

Pregnancy-Related Medicaid and Minimum Essential Coverage

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Introduction

Medicaid rules require that states provide full-scope Medicaid coverage to qualified pregnant women who meet the relevant income limits.² In setting this income limit, with respect to full-scope Medicaid coverage for qualified pregnant women, a state cannot set full-scope Medicaid eligibility for qualified pregnant women below limits set by Aid to Families with Dependent Children (AFDC) income limits that were in effect in that state on May 1, 1988.³

Where a pregnant woman does not meet the income limits for full Medicaid coverage, a state must provide at least pregnancy-related coverage to a woman whose household income is the higher of: 1) 133% of the federal poverty level (FPL); or 2) the Medicaid income limit the state had set for pregnancy-related coverage as of December 19, 1989.⁴ In some states, the result is a requirement to provide at least pregnancy-related coverage to women with incomes up to 185% FPL.⁵ For a full list of the income limits by state, see Appendix A.

The Affordable Care Act requires that most individuals in the United States be enrolled in health insurance that qualifies as minimum essential coverage (MEC). Those who are not enrolled in coverage that meets the standards for MEC face a monetary penalty. All Marketplace plans, most employer-based plans, and Medicare meet MEC. Full-scope Medicaid also meets MEC. However, not all pregnancy-related Medicaid programs meet MEC.

This issue brief will review federal guidance on pregnancy-related Medicaid and MEC, discuss the states with pregnancy-related Medicaid that do and do not meet MEC, and provide suggestions for further advocacy.

¹ With thanks to NHeLP summer 2016 law intern Kirin Goff for her assistance with this issue brief.

² 42 U.S.C. §§ 1396a(a)(10)(A)(i)(III), 1396d(n)(1)(A), 1396u-1(b)(1)(A); 42 CFR § 435.116(a)(1).

³ Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010; Final Rule, 77 Fed. Reg. 57, 17,205 (Mar. 23, 2012).

⁴ 42 U.S.C. §§ 1396a(a)(10)(A)(i)(IV), 1396a(l)(1)(A), 1396a(l)(2)(A)(i-ii, iv).

⁵ 42 U.S.C. §§ 1396a(a)(10)(A)(i)(IV), 1396a(l)(1)(A), 1396a(l)(2)(A)(i); Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010; Final Rule, 77 Fed. Reg. 57at 17204-17205.

Pregnancy-related Medicaid

“Pregnancy-related” Medicaid covers “those services that are necessary for the health of a pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant.”⁶ Such services include:

- prenatal care,
- labor and delivery,
- postpartum care,
- family planning, and
- “[s]ervices for other conditions that might complicate the pregnancy,” including “...diagnoses, illnesses, or medical conditions which might threaten the carrying of the fetus to full term...”⁷

The U.S. Department of Health and Human Services (HHS) has stated that “because it is difficult to identify what is ‘pregnancy-related’ and because the health of a pregnant woman is intertwined with the health of her expected child, the scope of such services is necessarily comprehensive.”⁸ This has been taken to mean that all medically necessary services a woman needs during her pregnancy and postpartum period are covered, and that services are not restricted merely to those directly related to pregnancy, such as prenatal care and labor and delivery.

Federal Guidance

With the passage of the ACA’s minimum coverage provision, the Internal Revenue Service (IRS) and Centers for Medicare & Medicaid Services (CMS) were faced with the challenge of determining which Medicaid programs constitute MEC.⁹

On August 30, 2013, the IRS issued a [final rule](#) stating that pregnancy-related Medicaid is *not* MEC.¹⁰ However, women covered by pregnancy-related Medicaid were eligible for a hardship exemption from meeting the MEC requirement and thus not liable for the penalty imposed on individuals who do not have health insurance.¹¹ Additionally, as pregnancy-related coverage was not considered MEC, income-eligible women on pregnancy-related

⁶ 42 C.F.R. § 440.210(a)(2)(i).

⁷ 42 C.F.R. § 440.210(a)(2)(ii).

⁸ Medicaid Program; Eligibility Changes under Affordable Care Act of 2010, 77 Fed. Reg. 57 at 17149.

⁹ The individual mandate requires that most individuals have health insurance meeting the standards for minimum essential coverage or face a monetary penalty. 26 U.S.C. § 5000A(a), 5000A(b)(1).

