

MEMORANDUM

To: Interested Parties
From: National Family Planning & Reproductive Health Association (NFPRHA),
National Health Law Program (NHeLP), Guttmacher Institute, National Women's
Law Center (NWLC), Planned Parenthood Federation of America (PPFA)
Date: May 22, 2014
Re: MAGI, Streamlined Applications, and Medicaid Family Planning Expansions

The Affordable Care Act (ACA) requires states implement a uniform methodology for determining income – modified adjusted gross income (MAGI) – in their eligibility determinations for Medicaid and for premium subsidies in the health insurance marketplaces. The ACA also requires states to move to a single, streamlined application (SSA), which the federal and state insurance marketplaces use to gather and assess information necessary to determine the insurance coverage and assistance for which a person is eligible.

Consumer and provider groups have expressed concern about the impact of transitioning to MAGI and SSA on Medicaid family planning expansion programs. In recent months, representatives of NHeLP, NFPRHA, the Guttmacher Institute, NWLC, and PPFA met with representatives of the Centers for Medicare & Medicaid Services (CMS) to discuss these issues. This memo details the outcomes of those conversations with CMS regarding MAGI, SSA, and Medicaid family planning expansions.

MAGI

A number of Medicaid family planning waiver and state plan amendment (SPA) programs allow states to determine eligibility for certain individuals by considering only their individual income. This allows state Medicaid agencies to enroll individuals into their family planning expansion programs who, based on parents', spouse's, or other household members' income, might not otherwise qualify for the family planning expansion. This policy of not counting certain income (referred to as "income disregards") under Medicaid eligibility rules has been especially important for ensuring that individuals are able to access family planning services and supplies confidentially without household members' involvement.

Beginning in 2014, the ACA's MAGI rules require that states move away from income disregards and convert to MAGI counting rules. However, the ACA, which authorized the use of SPAs to expand Medicaid eligibility for family planning services and supplies, specifically included language that allows states with Medicaid family planning SPAs to continue to consider only the income of the applicant/recipient in determining SPA eligibility, even after the transition to MAGI. Until this point, it has been unclear whether states could apply this unique flexibility for some groups of applicants but not others under the SPA, and whether states could consider only the income of the applicant/recipient in Medicaid family planning waivers (allowed under the authority of Section 1115 of the Social Security Act).

Based on conversations with CMS:

1. **States with family planning SPAs:** States may continue to exercise flexibility about how to count income for all applicants or for some applicants.
 - a. **Applicant-only income applied to all applicants:** States may consider only the income of individual applicants (rather than household members' income) by applying the flexibility uniformly to all applicants. States can accomplish this by designating every applicant as a *household size* of one and/or by counting only the individual (not household) *income* of applicants. The family planning SPA pre-print form reflects these flexibilities.
 - b. **Applicant-only income applied to minors only:** States also have the option to treat minor applicants (up to age 21, depending on the state) differently than adults. Under this option, states can count only the income of minor applicants while still counting all household income for adult applicants. If a state wants to exercise this applicant-only income standard under a SPA, it must complete an attachment to the S59 SPA application, which is included as an attachment to this memo (Appendix A). States may also request the attachment from CMS.
 - i. If the state already has a family planning SPA, the state can elect the minor applicant option at any time. The state would need to complete and submit the S59 attachment; this would constitute a change to the state's existing family planning SPA.
 - ii. For states that do not currently have a family planning SPA, the attachment can be submitted along with the S59 SPA application and will be considered by CMS as part of the SPA application.
2. **States with family planning waivers:** Because the flexibilities discussed above are options under family planning SPAs, CMS explicitly stated that the same options are available to family planning waivers to consider only the income of individual applicants (rather than household members' income). The process for taking up these options, however, is slightly different under a waiver than under a SPA.
 - a. **Waivers on temporary extensions:** Family planning waivers on temporary extension are operating under their existing Special Terms and Conditions (STCs), and therefore can continue to use their existing methodologies for determining income (e.g. continuing to consider only the income of individual applicants). This applies to any groups of applicants for whom states are currently counting only individual income: minors, adults, "special confidentiality" categories, etc.
 - b. **Waiver renewals:**
 - i. **Applicant-only income applied to all applicants:** As with SPAs, states with family planning waivers can choose to count only individual applicants' income and/or designate each applicant as a household size of one. To apply this flexibility uniformly to all family planning waiver applicants, states simply need to ensure this option is included in the STCs of their next waiver renewal.
 - ii. **Applicant-only income applied to minors only:** In the next waiver renewal, if the state seeks to count only the individual's income for minor applicants (up to age 21 or up to an age younger than 21) but not for adults, the state can do so.

One issue that remains unresolved at this time for both family planning SPAs and waivers is eligibility methodologies for **adults** who need confidential services where the state is unwilling to apply the applicant-only income counting flexibility uniformly to all applicants. CMS is assessing this issue, and has indicated that it is open to ideas on potential strategies that would allow adults to obtain confidential services. We will continue to work with CMS on this issue.

SSA

Medicaid agencies began using the SSA for assessing Medicaid and marketplace eligibility starting October 1, 2013. However, the federally facilitated marketplaces (FFMs) and some state-based marketplaces (SBMs) do not currently assess or determine eligibility for family planning expansion programs.

Even in states where eligibility for the Medicaid family planning expansion is evaluated using the SSA, some concerns have been raised that the SSA could be a deterrent for some individuals seeking to enroll in coverage through same-day, on-site enrollment. We are particularly concerned that this could undermine the confidentiality protections afforded by the special income/household counting flexibilities as discussed above.

CMS has stressed that its highest priority is that individuals be encouraged to apply for full coverage and be provided the opportunity to complete the SSA. However, CMS also recognizes that there will be situations where it may not be possible to fill out the full application, given the individual's circumstances and needs. In those cases, CMS agrees that states may continue to enroll the person in the more limited family planning coverage using a separate application form as necessary. This will still prioritize broader coverage without jeopardizing access to care.

Conclusion

We will continue to work with CMS on these issues, and will update this memo as needed. If you have questions, please contact:

Robin Summers
NFPRHA
rsummers@nfprha.org

Erin Armstrong
NHeLP
Armstrong@healthlaw.org

Rachel Gold
Guttmacher Institute
rgold@guttmacher.org

Judy Waxman
NWLC
jwaxman@nwlc.org

David Silverman
PPFA
davida.silverman@ppfa.org

Appendix A

S59 SPA Attachment for Family Planning

INDIVIDUALS ELIGIBLE FOR FAMILY PLANNING SERVICES
(Attachment to S59)

TRANSMITTAL NUMBER:

STATE:

The state is covering two categorical populations listed under section 1902(a)(10)(A)(ii)(XXI) of the Social Security Act and 42 CFR 435.214: (1) Individuals described at clause (xvi) of section 1905(a) (i.e., all individuals described in 1902(ii)); and (2) individuals described in clause (i) of 1905(a) (i.e., individuals under age 21).

The elections made in S59 apply to the group covering all individuals described in section 1902(ii).

The elections made in S59 apply to the group covering individuals under age 21 who also are described in section 1902(ii) except that, in determining eligibility for this group, the state considers only the income of the applicant.