Overview of Eligibility Appeals Proposed Rule

Center for Medicaid and CHIP Services

Center for Consumer Information and Insurance Oversight

January 2013

NPRM Overview

- On Monday, January 14, CMS released a notice of proposed rule making
- Rule builds on final Medicaid/CHIP and Exchange rules released in March 2012
- 30 day public comment period

Medicaid and CHIP Overview

- Key Provisions
  - Medicaid, CHIP & Exchange Eligibility Appeals
  - Notices
  - Medicaid & CHIP eligibility changes
  - Open enrollment
  - CHIP-related changes
  - Cost sharing & premiums
  - Verification of citizenship and immigration status

Coordinated Appeals Options Medicaid and CHIP

- Integrated/delegated appeals: Medicaid/CHIP agency delegates authority to make appeals decisions to Exchange appeals entity

- Bifurcated appeals/no delegation: State retains appeals function

Integrated/Delegated Appeals

- Limited to MAGI-based determinations
- Individuals must be able to opt out of delegated hearing processes to have their fair hearing conducted by the Medicaid agency
- State can retain right of review of the legal conclusions
- Exchange appeals entity must be governmental agency with merit protection

•Note: Medicaid programs that want to delegate appeals to other state agencies can do so by seeking a waiver of single state agency requirements

Bifurcated Appeals/No Delegation

- No duplicate information requests
- Information shared through secure electronic interface
- Rely on findings of Exchange appeals entity, if based on same process and standards applied by Medicaid agency
- Sequencing of hearings permitted – Medicaid hearing decision may be issued no later than 45 days from date of Exchange appeals decision
- Exchange and Medicaid/CHIP agencies to work out details in agreement (MOU)

Coordination of Appeals

- Appeal of ATPC/CSR amount automatically triggers Medicaid/CHIP appeal in certain circumstances
  - Final determination of Medicaid/CHIP ineligibility has been made by Medicaid/CHIP agency
  - Exchange has delegated authority to make Medicaid/CHIP eligibility determinations
- No automatic appeal in assessment model if Medicaid/CHIP agency has not denied eligibility
- Applies in both integrated and bifurcated processes

Modernizing Appeals

- Modernizes current regulations related to appeals
  - **Request for a hearing:** Allows requests by telephone, mail, in person, commonly used electronic methods, including, at state option, Internet Website
  - **Expedited appeals process:** For individuals when the standard time frame might jeopardize health. Aligns with existing Medicaid managed care regulations

Notices
Medicaid and CHIP

- Single Combined Notices:
  - Single combined notice for MAGI-based eligibility across all insurance affordability programs
  - Final notice generated by agency that completed the last step in making the eligibility determination
  - Not required until January 1, 2015

Coordinated Notices

- Exceptions
  - Eligibility determinations on non-MAGI basis
  - Individual is determined eligible for one insurance affordability program but is still pending a decision from another program
  - Members of the same household are eligible for different programs. Each individual receives a coordinated notice, single notice for whole household not required
- We propose that coordinated content required – Status of application/account with and potential eligibility for other programs

Modernizing & Simplifying Notices

- Proposes that Medicaid & CHIP agencies offer beneficiaries and applicants the option to receive electronic notices
- Outlines basic information and standards for notices approving eligibility

Medicaid Cost Sharing and Premiums

- Replaces all the current premium and cost sharing rules at 42 CFR 447.50-82 with new 447.50-57 to consolidate and coordinate the rules outlined in sections 1916 and 1916A of the Act

- Clarifies rules for individuals with income under 100 percent of the FPL as well as state flexibility to impose premiums and cost sharing on individuals with higher income.

