DEPARTMENT OF HEALTH & HUMAN SERVICES
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Medicaid and CHIP FAQs: Coverage of Former Foster Care Children

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Q1: Who is eligible under the eligibility group for former foster care children?

A1: Section 2004 of the Affordable Care Act added a new mandatory group for former foster care children at section 1902(a)(10)(A)(i)(IX) of the Social Security Act (the Act). Proposed 42 CFR 435.150 of the January 22, 2013 proposed rule, available at http://www.gpo.gov/fdsys/pkg/FR2013-01-22/pdf/2013-00659.pdf, would codify the provisions of section 1902(a)(10)(A)(i)(IX). Under the statute, states must cover individuals under age 26 who were both enrolled in Medicaid and in foster care under the responsibility of the state or tribe upon attaining either age 18 or such higher age as the state or tribe has elected for termination of federal foster care assistance under title IV-E. We are interpreting the statute also to permit states, at their option, to cover individuals who were in foster care and receiving Medicaid in another state upon turning 18 or "aging out" of foster care in the other state, but are not required to do so. There is no income test for eligibility under this group.

Q2: Can states cover individuals who left foster care before age 18, or who were not in foster care and Medicaid either upon turning 18 or upon "aging out" of foster care at a higher age, under this group?

A2: States cannot cover individuals who left foster care before aging out under the former foster care children group. Section 1902(a)(10)(i)(IX) of the Act only provides Medicaid eligibility for individuals who were in foster care when they turned 18 or such higher age when the state's foster care assistance ends. Individuals who left foster care before age 18, or who were not in foster care and Medicaid either upon turning 18 or upon "aging out" of foster care at the higher age elected by the state, are not eligible for coverage under this group. However, these individuals may be eligible under a different eligibility group.

Q3: The proposed rule at §435.150 discusses the option for states to cover individuals who were in foster care and receiving Medicaid in another state upon turning 18 or "aging out" of foster care in the other state. However, proposed §435.150 was not included in the July 15, 2013 rule and therefore has not been finalized. Can states exercise this option before CMS issues a final regulation for §435.150?

A3: Yes, we will approve state plan amendments to cover individuals who were in foster care and receiving Medicaid when they turned age 18 or "aged out" of foster care in another state. This option is provided in the state plan amendment (SPA) page (S33) for this group. Because this provision has not yet been finalized, if §435.150 is later finalized in such a way that conflicts with the state's approved state plan amendment, a subsequent amendment to the state plan may be necessary (see 42 CFR §430.12(c)(1)(i)). The state would be able to receive federal financial participation for expenditures under an approved SPA if the policy later

changed, until the state (within a reasonable period of time) had submitted a new SPA and modified its policies and procedures to comply with such change in federal policy.

Q4: Does the former foster care group cover individuals who turned 18 or aged out of foster care prior to January 1, 2014?

A4: Yes. Effective as of January 1, 2014, coverage is available to individuals under age 26 who meet the eligibility requirements described above. For example, an applicant who is 23 years old in January 2014 and who was in foster care and receiving Medicaid at the time he or she turned 18 (back in 2009) will be eligible for coverage under the former foster care group.

Q5: If an individual who aged out of foster care at age 18 and was receiving Medicaid in the state at that time applies for Medicaid at age 24, would she be eligible under this group?

A5: Yes.

Q6: Are individuals who were in foster care and enrolled in Medicaid when they turned age 18 or aged out of foster care in a different state eligible under this group?

A6: We do not believe the statue requires states to cover, under this group, individuals who were in foster care and enrolled in Medicaid when they turned age 18 or aged out of foster care in a different state. However, we believe the statute provides states the option to do so. As noted above, pending publication of a final regulation at §435.150, states may exercise the option proposed when they complete SPA page S33 for this group.

Q7: At what age do individuals become ineligible for, or "age out of," Title IV-E foster care assistance?

A7: Title IV-E foster care stops either when the individual attains age 21 or attains age 20, 19, or 18, as specified in the state's IV-E state plan.

Q8: Who is considered to have be "in foster care" for purposes of eligibility under this group? Are children placed with a relative or in another non-licensed out-of-home placement, with respect to whom foster care payments are not being made, considered to be "in foster care"?

A8: According to federal regulations at 45 CFR 1355.20, "Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the [state or tribal] agency has placement and care responsibility. This includes but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made."

Receipt of foster care maintenance payments is not required for a child to be considered "in foster care" under this definition. Thus, children placed with a relative or in another non-licensed out-of-home placement, with respect to whom foster care maintenance payments are not being provided, may be considered to be "in foster care" according to this definition if they are also under the placement and care of the state or tribal agency.

This definition of "foster care" is contained in regulations implementing titles IV-B and IV-E of the Social Security Act. However, because the federal regulations implementing titles IV-B and IV-E require state and tribal title IV-E agencies to agree to certain program requirements for all children in foster care, this definition applies to all foster care provided in a state or tribe, even that which is provided without federal financial participation.

Q9: Are individuals with respect to whom federal guardianship payments under section 473(d) of title IV-E of the Social Security Act were being paid and who were receiving Medicaid when the individual turned 18 (or such higher age as the state elected under title IV-E) eligible for coverage under the former foster care group?

A9: No. Federal guardianship assistance payments provided under section 473(d) of title IV-E of the Act are not considered federal foster care maintenance payments. Because the title IV-E agency no longer has placement and care responsibility for youth receiving such payments, these youth are not considered to be in foster care and therefore would not be eligible for coverage under the former foster care group.

