§ 1397jj. Definitions

(a) Child health assistance

For purposes of this subchapter, the term ''child health assistance'' means payment for part or all of the cost of health benefits coverage for targeted low-income children that includes any of the following (and includes, in the case described in section 1397ee(a)(1)(D)(i) of this title, payment for part or all of the cost of providing any of the following), as specified under the State plan:

(1) Inpatient hospital services.

(2) Outpatient hospital services.

(3) Physician services.

(4) Surgical services.

(5) Clinic services (including health center services) and other ambulatory health care services.

(6) Prescription drugs and biologicals and the administration of such drugs and biologicals, only if such drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.

(7) Over-the-counter medications.

(8) Laboratory and radiological services.

(9) Prenatal care and prepregnancy family planning services and supplies.

(10) Inpatient mental health services, other than services described in paragraph (18) but including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services.

(11) Outpatient mental health services, other than services described in paragraph (19) but including services furnished in a State-operated mental hospital and including community-based services.

(12) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices).

(13) Disposable medical supplies.

(14) Home and community-based health care services and related supportive services (such as home health nursing services, home health aide services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members, and minor modifications to the home).

(15) Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice nurse services, private duty nursing care, pediatric nurse services, and respiratory care services) in a home, school, or other setting.

(16) Abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

(17) Dental services.

(18) Inpatient substance abuse treatment services and residential substance abuse treatment services.

(19) Outpatient substance abuse treatment services.

(20) Case management services.

(21) Care coordination services.

(22) Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

(23) Hospice care (concurrent, in the case of an individual who is a child, with care related to the treatment of the child's condition with respect to which a diagnosis of terminal illness has been made.[1]

(24) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is—

(A) prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law,

(B) performed under the general supervision or at the direction of a physician, or

(C) furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

(25) Premiums for private health care insurance coverage.

(26) Medical transportation.

(27) Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

(28) Any other health care services or items specified by the Secretary and not excluded under this section.

(b) "Targeted low-income child" defined

For purposes of this subchapter—

(1) In general

Subject to paragraph (2), the term ''targeted low-income child'' means a child—

(A) who has been determined eligible by the State for child health assistance under the State plan;

(B)(i) who is a low-income child, or

(ii) is a child—

(I) whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level;

(II) whose family income (as so determined) does not exceed the medicaid applicable income level (as defined in paragraph (4) but determined as if ''June 1, 1997'' were substituted for ''March 31, 1997''); or

(III) who resides in a State that does not have a medicaid applicable income level (as defined in paragraph (4)); and

(C) who is not found to be eligible for medical assistance under subchapter XIX of this chapter or, subject to paragraph (5), covered under a group health plan or under health insurance coverage (as such terms are defined in section 300gg–91 of this title).

(2) Children excluded

Such term does not include—

(A) a child who is an inmate of a public institution or a patient in an institution for mental diseases; or

[1] So in original. A closing parenthesis probably should precede the period.

(B) except as provided in paragraph (6), a child who is a member of a family that is eligible for health benefits coverage under a State health benefits plan on the basis of a family member's employment with a public agency in the State.

(3) Special rule

A child shall not be considered to be described in paragraph (1)(C) notwithstanding that the child is covered under a health insurance coverage program that has been in operation since before July 1, 1997, and that is offered by a State which receives no Federal funds for the program's operation.

(4) Medicaid applicable income level

The term ''medicaid applicable income level'' means, with respect to a child, the effective income level (expressed as a percent of the poverty line) that has been specified under the State plan under subchapter XIX of this chapter (including under a waiver authorized by the Secretary or under section 1396a(r)(2) of this title), as of March 31, 1997, for the child to be eligible for medical assistance under section 1396a(*l*)(2) or 1396d(n)(2) of this title (as selected by a State) for the age of such child.

(5) Option for States with a separate CHIP program to provide dental-only supplemental coverage

(A) In general

Subject to subparagraphs (B) and (C), in the case of any child who is enrolled in a group health plan or health insurance coverage offered through an employer who would, but for the application of paragraph (1)(C), satisfy the requirements for being a targeted low-income child under a State child health plan that is implemented under this subchapter, a State may waive the application of such paragraph to the child in order to provide—

(i) dental coverage consistent with the requirements of subsection (c)(5) of section 1397cc of this title; or

(ii) cost-sharing protection for dental coverage consistent with such requirements and the requirements of subsection (e)(3)(B) of such section.

