

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations

SHO # 09-010
CHIPRA # 6

September 3, 2009

Dear State Health Official:

This letter is to provide additional guidance on the implementation of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3. CMS provided general information on the new option for States to provide CHIP coverage to targeted low-income pregnant women in its May 11, 2009 letter to State Medicaid Directors and State Health Officials (SHO #09-006). The attached set of answers to frequently asked questions are intended to provide further guidance on CMS policies regarding options for coverage of pregnant women under CHIP. In addition, a listing of the provisions with effective dates of February 4, 2009 and April 1, 2009 is provided.

We hope you will find this information helpful in your efforts to implement the provisions of CHIPRA. If you have questions, please contact Ms. Dianne E. Heffron, Acting Director, Family and Children's Health Programs Group, who may be reached at (410) 786-5647.

Sincerely,

/s/

Cindy Mann
Director

Enclosure

cc:

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Enclosure

**Questions and Answers Related to Coverage of Pregnant Women in the
Children’s Health Insurance Program (CHIP)**

On May 11, 2009, the Centers for Medicare & Medicaid Services (CMS) released a letter to State Health Officials (SHO #09-006) describing the new option created by section 111 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) that permits States to extend CHIP-funded health insurance coverage to targeted low-income pregnant women. The letter and attachments can be accessed on the CMS Web site at:

<http://www.cms.hhs.gov/SMDL/SHO/list.asp?listpage=9>

The following questions and answers are intended to further clarify CMS’ policies around coverage of pregnant women under CHIP and the parameters under which States may offer that coverage.

ELIGIBILITY/STATE PLAN REQUIREMENTS

Question 1: Did CHIPRA change how pregnant women can be covered under Medicaid?

Answer: No. There is no change to Medicaid eligibility for pregnant women under CHIPRA. As always, States have flexibility to set their own Medicaid eligibility income levels. Medicaid coverage of pregnant women is mandatory up to 133 percent of the Federal poverty level (FPL) and is optional up to 185 percent of the FPL.

Question 2: Can pregnant women be covered through CHIP?

Answer: Yes. CHIPRA included an explicit option for States to cover pregnant women under CHIP, provided they meet certain criteria (described in detail below). States may submit a CHIP State plan amendment to CMS to receive CHIP matching funds for expanding coverage for pregnant women at higher income levels than are covered under Medicaid. This option is only available for CHIP separate child health programs. States that operate CHIP Medicaid expansion programs may not cover pregnant women in Medicaid with CHIP funds. States that opt to cover pregnant women under the CHIP State plan may cover the cost of services for the woman until 60-days postpartum.

It should be noted that States may also provide coverage under the CHIP State plan of pregnancy-related care by electing the option to provide prenatal care as specified in section 42 CFR 457.10 (the “unborn child” option). (See Question 17 for more information.) If a State elects this option, prenatal care is available, within the specified family income levels, regardless of the citizenship status of the pregnant woman. Prenatal and labor and delivery services must be available under the CHIP State plan until the child is born and, as explained in more detail in Questions 18 and 20, if payment is made through a “global fee” prior to labor and delivery, benefits may include postpartum services.

Question 3: What are the new State plan requirements for covering pregnant women under CHIP?

Answer: Under CHIPRA section 111, States may provide coverage under the CHIP plan for pregnant women who are not eligible for Medicaid under the Medicaid State plan as of July 1, 2008. In order to receive approval to add coverage for “targeted low-income pregnant women” to the CHIP State plan, States must meet the following criteria:

- States must be covering pregnant women in Medicaid at or above 185 percent of the FPL.
- States must not apply an effective income level for pregnant women under CHIP that is lower than the Medicaid effective income level, and cannot cover higher income pregnant women without covering lower income pregnant women.
- States must not apply any preexisting condition exclusion or waiting period for CHIP coverage of pregnant women.
- States may not require enrollee cost sharing for preventive or pregnancy-related services.
- States must be covering children under age 19 in Medicaid or CHIP up to at least 200 percent of the FPL.
- States may not establish a higher income eligibility level for pregnant women than the State’s eligibility level for targeted low-income children.
- States must not impose any cap or limitation on the enrollment of targeted low-income children, and must not have any waiting list or any procedures designed to delay applications for enrollment.

Question 4: When is the new option to cover targeted low-income pregnant women effective and available to States?

