



# Eligibility and Enrollment Final Rule

## *Medicaid and CHIP*



*Center for Medicaid  
and CHIP Services*

*December 1, 2016*

# Eligibility & Appeals Final Rule

## *CMS-2334-F2*

Medicaid and Children's Health Insurance Programs:  
Eligibility Notices, Fair Hearing and Appeal Processes for  
Medicaid and Other Provisions Related to Eligibility and  
Enrollment for Medicaid and CHIP;  
Final Rule

- On display at the Federal Register  
November 21, 2016
- Published November 30, 2016
- Finalizes a subset of provisions included in the notice  
of proposed rulemaking (78 FR 4594) issued on January  
22, 2013

# Key Provisions

- Notices
- Appeals
- Medicaid Eligibility Changes under the Affordable Care Act & Other Statutes
- Accessibility for Individuals who are Limited English Proficient
- Verification
- Financial Methodologies
- Medical Support and Payment
- CHIP-specific Provisions
- Electronic Submission of Medicaid and CHIP State Plans

# Notices

# Content of Eligibility Notices

- Establishes minimum standards for content of eligibility notices (435.917(a))
- Approval notices must include (435.917(b)):
  - Basis and effective date of eligibility
  - Benefits and services available
  - Premium and cost sharing obligations
  - Procedures for reporting changes
  - Appeal rights
  - Non-MAGI eligibility (435.917(c))
- Denial/termination notices must include clear explanation of reason for ineligibility

# Coordination with Other Programs

## (435.917(d), 435.1200(h))

- Phases in use of single eligibility notices for multiple programs
- Combined eligibility notice to be provided by the last entity to “touch” an application or renewal
- Requires coordinated content for individuals who will not receive a combined notice

# Combined Eligibility Notice (435.1200(h))

Requires use of combined eligibility notices *to the extent feasible*, taking into account:

- Whether state uses a shared eligibility service with the Marketplace
- Whether FFM is determining or assessing eligibility for Medicaid and CHIP
- Maturity of the eligibility and enrollment systems operated by the state
- Time

# Coordinated Content (435.1200(h))

Includes, if applicable 435.1200(h)(2-3):

- Status of individual's eligibility determination for other program
- Impact of eligibility for/enrollment in one program on eligibility for another program
- Status of other household members

# Appeals

# Coordination with Other Programs

## (435.1200(g))

If an Exchange or other insurance affordability program provides an individual with a combined eligibility notice including determination of Medicaid/CHIP ineligibility, the Exchange or other program/appeals entity will:

- Provide individual with an opportunity to submit a “joint fair hearing request”
- Notify the Medicaid/CHIP agency of any joint fair hearing request to be conducted by agency, and transmit the individual’s electronic account to the agency

# Coordination Agreements (435.1200(b))

Requires Medicaid and CHIP agencies to enter into agreements with the Exchange/appeals entity and other programs/appeals entity to:

- Minimize burden on individuals seeking to appeal a denial or determination related to one or more program
- Provide for a combined appeals decision in appropriate situations

# Transfer of Information

## (435.1200(g))

Directs Medicaid and CHIP agencies to establish a secure electronic interface through which, when appropriate –

- The Exchange or other program or appeals entity can notify the agency that an individual has submitted a joint fair hearing request
- The individual's electronic account can be transferred from one program to the other
- The agency can notify the Exchange or other program or appeals entity that an individual has appealed a Medicaid denial; whether Medicaid benefits will be furnished pending a decision; and the outcome of the appeal

# Expedited Fair Hearings (431.224, 431.244(f))

- Requires states to establish and maintain an expedited fair hearing process (431.224)
- Establishes a standard for expedited fair hearings:
  - If the agency determines that the standard timeframe permitted for a fair hearing could jeopardize the individual's life, health or ability to attain, maintain, or regain maximum function (431.224)
- Creates a timeframe for final action:
  - 7 days for eligibility-related matters (431.224, 431.244(f))
  - 3 days for benefit or services related matters (431.224, 431.244(f))

# Fair Hearing Request

## (431.205, 431.220-431.223)

- Makes fair hearing requests and expedited hearing requests available through all modalities (431.221)
- Requires states to accept any method for withdrawal of a fair hearing request (431.223)
- Clarifies circumstances when an applicant or beneficiary can request a fair hearing (431.220)
- Provides for a fair hearing system that is accessible to individuals who are limited English proficient and individuals with disabilities and that complies with anti-discrimination statutes and regulations (431.205)

# **Medicaid Eligibility Changes under the Affordable Care Act & Other Statutes**

# Medicaid Eligibility Changes ... cont'd

Codifies statutorily-established eligibility groups:

- Former foster care children (42 CFR 435.150)
- Continuous eligibility for hospitalized children (42 CFR 435.172)
- Continuous eligibility for children up to age 19 (42 CFR 435.926)
- Optional eligibility:
  - Individuals needing treatment for breast or cervical cancer (42 CFR 435.213)
  - Individuals needing family planning-limited coverage (42 CFR 435.214 and 435.603)
  - Individuals with tuberculosis (42 CFR 435.215)
  - Independent foster care adolescents (42 CFR 435.226)
  - Presumptive eligibility (42 CFR 435, 1001-1002 and 435.1100-1101)

