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Q & A – Early Implementation of MAGI

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The Affordable Care Act (ACA) requires all states to implement the new income counting methodology, Modified Adjusted Gross Income (MAGI), for applicable Medicaid eligibility categories beginning January 1, 2014.[1] To help facilitate the transition to MAGI, CMS issued guidance allowing states to implement MAGI on October 1, 2013, coinciding with the beginning of open enrollment in the new health insurance marketplaces (exchanges).[2] The following addresses questions and concerns regarding the early implementation of MAGI.

Q1. Why should a state implement MAGI early?

A. Early implementation of MAGI will simplify and streamline state Medicaid eligibility processes. During the open enrollment period from October 1 to December 31, 2013, states must screen applicants for eligibility for insurance affordability programs using two different sets of rules - the state's existing Medicaid rules to determine who is immediately eligible, and the new MAGI rules to identify those eligible January 1, 2014. By implementing MAGI early, states can use just one income counting methodology for all new applicants.

Early implementation will also ease the transition by allowing states to operationalize new systems before the influx of new applicants expected when new coverage options become available in January 2014.

Q2. Will early MAGI implementation result in new coverage beginning early too?

A. No. New coverage options such as the adult Medicaid expansion and Advance Premium Tax Credits (APTCs) do not take effect until January 1, 2014, although the application process and eligibility determinations for these new programs begin October 1, 2013.

Q3. How will states implement the early adoption of MAGI?

A. According to the Centers for Medicare & Medicaid Services (CMS), states can seek approval for early MAGI implementation using the demonstration authority set forth in § 1115 of the Social Security Act.[3] Although the CMS guidance does not specify, it appears that states with any current § 1115 demonstration project can add early MAGI implementation using an expedited amendment process. The District of Columbia, for example, amended a current § 1115 covering adults between 133-200% FPL to extend MAGI to all populations. CMS approved the amendment without requiring public hearings or comment period.[4] A total

of 30 states have current § 1115 demonstrations, but it is unclear how many are seeking or have won approval to amend those projects to implement early MAGI.[5]

By contrast, states without a current § 1115 demonstration must follow the full public notice and comment requirements § 1115 proposals, including two public hearings, a state-level public comment period, and a federal comment and review period.[6] The state and federal public comment and review process requires at least 75 days. This means that, to ensure review and approval of early MAGI implementation before October 1, a state must have initiated its application process no later than July 18th.

Additionally, the approval of early MAGI is subject to a CMS Operational Readiness Review to confirm the state's eligibility systems can accurately make MAGI-based determinations and be fully operational by October 1, 2013.[7]

Q4. In states that implement MAGI early, what protections exist for current Medicaid enrollees scheduled for redetermination between Oct. 1 and Dec. 31 2013, who may lose eligibility due to the switch to MAGI?

A. It is unclear whether statutory and regulatory grace periods for redeterminations extend to early MAGI. The ACA expressly protects individuals who lose Medicaid eligibility solely due to the switch to MAGI as of January 1, 2014.[8] For redeterminations of beneficiaries who were Medicaid-eligible on or before December 31, 2013, CMS regulations delay the application of MAGI rules until March 31, 2014.[9]

However, the CMS guidance does not specifically address how to safeguard current enrollees who lose coverage in states that implement early MAGI. Publicly available § 1115 proposals and CMS' approval letter for the District of Columbia's early MAGI amendment do not address this issue either. In fact, the § 1115 proposals and the approval letter implement early MAGI for "all populations" subject to MAGI, with no exceptions or alternative process for 2013 redeterminations.[10]

In the absence of clarification from CMS, and in keeping with the ACA, states should expressly include safeguards for current enrollees in early MAGI implementation proposals. Otherwise, an enrollee redetermined in November could immediately lose coverage, while another redetermined in January would have a grace period. The following proposed options, modeled on statutory protections for eligibility redeterminations scheduled in the first quarter of 2014, protect current enrollees who would otherwise lose coverage due to an early transition to MAGI.

First, states could simply delay redeterminations scheduled between October 1 and December 31, 2013 to at least March 31, 2014. This would eliminate the administrative burden of operating two eligibility systems – one based upon the old rules and one based on the MAGI rules. It would also best protect current Medicaid enrollees and prevent gaps in coverage for individuals who may be found ineligible under MAGI. Moreover, the option to

postpone the 2013 redeterminations offers those enrollees the same protection available to states for enrollees whose redeterminations are scheduled after January 1, 2014 through March 31, 2014 (as explained below in Q5).

A second option allows states to apply MAGI to new applicants only. Individuals with redeterminations scheduled between October 1 and December 31, 2013 would be evaluated first under MAGI-rules, and those who lose eligibility (under MAGI) would be reevaluated using the old income counting rules. If found eligible under old rules, they would retain eligibility until their next scheduled redetermination, barring a change in circumstance. This option would protect individuals who may lose coverage due to the MAGI transition, but it requires states to temporarily maintain two eligibility systems.