¹⁰ I.R.S., Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage, 78 Fed. Reg. 169, 53648 (Aug. 30, 2013), <https://www.gpo.gov/fdsys/pkg/FR-2013-08-30/pdf/2013-21157.pdf>.

¹¹ I.R.S., Notice 2014-10, 1, <https://www.irs.gov/pub/irs-drop/n-14-10.pdf> (providing that those covered by pregnancy-related Medicaid during 2014 were not liable for the individual shared responsibility payment for the months in which they had pregnancy-related coverage).

Medicaid were also able to purchase health insurance through the Marketplace, with cost-sharing subsidies and premium tax credits.¹²

On November 7, 2014, CMS issued new [guidance](#), clarifying that if states provided women in their pregnancy-related Medicaid program the same full Medicaid benefits provided to other categorically needy populations, HHS would recognize that Medicaid program as MEC.¹³ However, in a state providing only pregnancy-related services, HHS would review the covered benefits relative to the coverage for other categorically needy pregnant beneficiaries.¹⁴ Where HHS determined that coverage to be equivalent to full Medicaid benefits, it would be recognized as MEC.¹⁵ HHS further noted that those enrolled in coverage that was not ultimately recognized as MEC would be eligible for a hardship exemption.¹⁶ In other words, the pregnant woman would not be penalized if her state's pregnancy-related Medicaid program did not meet the MEC standard.

The IRS also issued [guidance](#) clarifying that a qualified health plan (QHP) enrollee who becomes eligible for pregnancy-related Medicaid coverage or CHIP coverage that is otherwise considered MEC, will only be considered to have MEC if they actually enroll in Medicaid or CHIP.¹⁷ This matters because ordinarily if one qualifies for Medicaid that meets MEC, they would not be eligible for QHP subsidies. This would mean that a pregnant woman who newly qualifies for pregnancy-related Medicaid that meets MEC might suddenly lose her QHP subsidies. The IRS guidance allowed pregnant women already enrolled in a QHP who, based on their pregnancy, become newly eligible for Medicaid or CHIP that meets MEC, to choose to either keep their QHP subsidies, or to enroll in Medicaid or CHIP.¹⁸

Medicaid and CHIP may actually be more desirable options for some pregnant women, since unlike QHPs, Medicaid and CHIP coverage for pregnant women typically have no premiums, co-pays, or deductibles. However, some women may prefer to continue seeing the same providers in their existing QHP. Whatever the case may be, the purpose behind the IRS rule was to avoid churn caused by moving between programs and plans, as well as to ensure better continuity of care for women who may opt to remain in their QHP. See Appendix B for a flowchart of coverage options and MEC requirements for pregnant women.

¹² This was an exception to the general rule that Medicaid eligibility makes individuals ineligible for exchange subsidies. Medicaid and CHIP Payment Access Commission, Issue Brief, *Update on Pregnancy-Related Medicaid and Minimum Essential Coverage*, 2 (2016).

¹³ CMS, Dear State Health Official #14-002, Minimum Essential Coverage (Nov. 7, 2014), 10, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho-14-002.pdf>.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.*

¹⁶ *Id.* at 10-11. Consistent with SHO #14-002, CMS later issued guidance confirming that effective January 1, 2015, an individual enrolled in pregnancy-related Medicaid that is not recognized as MEC by either the IRS final rule or the HHS decision, would qualify for a hardship exemption under 45 CFR 155.605(g)(1). CENTERS FOR MEDICARE & MEDICAID SERVICES, GUIDANCE ON HARDSHIP EXEMPTIONS FOR PERSONS MEETING CERTAIN CRITERIA 3, (Nov. 21, 2014), <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Hardship-Exemption-Guidance-11-21-14-final.pdf>.

¹⁷ I.R.S., Notice 2014-71, 3 <https://www.irs.gov/pub/irs-drop/n-14-71.pdf>.

¹⁸ *Id.* at 2-3.

MEC Decisions

An NHeLP review of Medicaid State Plan Amendments in November 2015 found that seven states had pregnancy-related Medicaid that did not provide enrollees with full Medicaid benefits provided to other categorically needy populations. Subsequently, these states were reviewed by HHS to determine whether the pregnancy-related benefits were equivalent to full Medicaid benefits, thus satisfying the MEC requirement consistent with the [federal guidance](#).¹⁹ The seven states reviewed by HHS were Alabama, Arkansas, California, Idaho, New Mexico, North Carolina, and South Dakota.^{20;21;22;23;24;25;26}

In February 2016, CMS announced that four of the states—Alabama,²⁷ California, New Mexico, and North Carolina—provided equivalent services to pregnant women and were therefore considered to be MEC.²⁸ See Appendix C for a flowchart from the Medicaid and CHIP Payment and Access Commission (MACPAC) of coverage options for women on pregnancy-related Medicaid that is MEC.

