Applicable Individuals

Statutory Requirement

- Applicable individuals are generally those:
  - Eligible for or enrolled under the State plan **in the adult group** described in section 1902(a)(10)(A)(i)(VIII) of the Act; or
  - Not enrolled under the State plan but otherwise eligible for or enrolled under a section **1115(a)(2) demonstration population in a demonstration that provides minimum essential coverage (MEC),** who are at least age 19 and under age 65, not pregnant, not entitled to or enrolled for benefits under Medicare Part A or enrolled for benefits under Medicare Part B, and not otherwise eligible to enroll under the State Medicaid plan.

Additional Details

- Affected demonstration populations include those who are eligible under 1115(a)(2) of the Act in a demonstration providing coverage that meets MEC requirements.
- Individuals enrolled in or affected by 1915(b), 1915(c), or 1115(a)(1) waivers are not applicable individuals.
- Individuals may be deemed compliant or excluded from the definition of applicable individual, and therefore not subject to the community engagement requirement

Applicable Individuals in Section 1115 Demonstrations

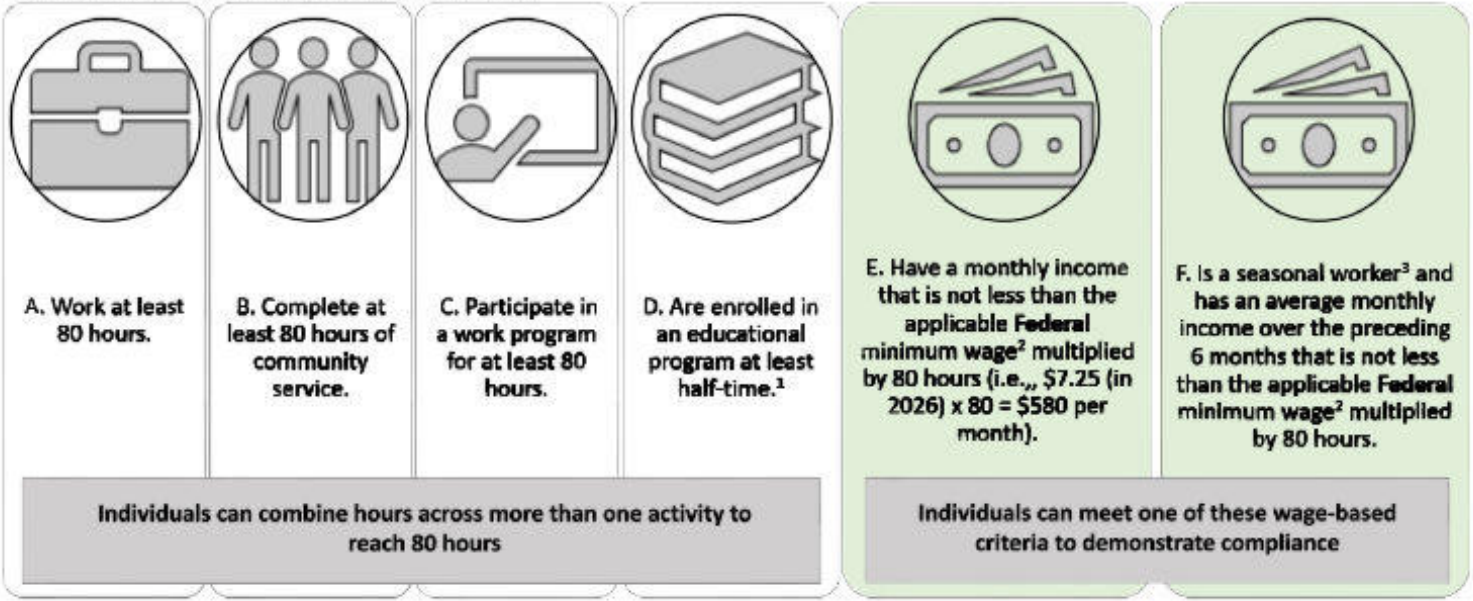
- CMS conducted a systematic review and analysis of approved demonstration-only populations to determine whether they include individuals who would be subject to community engagement due to: 1) receiving MEC through the demonstration, and 2) meeting all other applicability criteria.

- To date, CMS has identified 13 such populations in eight States.
  - Demonstration populations were determined not to be subject to community engagement requirements if: 1) demonstration coverage is not MEC, or 2) the population is likely to meet the definition of a "specified excluded individual."