In a third option, states would temporarily extend Medicaid coverage to January 1, 2014 for individuals who lose eligibility solely due to the switch to MAGI. Under this approach, the state would use MAGI to conduct eligibility determinations for new applicants and those scheduled for renewals between October 1 and December 31, 2013. Like in option two, if current Medicaid enrollees were found ineligible under MAGI, the state would conduct a second evaluation based on the old income counting rules to determine whether the enrollee lost eligibility solely due to MAGI. These individuals would then receive a temporary extension of their Medicaid coverage until January 1, 2014. However, some of the lowest income families in states that refuse Medicaid expansion will not qualify for subsidized Marketplace coverage and will have no affordable coverage options come 2014. So under this option, some beneficiaries would face an abrupt loss of coverage in January, while states would still have the administrative burden of maintaining two eligibility systems.

Q5. Are there any protections for Medicaid enrollees who lose eligibility in states that wait until January 1, 2014 to implement MAGI?

A. Yes. The ACA provides that individuals eligible for Medicaid on January 1, 2014, who lose eligibility solely due to the application of MAGI, will remain eligible "through March 31, 2014, or the date on which the individual's next regularly scheduled redetermination of eligibility is to occur, whichever is later."[11] However, the state can only identify such individuals by running both MAGI and the old rules.

To avoid this administrative burden, the CMS guidance also allows states to delay redeterminations scheduled to occur between January 1, 2014 and March 31, 2014.[12] Accordingly, those who would lose eligibility due to the MAGI transition will keep their coverage during the first quarter of 2014. This option allows states to stagger the rescheduled redeterminations.

States do not have to seek § 1115 approval to delay redeterminations scheduled for the first quarter of 2014. The ACA expressly prohibits the Department of Health and Human Services (HHS) from waiving MAGI applicability after January 1, 2014 except in very limited

circumstances.[13] However, it also provides HHS authority to waive certain Medicaid and CHIP provisions "as are necessary to ensure that States establish income and eligibility determination systems that protect beneficiaries."[14] This new authority is not subject to federal transparency rules.[15]

Q6. Will states include their MAGI conversion calculations in the § 1115 proposal?

A. As part of the move to MAGI, states must convert their current income eligibility standards to equivalent MAGI-based income eligibility standards. However, there are no transparency requirements in the conversion process outlined by CMS.[16] Only a handful of states (*e.g.*, California, North Carolina) have publicly released their MAGI conversions thus far. More should become available as states submit State Plan Amendments for the transition to MAGI.

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[1] 42 U.S.C. § 1396a(e)(14)(A).
[2] Ctrs. for Medicare & Medicaid Serv. (CMS), *Dear State Health Official Letter*, May 17, 2013, available at http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-003.pdf, (strategies to facilitate Medicaid and CHIP enrollment and renewal in 2014.)
[3] Id.
[4] Letter from Marilyn Tavenner, Ctrs. for Medicare & Medicaid Serv., to Linda D. Elam, PhD, MPH, Senior Deputy Dir. and State Medicaid Dir., District of Columbia Dept. of Health Care Finance, Early Adoption of MAGI-based Eligibility Rules Approval, (June 18, 2013) (on file at NHeLP). Under 42 C.F.R. § 431.412(c)(1), CMS has the discretion to treat § 1115 amendments which "substantially change" demonstrations as new, subjecting them to the public notice and comment procedures.
[5] AL, AR, CO, DE, FL, GA, IA, ID, IL, KS, LA, MA, ME, MI, MN, MO, MS, MI, NJ, NM, NY, OH, OK, OR, RI, TN, TX, VT, WA, WI, WY, available at http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/Section-1115-Demonstrations.html.
[6] 42 C.F.R. § 431.408.
[7] See *supra*, Tavenner letter note 4.
[8] 42 U.S.C.§ 1396a(e)(14)(D)(v).
[9] 42 C.F.R. § 435.603(a)(3).
[10] *See* West Virginia Bureau of Medical Services, Section 1115 Demonstration Program, Early Adoption of MAGI, at 2, available at http://www.dhhr.wv.gov/bms/news/Documents/1115%20Demo%20Application.pdf; Virginia Dept. of Medical Assistance Serv., Section 1115 Demonstration Program, at 2, available at http://www.dmas.virginia.gov/Content_pgs/MAGI.pdf; *supra*, Tavenner, letter note 4.
[11] 42 U.S.C.§ 1396a(e)(14)(D)(v).
[12] See *supra*, note 2.
[13] 42 U.S.C. § 1396a(e)(14)(A),(F).
[14] 42 U.S.C. § 1396a(e)(14)(A).
[15] See *supra*, note 2, at 4.
[16] CMS, *Dear State Health Official Letter*, Dec. 28, 2012, at 7, available at http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO12003.pdf, (conversion of net income standards to MAGI equivalent income standards.)