65 and older individuals in the group.

Exception: Rule of Construction Enacted in 2019

- Section 3(b) of the Sustaining Excellence in Medicaid Act of 2019:

  "RULE OF CONSTRUCTION. – Nothing in section 2404 of Public Law 111-148, section 1902(a)(17) or 1924 of the Social Security Act shall be construed as prohibiting a State from applying an income or resource disregard under a methodology authorized under section 1902(r)(2) of such Act

  (1) to the income or resources of an individual described in section 1902(a)(10)(A)(ii)(VI) of such Act (including a disregard of the income or resources of such individual's spouse); or

  (2) on the basis of an individual's need for home and community- based services authorized under subsection (c), (d), (i), or (k) of section 1915 of such Act or under section 1115 of such Act."

- This means that states may target disregards at individuals seeking eligibility in the special HCBS waiver-related eligibility group (described at 42 C.F.R. § 435.217) or at individuals who need HCBS authorized under section 1915(c), (i), or (k) of the Act but are seeking eligibility under another eligibility group. CMS State Medicaid Director letter "State Flexibilities to Determine Financial Eligibility for Individuals in Need of Home and Community-Based Services" (SMD #21-004, December 7, 2021) provides implementation guidance.

Authority to target section 1902(r)(2) disregards based on need for HCBS

The authority enacted in 2019 permits a state to target a less restrictive methodology at only individuals within an eligibility group who are in need of HCBS. For example:

- A state may target a disregard exclusively at individuals in an eligibility group who need 1915(c), (i), or (k) services without applying the disregard to other individuals in the group
- A state that offers 1915(i) and (k) services under its state plan could target a disregard at individuals who need 1915(i) services
- A state that operates more than one 1915(c) waiver could target a disregard at individuals who meet the coverage criteria for one particular waiver
- A state may target a disregard exclusively to individuals eligible in the group described at 42 C.F.R. §435.217

Application of the new authority to individuals eligible for the "217" group

- In operating 1915(c) HCBS waivers, states commonly extend eligibility to individuals described in section 1902(a)(10)(A)(ii)(VI), 42 C.F.R. §435.217 (the "217 group").
- The 217 group authorizes Medicaid coverage for individuals who:
  - Would be eligible if they were in a medical institution;
  - Would require an institutional level of care in the absence of the provision of HCBS; and
  - Will receive 1915(c) services.

Application of the new disregard authority to individuals eligible for the "217" group

- To adopt the 217 group, the state selects a group that is already covered under the state plan (the "principal group") and uses the eligibility standards and methodology of the principal group to determine a 217 group applicant's eligibility.

- Historically, CMS has required that states use the same income/resource standards and financial methodologies of the principal group in determining financial eligibility for the 217 group. However, using the new disregard authority, states may apply disregards at the 217 group without the need for the disregards to apply to the principal group.

Application of the new authority to individuals eligible for the "217" group, continued

- Example: Many states that cover the 217 group in its 1915(c) waiver use the special income level (SIL) eligibility group described in section 1902(a)(10)(A)(ii)(V) of the Act and 42 C.F.R. § 435.236 as the principal group. The SIL group provides coverage to individuals who are institutionalized for at least 30 consecutive days and have *gross* income up to 300 percent of the SSI federal benefit rate (FBR).

- Historically, an individual could not have gross income greater than 300 percent of the SSI FBR and qualify in the 217 group in a state using the SIL group as the principal group.

- Under the new authority, states may now apply a disregard exclusively at the 217 group, even where the SIL group is the principal group (e.g., income between 300 and 350 percent of the SSI FBR).

Application of the new authority to individuals receiving state plan HCBS

- States may now apply a less restrictive financial methodology to *only* individuals who meet the coverage requirements for state plan HCBS provided under 1915(i) or 1915(k) authority, without having to apply the same less restrictive financial methodology to all individuals seeking state plan Medicaid eligibility.
  - Example: A state has an approved 1915(i) HCBS benefit under its state plan. A state could exclusively apply an income disregard, for its medically needy group of individuals 65 years old or older, to those in the group who meet the coverage requirements for the state's approved 1915(i) benefit.

Intersection with section 1924 spousal impoverishment rules

- Section 1924 of the Act sets forth rules used to ensure that the "community spouse" of an institutionalized applicant or beneficiary is permitted to keep a share of the couple's combined income and resources.
- The spousal impoverishment rules require that, in making an initial eligibility determination, the resources of an institutionalized spouse and their community spouse be pooled, and the total resources be considered available to the institutionalized spouse, less an amount set aside for the community spouse.
- The Affordable Care Act (ACA) required that the spousal impoverishment statute's definition of an "institutionalized" spouse include married individuals eligible for HCBS provided under the authority of section 1915(c), (i), (k) or section 1115. The ACA's mandate has been extended through at least September 30, 2023.

Intersection with section 1924 spousal impoverishment rules, continued

- Prior to the ACA's enactment, states could opt to permit couples in which one spouse needed HCBS waiver services to retain all resources. This was no longer allowed after the ACA made the application of spousal impoverishment rules mandatory for married HCBS participants.
- The new authority specifically permits states to disregard all or a portion of income or resources of the spouse of an individual who needs HCBS when making a Medicaid eligibility determination, which may permit married couples to keep more or all of the couple's combined resources.

Intersection with section 1924 spousal impoverishment rules, continued

Example: Mr. Smith, a married individual with a community spouse, meets the needs-based and targeting criteria of a state's 1915(c) waiver. For purposes of this example, assume that:

- Mr. Smith has $2,000 in resources in his name
- Mrs. Smith has $50,000 in resources in her name
- Mr. and Mrs. Smith jointly own $10,000 in resources

Rather than considering all $62,000 in resources available to Mr. Smith, less the community spouse resource allowance (CSRA), the state may now disregard all resources owned by Mrs. Smith in making the Medicaid eligibility determination for Mr. Smith. Using the figures in this example, Mr. Smith would have $7,000 in resources deemed to him and Mrs. Smith would be permitted to keep $55,000 ($50,000 in the resources in her name that are disregarded + the $5,000 CSRA share of the countable $7,000).

Additional Information

- The new authority is available to states now.
- To implement income or resource disregards using this authority, states must submit a state plan amendment (SPA) to CMS.
- CMS staff is available to provide technical assistance. Please contact your state lead.

Resources

- State Flexibilities to Determine Financial Eligibility for Individuals in Need of Home and Community-Based Services (SMD #21-004, December 7, 2021) https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21004.pdf
- Sustaining Excellence in Medicaid Act of 2019 (August 6, 2019) https://www.congress.gov/116/plaws/publ39/PLAW-116publ39.pdf
- Affordable Care Act's Amendments to the Spousal Impoverishment Statute (SMD #15-001, May 7, 2015) https://www.medicaid.gov/federal-policy-guidance/downloads/SMD050715.pdf

Questions