



October 24, 2011

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Attention: **CMS-2349-P**

Re: Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010

The American Public Human Services Association (APHSA) respectfully submits this comment letter on the proposed rule CMS-2349-P, Eligibility Changes Under the Affordable Care Act of 2010. This proposed rule was published in the August 17, 2011, *Federal Register*.

APHSA is a bipartisan, nonprofit organization representing appointed state and local health and human service agency commissioners along with their key state program managers and hundreds of county-level directors of human services throughout the nation. Changes to Medicaid eligibility rules and procedures are of critical importance to our members and the work of their agencies. Medicaid eligibility functions are often performed by staff within our member agencies and on behalf of agency clients. As such, APHSA is pleased to provide you with the following comments.

GENERAL COMMENTS

The Medicaid program plays a vital role in states, providing health insurance coverage to millions of residents. Medicaid is the largest source of health coverage for children and covers individuals with complicated health conditions and disabilities. The Medicaid program has also become increasingly complex and layered in the decades since its enactment, especially in regards to program eligibility. There are numerous eligibility categories, some mandatory and others optional. The proposed rule on Medicaid eligibility changes would offer opportunities to consolidate and streamline certain categorical groups. Additionally, the statute and proposed rule may bring some uniformity to the eligibility process for certain groups. Given the administrative challenges that arise from Medicaid's current complexity, we appreciate the orientation towards simplification of eligibility categories taken in the proposed rule.

The changes to Medicaid eligibility rules and procedures described in the proposed rule are deep and system-wide, and would result in new ways of doing business within states. APHSA appreciates CMS' work to develop this proposed rule and recognizes the significant effort that it entailed. The proposed rule provides needed guidance to states. At the same time, there remains uncertainty for states that

impedes decision making. Further clarity, along with support and ongoing technical assistance to states, would be needed for states to undertake far-reaching changes to Medicaid eligibility.

Federal guidance and clarification should not, however, limit states' ability to design, develop, or build on eligibility and enrollment policies and procedures that reflect the administrative and programmatic structure of each state's Medicaid program as well as the broader health and human services infrastructure. Flexibility is essential for states to structure effective eligibility and enrollment procedures.

As CMS and states navigate Medicaid eligibility changes, APHSA appreciates the opportunities for information exchange and dialogue that CMS has facilitated, such as the recent series of conference calls on Medicaid eligibility and the proposed rule. We encourage CMS to continue this communication and recognize that changes to Medicaid eligibility and enrollment will require ongoing dialogue between the states and federal partners.

PROVISIONS OF THE PROPOSED RULE

Part B: Financial Methodologies for Determining Medicaid Eligibility Based on MAGI under the Affordable Care Act

As noted above, the Medicaid eligibility changes described in the proposed rule are significant and far-reaching. We recognize that there is an intention to ultimately have greater consistency and automation in the eligibility process for most applicants. Yet the transition to new methodologies and procedures will require significant effort and investment of time and resources on behalf of health and human service agencies. Additionally, a fair amount of complexity may still remain in the Medicaid program. The use of Modified Adjusted Gross Income (MAGI)-based methodologies is entirely new to the Medicaid program, for example, and raises many thorny eligibility questions. States will also be required to convert existing eligibility methodologies for certain groups to MAGI-based methodologies, which may be a challenging process. It is also critical to note that the use of greater automation and online tools for eligibility procedures, while certainly valuable, does not relieve the need for well-trained and knowledgeable eligibility staff or for casework and human intervention for certain individuals and families.

APHSA is concerned that, with the emphasis on automation and electronic data sources, the Medicaid eligibility proposed rule and its companion proposed rules may overlook the need for human intervention and case management that is often required for "high-touch" clients. These include individuals and families with complicated situations, for example, or those with low literacy or low cognitive function among others. Those at the low-income levels associated with Medicaid eligibility may have financial and family circumstances that shift frequently, requiring more assistance with eligibility, enrollment and renewal.

In light of the types of issues raised above, APHSA is deeply concerned that agency staff and training needs could be underestimated. Medicaid eligibility changes under ACA and the proposed rule place a very substantial training burden on health and human service agencies, from eligibility and front-line staff to managers and supervisors, and other staff. Even with online and automated tools and portals, eligibility staff will need significant retooling to effectively serve clients. This training burden is also likely to persist over some time as new eligibility methodologies and procedures are implemented and calibrated. Additionally, the potential influx of new clients seeking assistance, including high-touch clients, could tax agency staff at a time when most state agencies do not have the resources to add staff.

APHSA strongly encourages CMS to consider the training and capacity-building needs facing health and human service agencies. While resources to help address training needs would be very beneficial to states, we request that, at a minimum, CMS provide and facilitate training and technical assistance to state and local agencies to the maximum degree possible regarding eligibility changes.

Part D: Application & Enrollment Procedures for Medicaid

Medicaid eligibility changes and other provisions of ACA and the proposed rules envision more simplified, seamless eligibility pathways. Yet, over the course of several decades, states themselves have undertaken a range of efforts to create more coordinated and seamless eligibility systems, including efforts to streamline eligibility across Medicaid and key human service programs. APHSA strongly encourages CMS to consider these existing state efforts in rule-making and to recognize that states have valid and legitimate reasons to pursue coordinated or integrated eligibility pathways or other existing efforts to create streamlined eligibility structures.

