Proposed Rule: Medicaid, Children's Health Insurance Programs, and Exchanges

Description: This proposed rule would implement provisions of the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act), and the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). This rule reflects new statutory eligibility provisions, proposes changes to provide states more flexibility to coordinate Medicaid and CHIP eligibility notices, appeals, and other related administrative procedures with similar procedures used by other health coverage programs authorized under the Affordable Care Act. This proposed rule also modernizes and streamlines existing rules, eliminates obsolete rules, and updates provisions to reflect new or revised Medicaid eligibility pathways. This rule also implements CHIPRA eligibility-related provisions, including eligibility for newborns whose mothers were eligible for and receiving Medicaid or CHIP coverage at the time of birth.

Major Provisions

Process for Appeals of Eligibility Determinations. The rule proposes a coordinated Exchange and Medicaid appeals process. The rule proposes that enrollees will first have the opportunity for a preliminary case review by appeals staff, referred to as "informal resolution." If the enrollee is satisfied by the outcome of the informal resolution, the decision stands as an official appeal decision. All enrollees who remain dissatisfied with the outcome of the informal resolution process would have rights to a full appeal. As required by statute, a federally-managed appeals process would be available to all enrollees in the individual market.

State-based Exchanges would have the flexibility to implement their own appeals processes in accordance with the NPRM's standards, with individuals retaining the right to a federal appeal at HHS after exhausting the state-based appeals process.

The proposed rule provides options for states to coordinate appeals of eligibility decisions across Medicaid, CHIP, and the Exchange. Specifically, states could choose between the following options:

- A state Medicaid or CHIP agency could delegate the authority to make final determinations in Medicaid and CHIP eligibility appeals to an Exchange appeals entity subject to standards.
- A state could retain the Medicaid and CHIP appeals functions, consistent with the choice offered to states with respect to permitting the Federally-facilitated Exchange to make Medicaid and CHIP eligibility determinations or assessments.

Notices. The rule proposes that notices to applicants and beneficiaries would include combined, clear, and accurate information about eligibility for all insurance affordability programs, including Medicaid, CHIP, advance payments of the premium tax credit and cost-sharing reductions, as well as eligibility to enroll in a qualified health plan through the Exchange. The final combined, comprehensive notice

would be generated by the agency that completed the last step in making the eligibility determination (which could be the Exchange or the Medicaid or CHIP agency). This coordinated process would not be required to be in place until January 1, 2015, or, optionally, at an earlier date if all relevant agencies have the necessary systems in place.

Medicaid Benefits. The proposed rule modifies existing "benchmark" regulations applicable to Medicaid programs, as previously described in a State Health Officials Letter, to implement the benefit options available to low-income adults beginning January 1, 2014. The NPRM provides guidance on the use of section 1937 benchmark and benchmark-equivalent plans (now known as Alternative Benefit Plans) for the new eligibility group for low-income adults; the relationship between Alternative Benefit Plans and Essential Health Benefits; and the relationship between section 1937 and other Title XIX provisions.

Medicaid Cost Sharing. This rule proposes to update and simplify policies around Medicaid premiums and cost-sharing requirements to promote the most effective use of services and to assist states in identifying cost sharing flexibilities. Specifically, CMS proposes to update the maximum allowable cost-sharing levels and to consolidate redundant provisions in order to create one streamlined set of rules for all Medicaid premiums and cost sharing. Additionally, the rule proposes to allow states to establish higher cost sharing for non-preferred drugs, and to impose higher cost sharing for non-emergency use of the emergency department.

Streamlining Eligibility Categories. The proposed rule completes the process of streamlining the eligibility categories that will be in effect in 2014. These provisions build on the Medicaid and CHIP eligibility final rule issued in March 2012. Specifically, this NPRM proposes to:

- Define the range of eligibility groups for Medicaid and eliminate obsolete categories to reflect the existing federal statute and the shift to use of the Modified Adjusted Gross Income (MAGI) methodology for determining eligibility with most populations.
- Codify eligibility categories authorized in CHIPRA and the Affordable Care Act, such as the new coverage for former foster care children up to age 26.
- Simplify and align the citizenship documentation process across Medicaid, CHIP, and the Exchange.

Verification of Employer-sponsored Coverage. Individuals who are enrolled in employer-sponsored coverage or eligible for employer-sponsored coverage that meets affordability and minimum value standards are ineligible to receive advance payments of the premium tax credit or cost-sharing reductions through the Exchange. This proposed rule includes detail on the procedures for the Exchange to verify access to employer-sponsored coverage. It also proposes that an Exchange may opt to fulfill the employer-sponsored coverage verification process by relying on HHS.

Application Counselors. Application counselors play a key role in assisting individual in applying for and maintaining coverage in a qualified health plan through the Exchange and insurance affordability programs. This rule proposes standards for the certification of individuals seeking to become application counselors.