Demonstrations with Applicable Individual Populations Subject to Community Engagement	
State	**Demonstration Name**
GA	Pathways to Coverage: Pathways population & ESI/HIPP
HI	QUEST Integration: Population 1, 4, & 5
MA	MassHealth: e-HIV/Family Assistance & TANF and EAEDC
NY	Medicaid Redesign Team: TANF
OR	Oregon Health Plan: Youth with Special Health Care Needs
TN	TennCare III: Parent/Caretaker Relatives Expansion
UT	Utah Medicaid Reform: Adult Expansion population & Targeted Adults
WI	Badgercare Reform: Childless Adult demonstration population

Community Engagement Activities

Statutory Requirement: An individual who is not excepted can meet the community engagement requirement in a given month by doing one or a combination of activities shown in boxes A through D below. Individuals may also qualify by meeting one of the wage-based criteria (boxes E and F). The community engagement requirement does not apply to specified excluded individuals.



1. Hours accrued by an individual enrolled in an educational program less than half-time may be combined with hours performed for other activities to count towards demonstrating community engagement. If the applicable individual was enrolled at least half-time, then the individual would have already demonstrated community engagement.
2. Federal minimum wage is defined by section 6 of the Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1)(C).
3. A seasonal worker is described in section 45R(d)(5)(B) of the Internal Revenue Code of 1986.

Defining Qualifying Activities

- **Work:** Includes self-employment, in-kind work, and unpaid work (e.g., internships) in alignment with SNAP's definition of work (7 CFR 273.24(a)(2)).
- **Community Service:** Includes activities that directly benefit the community and is completed with an established organization (e.g., a public or nonprofit organization). The activity must not serve a partisan purpose.
- **Work Program:** Refers to work programs as defined at section 6(o)(1) of the Food and Nutrition Act (2008). Includes, but is not limited to, certain State-operated employment and training programs and veterans' training programs operated by the Dept. of Veterans Affairs (VA) or Dept. of Labor.
- **Educational Program:** Includes institutions of higher education, career and technical programs, high schools, and high school equivalency programs (e.g., General Educational Development (GED) programs).
  - States must use the school or institution's determination of student status (full-time, half-time, or less than half-time).
  - For students enrolled less than half-time in an educational program that uses credit hours, States must multiply the number of credit hours times 3 hours per week times 4.33 weeks per month to calculate total hours.
  - For students enrolled less than half-time in an educational program that does not use credit hours, States must count the hours spent attending class and participating in educational activities.

Mandatory Exceptions and Specified Excluded Individuals

Key Definitions

EXCLUSIONS: Apply to **specified excluded individuals** who are excluded from the definition of applicable individuals and are therefore not subject to the community engagement requirement.

EXCEPTIONS: Apply to **applicable individuals** who meet the criteria for either a **mandatory exception** or, at state option, a **short-term hardship exception,** and are therefore deemed compliant with the community engagement requirement.

EXEMPTIONS: Apply to **States** who are granted a **good faith effort exemption** from compliance with timely implementation.

Mandatory Exceptions

- Applicable individuals are **excepted** from demonstrating community engagement for a month and **deemed compliant** for that month if for all or part of a month the individual was:
  - **Under the age of 19**;
  - Entitled to or enrolled in **Medicare Part A** or enrolled in **Medicare Part B**;
  - Described in another **mandatory categorically needy eligibility group** (in sections 1902(a)(10)(A)(i)(I) through (VII) of the Act); or
  - A specified excluded individual.
- An additional exception applies to an individual who was an **inmate of a public institution at any point during the 3-month period** ending on the first day of a month in which the individual is otherwise subject to the community engagement requirement.
  - To apply this exception to a given month of a review period, the State must consider whether an individual was an inmate in any of the 3 months prior to that month of the review period. Other mandatory exceptions are applied to a month of the review period if the applicable individual met the criteria for the exception in that month.

Specified Excluded Individuals

- "Specified excluded individuals" are excluded from the definition of "applicable individual" and are **not** subject to the community engagement requirement.
- Status as a specified excluded individual is based on the **individual's status at the time of application or renewal**[1] and does not require a review of prior months.

