

HEALTH LAW UPDATE

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NEW CMS GUIDANCE ON THE AFFORDABLE CARE ACT'S MOE PROVISIONS

CMS recently issued guidance on the maintenance of effort (MOE) provisions under the Affordable Care Act (ACA) in a [letter to State Medicaid Directors](#). The MOE provisions of the ACA require that states maintain in effect those eligibility standards, methodologies or procedures that exist in a state on the date of enactment of the ACA up until the date that a state establishes its Exchange in 2014 or forfeit their Federal Medical Assistance Percentage (FMAP). The MOE provisions, as applicable to children, extend to 2019.

While underscoring that the states should generally follow the MOE provisions and guidelines issued by CMS under the American Recovery and Reinvestment Act (ARRA), the latest guidance from the agency addresses (1) the circumstances under which the ACA's MOE provisions would not apply to states with a certified budget deficit; (2) whether and how the termination or modification of a Medicaid section 1115 waiver would be affected by the ACA's MOE requirements; and (3) whether states may impose increases to existing premiums or new premiums under the CHIP and Medicaid programs.

States with certified budget deficits may be excepted from the ACA's MOE provisions applicable to adults who are not eligible for coverage on the basis of pregnancy or disability and whose incomes are above 133 percent of the federal poverty level. CMS cautions, however, that the ACA exception does not apply to the MOE requirements under ARRA, which remain applicable through June 20, 2011. Accordingly, "States should carefully consider the implications of any more restrictive eligibility provisions they may wish to implement during the first two calendar quarters of 2011," as a violation of the ARRA MOE provisions could result in the loss of a state's increased FMAP for this period. Additionally delineated in the CMS letter are the conditions under which states can qualify for this exception, as well the amount of flexibility that is available to the states when exercising this option.

While the ACA's MOE provisions apply to Medicaid section 1115 waivers and demonstrations in effect on March 23, 2010, that cover optional adult populations, they do not obligate a state to renew or continue a demonstration that has terminated or expired, according to CMS. However, states are precluded from modifying or terminating such demonstrations for purposes of restricting Medicaid eligibility for adult populations prior to the end of the demonstration period. CMS also outlined in the guidance letter special considerations that may apply to children covered under Medicaid and the Children's Health Insurance Program (CHIP) when a demonstration terminates or expires.

The agency revises prior guidance that precluded incremental premium increases under the ARRA MOE to accommodate the "longer time frame for the ACA MOE period." As a result, states may adopt premium increases retroactive to March 23, 2010, if their state plans or demonstrations [as of July 1, 2008, for Medicaid and March 23, 2010, for CHIP] contain approved and explicit language authorizing regular and automatic premium adjustments. Also, states can adopt amendments to

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their state plans or demonstrations authorizing inflation-adjusted premiums retroactive to the base amount in effect on March 23, 2010. Finally, states may adopt premiums for new coverage provided after July 1, 2008 (Medicaid), and March 23, 2010 (CHIP), "consistent with other provisions of law."

The CMS guidance comes on the heels of very public requests and responses by the Secretary to the governor of Arizona's request for relief from its 1115 Medicaid waiver. A number of governors have requested relief to deal with state budgetary woes.

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