# Medicaid Eligibility Changes...cont'd

## Streamlines and updates eligibility groups:

- Deemed newborn children (42 CFR 435.117)
  - CHIPRA changes for pregnant women receiving emergency Medicaid, CHIP
- Families with eligibility extended due to increased spousal support collection (42 CFR 435.115)
- Children with title IV-E adoption assistance, foster care, or guardianship care (42 CFR 435.145)
- Optional eligibility for:
  - Parents and other caretaker relatives (42 CFR 435.220)
  - Reasonable classifications of individuals under age 21 (42 CFR 435.222)
  - Individuals under age 21 with state adoption assistance agreements (42 CFR 435.227)
  - Targeted low-income children (42 CFR 435.229)
- Medically need parents and other caretaker relatives (42 CFR 435.831)

# Former Foster Care Children

## *42 CFR 435.150*

Mandatory coverage for individuals under age 26 who were:

1. In foster care under the responsibility of the state or Tribe upon attaining either age 18 or a higher age at which foster care ends, and
2. Enrolled in Medicaid under the state's Medicaid state plan or section 1115 demonstration at that point in time

# Former Foster Care Children

## *Changes from the NPRM*

- Proposed option to cover individuals who were in foster care and enrolled in Medicaid in “any state” not finalized
- Final rule provides state option to cover individuals who were in foster care upon attaining age 18 or a higher age at which foster care ends and enrolled in Medicaid at some point during the period of foster care during which the individual aged out

# Verification Process

# Verification

- Verification of citizenship and non-citizen status (42 CFR 435.406, 435.407, 435.956, 457.320, 457.380)
- Special circumstances (42 CFR 435.952(c)(3))

# Verification of Citizenship & Non-Citizen Status

(42 CFR 435.406, 435.407, 435.956, 457.320, 457.380)

- Primacy of electronic verification through FDSH or alternative approved mechanism (435.956(a)(1)(i)(A) and (a)(2)(i))
- CHIPRA changes to citizenship documentation requirement
  - Exemption of deemed newborns, documentation issued by a Federally Recognized Indian Tribe (435.406(a)(1)(iii)(E), 435.407(a)(5))
  - Application to CHIP (457.320(d), 457.380(b))

# Reasonable Opportunity Period (42 CFR 435.956(a)(5) and (b), 457.380(b))

- 90 days for citizenship and non-citizen status
- Benefits provided during ROP to same extent as otherwise-eligible individuals based on attested status
- Simplifies the “paper documentation” process if needed, for example (435.407)
  - Original documents not required (435.407(f))
  - Eliminates hierarchy of preferred documentation
  - State option to use verification by another state or federal agency in certain circumstances (435.407(d))
- Good faith extension for non-citizens only (435.956(b)(2)(ii)(B))

# **Financial Methodologies**

# Application of Financial Eligibility Methodologies (435.601 and 602)

- Clarifies that the methodologies set forth in §435.601 and §435.602 apply only to individuals excepted from MAGI
  - SSI methodologies apply to eligibility based on being over age 64, or having a disability or blindness
  - Limits on attributing, or deeming, the income and resources from other individuals to an applicant or beneficiary

# **MAGI-like methods for certain medically needy individuals (435.831)**

- Permits application of AFDC-based methods or a MAGI-like methodology to determine income eligibility for medically needy children, pregnant woman, parents and other caretaker relatives
- Methodology adopted cannot violate limitations on deeming or attribution of income from other individuals

# MAGI-based Methodologies (435.603)

- Clarifies that exception from MAGI-based methodologies for individuals needing long-term services and supports (LTSS) applies when
  - Being institutionalized or receiving LTSS is a condition of eligibility; or
  - The eligibility determination is being made for the purpose of receiving LTSS
  - Individuals eligible under a MAGI-based group are not excepted from the MAGI-based methodologies simply because they require LTSS
- State flexibility for optional family planning group

# **Other Provisions**

# Medical Support & Payments

- At application, requires that individuals agree to cooperate with child support enforcement
- Enforcement of requirement to cooperate in pursuing medical child post-enrollment
- Supports alignment and coordination with other insurance affordability programs

42 CFR 433.138, 433.145, 433.147, 433.148, 433.152, and  
435.610

# Accessibility for Individuals who are Limited English Proficient (435.905)

- Language services for limited English proficient individuals to include oral interpretation and written translation (435.905(b)(1))
- Requires taglines indicating availability of language services. (435.905(b)(3))

# CHIP

- Many of the Medicaid provisions apply fully or with moderate variation to CHIP:
  - Notices
  - Coordination involving appeals entities
  - Deemed newborns
  - Family planning
  - Continuous eligibility
  - Presumptive eligibility
  - Verification
  - Language accessibility
  - Electronic state plan submission

# Electronic Submission of Medicaid & CHIP State Plans (430.12)

- Provides framework for electronic state plan amendments
- Implementation plan
  - Electronic templates to be released incrementally
  - States to transition to the new formats
  - CMS to provide additional guidance and technical assistance to help states meet applicable deadlines

# Questions?