(B) Limitation

A State may limit the application of a waiver of paragraph (1)(C) to children whose family income does not exceed a level specified by the State, so long as the level so specified does not exceed the maximum income level otherwise established for other children under the State child health plan.

(C) Conditions

A State may not offer dental-only supplemental coverage under this paragraph unless the State satisfies the following conditions:

(i) Income eligibility

The State child health plan under this subchapter—

(I) has the highest income eligibility standard permitted under this subchapter (or a waiver) as of January 1, 2009;

(II) does not limit the acceptance of applications for children or impose any numerical limitation, waiting list, or similar limitation on the eligibility of such children for child health assistance under such State plan; and

(III) provides benefits to all children in the State who apply for and meet eligibility standards.

(ii) No more favorable treatment

The State child health plan may not provide more favorable dental coverage or cost-sharing protection for dental coverage to children provided dental-only supplemental coverage under this paragraph than the dental coverage and cost-sharing protection for dental coverage provided to targeted low-income children who are eligible for the full range of child health assistance provided under the State child health plan.

(6) Exceptions to exclusion of children of employees of a public agency in the State

(A) In general

A child shall not be considered to be described in paragraph (2)(B) if—

(i) the public agency that employs a member of the child's family to which such paragraph applies satisfies subparagraph (B); or

(ii) subparagraph (C) applies to such child.

(B) Maintenance of effort with respect to agency contribution for family coverage

For purposes of subparagraph (A)(i), a public agency satisfies this subparagraph if the amount of annual agency expenditures made on behalf of employees enrolled in health coverage paid for by the agency that includes dependent coverage for the most recent State fiscal year is not less than the amount of such expenditures made by the agency for the 1997 State fiscal year, increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for All-Urban Consumers (all items: U.S. City Average) for such preceding fiscal year.

(C) Hardship exception

For purposes of subparagraph (A)(ii), this subparagraph applies to a child if the State determines that the annual aggregate amount of premiums and cost-sharing imposed for coverage of the family of the child would exceed 5 percent of such family's income for the year involved.

(c) Additional definitions

For purposes of this subchapter:

(1) Child

The term ''child'' means an individual under 19 years of age.

(2) Creditable health coverage

The term ''creditable health coverage'' has the meaning given the term ''creditable coverage'' under section 2701(c)[2] of the Public

[2] See References in Text note below.

Health Service Act (42 U.S.C. 300gg(c)) and includes coverage that meets the requirements of section 1397cc of this title provided to a targeted low-income child under this subchapter or under a waiver approved under section 1397ee(c)(2)(B) of this title (relating to a direct service waiver).

(3) Group health plan; health insurance coverage; etc.

The terms ''group health plan'', ''group health insurance coverage'', and ''health insurance coverage'' have the meanings given such terms in section 300gg–91 of this title.

(4) Low-income child

The term ''low-income child'' means a child whose family income is at or below 200 percent of the poverty line for a family of the size involved.

(5) Poverty line defined

The term ''poverty line'' has the meaning given such term in section 9902(2) of this title, including any revision required by such section.

(6) Preexisting condition exclusion

The term ''preexisting condition exclusion'' has the meaning given such term in section 2701(b)(1)(A)[2] of the Public Health Service Act (42 U.S.C. 300gg(b)(1)(A)).

(7) State child health plan; plan

Unless the context otherwise requires, the terms ''State child health plan'' and ''plan'' mean a State child health plan approved under section 1397ff of this title.

(8) Uncovered child

The term ''uncovered child'' means a child that does not have creditable health coverage.

(9) School-based health center

(A) In general

The term ''school-based health center'' means a health clinic that—

(i) is located in or near a school facility of a school district or board or of an Indian tribe or tribal organization;

(ii) is organized through school, community, and health provider relationships;

(iii) is administered by a sponsoring facility;

(iv) provides through health professionals primary health services to children in accordance with State and local law, including laws relating to licensure and certification; and

(v) satisfies such other requirements as a State may establish for the operation of such a clinic.

