
CMCS Informational Bulletin

DATE: February 10, 2020

FROM: Calder Lynch, Deputy Administrator and Director
Center for Medicaid and CHIP Services

SUBJECT: New Extension of the Affordable Care Act’s Spousal Impoverishment Provision for Married Applicants and Recipients of Home and Community-Based Services

The purpose of this CMCS Informational Bulletin is to advise State Medicaid agencies that the recently enacted Further Consolidated Appropriations Act, 2020 (Pub. L. No. 116-94, enacted on December 20, 2019) modifies section 2404 of the Patient Protection and Affordable Care Act (ACA) to require that state Medicaid agencies apply the spousal impoverishment rules to married applicants and beneficiaries eligible for home and community-based services (HCBS) through May 22, 2020.¹

The Further Consolidated Appropriations Act, 2020 contains the fourth temporary extension of the ACA’s spousal impoverishment-related provision. CMS has informed states of each previous extension through CMCS Informational Bulletins.² As CMS has noted with regard to previous extensions, states should continue to follow the guidance CMS published in SMDL #15-001 (“Affordable Care Act’s Amendments to the Spousal Impoverishment Statute”³) relating to the application of the ACA’s spousal impoverishment-related provision so long as section 2404 of the ACA is in effect.

Similar to previous legislation providing temporary extensions of the ACA’s spousal impoverishment-related provisions,⁴ the Further Consolidated Appropriations Act, 2020 made changes to how states may apply income and resource disregards authorized under section 1902(r)(2) of the Act to certain individuals eligible for HCBS.⁵ CMS expects to provide guidance soon on this matter.

In the event that the ACA’s spousal impoverishment provision expires in the future, states can refer to the CMCS Informational Bulletin, “Sunset of Section 2404 of the Affordable Care Act,

¹ See Division N (“Health and Human Services Extenders”), Title I (“Health and Human Services Extenders”), Subtitle B - Medicaid Provisions, Section 204(a) (“Extension of the spousal impoverishment protections”), of the Appropriations Act.

² See <https://www.medicare.gov/federal-policy-guidance/downloads/cib020819.pdf>; <https://www.medicare.gov/federal-policy-guidance/downloads/cib050819.pdf>; and <https://www.medicare.gov/federal-policy-guidance/downloads/cib090419.pdf>.

³ <https://www.medicare.gov/federal-policy-guidance/downloads/smd050715.pdf>

⁴ Section 3(a) of the Medicaid Extenders Act of 2019 (P.L. 116-3), and section 3(b) of the Sustaining Excellence in Medicaid Act of 2019 (P.L. 116-39)

⁵ See Division N (“Health and Human Services Extenders”), Title I (“Health and Human Services Extenders”), Subtitle B - Medicaid Provisions, Section 204(b) (“Rule of Construction”) of the Appropriations Act.

Relating to the Spousal Impoverishment Rules for Certain Home and Community-Based Services Applicants and Recipient,”⁶ published on November 9, 2018. The bulletin provided instructions on how states should proceed if the ACA’s provision expired.

CMCS is available to provide technical assistance as needed. If you have any questions, please contact Gene Coffey at Gene.Coffey@cms.hhs.gov.

⁶ <https://www.medicaid.gov/federal-policy-guidance/downloads/cib110918-2.pdf>