1. **Former foster care children** described in section 1902(a)(10)(A)(i)(IX);
2. Most **American Indians and Alaska Natives**;
3. A **parent, guardian, caretaker relative, or family caregiver** of a dependent child 13 years of age and under or a disabled individual;
4. **Veterans** with a total (100 percent) disability rating as defined under 38 U.S.C. §1155;
5. Individuals who are **medically frail** or otherwise have special medical needs (as defined by the Secretary);
6. Individuals who are **already compliant with Temporary Assistance for Needy Families (TANF) work requirements**;
7. Members of households that **receive Supplemental Nutrition Assistance Program (SNAP) benefits who are subject to SNAP work requirements** (general or time limit work requirements);
8. Participants in certain **drug addiction or alcoholic treatment and rehabilitation programs** (i.e., substance use disorder (SUD) treatment programs);
9. **Inmates of a public institution**; and
10. **Pregnant women** or individuals entitled to **postpartum medical assistance**.

§ 435.554

1. If a State identifies that an applicable individual meets an exclusion, the person becomes a specified excluded individual and is no longer subject to the community engagement could be identified during the renewal process, as part of a more frequent verification of community engagement (if elected by the State), through information that becomes available to the State, or due to the individual reporting a change in their status to the Medicaid agency.

Family Caregiver Definition & Implementation Criteria

Family Caregiver means an adult family member or other individual who has a significant relationship with, and who provides care within a broad range of assistance to, a dependent child 13 years of age and under or a disabled individual (i.e., care recipient). Caregiving must not solely be incidental in nature. A family caregiver is a specified excluded individual if he or she meets one of the following criteria:

1. The individual primarily **resides with** the care recipient(s).
   - Care must be provided regularly and not be solely incidental in nature (no minimum hours of care per month).
2. The individual is a **relative of but does not reside with the care recipient(s)**.
   - Care must be provided regularly and not be solely incidental in nature (no minimum hours of care per month).
3. The individual **does not reside** with and **is not a relative** of the care recipient(s) and **provides at least 80 hours of caregiving** per month to the care recipient(s).
   - Caregiving hours less than 80 hours per month may be counted towards community engagement activities for applicable individuals

Medical Frailty Exclusion – Statutory Definition

- The statutory definition of medical frailty includes individuals who meet one or more of the following five categories:
  1. Who is blind or disabled (as defined in section 1614 of the Act);
  2. With a substance use disorder;
  3. With a disabling mental disorder;
  4. With a physical, intellectual or developmental disability that significantly impairs their ability to perform one or more activities of daily living; or
  5. With a serious or complex medical condition.

- The definition is similar to the medical frailty definition used for the Alternative Benefit Plan (ABP) at 42 CFR 440.315(f), but *there are some key differences*.

Medical Frailty Exclusion – Additional Definitional Details

- The definition of medically frail only includes:
  - individuals who meet one or more of the five categories identified in the statute (section 1902(xx)(9)(A)(ii)(V) of the Act); and
  - is limited to individuals whose physical, mental, or other behavioral health condition **significantly impairs the individual's ability to comply with the community engagement requirement.**
- States do not have the option to add other types of individuals to the definition of medical frailty, beyond those listed in the statute.
- For example, States cannot provide an exclusion to individuals on the basis of non-medical factors, such as risk of homelessness.
- The definition of individuals with an SUD excludes an individual in stable recovery (i.e., in recovery for 5 or more years).

Medical Frailty Exclusion – Framework

- A "serious or complex medical condition" is a medical condition that is life threatening, seriously disabling, causes significant pain or discomfort, requires a major time or effort commitment from caregivers, requires frequent monitoring, is associated with severe consequences, affects multiple organ systems, requires management, requires coordination of multiple specialties, requires treatment that carries a risk of serious complications, or requires adjustment in non-medical environments.

- States must develop a list of diseases, diagnoses, disorders, or other health conditions to identify individuals who are medically frail.
  - The list must be auditable, justifiable, and consistent with the regulatory definition.
  - The list must be revised on a regular basis.

- The State must have reasonable processes and criteria in place for individuals to request consideration for the exclusion due to a condition not on the list.

Optional Exception for Short-Term Hardship Events for Applicable Individuals – Statutory Requirement

- States have the option to adopt the exception for short-term hardship events.
- A short-term hardship event exists if an individual, for all or part of a month:
  - Received inpatient hospital services, nursing facility services, services in an intermediate care facility for individuals with intellectual disabilities, inpatient psychiatric hospital services, or other services of similar acuity.
  - Resided in a county for which the President declared an emergency or disaster under the authority of the National Emergencies Act or Robert T. Stafford Disaster Relief and Emergency Assistance Act.
  - Resided in a county in which the unemployment rate is at or above the lesser of 8 percent or 1.5 times the national unemployment rate (if requested by the State).
  - Must travel, or whose dependent must travel, outside of their community for an extended period of time to receive necessary medical services for a serious or complex medical condition that are not available within their community.

