Georgetown University Health Policy Institute
Center for Children and Families

Center on Budget and Policy Priorities

Holding the Line on Medicaid and CHIP: Key Questions and Answers About Health Care Reform's Maintenance-of-Effort Requirements

Background

The Patient Protection and Affordable Care Act (PPACA; Public Law 111-148), signed into law on March 23, 2010, requires that states maintain their current eligibility standards for Medicaid and the Children's Health Insurance Program (CHIP). These maintenance-of-effort (MOE) requirements apply to adults until the major components of health reform go into effect on January 1, 2014, and to children until September 30, 2019. During the MOE periods, states also are barred from imposing new paperwork and other barriers that would make it harder for people to enroll in Medicaid or CHIP. These MOE requirements are designed to assure that people do not lose coverage in the months and years ahead as health reform is being implemented. In the absence of such provisions, some states might have scaled back Medicaid or CHIP coverage in response to current fiscal problems or in anticipation of health reform, even as changes are being made to move the country forward in providing families with affordable coverage options.

Detailed Questions and Answers

This set of question and answers reviews how the MOEs are structured in the PPACA. As noted, some areas are open to interpretation. Until the Centers for Medicare and Medicaid Services (CMS) issues guidance that answers these questions definitively, it is important to treat all of these answers as educated guesses.

1. In general, what are the new maintenance-of-effort (MOE) requirements included in health reform?

The PPACA requires states to maintain eligibility standards for adults in Medicaid until January 1, 2014, when the new health exchanges are operational, and for children in Medicaid and CHIP until October 1, 2019. The statutory language says that a state shall not have in effect eligibility standards, methodologies, or procedures under its Medicaid or CHIP state plan (or under a Medicaid or CHIP waiver) "that are more restrictive than the eligibility standards, methodologies, or procedures" in effect on the date of enactment of the PPACA. This language is explored in more detail under Question 4, but, in effect, it means states cannot adopt changes in eligibility rules and procedures that would make someone ineligible for Medicaid or CHIP coverage, who would have been eligible for Medicaid or CHIP on March 23, 2010. Examples of changes that are likely to be precluded by the MOE language include:

- Scaling back income eligibility or eliminating coverage for an entire eligibility category in Medicaid;
- Eliminating CHIP or scaling back eligibility for children in CHIP;
- Dropping lawfully-residing immigrants from coverage in Medicaid or CHIP;
- Reducing or eliminating an income or asset disregard, such as an earnings disregard;
- Imposing a new paperwork requirement, such as a face-to-face interview or a more frequent renewal period.

One exception, discussed in more detail in Question 8, is that the handful of states that cover adults with incomes above 133 percent of the federal poverty line (FPL) can scale back coverage for this population beginning in January 2011, if they are facing a budget deficit.

2. Can states still expand coverage or simplify enrollment?
Yes, the purpose of the MOEs is to prevent people from losing coverage while the major components of health reform are being implemented. It is not to stop states from covering more people. States still have full flexibility to further expand eligibility or simplify enrollment in Medicaid and CHIP, such as by exercising the options made available to them under the Children's Health Insurance Program Reauthorization Act (CHIPRA), which was signed into law by President Obama in February 2009.

3. When do the MOE requirements for Medicaid and CHIP go into effect?
The MOE requirements became effective when President Obama signed the PPACA on March 23, 2010. This means that states cannot roll back the Medicaid and CHIP eligibility standards and methods and procedures for determining eligibility that they had in place on March 23, 2010.

4. What constitutes a policy that is "in effect" for purposes of the MOEs?
States cannot scale back the coverage that they had "in effect" on March 23, 2010. CMS guidance on the MOE included in the American Recovery and Reinvestment Act (ARRA) passed last year, which includes similar language, clarifies that "in effect" means the "actual standards, methodologies, or procedures that States were utilizing…to determine or redetermine eligibility for Medicaid under the State plan or through a waiver program, and which are consistent with Federal statute and regulations." Thus, cuts passed by state legislatures early in 2010 that have not been implemented as of March 23, 2010 are likely to be considered an MOE violation if implemented in the future. For example, Arizona passed legislation in the week before health reform passed to eliminate its CHIP program in June 2010, but it had not implemented the cut, and it had not updated its state plan to reflect the planned cut as of March 23, 2010. CMS already has informed Arizona policymakers that they will be in violation of the health care reform MOE requirements if they proceed with eliminating CHIP.

