



October 31, 2011

Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8010
Baltimore, MD 21244-8010

**RE: Medicaid Programs: Eligibility Changes under the Affordable Care Act of 2010:
Proposed Rule CMS-2349-P**

Dear Sir/Madam:

On behalf of the National Alliance on Mental Illness (NAMI), I am pleased to offer the following comments regarding the proposed rules for Medicaid eligibility changes under the Affordable Care Act of 2010. NAMI is the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by serious mental illness. NAMI advocates for access to services, treatment, supports and research and is steadfast in its commitment to raising awareness and building a community of hope for all those in need.

Medicaid is the largest source of public sector funding for state mental health programs and has been pivotal in providing recovery-oriented services for children and adults living with serious mental illness.

NAMI strongly supports the expansion of Medicaid under the Affordable Care Act (ACA) to all Americans with incomes at or below 133 percent of the federal poverty level (FPL), including childless adults. The new Adult group will provide coverage for uninsured adults who might not be able to afford insurance (even with premium subsidies) through the Health Benefit Exchanges. State Medicaid expansion plans, however, will only be required to provide a benchmark or benchmark equivalent benefit package that will likely provide inadequate benefits for people with chronic or special health care needs, including serious mental illness.

To protect vulnerable individuals, the ACA prohibits states from requiring a blind or disabled individual to enroll in benchmark coverage. Instead, the law requires states to enroll these individuals in traditional Medicaid coverage. In addition, under the ACA people who are medically frail or have special health care needs are also exempted from benchmark coverage. In April 2010, the Secretary issued final regulations requiring states to include in their definition of medically frail for the purposes of exemption from the benchmark, "...at least those individuals described in §438.50(d)(3), children with serious emotional disturbances, individuals with disabling mental disorders, individuals with serious and complex medical conditions, and individuals with physical and/or mental disabilities that significantly impair their ability to perform one or more activities of daily living." (42 CFR §440.315(f)).

However, under this proposed rule, the Modified Adjustment Gross Income (MAGI) calculation would be used to determine eligibility for everyone applying or reapplying for medical assistance. Individuals who, because of income, were found eligible for the new Adult Medicaid expansion plan would be ineligible for evaluation for other coverage categories. This could result in numerous individuals with significant mental health needs who are currently receiving, or are eligible for, community-based long-term services, waiver services or are eligible for Medicaid through a Medicaid Buy-In option (or who are disabled or medically frail) being inadvertently enrolled in a Medicaid expansion plan with limited benchmark or benchmark equivalent benefits.

NAMI would note that in many states individuals living with serious mental illness are at risk of falling into this cohort of beneficiaries, including those in waiver programs that fund community-based services and supports (including assertive community treatment) under the Medicaid Rehabilitation Option. In addition, new options under the ACA, in particular the 1915(i) option, will allow states to offer targeted eligibility expansion for specific high cost beneficiaries with special needs. It is critical that these vulnerable individuals not be placed at risk of enrollment in benchmark or benchmark equivalent plans.

Recommendations:

- **CMS must ensure that final regulations provide a mechanism to ensure that individuals who are currently enrolled in traditional Medicaid or who are eligible for other categories of Medicaid coverage are enrolled in the eligibility category with the service package most appropriate to meet their needs, rather than automatic enrollment in a benchmark or benchmark equivalent plan. In particular, states should not be allowed to make an eligibility determination based on MAGI without first determining whether the individual is exempt from benchmark coverage or eligible for another category of coverage.**
- **CMS should establish a review and enforcement mechanism to monitor states' policies and practices to ensure that people with disabilities, including serious mental illness, people who need long-term services and supports and the medically frail are screened and enrolled in the eligibility category with the service package that best meets their needs, if eligible.**

§435.907

Applications

NAMI applauds the intent to streamline and simplify the application process, which is of particular importance to individuals living with serious mental illness or substance use disorders for whom complex, tedious and confusing processes create substantial barriers to coverage and access to care. For individuals who may qualify for Medicaid coverage on a basis other than MAGI, the regulations propose two alternative approaches, both of which are permissive, rather than requirements of states. In the absence of a requirement for states to capture information that would suggest eligibility for categories and requirement to subsequently enroll the individual in the most appropriate coverage for which the individual is eligible, people with complex, high or chronic health care needs, including individuals

living with serious mental illness, would be at risk of inappropriate enrollment in limited benchmark, or benchmark equivalent, Medicaid expansion plans.