Assessing Compliance Overview

- CMS is using the term, **"Review Period,"** to refer to the time period under consideration during which an applicable individual must demonstrate the requisite number of months (specified by the State) of community engagement to fulfill the requirement.

- At application: The review period is the 1, 2, or 3 consecutive months prior to the month of application, as specified by the State.
  - Note: at application, the months in the review period and the number of months that an applicable individual must demonstrate community engagement are necessarily the same.

- For beneficiaries enrolled in Medicaid:
  - At renewal, if the State does not elect to conduct more frequent verifications: the review period is the eligibility coverage period that ends when the renewal is due.
  - If the State elects more frequent verifications of community engagement: the review period is the time between each such verification, including the regularly scheduled renewal. Each review period is inclusive of the month in which the verification is due.

Assessing Compliance with Community Engagement for Enrolled Beneficiaries

Medicaid beneficiaries must demonstrate community engagement for 1 or more months (as specified by the State), whether or not consecutive.

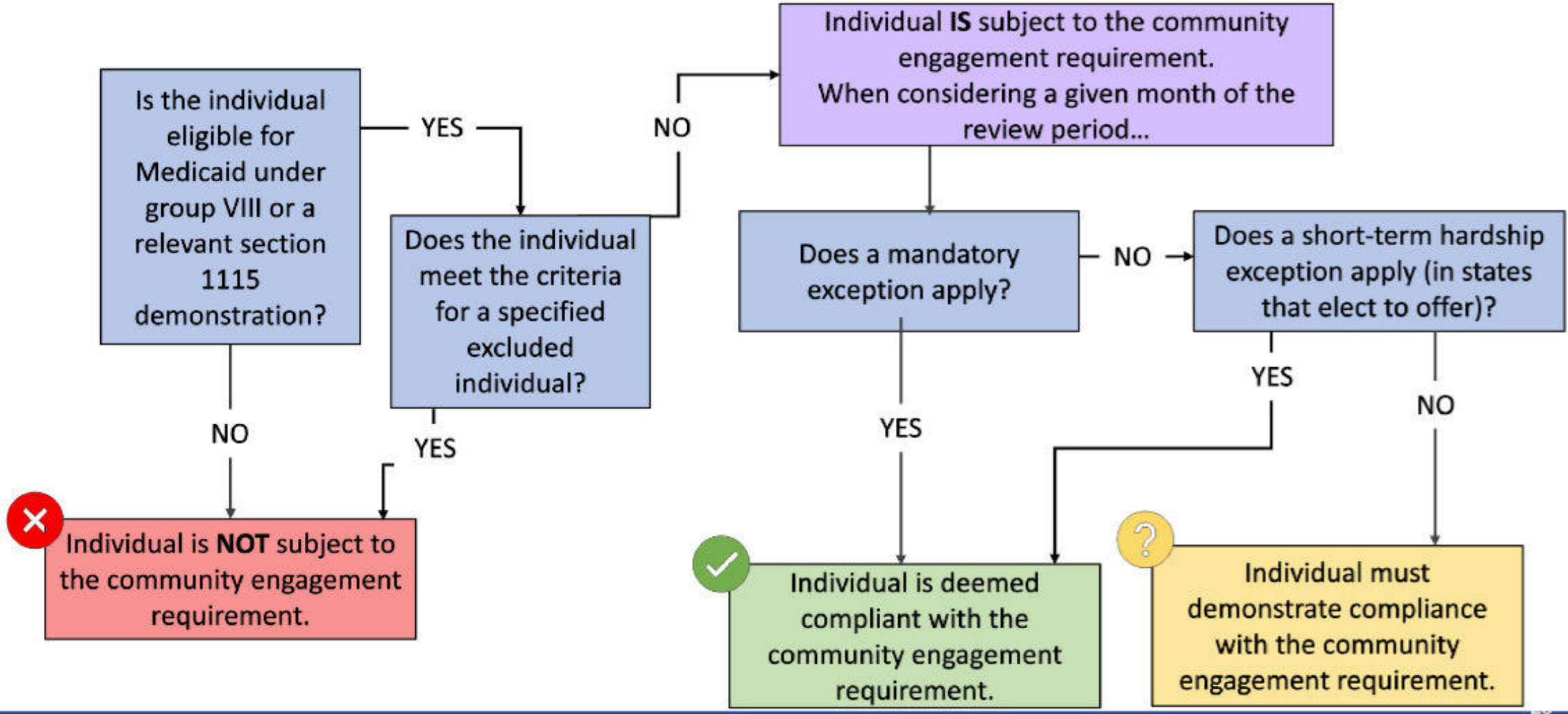
- A beneficiary is considered to have successfully met the requirements if during any part of the review period the beneficiary demonstrated community engagement for the number of months the State specified; while the State may specify the number of months it **may not** dictate the specific month(s).
- If the State requires applicable individuals to demonstrate community engagement for more than 1 month, it must permit, but may not require, them to demonstrate community engagement in consecutive months.