States have undertaken these types of efforts not only to reduce administrative burdens but also to promote improved outcomes for clients including family stabilization, better nutrition, employment, and improved health outcomes through access to coverage. Efforts to create coordinated or integrated eligibility pathways recognize that low-income individuals and families may have multiple needs, and that addressing these needs through access to supports and services across programs can ultimately enable individuals and families to increase their independence and functioning.

APHSA is concerned that statutory and proposed regulatory provisions and timeframes could undermine existing state efforts to create coordinated or integrated eligibility and enrollment procedures, particularly cross-programmatic efforts. Part D of the proposed rule (Application and Enrollment Procedures for Medicaid) focuses on coordinated eligibility and enrollment for insurance affordability programs and on development of a single, streamlined application. However, this provision does not appear to acknowledge eligibility and enrollment procedures, or applications, that coordinate and streamline eligibility determination across health coverage programs and human service programs. We strongly request that CMS, in its rule-making, recognize not only coordinated application, eligibility and enrollment for health coverage programs, but also the option for coordination of eligibility with human service programs. Additionally, we urge CMS to allow states flexibility to build on their existing efforts so that they can leverage current eligibility applications and procedures.

As described in the proposed rule, ACA directs the Secretary of the U.S. Department of Health and Human Services to develop and provide states with a single, streamlined application to be used for all insurance affordability programs. States also have the option to develop and use an alternative streamlined application pending Secretary approval. In light of our comments above, APHSA recommends that the maximum flexibility be used regarding the state option to enable states to build on existing coordinated applications if they choose. We also urge the Secretary to consider the cross-programmatic needs of many low-income individuals and families in developing the single, streamlined application. We encourage the Secretary to develop an application that incorporates data elements and questions that facilitate linkage to and/or enrollment in human service programs.

APHSA recognizes and appreciates the partnership CMS and HHS have developed with us to leverage opportunities for coordination and integration across health coverage and human service programs. Our comments reflect our deep commitment to improved outcomes for low-income individuals and families.

We encourage CMS, HHS and other federal partners to continue your cross-agency efforts and partnerships on program eligibility.

Part J: Single State Agency

In light of our comments above regarding coordination and integration of health and human services programs serving low income populations, we also bring to your attention a potential conflict with at least one other assistance program, the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program), which many states contemplate including among the human service programs that are linked with the exchanges through interoperable sharing of application data and preliminary eligibility determinations. The Food and Nutrition Service, which has federal responsibility for SNAP policy, has recently implemented a very restrictive interpretation of the allowable use of merit staff in SNAP. The SNAP statute requires merit staff to determine the eligibility of applicants but does not speak specifically to the many supporting tasks that underlie that determination. In a memorandum issued January 22, 2010, FNS stated the following:

Over the past few years several States have used vendor staff to help households complete the application, gather verifying information about household circumstances, answer case specific questions from call centers and/or enter information into the State's automated data processing system. ... After a careful review of the impact of these projects on program administration, FNS has determined that it is not in the best interest of the households entitled to SNAP to support such projects with Federal Financial Participation (FFP).

Accordingly, FNS is requiring States to report to receive prior FNS approval if they plan to use non-merit pay staff to perform discretionary tasks in the intake and enrollment process. FNS will work with States to determine if FFP is warranted.

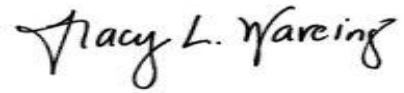
In response to several recent state initiatives involving the use of non-merit staff for various SNAP eligibility determination support functions, FNS has both issued formal denials and has provided verbal guidance indicating that formal approval would be unlikely. While CMS does not have direct jurisdiction over FNS policies, we point out this stance as a potential impediment to efficient and effective administration of state exchanges or even of systems that want to consolidate preliminary eligibility functions between the current Medicaid program and human service programs such as SNAP. Based on what we have seen to date, we fear that FNS might disapprove any state plans that included linkages to SNAP and that did not use merit staff for every step of the eligibility determination process. This could severely hamper the scope of what many states need to do for reasons of efficiency, cost savings, minimizing the timeline of system implementation, and maximum client access and outreach. The FNS stance could therefore significantly hamper one of the key goals of the ACA.

We urge the Administration to resolve this potential conflict and to direct all agencies that may be involved in exchanges and in interoperable information systems to allow the necessary flexibility needed in all programs with respect to the merit staff issue.

We appreciate the efforts of CMS to provide guidance to states on Medicaid eligibility changes under the ACA. As states and CMS address these eligibility changes over time, we believe there is a strong need for ongoing flexibility to support decision-making over time. We look forward to working with you on

these and other issues and appreciate your time and consideration of these comments. Please contact Nanette Relave with any questions at (202) 682-0100 x241.

Sincerely,

A handwritten signature in black ink that reads "Tracy L. Wareing". The signature is written in a cursive style with a large initial 'T'.

Tracy L. Wareing
Executive Director, APHSA