Three states—Arkansas, Idaho, and South Dakota—did not provide equivalent services and were not approved as MEC.²⁹ See Appendix D for a flowchart from MACPAC of coverage options for women on pregnancy-related Medicaid that is not MEC.

¹⁹ CMS, *supra* note 13.

²⁰ In December 2015, Alabama’s State Plan Amendment providing full Medicaid coverage for all pregnant women, was approved by CMS. See CMS, Dear Alabama Medicaid Commissioner, <https://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/AL/AL-15-0009.pdf>. (Alabama State Plan Amendment AL-15-0009-MM1).

²¹ CMS, Dear Arkansas Medicaid Director, <http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/AR/AR-13-15-MM1.pdf>. (Arkansas State Plan Amendment 13-15 MM1).

²² CMS, Dear California Chief Deputy Director, Healthcare Programs, <http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/CA/CA-14-0021.pdf>. (California State Plan Amendment 14-0021-MM1).

²³ CENTER FOR MEDICAID AND MEDICARE SERVICES, IDAHO ALTERNATIVE BENEFIT PLAN, (Oct. 31, 2014), <http://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/BasicBenchmark.pdf>.

²⁴ CMS, Dear New Mexico Director of Medical Assistance Division, <http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/NM/NM-13-0022-MM2.pdf>. (New Mexico State Plan Amendment 13-0022 MM1).

²⁵ CMS, Dear Chief Operating Officer, Division of Medical Assistance, <http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/NC/NC-14-0004-MM1.pdf>. (North Carolina State Plan Amendment 14-0004-MM1).

²⁶ CMS, Dear Secretary, Department of Social Services, <http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/SD/SD-13-0015-MM.pdf>. (South Dakota State Plan Amendment 13-0015-MM).

²⁷ In December 2015, CMS approved Alabama’s request to provide full Medicaid coverage for all pregnant women. Alabama still appeared on the list of states for CMS to review and its pregnancy-related program was determined to be MEC. However, pregnant women in Alabama are now receiving full Medicaid coverage and are no longer in pregnancy-related Medi-Cal.

²⁸ Centers for Medicare & Medicaid Services, *Minimum Essential Coverage*, <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/minimum-essential-coverage.html>; see also CENTERS FOR MEDICARE AND MEDICAID SERVICES, MEDICAID SECRETARY-APPROVED MINIMUM ESSENTIAL COVERAGE, 2,5-6, (Feb. 16, 2016), <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/downloads/state-mec-designations.pdf>.

²⁹ Centers for Medicare & Medicaid Services, *Minimum Essential Coverage*, *supra* note 28.

Need for Continued Advocacy

As noted above, women covered by pregnancy-related Medicaid programs not found to be MEC—in Arkansas, Idaho, and South Dakota—should qualify for a hardship exemption.³⁰ Advocates in those states should continue encouraging their state to improve the level of services provided for pregnant women under their pregnancy-related Medicaid programs so these programs can ultimately be recognized as MEC.

Even in states with the MEC designations, advocates should continue monitoring services available to pregnant women to ensure that states are truly providing comprehensive coverage that includes all medically necessary services. State agencies and advocates should prioritize education to inform women that they can receive comprehensive services under pregnancy-related Medicaid, and inform providers that the state Medicaid program covers comprehensive services for pregnant women.

Problems remain for pregnant women trying to access Medicaid services. In California, advocates have seen cases where the services provided through the pregnancy-related Medicaid program were not comprehensive, and where women in the state were unable to access care for broken bones, brain tumors, heart disease, or physical therapy.³¹ Advocates in California are continuing their work to ensure that the state's pregnancy-related Medi-Cal program provides comprehensive coverage for all medically necessary services during the pregnancy and postpartum period.

