

NASDDDS

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Dear Ms. Hulbert:

We are writing with several questions about the implementation of provisions in the American Recovery and Reinvestment Act (ARRA) that deal with increased Federal Medical Assistance Percentage (FMAP). As you know, most of our member state agencies have operational control over parts of their states' Medicaid programs, particularly services provided under 1915(c) and other waivers. They have been raising a number of questions about the requirements states must meet to remain eligible for increased FMAP. The fact sheet recently released by CMS was very helpful in resolving a number of these questions, but a few still remain unanswered.

We understand that under the provisions of the 2009 ARRA states cannot make changes to "eligibility standards, methodologies, or procedures" under their Medicaid State Plan, waiver or demonstration programs that are more restrictive than those in effect on July 1, 2008. It is clear that states cannot change the eligibility platform for individuals enrolled in Section 1915(c) Medicaid waivers through reductions in waiver capacity—either in occupied slots or unoccupied slots. Also, we understand that changes in any of the targeting criteria or in the cost-neutrality standards that would result in the termination eligible individuals are not permitted. Given the depth of the budget problems, even with the enhanced FMAP, states are struggling to preserve key services.

What is not clear is what exactly constitutes a "change in methodologies or procedures." Assuming eligibility standards and criteria remain consistent with those in place on July 1, 2008, we would appreciate more guidance on whether or not states:

1. Can make changes to the amount, duration or scope of services offered under the state plan or waiver, and,
2. Can make changes to the definitions of services.

As you are well aware, states amend waivers frequently, making changes in service definitions, as well as in their amount, duration and scope. With the present budget pressures, states are looking to preserve core support services while making changes to other services that perhaps are less critical or less utilized. For example, under a 1915(c) waiver a state may choose to cap or reduce respite hours in order to preserve more critical services such as personal care. The state has not changed eligibility nor eliminated the service, but has reduced the amount of the service. Is this permissible under the ARRA provisions?

Also, states often make changes to definitions in order to move their programs forward. For example, a state, in order to move toward more progressive models of support, may choose to redefine day habilitation by restricting the use of facility-based services or may institute a "work first" policy that promotes paid employment. How could a state determine whether such changes would jeopardize their eligibility for the increased FMAP provided by ARRA?

We appreciate your attention to these questions. As states continue to innovate and improve their systems despite deepening budget challenges, understanding ARRA requirements for receiving the FMAP increase has become a crucial part of their planning process.

Sincerely,

Nancy Thaler
Nancy Thaler
Executive Director