



"People
helping people
help
themselves"

Michael R. Pence, Governor
State of Indiana

Indiana Family and Social Services Administration
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TO: Chris Atkins, Director
Office of Management and Budget

RE: Family impact certification – Medicaid eligibility changes (MAGI)

DATE: June 12, 2013

CC: Natalie Angel, Steve Holt, Brandon Shirley

This certification, submitted in accordance with Executive Order #13-05, formalizes the Family and Social Services Administration's ("FSSA") assessment of the impact of a rule that it intends to adopt on Indiana families.

Executive Order 13-05 Certification of rules affecting families

Executive Order 13-05 ("Executive Order") requires the FSSA, prior to adopting any policy or rule, to certify that it has assessed its "real or potential impact on family well-being or family formation" in light of considerations set out in Executive Order. See Executive Order, § 3. In addition, the FSSA must justify any rule that is expected to have a negative impact on family well-being or formation. *Id.* The Office of Management and Budget ("OMB") must respond to the FSSA statement no later than seven (7) days before the public hearing. *Id.*

Summary and background of the proposed rule

The proposed rule changes the methodology for determining Medicaid eligibility for certain groups of applicants or recipients. This new income conversion methodology, known as Modified Adjusted Gross Income ("MAGI"), calculates Medicaid eligibility based on the individual's household composition and income. The OMPP must promulgate administrative rules to codify the new methodology and align the administrative code with federal and state law.

The new methodology for determining Medicaid eligibility is mandated by federal law and is necessary under Indiana law. Effective January 1, 2014, states are required to apply the MAGI methodology to certain individuals applying for or receiving Medicaid benefits. See 42 C.F.R. § 435.603 *final rule eff.* Jan. 1, 2014. Recent changes to Indiana law also exempted the group of individuals subject to the new MAGI methodology from the previous eligibility requirements,



thus allowing FSSA to proceed with the new MAGI eligibility standards beginning January 1, 2014. *See* HEA 1328.

Justification of proposed rule

Existing Medicaid eligibility policies have likely caused certain individuals to make decisions that may not support traditional family formation in order to achieve or maintain Medicaid eligibility. The proposed rule, by basing Medicaid eligibility on the financial earnings of certain household members, may continue this trend and negatively impact family formation. Specifically, an applicant or recipient may take certain steps, like avoiding marriage, to prevent another individual's income counted toward his or her eligibility. However, this outcome is speculative and it is not expected that this rule will increase such occurrences beyond what happens today.

Notwithstanding, the OMPP must proceed with formal rulemaking for the following reasons: 1) federal law requires the eligibility changes; 2) the State's non-compliance would result in the loss of federal Medicaid dollars and possible legal challenges; and 3) the changes are required under recently passed state legislation.

First, the Patient Protection and Affordable Care Act ("PPACA") requires all participating states to utilize the MAGI based income methodology for determining Medicaid eligibility beginning January 1, 2014. *See* 42 U.S.C. § 1396a(e)(14)(A) ("Notwithstanding any other provision . . . a state *shall use* the modified adjusted gross income of an individual and, in the case of an individual in a family greater than 1, the household income of such family"). *See also* 42 C.F.R. 435.603(a)(2) ("Effective January 1, 2014, the agency *must apply* the financial methodologies set forth in this section in determining the financial eligibility of all individuals for Medicaid . . .") (emphasis added). Compliance with these laws is mandatory.

Second, the State's non-compliance with this federal requirement would result in its loss of federal Medicaid dollars. *See* 42 U.S.C. § 1396c ("If the Secretary [of HHS] . . . finds . . . that there is a failure to comply substantially with any such provisions . . . the Secretary shall notify such State that further payments will not be made to the State . . ."). The State's failure to comply with the MAGI requirement would be considered "substantial non-compliance," thus justifying the withholding of its federal Medicaid dollars. Additionally, the state could be exposed to legal challenges and costly litigation by individuals who were being denied benefits who would have been Medicaid eligible under the new MAGI methodology.

Third, recently enacted state legislation enabled the OMPP to apply the MAGI standards to individuals beginning January 1, 2014. *See* HEA 1328. This statutory change removed the application of existing laws to the MAGI population. The OMPP must promulgate administrative rules to align them with the state and federal laws and to have laws in place that govern eligibility for this population. More importantly, the rule change reduces consumer and administrative confusion and ensures that the law is applied equally and fairly.

The FSSA is submitting this certification to the OMB that it has considered the requisite criteria in Executive Order 13-05 in developing the proposed rule and justification to proceed with the rule change.

Office of the Secretary of Family and
Social Services

Debra F. Minott

Debra F. Minott, Secretary