New Mexico's Medicaid program will pay for pregnancy-related and post-partum services only and does not cover "... procedures, services, pharmaceuticals, or miscellaneous items which are not related to the pregnancy."³² However, covered pregnancy-related services do include nutritional assessment and "... services or supplies not related to the pregnancy but which are necessary as a result of a condition which may complicate the pregnancy prior to delivery," including such things as hospital services, family planning services, psychological services, and drug services.³³

Women in North Carolina face similar obstacles. The North Carolina Division of Medical Assistance's Clinical Coverage Policies define coverage under Medicaid for Pregnant Women (MPW)—the state's pregnancy-related services program—as including "...pregnancy-related antepartum, labor and delivery, and postpartum care as well as

³⁰ CENTERS FOR MEDICARE & MEDICAID SERVICES, GUIDANCE ON HARDSHIP EXEMPTIONS FOR PERSONS MEETING CERTAIN CRITERIA,3, (Nov. 21, 2014), <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Hardship-Exemption-Guidance-11-21-14-final.pdf>.

³¹ Regular Session Memorandum, Maternal and Child Health Access, MCHA Special Session Alert 1 (July 23, 2013) <http://www.mchaccess.org/pdfs/alerts/Regular%20Session%20Memo%20July%202013.pdf>.

³² United States. New Mexico Human Services Department. *State Plan Attachment*, State Supplement A to Attachment 3.1-A, 23; New Mexico Administrative Code, § 8.294.600.9 (2014).

³³ *New Mexico Human Services Department*, *supra* note 32, at Attachment 3.1-A, 23.

services for conditions that—in the judgment of their physician—may complicate pregnancy.”³⁴ The policy specifies that:

Conditions that may complicate the pregnancy can be further defined as any condition that may be problematic or detrimental to the well-being or health of the mother or the unborn fetus such as undiagnosed syncope, excessive nausea and vomiting, anemia, and dental abscesses (This list is not all-inclusive.). The eligibility period for MPW coverage ends on the last day of the month in which the 60th postpartum day occurs [42 CFR 447.53(b)(2)].³⁵

Services are available for conditions related to the pregnancy, pre-existing conditions, and/or “new pathological conditions that may adversely affect the best possible outcome from the pregnancy.”³⁶ Covered services are prenatal care, outpatient prenatal testing, inpatient hospital services, labor and delivery services, family planning services, pharmacy services, baby love services, physician services, medical consultation, routine dental care (covered only through the date of delivery and not for the postpartum period), behavior health services, and postpartum services.³⁷ There are no copayments for MPW enrollees.³⁸ However, women covered by MPW must get prior authorization for services in podiatry, chiropractic, optometric and optical services, home health, personal care services, hospice, private duty nursing, home infusion therapy, or durable medical equipment.³⁹

Moving forward, advocates in California, New Mexico, and North Carolina should continue to investigate the scope of coverage, specifically with respect to the following questions:

- Are the services provided comprehensive?
- Are the services comparable to those in full-scope Medicaid?
- Are there any medically necessary services—whether related to the pregnancy or not—that are being denied?

Conclusion

CMS’ recent designation of the pregnancy-related Medicaid programs in California, New Mexico, and North Carolina as MEC raises the need for continued vigilance on the part of advocates. This includes ensuring that the scope of services women receive is actually comprehensive, that women know they are entitled to comprehensive services, and that providers know their state Medicaid program covers such services for pregnant women. Meanwhile, advocates in Arkansas, Idaho, and South Dakota, are encouraged to continue

³⁴ North Carolina Division of Medical Assistance, Obstetrics, Clinical Coverage Policy No. 1E-5 § 2.1.2, 1, (amended Oct. 1, 2015), <http://www2.ncdhhs.gov/dma/mp/1E5.pdf>.

³⁵ *Id.*

³⁶ North Carolina Adult Medicaid Manual, MA-2905, Medicaid Covered Services § XXXV. Medicaid for Pregnant Women (Aug. 1, 2011), http://info.dhhs.state.nc.us/olm/manuals/dma/abd/man/MA2905-34.htm#P1869_78483.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at § 5.1.

urging their state to improve the level of services provided for pregnant women under their pregnancy-related Medicaid programs.

Appendix A

This chart lists the current state income limits for Medicaid coverage for pregnant women, as well as the minimum limit allowed, which is based on the limit in place in 1989.

