



Center for Medicaid, CHIP and Survey & Certification

SHO # 11-002
ACA # 15

April 4, 2011

Re: CHIP Coverage of Children of Public Employees

Dear State Health Official:

This letter is one of a series intended to provide guidance on the implementation of the Affordable Care Act. This letter provides initial guidance to States regarding the new option, as amended by the Medicare and Medicaid Extenders Act of 2010 (Public Law 111-309), to receive Federal matching funds for coverage of children of State employees through the Children's Health Insurance Program (CHIP).

The purpose of this letter is to provide guidance to States regarding the flexibility available through this new option. States may receive Federal funding to extend CHIP eligibility to otherwise eligible children of State employees in cases where the State has maintained its contribution levels for health coverage for employees with dependent coverage, or can demonstrate that the State employees' health benefits plan's out-of-pocket costs pose a financial hardship for families. This new coverage option was effective upon enactment of the Affordable Care Act on March 23, 2010.

Background

Prior to passage of the Affordable Care Act, section 2110(b) of the Social Security Act (the Act) excluded from eligibility CHIP children who were eligible for health benefits coverage under a State health benefits program on the basis of a family member's employment with a public agency in the State (children of State employees). However, over time, it has become clear that in some States children of State employees do not, in fact, have access to comprehensive coverage options that are affordable to their families. Many of these children without meaningful access to affordable coverage are within the income eligibility level of their State's CHIP program.

The Affordable Care Act

In response to States' repeated requests for Federal support in this area, Congress added the new option for States in the Affordable Care Act. Specifically, section 10203(b)(2)(D) of the Affordable Care Act amends the definition of a targeted low-income child in section 2110(b)(2)(B) of the Act by permitting States to extend CHIP eligibility to children of State employees who are otherwise eligible under the State child health plan to the extent that one of

two conditions is met. These conditions are described in a new section 2110(b)(6) (added by the Affordable Care Act and amended by Public Law 111-309) of the Act and will be referred to as the maintenance of agency contribution condition and the hardship condition. States now have the opportunity to receive Federal funding to provide CHIP coverage to children of State employees when either of these conditions is met.

Maintenance of Agency Contribution

The first approach for offering coverage to children of public employees is in cases where States can demonstrate that they have been consistently contributing to the cost of employee coverage, with increases for inflation, since 1997. This condition is met when the public agency expenditures for health coverage for employees that have dependent coverage is not less than the amount of such expenditures in the 1997 State fiscal year, increased by the percentage increase of the medical care expenditure category of the Consumer Price Index (CPI-M) for All-Urban Consumers (all items: U.S. City Average).

To meet this condition, States may aggregate employee contributions by the public agency rather than have to consider the expenditures for a particular employee or class of employees of the public agency. Only the expenditures for health coverage for employees who elect dependent coverage need be considered. Each public agency would determine the State fiscal year 1997 baseline contribution levels for its employees, and compare the most recent State fiscal year to those levels. The attached set of Questions & Answers provides further information for States interested in this option.

Hardship

Another approach available to States is for a State to demonstrate that the coverage currently available through the public employee system poses a financial hardship for families. States seeking to offer coverage based on this condition would make a hardship determination to assess whether the annual aggregate premiums and cost-sharing imposed by the State health benefits plan would exceed 5 percent of a family's income during the year the child would be enrolled in CHIP. The attached set of Questions & Answers provides further information on this approach.

State Plan Option

States wishing to elect this coverage may submit a CHIP State plan amendment at any time. To continue to meet either condition, the State will need to monitor, on an annual basis, agency expenditures or the cost-sharing rules applicable to the coverage offered through the State health benefits plan to ensure that it continues to meet one of the conditions. The Centers for Medicare & Medicaid Services (CMS) is happy to provide technical assistance to States considering the option to cover the children of State employees, including review of other proposed methodologies to meet the maintenance of agency contribution or hardship conditions.

CMS is developing a Notice of Proposed Rulemaking outlining proposed regulations for this new option.

If you have questions regarding the information provided in the letter, please contact Ms. Victoria Wachino, Director, Family and Children’s Health Program Group, 410-786-5647.

Sincerely,

/s/

Cindy Mann
Director

Enclosure

cc:

CMS Regional Administrators

CMS Associate Regional Administrators
Division of Medicaid and Children’s Health

Richard Fenton
Acting Director
Health Services Division
American Public Human Services Association

Matt Salo
Executive Director
National Association of Medicaid Directors

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Director of Health Legislation
National Governors Association

Debra Miller
Director for Health Policy
Council of State Governments

Christine Evans, M.P.H
Director, Government Relations
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.
Executive Director
National Academy for State Health Policy

Enclosure

Questions and Answers for Coverage of State Employees' Children under CHIP

Q: For coverage of children of State employees, do both the maintenance of agency contribution condition and the hardship condition have to be met?

A: No, a State is only required to meet one of these conditions in order to provide coverage to these children.

Q: How would a State demonstrate that it meets the maintenance of agency contribution condition?

A: A State must demonstrate that the amount of expenditures for a public agency made on behalf of employees with dependent coverage for the most recent State fiscal year is not less than the amount of such expenditures made in 1997, adjusted for inflation. (1997 was the year CHIP was enacted into law.) This does not require a case-by-case determination but can be calculated on an average basis for each public agency (and, where multiple public agencies have the same contribution rate structures, can be done in the aggregate for all such agencies).