Recommendations:

- **Regulations should require states to develop an application approach that captures information to elicit eligibility for other Medicaid categories, including current coverage under state waivers or options, Medicaid Buy-In programs, medically frail criteria or for long-term care.**
- **Regulations should require states to enroll individuals eligible for Medicaid in the most appropriate category of coverage.**
- **Regulations should require states to validate that the application approach they are using is appropriately capturing and enrolling individuals in other categories of Medicaid coverage who are exempt from benchmark or benchmark equivalent coverage, including people with disabilities and individuals who meet medically frail criteria.**

§435.908

Assistance with Application and Redetermination

NAMI is pleased to see the requirement that assistance be provided to individuals seeking help with the application or redetermination process. NAMI particularly commends the requirement to conduct outreach to vulnerable and underserved populations eligible for Medicaid and an emphasis on outreach and assistance for people who are newly eligible, people with disabilities, underserved racial and ethnic minorities and other groups. Under the current structure of Medicaid, eligible individuals living with serious mental illness or substance use disorders have a high incidence of either not being enrolled, or being disenrolled, as a result of transitioning in and out of IMD or being incarcerated. It is therefore important for CMS to help states ensure adequate opportunities for enrollment and re-enrollment at points of service in order to promote follow-up care and avoid costly emergency interventions.

Recommendation:

- **NAMI would recommend that CMS undertake sub-regulatory guidance and technical assistance that specifically addresses the unique needs of individuals who are living with serious mental illness or substance use disorders in applying for and renewing medical assistance and accessing benefits, including opportunities for enrollment and re-enrollment at points of service.**

§435.911

MAGI Screen

NAMI is pleased that the proposed regulations require a quick decision regarding an applicant's eligibility for Medicaid and other insurance programs and for coverage to be furnished to eligible individuals without "undue delay." However, individuals who are eligible for traditional Medicaid or waiver services on the basis of being blind or disabled, medically frail, over age 65, in need of long-term care or on the basis of other criteria should

be exempt from MAGI calculations and exempt from enrollment in benchmark or benchmark equivalent plans.

Recommendation:

- **CMS should issue regulations to clarify that individuals who are determined eligible for Medicaid coverage under MAGI, but who meet other Medicaid coverage criteria, are exempted from benchmark or benchmark equivalent plans and are enrolled or re-enrolled in the Medicaid category with the service package most appropriate to meet their needs.**

Coverage Month

NAMI supports the inclusion in this regulation of standards to ensure that Medicaid coverage is extended until the end of the month that the appropriate termination notice period ends. Under this standard, if an individual loses Medicaid eligibility and is determined eligible for enrollment through the Exchange after the 22nd day of the month, enrollment through the Exchange begins the first day of the following month. Currently, that would result in discontinuity of coverage for a week to nine days. For individuals living with serious mental illness, this could cause disruption in medication regimens and other treatment and support needs. Without needed medications or treatment, individuals with serious mental health needs often experience psychiatric crises and costly adverse events in very short periods of time.

Recommendation:

- **CMS should issue additional guidance to extend Medicaid coverage until the end of the month that the appropriate termination notice period ends.**

§435.916

Periodic Redetermination of Medicaid Eligibility

NAMI appreciates the recognition that application and documentation processes may be unnecessary and burdensome for many and that many eligible beneficiaries, including individuals with serious mental illness, lose coverage at renewal for procedural reasons, often churning on and off of coverage. This churning is administratively costly and disrupts health outcomes and efficiency of care delivery.

