

under the Medicaid State plan, or eligibility of a child for child health assistance under the Children's Health Insurance Program;

(6) Is an elementary or secondary school, as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801);

(7) Is an elementary or secondary school operated or supported by the Bureau of Indian Affairs;

(8) Is a State or Tribal child support enforcement agency;

(9) Is an organization that—

(i) Provides emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act;

(ii) Is a State or Tribal office or entity involved in enrollment in the program under this title, Part A of title IV, or title XXI; or

(iii) Determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 or any other section of the United States Housing Act of 1937 (42 U.S.C. 1437) or under the Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4101 et seq.); and

(10) Any other entity the State so deems, as approved by the Secretary.

*State health benefits plan* means a health insurance coverage plan that is offered or organized by the State government on behalf of State employees or other public agency employees within the State. The term does not include a plan in which the State provides no contribution toward the cost of coverage and in which no State employees participate, or a plan that provides coverage only for a specific type of care, such as dental or vision care.

[66 FR 2675, Jan. 11, 2001, as amended at 66 FR 33823, June 25, 2001; 75 FR 48852, Aug. 11, 2010]

#### § 457.305 State plan provisions.

The State plan must include a description of—

(a) The standards, consistent with §§ 457.310 and 457.320, used to determine the eligibility of children for coverage under the State plan.

(b) The State's policies governing enrollment and disenrollment; processes for screening applicant children for

and, if eligible, facilitating their enrollment in Medicaid; and processes for implementing waiting lists and enrollment caps (if any).

#### § 457.310 Targeted low-income child.

(a) *Definition.* A targeted low-income child is a child who meets the standards set forth below and the eligibility standards established by the State under § 457.320.

(b) *Standards.* A targeted low-income child must meet the following standards:

(1) *Financial need standard.* A targeted low-income child:

(i) Has a family income at or below 200 percent of the Federal poverty line for a family of the size involved;

(ii) Resides in a State with no Medicaid applicable income level or;

(iii) Resides in a State that has a Medicaid applicable income level and has family income that either—

(A) Exceeds the Medicaid applicable income level for the age of such child, but not by more than 50 percentage points; or

(B) Does not exceed the income level specified for such child to be eligible for medical assistance under policies of the State plan under title XIX on June 1, 1997.

(2) *No other coverage standard.* A targeted low-income child must not be—

(i) Found eligible or potentially eligible for Medicaid under policies of the State plan (determined through either the Medicaid application process or the screening process described at § 457.350); or

(ii) Covered under a group health plan or under health insurance coverage, as defined in section 2791 of the Public Health Service Act, unless the plan or health insurance coverage program has been in operation since before July 1, 1997 and is administered by a State that receives no Federal funds for the program's operation. A child is not considered covered under a group health plan or health insurance coverage if the child does not have reasonable geographic access to care under that plan.

(3) For purposes of this section, policies of the State plan under title XIX plan include policies under a Statewide demonstration project under section

§ 457.320

42 CFR Ch. IV (10–1–10 Edition)

1115(a) of the Act other than a demonstration project that covered an expanded group of eligible children but that either—

- (i) Did not provide inpatient hospital coverage; or
- (ii) Limited eligibility to children previously enrolled in Medicaid, imposed premiums as a condition of initial or continued enrollment, and did not impose a general time limit on eligibility.

(c) *Exclusions.* Notwithstanding paragraph (a) of this section, the following groups are excluded from the definition of targeted low-income children:

(1) *Children eligible for certain State health benefits coverage.* (i) A targeted low-income child may not be eligible for health benefits coverage under a State health benefits plan in the State on the basis of a family member’s employment with a public agency, even if the family declines to accept the coverage.

(ii) A child is considered eligible for health benefits coverage under a State health benefits plan if a more than nominal contribution to the cost of health benefits coverage under a State health benefits plan is available from the State or public agency with respect to the child or would have been available from those sources on November 8, 1999. A contribution is considered more than nominal if the State or public agency makes a contribution toward the cost of an employee’s dependent(s) that is \$10 per family, per month, more than the State or public agency’s contribution toward the cost of covering the employee only.

(2) *Residents of an institution.* A child must not be—

- (i) An inmate of a public institution as defined at §435.1010 of this chapter; or
- (ii) A patient in an institution for mental diseases, as defined at §435.1010 of this chapter, at the time of initial application or any redetermination of eligibility.

[66 FR 2675, Jan. 11, 2001, as amended at 71 FR 39229, July 12, 2006]

§ 457.320 Other eligibility standards.

(a) *Eligibility standards.* To the extent consistent with title XXI of the Act and except as provided in paragraph (b)

of this section, the State plan may adopt eligibility standards for one or more groups of children related to—

- (1) Geographic area(s) served by the plan;
- (2) Age (up to, but not including, age 19);
- (3) Income;
- (4) Resources;
- (5) Spenddowns;
- (6) Disposition of resources;
- (7) Residency, in accordance with paragraph (d) of this section;
- (8) Disability status, provided that such standards do not restrict eligibility;
- (9) Access to, or coverage under, other health coverage; and
- (10) Duration of eligibility, in accordance with paragraph (e) of this section.

(b) *Prohibited eligibility standards.* In establishing eligibility standards and methodologies, a State may *not*—

- (1) Cover children with a higher family income without covering children with a lower family income within any defined group of covered targeted low-income children;
- (2) Deny eligibility based on a pre-existing medical condition;
- (3) Discriminate on the basis of diagnosis;
- (4) Require any family member who is not requesting services to provide a social security number (including those family members whose income or resources might be used in making the child’s eligibility determination);
- (5) Exclude American Indian or Alaska Native children based on eligibility for, or access to, medical care funded by the Indian Health Service;
- (6) Exclude individuals based on citizenship or nationality, to the extent that the children are U.S. citizens, U.S. nationals or qualified aliens, (as defined at section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as amended by the BBA of 1997, except to the extent that section 403 of PRWORA precludes them from receiving Federal means-tested public benefits); or
- (7) Violate any other Federal laws or regulations pertaining to eligibility for a separate child health program under title XXI.