

Center for Medicaid, CHIP and Survey & Certification

CMCS Informational Bulletin

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SUBJECT: Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 – Implications for Medicaid and CHIP

This bulletin provides information about a provision in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312), which was signed into law on December 17, 2010. Section 728 of this Act disregards federal tax refunds or advance payments with respect to a refundable tax credit, received after December 31, 2009, as income and as resources (for a period of 12 months after receipt) for purposes of determining eligibility for all federal or federally-assisted programs, including Medicaid and the Children's Health Insurance program (CHIP). Section 728 also provides that these tax refunds and advance payments are not to be taken into account in determining the amount or extent of benefits provided under any program subject to this provision, including Medicaid and CHIP.

This provision became effective December 17, 2010, and applies to tax refunds or advance payments received after December 31, 2009, but before January 1, 2013. Because the 2011 tax season has already begun, States are encouraged to move expeditiously to implement this provision. The following is a more detailed description of how the specific requirements of Section 728 apply under Medicaid and, where applicable, under CHIP.

Definition of Income Under Medicaid and CHIP

Tax refunds and advance payments are not to be counted as income when determining eligibility under Medicaid or CHIP for the recipient of the payment, or for any other individual. Therefore, in addition to not counting the refund or payment as income to the individual, any payment made is not countable as income when determining Medicaid or CHIP eligibility for a spouse or other family members. Tax refunds and advance payments may not be counted as income to someone else even if they are given to that person. This also applies to "209(b) States" that use more restrictive Medicaid eligibility criteria than are used by the Supplemental Security Income (SSI) program.

Treatment as a Countable Resource Under Medicaid and CHIP

Tax refunds and advance payments are not counted as an available resource for a period of 12 months following the month of receipt of the payment. This means that during the time a

payment is exempt from being counted as a resource to the individual, it also is not countable as a resource to anyone else. Under Medicaid, this also applies in 209(b) States. However, if any portion of the payment is still retained by the individual after the 12-month period expires, that portion then becomes a countable resource for both Medicaid and CHIP.

Transfers of Assets and Treatment of Trusts Under Medicaid (Not Applicable to CHIP)

The legislation also provides that a tax refund or advance payment is not to be counted in determining the amount or extent of Medicaid benefits or assistance. This effectively precludes applying penalties under section 1917(c) of the Social Security Act to individuals who, in applying for long term care benefits under the Medicaid program during the period in which tax refunds or advance payments are not countable either as income or resources (January 1, 2010 through December 31, 2013), dispose of part or all of the refunds or advance payments in a manner that normally would be considered a transfer of assets for less than fair market value.

Section 728 also precludes counting as available in any way refunds or advance payments that may, during the exempt period, be placed in trusts which would normally be governed by the trust provisions at section 1917(d) of the Act. Assessing a transfer penalty, or counting such payments placed in a trust during the exempt period as available income or resources, would effectively treat the refunds or payments in a manner that could affect Medicaid eligibility and/or benefits. However, if given away or placed in a trust after the end of the exempt period, payments would be subject to transfer penalties or being counted under the Medicaid trust provisions, as applicable.

Post-Eligibility Treatment of Income Under Medicaid (Not Applicable to CHIP)

Tax refunds or advance payments are not countable as income for purposes of the post-eligibility treatment of income provisions applicable to institutionalized individuals and certain individuals eligible for services under a home and community-based waiver. Counting these payments as income would result in increasing the individual's income under post-eligibility, which in turn would result in Medicaid reducing its payment to the provider. Therefore, the amount of benefits payable by Medicaid on behalf of the individual would effectively be reduced. Such a reduction would violate the requirements of section 728.

Use of section 1902(r)(2) to Disregard State Tax Refunds or Advance Payments

Section 728 does not apply to any refunds or advance payments for State or local taxes. However, States have the authority under section 1902(r)(2) of the Social Security Act to disregard both as income and resources State and local tax refunds and advance payments in the same manner such federal tax payments are disregarded under section 728. We encourage States to make use of this authority for all eligibility groups subject to section 1902(r)(2). States wishing to use this authority should submit a Medicaid State plan amendment in the standard format used for section 1902(r)(2) income and resource disregards. States can also implement similar income and resource disregards under their CHIP programs.

We hope you will find this information helpful. Questions regarding this legislation may be directed to Roy Trudel, Division of Eligibility, Enrollment and Outreach, Children and Adults Health Programs Group, at (410) 786-3417 or via email at roy.trudel@cms.hhs.gov.