NAMI supports proposals in the regulations to codify longstanding policy that agencies renew eligibility for beneficiaries by first evaluating information available to the agency in the electronic account or from other reliable data sources that eliminate need for a renewal form or signed returned notice. We also strongly support a proposed reconsideration period for individuals who lose coverage for failure to return a renewal form and appreciate the invitation to comment.

Recommendations:

- **CMS should specify a 90-day reconsideration period, including for beneficiaries eligible on a basis other than MAGI.**
- **CMS should require states to provide options for permitting all beneficiaries to report changes online, over the telephone, by mail or in person.**

Coordination and Continuity of Coverage Between Medicaid and State Exchanges

Individuals living with serious mental illness and substance use disorders, including transition-age youth, are very likely to move between eligibility for traditional Medicaid coverage, Medicaid benchmark or benchmark equivalent coverage and Exchange plans. For individuals with chronic, complex or special health needs, including mental illness and substance use disorders, continuity of coverage and or providers is critical to ensuring stability and good health outcomes. While regulations encourage coordination between Medicaid and Exchanges, it is particularly important that coordination extend to ensuring access to appropriate services and supports and continuity of care for individuals with chronic, complex or special health needs.

Currently, over 1.4 million individuals reside in prisons, with countless others in jails or juvenile facilities, while thousands more reside in state hospitals. In many, if not most, states, Medicaid eligibility is terminated for these individuals when they reside in a facility. This results in many individuals facing barriers and delays to re-enrollment in benefits for which they are eligible. As a result, many experience discontinuity of care and, at a high cost to individuals and health care systems, end up in crisis or with worsened conditions.

NAMI applauds CMS' periodic encouragement to states to suspend, rather than terminate, Medicaid coverage to facilitate continuity of care, better health outcomes and lower overall health care costs.

Recommendations:

- **CMS should require states to suspend, rather than terminate, Medicaid eligibility for individuals who lose coverage due to their status as an inmate of a public institution or as a resident in an Institution for Mental Disease (IMD) and require automatic reinstatement at point of discharge for individuals.**
- **CMS should require states to develop and implement presumptive eligibility processes, particularly for hospitals, Institutions for Mental Disease (IMDs), correctional institutions, jails and facilities for juvenile offenders.**
- **CMS should explicitly state that incarceration or institutional status does not bar an individual from applying for coverage.**
- **CMS should require states to include corrections and juvenile detention systems in the planning and implementation process when preparing for coming Medicaid eligibility changes.**
- **CMS should issue additional regulations or guidance addressing the need for agencies or entities governing Exchanges and Medicaid and other public agencies to ensure access to appropriate services and supports and to ensure continuity of care and providers for individuals with chronic, complex or special health needs, including serious mental illness.**

Outreach and Enrollment

NAMI appreciates that the Affordable Care Act promotes outreach and enrollment, including for underserved and vulnerable populations. Individuals with serious mental illness and substance use disorders are disproportionately represented among the homeless and in institutions and may experience other challenges that result in low levels of enrollment or re-enrollment. Because reaching this population early is essential to lowering long-term health care costs, it is vital that outreach efforts include specific training in communicating effectively with this hard-to-reach population. Many community-based non-profit organizations and mental health and substance use treatment providers and emergency responders are particularly familiar with reaching vulnerable adult populations who are difficult to reach. Those organizations and professionals who routinely interface with individuals with serious mental illness and substance use conditions are well-positioned to facilitate enrollment and access to services.

Recommendations:

- **Entities involved in Medicaid expansion outreach and education efforts should be required to implement and demonstrate success with specialized and effective outreach efforts to enroll hard-to-reach populations, including individuals living with serious mental illness and/or substance use disorders.**

- **Providers, including those delivering mental health and substance abuse services, must be included as targets of outreach and education efforts to enable them to help eligible individuals enroll in coverage and access care.**

Respectfully submitted,



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Executive Director