Cost Sharing and Premiums

- Updates the maximum allowable nominal cost-sharing levels to be a flat $4 for outpatient services

- Allows states to charge up to $8 for non-preferred drugs and non-emergency use of the ED for individuals with income at or below 150% of the FPL

Open Enrollment Medicaid and CHIP

- Initial open enrollment period for Exchange begins October 1, 2013
- Medicaid/CHIP agencies to accept:
  - Single streamlined application and application currently in use
  - Electronic accounts transferred from Exchange
- States to make timely eligibility determinations effective 1/1/14 based on single streamlined application
- Authority to delegate eligibility determinations to Exchange for purposes of open enrollment

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Open Enrollment

- For 2013 eligibility
  - Use information on single streamlined application; or
  - Notify applicant how to apply using 2013 application
- Solicit comments on provisions in both eligibility rules needed to be effective October 1, 2013

Provisions for Separate CHIPs
Limits on Waiting Periods

- Limit CHIP waiting periods to no more than 90 days
- States retain ability to establish exemptions but certain exemptions (most common types employed by states today) will be required
- Children moving to CHIP from other insurance affordability programs are not subject to a waiting period

Limits on Waiting Periods

- Children in a WP may be eligible for APTC. States would need to track the child and notify Exchange when APTC should end and when child should be enrolled in CHIP
- The FFE will not determine final CHIP eligibility for a child subject to a WP but will transfer the case to the state to determine if exemptions to WP apply
- Waiting periods for premium assistance programs must be applied to the same extent as for direct coverage under CHIP

Premium Lock-Out Periods

- A premium lock out period is defined as no more than 90 days
- Lock–out periods would not be applicable to a child who has paid outstanding premiums or fees
- The collection of past due premiums or fees cannot be a condition of eligibility for reenrollment once the lock out period has expired (in alignment with Exchange)

Medicaid & CHIP Eligibility

- Completes the process of streamlining the eligibility rules that will be in effect in 2014
- Codifies remaining family and children's groups and eligibility pathways in the Affordable Care Act and prior legislation
  - Deemed Newborns, Breast and Cervical Cancer, Tuberculosis, lawfully residing children/pregnant women
- MAGI income methods for medically needy
- Eliminates obsolete categories and regulations
- Technical changes to reflect shift to MAGI

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Presumptive Eligibility

- Codifies state options for all populations now provided under statute
- Hospital Presumptive Eligibility (Medicaid only)
  - Consistent with other PE options
  - Tools/state flexibility
    - Attestation of citizenship/immigration status and residency
    - Performance standards – e.g., based on number of regular applications submitted and/or approved
    - Corrective action for hospitals not following state policies or meeting established standards

Medicaid & CHIP Eligibility

- State Option to Cover Lawfully Residing Non-Citizen Children & Pregnant Women
  - A child or pregnant woman must be lawfully present in the U.S., and otherwise eligible for Medicaid, including meeting state residency standard
  - Definition of "lawfully present" essentially codifies July 2010 SHO guidance
  - Minor modifications promote simplification of administration and also alignment with the Exchange

Verifying Citizenship and Immigration Status

- Codifies requirement to verify citizenship and immigration status through the data services hub before resorting to other verification processes
- Applies the citizenship and immigration status documentation requirements to CHIP applicants
- Simplifies existing citizenship documentation process
- Codifies CHIPRA citizenship documentation provisions
- Includes a reasonable opportunity period to align with the Exchange

Additional Provisions Medicaid and CHIP

- Application Counselors and Authorized Representatives:
  - Aligns with Exchange rule
  - Address security and confidentiality of information
- Accessibility for Individuals who are Limited English Proficient:
  - Aligns with Exchange rule to clarify that language services includes oral interpretation, written translations, and taglines and requires notice of services.
  - Accessibility standards apply to fair hearings and notices

Additional Provisions

- Cooperation in establishing paternity and obtaining medical support payments (Medicaid only)
  - General requirements unchanged
  - To achieve coordination with other insurance affordability programs and maximize online experience
    - Agreement to cooperate at application
    - Steps to effectuate cooperation done post-eligibility

Highlights of the Noticed of Proposed Rulemaking

- Medicaid Alternative Benefit Plans and Essential Health Benefits

Exchange NPRM Provisions

- Appeals of Eligibility Determinations for Exchange Participation and Insurance Affordability Programs
  - Subpart F and Subpart H §155.740

More information

The NPRM is available at:

- https://www.federalregister.gov/articles/2013/01/22/2013-00659/essential-health-benefits-in-alternative-benefit-plans-eligibility-notices-fair-hearing-and-appeal