5. When do the MOE requirements for Medicaid and CHIP end?
The Medicaid MOE remains in place for adults until January 1, 2014. (More precisely, the Medicaid MOE for adults continues until the new exchanges are fully operational, which must be accomplished by January 1, 2014). At that time all adults with incomes up to 133 percent of the FPL will be eligible for Medicaid and uninsured adults with incomes above that level will be able to get subsidized coverage in the exchanges. The CHIP MOE and Medicaid MOE for children up to age 19 (or such higher age as a state may have elected) continue until September 30, 2019.

6. What happens if a state violates the Medicaid or CHIP MOE?
If a state violates the Medicaid or CHIP MOE, it would forgo all of its federal Medicaid funding, including funding for children, parents, pregnant women, seniors, people with disabilities, and administrative costs. In light of these severe consequences, states have an enormous incentive to comply with the MOE requirements.

7. **How do the health reform MOE requirements relate to ARRA?**
States already must comply with a Medicaid MOE requirement based on the policies that they had in effect on July 1, 2008 to secure the Medicaid fiscal relief provided in ARRA. The ARRA Medicaid MOE is slated to expire on December 31, 2010, along with the Medicaid fiscal relief. (Congress, however, is widely expected to extend these provisions until June 30, 2011.) While there is considerable overlap, the new health reform MOE requirements differ from the ARRA rules in some key respects. Most notably, the health reform MOEs 1) apply to CHIP (not just

Medicaid), 2) apply for a significantly longer period of time, and 3) eliminate all federal Medicaid funding for violations, not just the extra Medicaid fiscal relief included in ARRA.

8. **What is the exception to the Medicaid MOE for states facing budget deficits in 2011?** Staring next year (January 1, 2011), a state that provides Medicaid coverage to adults with incomes above 133 percent of the FPL can scale back eligibility for adults (unless pregnant or disabled) if the state is facing, or projects it will face, a budget deficit. However, if the six-month extension of ARRA is enacted as expected, it will likely include a separate MOE requirement that would keep states from scaling back eligibility for these adults until June 30, 2011, when the six-month extension expires.

9. **Can states still make other kinds of cuts to their Medicaid and CHIP programs?** The MOE requirements do not stop states from cutting Medicaid and CHIP in other ways, such as by reducing provider reimbursement rates or eliminating optional benefits. The experience with the ARRA Medicaid MOE suggests that states may actually turn more heavily to such cuts when they are prevented from scaling back eligibility.

10. **What are the unique issues raised by the CHIP MOE?**
While states have some experience with an MOE requirement in Medicaid because of ARRA (see question 7), the PPACA for the first time creates an MOE requirement for CHIP. CHIP allows states to expand coverage to uninsured children through a Medicaid expansion or a separate state program. Under a separate state program, states historically have had the flexibility to cap or freeze enrollment, and CMS will need to issue guidance as to how the CHIP MOE affects such policies. The statutory language creating the CHIP MOE specifically says that states are not precluded from setting up enrollment caps if they run out of federal CHIP funding, suggesting that Congress was not envisioning other scenarios under which states would be allowed to put caps into effect.

    One key issue CMS will need to consider is how to treat states that have language in their CHIP state plans authorizing an enrollment freeze or cap if they run out of state appropriations, but, on the date of PPACA's enactment did not actually have such a freeze or cap in place. Currently, it is unclear whether CMS will treat these states as having a cap or freeze "in effect."

    As of March 23, 2010, only one state (Arizona) had an enrollment freeze in place. Even if Arizona is allowed to continue with this policy, CMS will need to decide whether the state is expected to maintain its enrollment at March 23, 2010 levels over time. In the absence of such a requirement, Arizona's CHIP program will shrink as children leave due to a change in family income or for a variety of other reasons. While CMS has not previously addressed such a situation in the context of CHIP, it did decide in the context of the ARRA MOE that capped home and community-based waiver programs in Medicaid need to maintain their capacity to serve people over time. Specifically, CMS determined that states could not reduce the number of people served by these waivers below the higher of 1) the number of slots actually being used by people, or 2) the number of slots funded on the effective date of the MOE requirement.

    We will provide additional information on the MOE requirements as CMS guidance becomes available. In the meantime, if you would like to discuss any of these issues, please contact Judy Solomon at 202-408-1080 or Tricia Brooks at 202-365-9148.