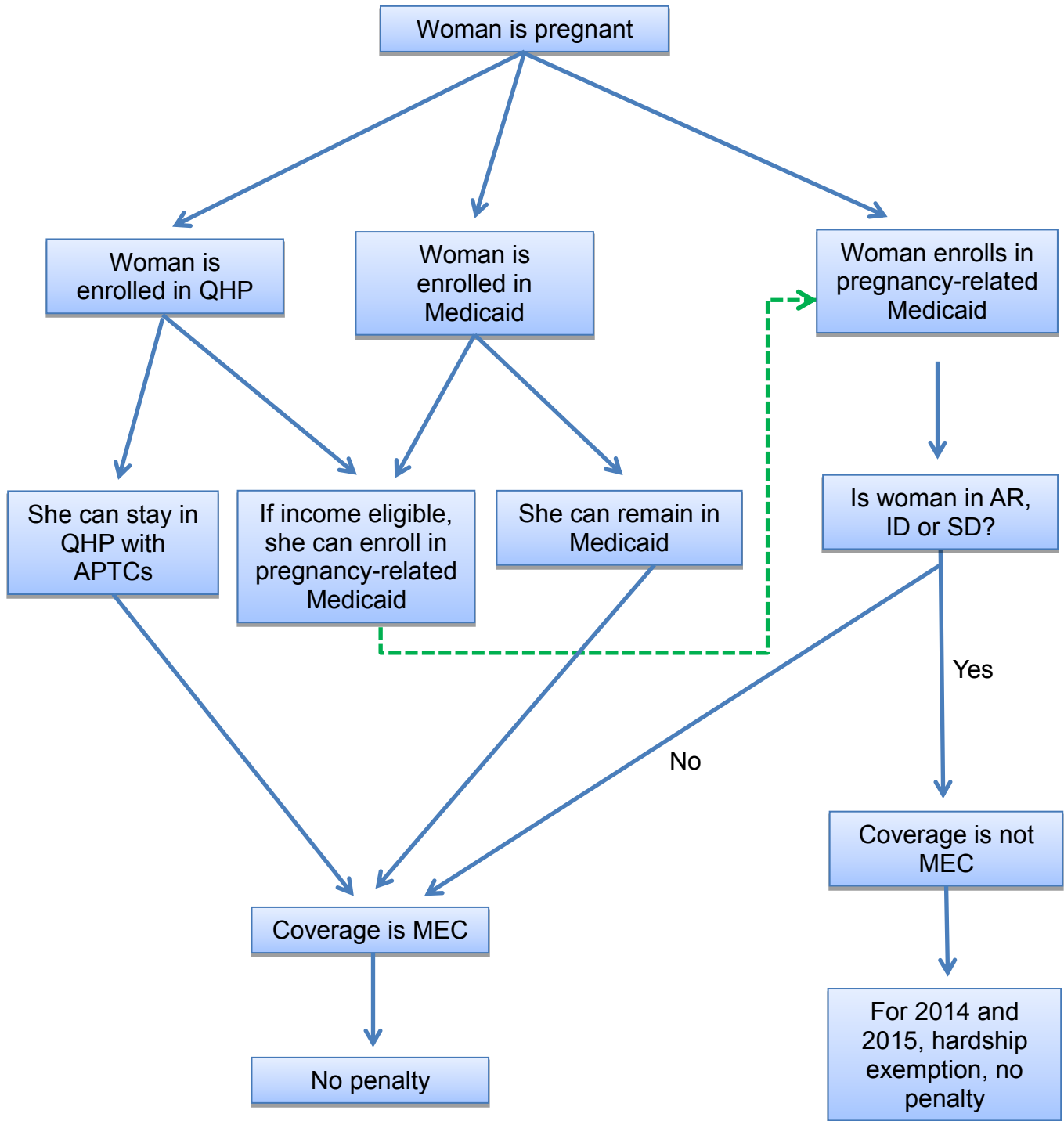
STATE	MEDICAID INCOME ELIGIBILITY LIMIT AS OF JANUARY 2016 (Percent of the FPL)	MEDICAID INCOME ELIGIBILITY MINIMUM SET BY OBRA '86/'87/89 (Percent of the FPL) ⁴⁰
Alabama	146%	100%
Alaska	205%	100%
Arizona	161%	100%
Arkansas	214%	100%
California	213%	185%
Colorado	200%	75%
Connecticut	263%	185%
Delaware	217%	100%
D.C.	211%	100%
Florida	196%	150%
Georgia	225%	100%
Hawaii	196%	185%
Idaho	138%	75%
Illinois	213%	100%
Indiana	218%	100%
Iowa	380%	185%
Kansas	171%	150%
Kentucky	200%	125%
Louisiana	138%	100%
Maine	214%	185%
Maryland	264%	185%
Massachusetts	205%	185%
Michigan	200%	185%
Minnesota	283%	185%
Mississippi	199%	185%
Missouri	201%	100%
Montana	162%	100%
Nebraska	199%	100%
Nevada	165%	75%
New Hampshire	201%	75%
New Jersey	199%	100%
New Mexico	255%	100%
New York	223%	185%
North Carolina	201%	150%
North Dakota	152%	75%
Ohio	205%	100%
Oklahoma	138%	100%
Oregon	190%	85%
Pennsylvania	220%	100%
Rhode Island	195%	185%
South Carolina	199%	185%