To do this, a State would first determine the amount of expenditures made by the public agency toward dependent coverage for State fiscal year (SFY) 1997. Next, a State would use the SFY 1997 expenditures and adjust it on an annual basis using the Consumer Price Index for medical expenses (CPI-M) in order to calculate what the expenditures would have been for the most recent prior fiscal year. You can find the CPI-M on the Bureau of Labor Statistics website:

<http://www.bls.gov/cpi/home.htm#tables>.

Finally, the State would then compare this adjusted 1997 expenditure amount to the current expenditure amount (calculated in the same manner as for 1997). If the State demonstrates that the public agency contributed an amount in the most recent prior fiscal year that is at least equivalent to the amount spent in SFY 1997, trended forward, then the maintenance of agency contribution condition will be met. The State will then be able to make dependents of employees of the public agency eligible for CHIP to the extent that other eligibility standards are met for those dependents.

If different public agencies, such as State agencies, public universities or local education agencies all offer coverage under a State health benefits program, but provide different contribution levels for dependent care coverage, then a separate calculation and comparison between 1997 and current expenditures must be made for each public agency that has a different contribution level.

A State would need to amend section 4.4.1 of its CHIP State plan and provide a methodology for how it would calculate the public agency expenditures on an annual basis in subsequent years. A State would need to provide an assurance that it would make these calculations on an annual basis.

Q: How would a State demonstrate the hardship condition under this new option?

A: States can demonstrate that families meet the hardship condition by analyzing data on the annual family premiums, co-pays, deductibles, and other cost sharing under the State employees' benefit plan (including separate dental/vision plans). A State's calculation should be based on cost sharing requirements and a reasonable estimate of prospective cost sharing obligations that would be experienced by participating State employees and their families. CMS will work with States in reviewing these estimates to determine reasonableness. If this total out-of-pocket expense for premiums, deductibles, and other cost sharing exceeds 5 percent of a family's income then the hardship condition is met.

A State would need to amend section 4.4.1 of its CHIP State plan and provide a methodology for how it would calculate the hardship condition on an annual basis in subsequent years. A State would need to provide an assurance that it would make these calculations on an annual basis.

Q: Can States make prospective determinations in order to meet the hardship condition?

A: Yes. A State can estimate annual cost sharing for the coming year for families and compare it with the 5 percent cap based on family income to make a prospective determination about meeting this hardship condition. A State could make these projections for all families that fall within certain income bands or Federal poverty level (FPL) categories. If different public agencies, such as State agencies, public universities or local education agencies offer different State health benefits, such as providing different contribution levels for dependent care coverage, then a separate calculation could be completed for each agency.

Q: Would a State need to extend this State employee coverage option to all income levels covered under its CHIP State plan?

A: No. A State could extend this option to a subset of its CHIP-eligible population by defining the eligible population accordingly. CHIP eligibility rules in 42 CFR 457 Subpart C permit States to identify eligibility groups based on access to other coverage, and this could include providing for separate treatment of children with access to a State health benefit program. The State could also determine that the conditions for coverage of children of State employees are not met for all otherwise eligible children of State employees. For example, if a State has a CHIP income threshold of 300 percent of the FPL, but can only substantiate that those with family incomes under 200 percent of the FPL meet the 5 percent hardship option, it may determine that, only those with family incomes under 200 percent of the FPL will automatically be eligible, while those above 200 percent may present additional documentation to establish hardship. In such an instance, the State plan amendment submission should reflect the income coverage level that the State intends to cover and criteria to determine if higher income families also meet a hardship condition. The statutory provision in CHIP prohibiting States from covering children with a higher family income without covering children with a lower family income within any defined group of covered targeted low-income children still applies.

Q: Would a State need to extend this State employee coverage option to all State employees?

A: No, this is an option and States have flexibility to define eligible groups as outlined in 42 CFR 457 Subpart C. A State could extend this option to all or a subset of its State employees. For example, if a State offers different coverage options for University employees, that agency may not meet the maintenance of agency contribution condition or those families may not meet the hardship condition. Or the State may find it can only afford to offer coverage to employees at a certain income level as explained in the previous question. CMS will work with States and their unique circumstances.

Q: How is this coverage option affected by crowd out?

A: States have discretion as to how they limit and monitor crowd out. States are not required to have a waiting period, but for those States with a waiting period, some have an affordability exception to the waiting period. The State may want to consider adding an exception specific to State employees who meet the affordability condition. States must continue to monitor for crowd out because children must be uninsured as described in section 2110(b)(1)(C) of the Act.

Q: Can a child of a State employee be eligible for CHIP and use premium assistance for a State employee health benefits plan?

A: Yes and all rules related to the premium assistance options continue to apply. For example, if a State chose to provide premium assistance under section 2105(c)(10) of the Act, like any other employer, whether the State is covering children of State employees using the hardship or maintenance of agency contribution approach, the State agency would need to maintain its 40 percent contribution.

Q: Can States that offer coverage to pregnant women include those who are State employees? Can States that offer supplemental dental coverage enroll children of State employees into that program?

A: Yes. A State can choose to include or exclude targeted low-income pregnant women who are State employees and children of State employees in supplemental dental coverage, consistent with the rules applicable to children.