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FEB 12 2016

Dave Richard  
Deputy Secretary for Medical Assistance  
North Carolina Department of Health and Human Services  
1985 Umstead Drive, 2501 Mail Service Center  
Raleigh, NC 27699

Re: Designation of Minimum Essential Coverage

Dear Mr. Richard:

The purpose of this letter is to inform the state whether certain types of Medicaid and CHIP coverage provided in North Carolina 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 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 North Carolina's Medicaid state plan. We requested additional information from the state to elaborate on any limitations in coverage reflected in the state plan 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, which could affect the MEC designations

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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.

discussed below, CMS will evaluate the new coverage to assess whether the designation in this letter is still appropriate.

### Coverage for Pregnancy-Related Services

North Carolina provides full Medicaid benefits for pregnant women whose income is at or below \$667 per month. 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 \$667 per month and 196 percent of the federal poverty level consists of the same medically necessary benefits and services provided to pregnant women with income at or below \$667 per month. Accordingly, CMS has concluded that the Medicaid coverage provided to pregnant women with income above \$667 per month 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 North Carolina 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.

### 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 MEC, 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/cciio/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 North Carolina 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, Center for Medicaid & CHIP Services, at (410) 786-5647.

Sincerely,  
  
Vicki Wachino  
Director

cc:

Jackie Glaze, ARA, CMS Regional Office Atlanta