⁴⁰ MCH Update: State Coverage of Pregnant Women and Children – July 1990, NAT'L GOVERNORS' ASS'N 11 tbl.1 (July 1990).

South Dakota	138%	100%
Tennessee	200%	100%
Texas	203%	130%
Utah	144%	100%
Vermont	213%	185%
Virginia	148%	100%
Washington	198%	185%
West Virginia	163%	150%
Wisconsin	306%	82%
Wyoming	159%	100%

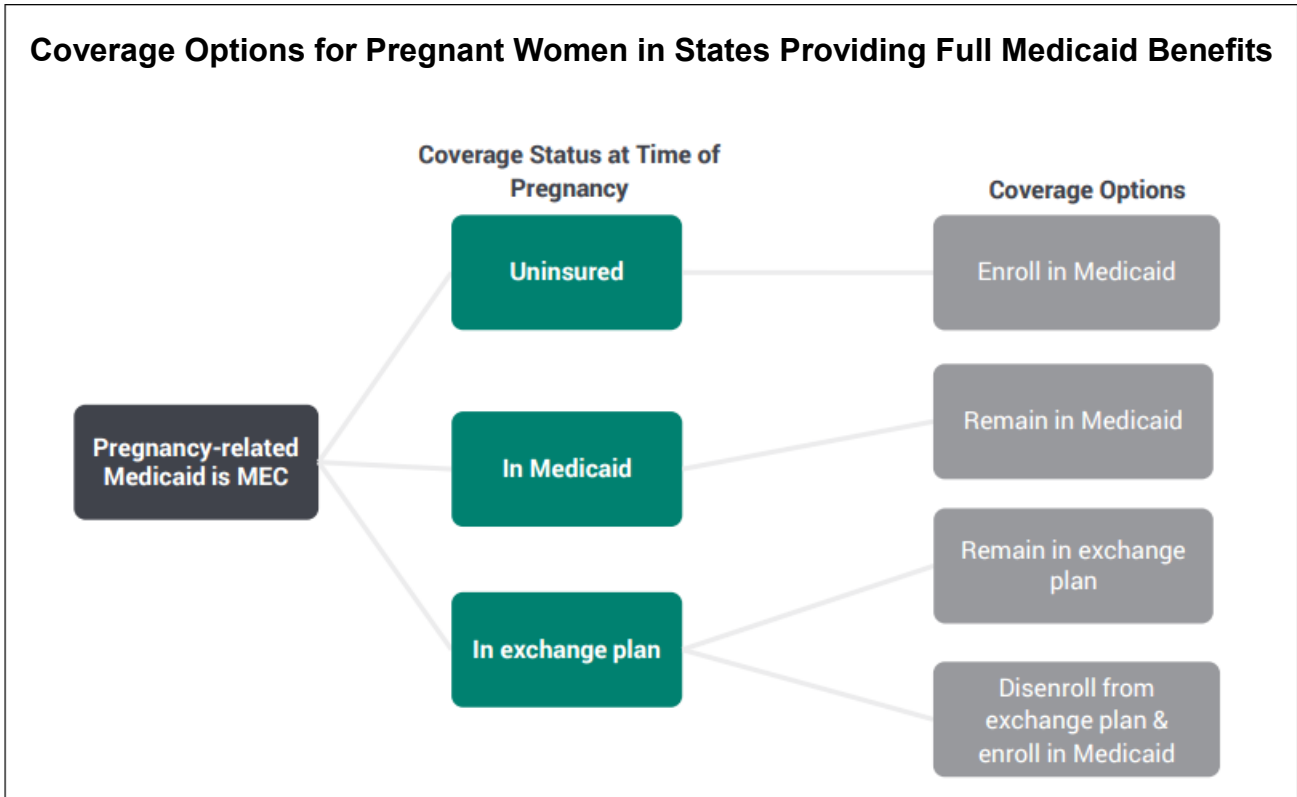
Appendix B

This flowchart provides an overview of coverage options and MEC requirements for pregnant women.