(B) Sponsoring facility

For purposes of subparagraph (A)(iii), the term ''sponsoring facility'' includes any of the following:

(i) A hospital.

(ii) A public health department.

(iii) A community health center.

(iv) A nonprofit health care agency.

(v) A local educational agency (as defined under section 7801 of title 20.[1]

(vi) A program administered by the Indian Health Service or the Bureau of Indian Affairs or operated by an Indian tribe or a tribal organization.

(Aug. 14, 1935, ch. 531, title XXI, §2110, as added Pub. L. 105–33, title IV, §4901(a), Aug. 5, 1997, 111 Stat. 567; amended Pub. L. 105–100, title I, §162(3), (9), Nov. 19, 1997, 111 Stat. 2189, 2190; Pub. L. 106–554, §1(a)(6) [title VIII, §802(d)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–582; Pub. L. 111–3, title V, §§501(b)(1), 505(b), Feb. 4, 2009, 123 Stat. 85, 90; Pub. L. 111–148, title II, §§2102(a)(7), 2302(b), title X, §10203(d)(2)(D), Mar. 23, 2010, 124 Stat. 288, 293, 930; Pub. L. 111–309, title II, §205(d), Dec. 15, 2010, 124 Stat. 3290.)

REFERENCES IN TEXT

Section 2701 of the Public Health Service Act, referred to in subsec. (c)(2), (6), is section 2701 of act July 1, 1944, which was classified to section 300gg of this title, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111–148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg–3 of this title. A new section 2701 of act July 1, 1944, related to fair health insurance premiums, was added, effective for plan years beginning on or after Jan. 1, 2014, and amended, by Pub. L. 111–148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of this title.

AMENDMENTS

2010—Subsec. (a)(23). Pub. L. 111–148, §2302(b), which directed insertion of ''(concurrent, in the case of an individual who is a child, with care related to the treatment of the child's condition with respect to which a diagnosis of terminal illness has been made'' after ''hospice care'', was executed by making the insertion after ''Hospice care'', to reflect the probable intent of Congress.

Subsec. (b)(2)(B). Pub. L. 111–148, §10203(d)(2)(D)(i), inserted ''except as provided in paragraph (6),'' before ''a child''.

Subsec. (b)(6). Pub. L. 111–148, §10203(d)(2)(D)(ii), added par. (6).

Subsec. (b)(6)(B). Pub. L. 111–309, §205(d)(1), struck out ''per person'' before ''agency contribution'' in heading and substituted ''employees'' for ''each employee''.

Subsec. (b)(6)(C). Pub. L. 111–309, §205(d)(2), struck out '', on a case-by-case basis,'' after ''determines''.

Subsec. (c)(9)(B)(v). Pub. L. 111–148, §2102(a)(7), substituted ''local educational agency (as defined under section 7801 of title 20'' for ''school or school system''.

2009—Subsec. (b)(1)(C). Pub. L. 111–3, §501(b)(1)(A), inserted '', subject to paragraph (5),'' after ''subchapter XIX of this chapter or''.

Subsec. (b)(5). Pub. L. 111–3, §501(b)(1)(B), added par. (5).

Subsec. (c)(9). Pub. L. 111–3, §505(b), added par. (9).

2000—Subsec. (a). Pub. L. 106–554 substituted ''section 1397ee(a)(1)(D)(i)'' for ''section 1397ee(a)(2)(A)'' in introductory provisions.

1997—Subsec. (b)(1)(B)(ii). Pub. L. 105–100, §162(3)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''is a child whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level; and''.

Subsec. (b)(4). Pub. L. 105–100, §162(3)(B), substituted ''March 31, 1997'' for ''June 1, 1997'' and ''1396a(*l*)(2) or 1396d(n)(2) of this title (as selected by a State)'' for ''1396a(*l*)(2) of this title''.

