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**FEB 12 2016**

Mari Cantwell  
Chief Deputy Director, Health Care Programs  
California Department of Health Care Services  
1501 Capitol Avenue, 6<sup>th</sup> Floor, MS 0000  
Sacramento, CA 95814

Re: Designation of Minimum Essential Coverage

Dear Ms. Cantwell:

The purpose of this letter is to inform the state whether certain types of Medicaid and CHIP coverage provided in California is recognized by the Centers for Medicare & Medicaid Services (CMS) as minimum essential coverage (MEC) under section 5000A(f)(1)(E) of the Internal Revenue Code of 1986 (the Code).

On November 7, 2014, we explained in State Health Official Letter (SHO) #14-002 that certain types of coverage are not recognized as government-sponsored minimum essential coverage (MEC) under section 5000A(f)(1)(A) of the Code, including certain coverage for low-income pregnant women under the Medicaid state plan, coverage for medically needy individuals under the Medicaid state plan, and coverage under a demonstration program authorized under section 1115 of the Social Security Act (the Act). These types of coverage are not included as MEC under Internal Revenue Service (IRS) regulations implementing section 5000A(f)(1)(A)(ii) of the Code.<sup>1</sup> However, in many states, this coverage is comparable to the coverage generally afforded to categorically needy Medicaid beneficiaries. Therefore, pursuant to the authority under section 5000A(f)(1)(E) of the Code, CMS, in consultation with the Secretary of the Treasury, would recognize as MEC, coverage which is not recognized as MEC under the IRS regulations.

Following issuance of SHO #14-002, CMS reviewed the coverage provided to low-income pregnant women and medically needy individuals under California's Medicaid state plan as well as the coverage provided under the special terms and conditions (STCs) of its demonstration project authorized under section 1115 of the Act. We requested additional information from the

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<sup>1</sup> At the time of the SHO, the IRS had not finalized its proposed rule to carve out medically needy or section 1115 coverage as minimum essential coverage. The final rule, implementing 26 CFR 1.5000A-2(b), was published on November 26, 2014.

state to elaborate on any limitations in coverage reflected in the state plan or STCs in order to compare the coverage provided against the standards established in the SHO. In the event that the state elects to alter the benefits provided to pregnant women or medically needy individuals or to beneficiaries enrolled under the state's demonstration project, which could affect the MEC designations discussed below, CMS will evaluate the new coverage to assess whether the designation in this letter is still appropriate.

#### Coverage for Pregnancy-Related Services

California provides full Medicaid benefits for pregnant women whose income is at or below 109 percent of the federal poverty level (FPL). This coverage is recognized as MEC under the IRS regulations. Information provided by the state establishes that the pregnancy-related services provided to Medicaid-eligible pregnant women with income between 109 and 208 percent of the FPL consists of the same medically necessary benefits and services provided to pregnant women with income at or below 109 percent FPL. Accordingly, CMS has concluded that the Medicaid coverage provided to pregnant women with income above 109 percent FPL is equivalent to the state plan benefits provided to other pregnant women and therefore designated as MEC.

#### Medically Needy Coverage

Based on our evaluation of information provided by the state and discussion with state staff, we have determined that the coverage provided to individuals who meet eligibility criteria as medically needy under 42 CFR 435.300 et seq. in California is comparable to the Medicaid State Plan benefit package provided to categorically needy populations. Therefore, in accordance with the guidance, CMS has determined that medically needy coverage in the state is recognized as MEC for individuals who are eligible for such coverage without having to incur medical expenses in order to establish financial eligibility for medically needy coverage. However, coverage provided to individuals who must incur medical expenses in order to establish financial eligibility for medically needy coverage is not recognized as MEC.

#### Coverage Authorized Under Section 1115

Based on our evaluation of the STCs for the state's demonstration project and discussion with state staff, we have concluded that the coverage under California's Bridge to Reform Comprehensive Demonstration (Project #11-W-00193/9) meets the comprehensive criteria. The demonstration project provides all mandatory Medicaid State Plan populations, optional Medicaid state plan populations, Children's Health Insurance Program (CHIP) eligible, and newly eligible adults with a benefit package that is equivalent to state plan coverage for categorically needy. Accordingly, CMS has determined that the coverage provided under this demonstration project is recognized as MEC.

#### Implications of MEC Designation

Under section 5000A of the Code, "nonexempt individuals" must be enrolled in MEC for each month beginning after December 31, 2013, or make a payment (shared responsibility payment)

with their federal income tax return. Individuals enrolled in coverage designated as MEC will not be liable for the shared responsibility payment. In addition, individuals eligible for coverage that is MEC are not eligible for advanced premium tax credits (APTC) and cost-sharing reductions (CSR).

Individuals eligible for Medicaid coverage that is not considered MEC may be eligible for APTC and CSRs for enrollment in a qualified health plan (QHP) through the Marketplace. These individuals may simultaneously elect to enroll in Medicaid and a QHP, or they may elect to enroll in Medicaid with the limited benefit. However, unless they are eligible for a hardship or other exemption from the requirement to maintain minimum essential coverage, individuals who elect Medicaid coverage that is not recognized as MEC may be subject to the shared responsibility payment.

Medically needy individuals enrolled in non-MEC Medicaid after incurring medical expenses to meet their spenddown requirement are eligible for a hardship exemption. On November 21, 2014, the Center for Consumer Information and Information Oversight issued guidance explaining that medically needy individuals who are not enrolled in MEC will need to apply for this hardship exemption through the Marketplace. More information on the hardship exemptions available to Medicaid beneficiaries can be found at <https://www.cms.gov/ccio/resources/Regulations-and-Guidance/index.html>.

States are required to comply with IRS reporting requirements with respect to individuals who are covered by minimum essential coverage and therefore are not liable for the individual shared responsibility payment. Copies of the 1095-B forms must be furnished to the person identified as the “responsible individual” on the form. For more information on the IRS reporting requirements, please visit <http://www.irs.gov/instructions/i109495b/ar01.html>. We also strongly encourage California to provide individuals enrolled in non-MEC Medicaid coverage with a notice of their coverage status as well as the availability of an exemption from the shared responsibility payment in the case of medically needy individuals enrolled in Medicaid coverage that is not recognized as MEC and how to obtain the exemption.

If you have questions regarding these designations, please contact Ms. Anne Marie Costello, Acting Director, Children and Adults Health Programs Group, Centers for Medicaid & CHIP Services, at (410) 786-5647.

ORIGINAL SIGNED

Vikki Wachino  
Director