Appendix C

This flowchart outlines coverage option for women on pregnancy-related Medicaid that is MEC.

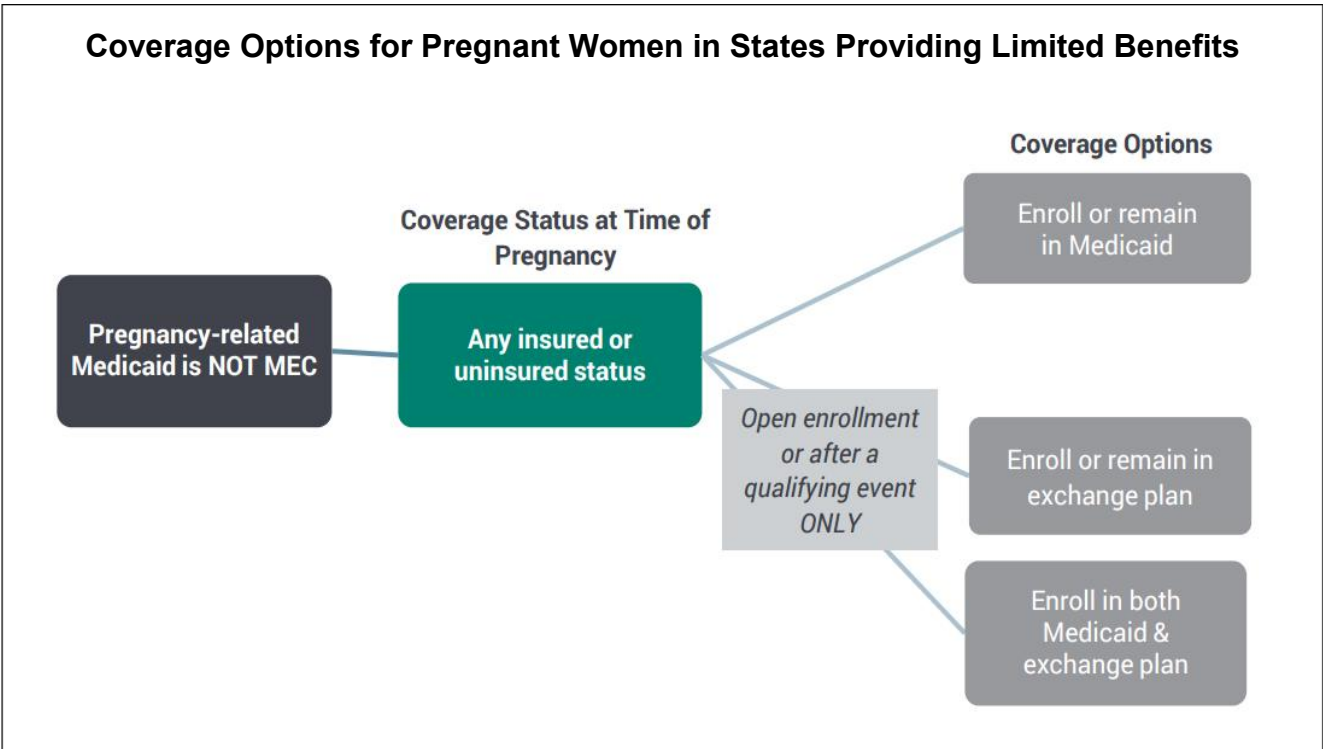


Source: Medicaid and CHIP Payment and Access Commission⁴¹

Appendix D

⁴¹ Medicaid and CHIP Payment Access Commission, Issue Brief, *Update on Pregnancy-Related Medicaid and Minimum Essential Coverage*, 4 (2016).

This flowchart outlines coverage options for women on pregnancy-related Medicaid that is not MEC.⁴²



Source: Medicaid and CHIP Payment and Access Commission⁴³

⁴² The three states with pregnancy-related Medicaid programs that are not MEC are Arkansas, Idaho, and South Dakota.

⁴³ Medicaid and CHIP Payment Access Commission, *supra* note 41 at 5.