Frequency of Assessing Compliance

- States are required to assess compliance with community engagement at each renewal.
- States may elect to conduct more frequent verifications of community engagement between renewals.

The option to conduct more frequent verifications only applies to applicable individuals, thus a specified excluded individual's status as such **cannot** be verified more frequently than at each renewal.

Identifying Who is Subject to Community Engagement



Verifying Compliance, Exceptions, and Status as a Specified Excluded Individual (1/2)

- States must first attempt to use reliable information available to the State to verify an individual's compliance with, or exception or exclusion from, the community engagement requirement. The use of *ex parte* verification does not only apply to the renewal process.
- States must document the data sources the State will use in their verification plan and must retain and be able to produce all information, data, and documentation (when applicable) used to make an eligibility determination.
- States may only request additional information or documentation from individuals when reliable information is not available to the State, or the information available to the State is not reasonably compatible with the information provided by the applicant or beneficiary on their application or renewal form, to verify an individual's compliance or excluded or excepted status.

Verifying Compliance, Exceptions, and Status as a Specified Excluded Individual (2/2)

- States must provide an individual the opportunity to furnish information and documentation needed to verify their compliance or deemed compliance with the community engagement requirement or that they are a specified excluded individual prior to denying or terminating eligibility.
- **Prior to January 1, 2028**, States may require documentation or accept other information (e.g., self declaration under penalty of perjury) when there is no reliable information available to the State or the reliable information is not reasonably compatible with the information provided by or on behalf of the individual.
- **Beginning on January 1, 2028**, States must require documentation, wherever documentation is reasonably available, if there is no reliable information available to the State or reliable information is not reasonably compatible with information provided by the individual.

Verification Hierarchy

1. **Ex parte (available information):** States must first attempt to verify information using available data. If there is sufficient information available through data sources to verify eligibility, the state **must** use that information to complete a determination and may not require additional information from the individual.

2. **Documentation:** Beginning on January 1, 2028, states **must** require documentation, wherever documentation is reasonably available, if there is no reliable information available to the state or reliable information is not reasonably compatible with information provided by the individual.

   Prior to 2028, states may accept self declaration under penalty of perjury in the absence of available reliable information.

3. **Other information:** States **must** accept other information when no documentation is reasonably available (regardless of the year).

§ 435.557(b) and (c)

Verification of Medical Frailty

- States must attempt to use reliable information available to the State to verify that an individual is medically frail or has other special medical needs.
  - Reliable information includes adjudicated claims, payment, or encounter data from the preceding 12 months.
  - If no reliable information is available, States must request documentation from the individual to verify medical frailty beginning on January 1, 2028.
- CMS will expect States to reverify medical frailty status at least once every 12 months, but may verify more frequently, such as at each renewal.

For new applicants or beneficiaries newly attesting to medical frailty, documentation may not be reasonably available. In this scenario, beginning in 2028, States may use a **one-time screening** tool under penalty of perjury to verify medical frailty. The State **must** use reliable information or request documentation at that individual's first regularly-scheduled redetermination if data is not available or does not confirm medical frailty status.

Noncompliance Procedures (1/2)

- When a State is unable to verify compliance with or exception/exclusion from the community engagement requirement, the State must send a notice of noncompliance to the applicant/beneficiary and provide 30 calendar days to make a satisfactory showing either demonstrating compliance (including deemed compliance through an exception) or that the community engagement requirement does not apply.