Subsec. (c)(3). Pub. L. 105–100, §162(9), made technical amendment to reference in original act which appears in text as reference to section 300gg–91 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title II, § 2102(a), Mar. 23, 2010, 124 Stat. 288, provided that the amendment made by section 2102(a)(7) of Pub. L. 111–148 is effective as if included in the enactment of the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 105–33, see section 1(a)(6) [title VIII, § 802(f)] of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–100, title I, § 162, Nov. 19, 1997, 111 Stat. 2188, provided in part that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

CHIP ELIGIBILITY FOR CHILDREN INELIGIBLE FOR MEDICAID AS A RESULT OF ELIMINATION OF DISREGARDS

Pub. L. 111–148, title II, § 2101(f), Mar. 23, 2010, 124 Stat. 287, provided that: ''Notwithstanding any other provision of law, a State shall treat any child who is determined to be ineligible for medical assistance under the State Medicaid plan or under a waiver of the plan as a result of the elimination of the application of an income disregard based on expense or type of income, as required under section 1902(e)(14) of the Social Security Act [42 U.S.C. 1396a(e)(14)] (as added by this Act), as a targeted low-income child under section 2110(b) [42 U.S.C. 1397jj(b)] (unless the child is excluded under paragraph (2) of that section) and shall provide child health assistance to the child under the State child health plan (whether implemented under title XIX or XXI, or both, of the Social Security Act [42 U.S.C. 1396 et seq., 1397aa et seq.]).''

§ 1397kk. Phase-out of coverage for nonpregnant childless adults; conditions for coverage of parents

(a) Termination of coverage for nonpregnant childless adults

(1) No new CHIP waivers; automatic extensions at State option through 2009

Notwithstanding section 1315 of this title or any other provision of this subchapter, except as provided in this subsection—

(A) the Secretary shall not on or after February 4, 2009, approve or renew a waiver, experimental, pilot, or demonstration project that would allow funds made available under this subchapter to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult; and

(B) notwithstanding the terms and conditions of an applicable existing waiver, the provisions of paragraph (2) shall apply for purposes of any period beginning on or after January 1, 2010, in determining the period to which the waiver applies, the individuals eligible to be covered by the waiver, and the amount of the Federal payment under this subchapter.

(2) Termination of CHIP coverage under applicable existing waivers at the end of 2009

(A) In general

No funds shall be available under this subchapter for child health assistance or other health benefits coverage that is provided to a nonpregnant childless adult under an applicable existing waiver after December 31, 2009.

(B) Extension upon State request

If an applicable existing waiver described in subparagraph (A) would otherwise expire before January 1, 2010, notwithstanding the requirements of subsections (e) and (f) of section 1315 of this title, a State may submit, not later than September 30, 2009, a request to the Secretary for an extension of the waiver. The Secretary shall approve a request for an extension of an applicable existing waiver submitted pursuant to this subparagraph, but only through December 31, 2009.

(C) Application of enhanced FMAP

The enhanced FMAP determined under section 1397ee(b) of this title shall apply to expenditures under an applicable existing waiver for the provision of child health assistance or other health benefits coverage to a nonpregnant childless adult during the period beginning on February 4, 2009, and ending on December 31, 2009.

(3) State option to apply for Medicaid waiver to continue coverage for nonpregnant childless adults

(A) In general

Each State for which coverage under an applicable existing waiver is terminated under paragraph (2)(A) may submit, not later than September 30, 2009, an application to the Secretary for a waiver under section 1315 of this title of the State plan under subchapter XIX to provide medical assistance to a nonpregnant childless adult whose coverage is so terminated (in this subsection referred to as a ''Medicaid nonpregnant childless adults waiver'').

(B) Deadline for approval

The Secretary shall make a decision to approve or deny an application for a Medicaid nonpregnant childless adults waiver submitted under subparagraph (A) within 90 days of the date of the submission of the application. If no decision has been made by the Secretary as of December 31, 2009, on the application of a State for a Medicaid nonpregnant childless adults waiver that was submitted to the Secretary by September 30, 2009, the application shall be deemed approved.

(C) Standard for budget neutrality

The budget neutrality requirement applicable with respect to expenditures for medical assistance under a Medicaid nonpregnant childless adults waiver shall—

(i) in the case of fiscal year 2010, allow expenditures for medical assistance under subchapter XIX for all such adults to not