Answer: States may begin covering targeted low-income pregnant women in CHIP as of April 1, 2009, the effective date of CHIPRA Section 111. A State plan amendment template was included with the State Health Official letter dated May 11, 2009 (SHO #09-006), and is available at: <http://www.cms.hhs.gov/SMDL/SHO/list.asp?listpage=9>.

Question 5: Can States that currently cover pregnant women above 185 percent of the FPL under Medicaid shift coverage of pregnant women above that income level from Medicaid to CHIP?

Answer: No. Under the CHIP Plan, States may only receive CHIP funds to cover targeted low-income pregnant women who were not eligible for coverage under the Medicaid State plan as of July 1, 2008.

Question 6: Are States with existing pregnant women coverage up to 185 percent of the FPL now required to cover children up to 200 percent of the FPL?

Answer: No. States with existing pregnant women coverage up to 185 percent of the FPL, whether coverage is through a section 1115 demonstration or the Medicaid State plan, are not required to cover children up to 200 percent of the FPL. However, States that choose to expand eligibility for pregnant women under the CHIP State plan must cover children under 19 years of age, under the Medicaid or CHIP State plan(s), up to a minimum income level of 200 percent of the FPL. States are also permitted to expand Medicaid pregnant women coverage to higher income levels (e.g., 250 percent of the FPL), regardless of whether they are covering children up to 200 percent of the FPL.

Question 7: Are States required to use the same income methodology to determine CHIP eligibility for targeted low-income pregnant women as is applied for CHIP targeted low-income children (e.g., application of different income disregards)?

Answer: No. States may use a different income methodology for CHIP targeted low-income pregnant women than for CHIP targeted low-income children. This is consistent with current CHIP requirements at 42 CFR 457.320, which allow States to vary eligibility group standards by geographic area; age; income; resources; spend downs; disposition of resources; residency; disability status (provided that such standards do not restrict eligibility); access to, or coverage under, other health coverage; and duration of eligibility.

However, States do have flexibility to use the same income methodology for both targeted low-income pregnant women and targeted low-income children. CHIPRA did not make any changes to the CHIP definition of family income, which is defined as income determined by the State for a family as defined by the State. In determining the applicable disregards, however, States must ensure that they are not covering, through CHIP, pregnant women who were eligible for Medicaid as of July 1, 2008.

Question 8: Can States cover pregnant women under the new CHIP State plan option, regardless of whether the State has a separate child health program, a Medicaid expansion program, or a combination program? If so, what is the process for implementing this option?

Answer: The option to receive CHIP funding to cover targeted low-income pregnant women under the CHIP State plan is available to all States. However, since CHIPRA explicitly provides at section 111 that a “State may elect through an amendment to its State child health plan under section 2102 to provide pregnancy-related assistance under such plan for targeted low-income pregnant women,” States are not permitted to cover targeted low-income pregnant women through a CHIP Medicaid expansion program.

- CHIP Separate Programs: States that currently have separate CHIP programs can amend their State plan by adding a new population of targeted low-income pregnant women to the existing coverage of targeted low-income children. These States would continue to operate as a CHIP separate program, covering both children and pregnant women under

the CHIP State plan. There would be no change to the State’s CHIP program type under this scenario.

- **CHIP Medicaid Expansion Programs:** States that currently have a CHIP Medicaid expansion program can amend their CHIP plan to create a separate program for targeted low-income pregnant women. States that elect this option would become combination CHIP programs. Currently covered children would continue to be eligible under the CHIP Medicaid expansion program and the newly eligible targeted low-income pregnant women would be covered under the separate program. In this case, States may wish to design their CHIP program for pregnant women as a “Medicaid look-alike” plan.
- **CHIP Combination Programs:** States with existing CHIP combination programs can amend their State plans to add targeted low-income pregnant women to their separate CHIP program. These States would continue to operate as a CHIP combination program covering both children and pregnant women.

As always, State plan amendments must be approved by CMS.

Question 9: Does CMS have a CHIP State plan pre-print for covering targeted low-income pregnant women?

Answer: The State Health Official letter released on May 11, 2009 (SHO # 09-006), included draft CHIP State plan pre-print pages in order to elect the option to cover targeted low-income pregnant women in CHIP. States are not required to use these draft pre-print pages as they are pending approval by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act.

PRESUMPTIVE ELIGIBILITY (PE)

Question 10: Can States provide presumptive eligibility to pregnant women under CHIP?