Q10: Do MAGI-based methodologies apply to determining eligibility for the group for former foster care children up to age 26? Will states need to consider their parents' income?

A10: There is no income test for eligibility under this new mandatory group for former foster care children. Therefore, MAGI-based methodologies are not relevant and states do not need to consider the parents' (or even the individual's own) income for purposes of Medicaid eligibility.

Q11: Are states permitted to apply an asset test for eligibility under the group for former foster care children?

A11: No. States may not impose an asset test for eligibility under the former foster care group.

Q12: What is the difference between the mandatory group for former foster care children under section 1902(a)(10)(A)(i)(IX) (proposed §435.150) and the optional group for independent foster care adolescents under section 1902(a)(10)(A)(ii)(XVII) (proposed §435.226)? Can states that currently cover the optional group delete it from their state plan?

A12: While there is significant overlap in eligibility under the two groups, the mandatory group for former foster care children does not completely subsume or replace coverage under the optional group, and states that currently cover the optional group for independent foster care

adolescents must continue to do so until the maintenance of effort for individuals under age 21 has expired in accordance with section 1902(gg) of the Act.

The coverage of former foster care individuals ages 18-25, set forth at proposed §435.150, covers individuals who were either receiving IV-E or non-IV-E foster care and were enrolled in Medicaid either when they turned age 18 or aged out of foster care. As noted in an earlier question, states have the option, but are not required, to cover individuals who were in foster care and enrolled in Medicaid in another state when they turned 18 or aged out of foster care.

The optional coverage for independent foster care adolescents, set forth at proposed §435.226, covers individuals age 18-20 who were in IV-E or, at state option, non-IV-E foster care when they turned age 18. Eligibility under the optional group does not require the individual to have been enrolled in Medicaid when they turned 18, nor are they required to have been in foster care in the same state in which they are seeking coverage under this group. Unless the state has elected to eliminate the income test for this group (by disregarding all income under section 1902(r)(2) of the Act), eligibility for this optional group is subject to the MAGI-based methods described at §435.603.

As noted, the mandatory group will largely subsume the optional group, but there are some differences:

- The mandatory group at §435.150 must be applied to individuals who were in state-only funded or IV-E foster care. The optional group at §435.226 applies to individuals who were receiving IV-E foster care and, at state option, individuals who were in state foster care.
- The mandatory group requires that the individual have been enrolled in Medicaid while in foster care when s/he turned 18 or aged out of foster care; the optional group only requires that the individual have been in foster care when they turned 18.
- Eligibility for the mandatory group goes up to age 26; the optional group goes up to age 19, 20, or 21 (state option).
- There is no income test for the mandatory group. There is an income test for the optional group. Currently, the income standard for the optional group is based on the AFDC payment standard, although most states that cover this group apply a block of income disregard under section 1902(r)(2) of the Act to raise the effective income standard, and in some cases to eliminate it. This standard will be converted to a MAGI-equivalent standard effective in 2014, and additional disregards will no longer be permitted. States that have effectively eliminated any income test for this optional group may continue that policy in 2014.

Q13: Are individuals eligible for Medicaid under the former foster care group eligible for EPSDT?

A13: Individuals under age 21 who are eligible under the group for former foster care children are covered for EPSDT services. Individuals ages 21 – 25 who are eligible under this group are not covered for EPSDT services.

Q14: Does this eligibility category effectively impose a requirement on states to maintain a roster of former foster care young adults receiving Medicaid when they turned age 18 or "aged out" at a higher age, which states would need to check for all applicants under age 26? If not, how can states operationalize eligibility under this group?

A14: States have broad flexibility under the final regulations at §435.956 regarding verification of non-financial eligibility requirements, other than citizenship and immigration status. States may, for example, accept self-attestation of the former foster care status and enrollment in Medicaid required for eligibility under this group.

In addition, §435.952(c)(2)(ii) provides that the state may not require paper documentation unless electronic data to verify the individual's status as a former foster care individual is not available and establishing such a data match would not be effective. States that do not currently have an electronic data base that could be used for verifying an applicant's former status as a foster care child receiving Medicaid should consider the effectiveness of developing such capability in accordance with the regulations. The 90/10 federal match for systems development would be available for this purpose through December 2015, as outlined in 42 CFR Part 433, available at http://www.gpo.gov/fdsys/pkg/FR-2011-04-19/pdf/2011-9340.pdf.

We note that, over time, verification of former foster care status may become less important at the point of application because, in accordance with sections 471(a)(16) and 475(1)(D) and (5)(H) of the Act, Title IV-E/B agencies are required to assist and support a foster youth in developing a transition plan during the 90-day period before the youth attains age 18, or if applicable, before the later age elected by the state or tribe, that addresses specific options for the youth, including health insurance coverage. We encourage child welfare agencies and state Medicaid agencies to begin incorporating coverage under this group in the transition planning for foster care youth as soon as practicable. More information about transition planning requirements for youth in foster care can be found in Section C of ACYF-CB-PI-10-11, available at http://archive.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm.

Q15: Can individuals who meet the requirements both for the group for former foster care children and the new adult group at 42 CFR 435.119 be enrolled in either group?

A15: No. In accordance with section 1902(a)(10)(G) of the Social Security Act, eligibility under the group for former foster care children takes precedence over eligibility under the new adult group. Thus, individuals who meet the requirements for both of these groups must be enrolled under the group for former foster care children.

Q16: Is the 100% federal matching rate (FMAP) available for individuals who are newly-eligible under the former foster care group?

A16: No. Under the law, the state's regular federal matching rate applies for individuals eligible under the former foster care group.