



Memorandum

October 2, 1997

FROM: Director
Center for Medicaid and State Operations

SUBJECT: Medicaid Eligibility-Policy Governing Family Size in Determining Eligibility for Qualified Medicare Beneficiaries and Specified Low Income Beneficiaries (Your Memorandum Dated 08/21/96)-INFORMATION

TO: Regional Administrator
Region I, Boston

Attn: Associate Regional Administrator
Division of Medicaid and State Operations

I am responding to the subject memorandum asking that we reevaluate our policy on family size as relates to determining eligibility for Qualified Medicare Beneficiaries (QMBs) and Specified Low Income Medicare Beneficiaries (SLMBs). Your request is prompted by a lawsuit pending against Rhode Island, similar to other lawsuits filed in New Mexico and Arizona. Those suits were eventually settled when the States in question submitted State plan amendments under section 1902(r)(2) of the Act to take into account differences in family size when determining eligibility for QMBs and SLMBs. You do not believe Rhode Island is willing to resolve its issue by submitting such a plan amendment. Further, Rhode Island has told you that it may move to enjoin the Secretary as a third party to the suit.

Briefly, the issue is the definition of "family size" as it is used to determine eligibility for QMBs and SLMBs. Section 1902(p)(1)(B) of the Act defines a QMB as an individual whose income, as determined under section 1612 of the Act, does not exceed 100 per cent of the Federal poverty level for a "family of the size involved". This language concerning family size also applies to SLMBs, and in fact references to "family of the size involved" are found in other portions of title XIX specifying eligibility criteria for other SSI-related poverty level groups, including the optional aged and disabled group, section 1902(m); Qualified Disabled Working Individuals (QDWI), section 1905(s); and the COBRA continuation group, section 1902(u).

Because the statutory language for each of the groups listed above requires that income and resources be determined under the requirements of the SSI program (sections 1612 and 1613 of the Act), HCFA decided that SSI methodologies in general should be used to determine eligibility for all of the SSI-related poverty level groups. In addition to income and resource methodologies, this included SSI deeming methodologies (section 1614) and the SSI definition of who is eligible. Under SSI, eligibility is determined for individuals, or for couples. Unlike AFDC, SSI does not recognize "families" larger than two persons except through the SSI deeming process.

The result of HCFA's decision was that those eligible under the various SSI-related poverty level groups were treated as individuals or, if both members of a couple were eligible, as a couple. The income standards used were the appropriate percentage of the Federal poverty level for one or for two as applicable, but additional family members were accounted for only through the SSI deeming process, and not by using a percentage of the Federal Poverty Level for family sizes larger than two.

While we believe that our policy was a reasonable interpretation of the applicable statutory provisions, advocates have not agreed with our policy position. HCFA's policy regarding family size has been challenged in several lawsuits, originally in New Mexico and Arizona and now in Rhode Island. New Mexico and Arizona were able to settle their lawsuits via State plan amendments. However, the increasing number of lawsuits regarding our policy requires us to reconsider and revise our definition of "family size" for use in determining eligibility for the various SSI-related poverty level groups.

Therefore, effective immediately States have the option of defining what is meant by a "family of the size involved" for purposes of determining eligibility for QMBs and SLMBs, section 1905(p); QDWIs, section 1905(s); the optional aged and disabled group, section 1902(m); and the COBRA continuation group, section 1902(u). States may continue to use the current definition i.e., a "family" is either an individual or a couple, with additional family members accounted for through the SSI deeming process. However, the States can establish a different definition if they choose to do so. As one example, an eligible individual with an ineligible spouse and three children could be defined as a family of five, with the poverty level for a family five used as the income standard. Other variations are possible; what alternative definition, if any, to use would be up to the State.

We believe that allowing the States to establish their own definitions of "family of the size involved" for purposes of determining eligibility for the groups described above will enhance State flexibility and eliminate further lawsuits on this issue.

If you have any questions, please contact Roy Trudel, (410)786-3417.

/s/

Sally K. Richardson

Cc: Regional Administrators, Regions II-X
Attn: Associate Regional Administrators
Division of Medicaid and State Operations