Answer: Yes. CHIPRA includes provisions at sections 111 and 113, which were effective April 1, 2009, related to PE for children and pregnant women under Medicaid or CHIP. The legislation specifically changed CHIP and Medicaid claiming policy for children so that States are no longer required to claim PE costs against the CHIP allotment under certain circumstances. CHIPRA also expanded the definition of providers that are eligible to determine PE for pregnant women to include the “eligible entities” which may determine PE for children. CHIP PE for targeted low-income pregnant women is covered in accordance with the requirements at section 1920 of the Social Security Act (the Act) and in the same manner as PE coverage for pregnant women under the Medicaid State plan. States that elect to cover targeted low-income pregnant women under the CHIP State plan may also elect to offer PE for these pregnant women.

BENEFITS

Question 11: Can States provide different benefits to pregnant women than CHIP children?

Answer: Yes. States can provide different benefits to pregnant women than CHIP children. States may also elect to provide coverage to pregnant women using its existing CHIP benefit package. States have flexibility to provide any benefit package that meets the requirements of section 2103 of the Act. Specifically, States choose from one of the following four types of benefit coverage options:

- 1) *Benchmark coverage*-The coverage available under the Federal Employees Health Benefit Plan, the State Employee Plan, or the coverage available through the largest insured commercial, non-Medicaid Health Maintenance Organization in the State;
- 2) *Benchmark-equivalent coverage*-The benefits provided have an aggregate value that is actuarially equivalent to one of the benchmark plans;
- 3) *Existing comprehensive State-based coverage in PA, FL, or NY*-Three States had a comprehensive benefit package that was grandfathered in under title XXI of the Act; or,
- 4) *Secretary-approved coverage*-A benefit package determined by the Secretary to provide appropriate coverage for the population. Under Secretary-approved coverage, the State defines the package, which may or may not include the full Medicaid benefit package of services. Secretary-approved coverage is subject to approval by the Secretary as described in section 2103(a)(4) of the Act.

In general, States have the flexibility under CHIP to define the services to be provided as long as the benefit package meets one of the four benefit options described above.

Question 12: Are States required to cover postpartum benefits for targeted low-income pregnant women?

Answer: CHIPRA requires that States meet the same CHIP coverage requirements for targeted low-income pregnant women as is required for targeted low-income children. Although CHIPRA does not explicitly require the coverage of postpartum benefits for targeted low-income pregnant women, these services are typically offered as part of pregnancy-related coverage and are highly recommended by both the American Academy of Pediatrics and the American College of Obstetrics and Gynecology. Postpartum care is important both in terms of ensuring the health of the mother and for purposes of family planning.

As required under section 2103, a State must choose to provide one of the four types of benefit package options described above. Should a State choose to propose a benefit package under Secretary-approved coverage, approval for such coverage would be at the Secretary's discretion. Given the importance of postpartum services, a State proposing not to cover postpartum care would need to include in its request for Secretary-approved coverage a rationale and justification for not providing postpartum benefits. States may also choose to provide the full Medicaid benefit package, which includes postpartum benefits as a required Medicaid service. As noted above, this "Medicaid look-alike" package is considered Secretary-approved coverage.

ENROLLMENT CAPS/WAITING LISTS

Question 13: Can States maintain an enrollment cap/waiting list for children while covering pregnant women?

Answer: No. States cannot impose any cap or limitation on the enrollment of targeted low-income children, and must not have any waiting list or any procedures designed to delay applications for enrollment in order to cover pregnant women.

COST SHARING

Question 14: What cost sharing can be applied to targeted low-income pregnant women?

Answer: In general, cost sharing for targeted low-income pregnant women must be consistent with the cost-sharing protections for children under section 2103(e) of the CHIP statute. However, just as there is no cost sharing permitted for well-baby and well-child care, cost sharing for preventive or pregnancy-related services cannot be applied to targeted low-income pregnant women. Also, any cost sharing must be applied toward a cumulative cost-sharing maximum capped at 5 percent of the annual family income.

WAITING PERIOD OF UNINSURANCE

Question 15: Can States apply a waiting period or period of uninsurance to pregnant women prior to enrolling them into CHIP?

Answer: No. States cannot apply a waiting period or any preexisting condition exclusion for CHIP coverage of pregnant women.