- After the 30-calendar day period ends, if the individual has not made a satisfactory showing, the State must consider if the individual is eligible for Medicaid on any other basis.
  - If so, the State must enroll the individual in such group.
  - If not, the State must deny the application or disenroll the individual not later than the end of the month following the month in which the 30-calendar day period ends after providing advance notice and fair hearing rights and assessing potential eligibility for other insurance affordability programs.

Noncompliance Procedures (2/2)

- Application: When a notice of noncompliance and the 30-calendar day period to respond are required at application, CMS is allowing a new optional exception to the timeliness standard for MAGI eligibility determinations (45 days). States must document this exception and the reason for delay in the beneficiary case record.
- Renewal: The noncompliance notice and the 30-calendar day response period **must** be completed by the end of the eligibility period. To accomplish this, States have two options to fit the noncompliance notice within the existing renewal process. The noncompliance notice can be sent:
  1. At the same time as the renewal form (that is sent after a State attempted to but is unable to renew coverage on an *ex parte* basis), or
  2. After a renewal form is returned with insufficient information to verify community engagement or after the time allotted to return the renewal form has elapsed.

Implementation Timing

Implementation Timing

- States must implement the community engagement requirement by January 1, 2027, or, at State option, earlier via the State plan or 1115 authority.
- A State's implementation date is the date on which the community engagement requirement becomes a condition of eligibility for applicable individuals. On or after the implementation date:
  - **Applicants** must demonstrate or be deemed to demonstrate community engagement.
    - For applications pending as of the implementation date, States must apply policies in place when the application was submitted.
  - Enrolled **beneficiaries** must demonstrate or be deemed to demonstrate community engagement as part of periodic renewals, or more frequently, if elected by the State.
    - States must verify an applicable individual's compliance beginning with the first renewal **initiated** following the State's implementation date.

Good Faith Effort Exemption

- The Secretary may grant a State a temporary exemption from compliance with timely implementation of the community engagement requirement, if the State has demonstrated a good faith effort.
- CMS will consider the following criteria on a case-by-case basis in granting exemptions:
  - Any actions taken by the State toward compliance,
  - Any significant barriers to meeting requirements,
  - The State's detailed plan and timeline for achieving full compliance, and
  - Any other criteria determined appropriate by the Secretary.
- CMS expects States to have made consistent progress towards implementation across multiple domains, such as procurement, policy development, and operational preparations.
- CMS expects to approve initial requests for no longer than 6 months and may approve extensions. Exemptions must expire no later than December 31, 2028.
- States receiving an exemption must submit quarterly reports on their progress and timeline for implementation, along with information on newly identified barriers or challenges to full compliance.
  - CMS may end an exemption if a State does not meet reporting requirements or no longer demonstrates a good faith effort towards implementation.

State Outreach Requirements

Outreach – Timing and Operations

Statutory Requirement

- States must conduct outreach to applicable individuals in the 4th, 5th, and 6th months prior to the first day that individuals must comply with the requirements, depending on whether a State elects a 1-, 2-, or 3-month review period, respectively.

Additional Details

- States must provide beneficiary-specific outreach to all individuals enrolled in the adult group described at § 435.119 or an applicable section 1115 demonstration, including specified excluded individuals and those who qualify for an exception.
- States must also conduct outreach when an individual is determined eligible at application, renewal, or change in circumstance; when the State elects or effectuates a short-term hardship exception; and at CMS request based on State monitoring data.
- States may use managed care plans to assist with periodic outreach.

Managed Care Implications

Role of Managed Care Plans

- States are prohibited from using their Medicaid managed care plans or other contractors that have direct or indirect financial relationships with plans to determine beneficiary compliance with community engagement. There is no prohibition on States delegating some support activities to plans.
- States and their actuaries must ensure that any costs associated with the non-benefit component of a capitation rate complies with all Federal requirements, including §§ 438.4 and 438.5.

States **may** elect to utilize their managed care plans to provide or enhance certain activities that leverage the plans' relationships with their enrollees.

For example, States **may** use managed care plans to:

- Conduct outreach and education enrollees,
- Share data (e.g., medically frail status) to inform States' determinations, or
- Refer enrollees to work programs.

States **cannot** delegate activities to managed care plans that are unrelated to the provision of Medicaid-covered services in accordance with the contract or that would be unreasonable to include in capitation rates.

For example, States **cannot** delegate activities to:

- Conduct tracking or collect information on work, community service, or education activities, or
- Issue formal notifications to Medicaid beneficiaries regarding noncompliance.