FUNDING

Question 16: Will new funds be made available to States that cover pregnant women?

Answer: CHIPRA made additional CHIP funds available to States, although there is no specific allotment dedicated to pregnant women. States will have the option to provide coverage for pregnant women using their new CHIP allotments and pregnant women covered under the CHIP State plan will be considered CHIP program eligible.

PRE-CHIPRA OPTION FOR COVERAGE OF PRENATAL CARE

Question 17: Can States continue to use the option outlined in the letter to State Health Officials dated November 12, 2002, and at 42 CFR 457.10 to provide prenatal care to pregnant women?

Answer: Yes. States that have a CHIP separate child health program continue to have the option to provide prenatal care under the CHIP State plan option described at 42 CFR 457.10. If a State chooses to cover both the prenatal care option specified at 42 CFR 457.10 and the new group of targeted low-income pregnant women under CHIP, States must uniquely identify enrollees so that there is no duplication of payment for services between eligibility groups. Eligibility under either category is also subject to screening for Medicaid eligibility and payment is not available under CHIP for services that would be covered under Medicaid.

As described in the responses to Questions 11 and 12, States may provide different benefit packages to each CHIP population. Therefore, States may opt to provide a different benefit package through 42 CFR 457.10 than to targeted low-income pregnant women under CHIPRA. Specifically, there may be differences in providing postpartum benefits between these two populations. Under the option described at 42.CFR 457.10, women generally are not eligible for postpartum services unless the State elects to use a prepaid global payment methodology that includes postpartum services. However, targeted low-income pregnant women covered under the new CHIPRA option are eligible for postpartum services under the CHIP State plan.

Question 18: Can States cover postpartum care for the mothers covered under the pre-CHIPRA option (42 CFR 457.10), regardless of the mother's immigration or citizenship status?

Answer: Yes, under certain circumstances. As noted above, States have the option to pay for pregnancy and delivery services through a prepaid global fee consistent with general industry practices. Services that are often paid for using these payment methods include prenatal care, labor and delivery services (including pain management), and postpartum care. States that use a global payment may receive Federal matching funds for the entire payment. States that cover prenatal care through 42 CFR 457.10, but do not use a global payment may only receive Federal matching funds for postpartum services to the mother if she is determined to be eligible under the approved Medicaid or CHIP State plan.

Question 19: Are there Federal requirements for determining the pregnant woman's household size?

Answer: No. States continue to have flexibility to decide how to define income and family size. Note, however, that States may not define family size or family income in such a way that would make eligible for CHIP the pregnant women who are eligible for Medicaid under rules in effect on July 1, 2008, or who are otherwise eligible for Medicaid.

Question 20: Can States cover pregnant women under CHIP regardless of the mother’s insurance status?

Answer: No. Under both CHIP options (42 CFR 457.10 and the new CHIPRA option), States may only extend coverage to those who are not covered under a group health plan or under health insurance coverage, as defined in section 2791 of the Public Health Service Act.

States must apply screen and enroll processes to ensure that funding for prenatal care under CHIP does not replace funding for prenatal care under Medicaid. The citizenship status of the pregnant woman is not taken into consideration for purposes of determining eligibility in these circumstances. This option allows States to provide prenatal care for low-income immigrants. However, these women are often eligible for labor and delivery services through emergency services provided under Medicaid. Therefore, unless a State is paying for services as one global fee, which includes prenatal, labor and delivery, and postpartum services, these labor and delivery costs should be paid for under Medicaid.

CHIPRA EFFECTIVE DATES

Question 21: Which of the CHIPRA provisions went into effect on February 4, 2009, the date the President signed the bill into law? Which provisions became effective on April 1, 2009?

Answer: The following provisions are effective as of February 4, 2009:

- Option to establish an “Express Lane” agency to evaluate a child’s initial eligibility or renewal status for Medicaid or CHIP (CHIPRA section 203); and
- Requirement that States have at least a 30-day grace period for individuals to make premium payments before losing their coverage (CHIPRA section 504).

The following provisions are effective as of April 1, 2009:

- Option to provide dental-only supplemental coverage for separate CHIP programs (CHIPRA section 501);
- Option to provide coverage to targeted low-income pregnant women under the CHIP State plan (CHIPRA section 111);
- No Federal matching funding for presumptive eligibility expenditures will be deducted from the CHIP allotment (CHIPRA section 113);
- Application of the regular Medicaid Federal Medical Assistance Percentage (FMAP) for expenditures for children in families with incomes in excess of 300 percent of the FPL (CHIPRA section 114);
- Option for States to claim expenditures for Medicaid expansion populations under section 1905(u) of the Act, at the enhanced FMAP rate using title XXI funds or at the regular FMAP rate using title XIX funds (CHIPRA section 115);
- Option to extend Medicaid/CHIP coverage to qualified alien children and/or pregnant women who are residing lawfully in the United States and who have not met the 5-year waiting period or “5-year bar” required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (CHIPRA section 214);

- Option to offer premium assistance subsidies to CHIP and Medicaid-eligible children who have access to qualified employer-sponsored insurance (CHIPRA section 301);
- Provides a guaranteed right to enroll in a group health plan without having to wait for an open enrollment period if certain conditions are met (CHIPRA section 311);
- Group health plan administrators must disclose information about plan benefits to States upon request when a family's child is covered under Medicaid or CHIP to allow States to determine the cost-effectiveness of providing premium assistance for the purchase of coverage under the plan and to provide supplemental benefits (CHIPRA section 311);
- The Department of Health and Human Services (HHS) and Department of Labor (DOL) are directed to establish a working group by April 1, 2009, to develop a model coverage coordination disclosure form for plan administrators to complete that would require certain information for this purpose (CHIPRA section 311); and
- Application of Medicaid managed care requirements in sections 1932(a)(4), (a)(5), (b), (c), (d), and (e) of the Act to CHIP managed care contracts entered into or renewed as of July 1, 2009, in the same manner as they are applied in Medicaid (CHIPRA section 403).

States should also note the following effective dates for other CHIPRA provisions:

- Provide information on dental benefits and a list of Medicaid/CHIP dental providers on the Insure Kids Now Web site and hotline by August 4, 2009 (CHIPRA section 501);
- Required coverage of dental services under CHIP, effective October 1, 2009 (CHIPRA section 501);
- Application of the Medicaid prospective payment system for Federally qualified health centers (FQHCs) and rural health centers (RHCs) in section 1902(bb) of the Act to CHIP programs effective for services rendered by FQHCs/RHCs on or after October 1, 2009 (CHIPRA section 503);
- Mental health parity requirements that prevent States that include mental health or substance abuse services in their CHIP plans from imposing financial requirements and treatment limitations that are more restrictive than those for medical and surgical benefits, effective the first plan year that begins on or after October 4, 2009 (CHIPRA section 502);
- Employers who maintain group health plans in States that provide CHIP (or Medicaid) premium assistance subsidies are required to provide written notices to their employees informing them of the potential opportunities for premium assistance in their State. In addition, HHS and DOL are required to develop national and State-specific model notices by February 4, 2010, to enable employers to comply with the notice requirement (CHIPRA section 311);
- Extends citizenship verification requirements to CHIP children as previously required under the Deficit Reduction Act of 2005 for Medicaid recipients, effective January 1, 2010. States may meet this requirement by requesting that the Social Security Administration verify names, Social Security numbers, and date of birth through the State Verification Exchange System. Additionally, States have the option to cover individuals who were denied eligibility solely based on citizenship retroactively to February 8, 2006 (CHIPRA section 211); and
- By February 4, 2010, the premium assistance model coverage coordination disclosure form should be available (CHIPRA section 311).

Question 22: Are States required to comply with the provisions of CHIPRA before CMS publishes guidance and/or regulations?

Answer: Yes, these provisions are in effect generally on April 1, 2009, unless otherwise provided in the statute, whether or not regulations have been issued. However, Federal financial participation under titles XIX or XXI will not be denied for a State that implements these amendments in a good faith effort, which turns out not to be in compliance before guidance is provided or final regulations are promulgated. Furthermore, in the case of a Medicaid or CHIP State plan that CMS determines requires State legislation in order to meet one or more of the CHIPRA requirements in accordance with the timeframes described in section 3 of CHIPRA, the State plan shall not be regarded as failing to comply until the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins following February 4, 2009 (with each year of a 2-year legislative session considered as a separate regular session). As described in section 2106 of the Act, States must have CHIP State plans in place that meet the requirements of CHIP law and regulations. As always, CMS will work closely with States to ensure that CHIP State plans reflect changes in CHIP law, as well as regulations and guidance resulting from CHIPRA.