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CMS Applies Same-Sex Couple Policy To Exchanges, But Not Medicaid

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CMS will apply Medicare's policy on same-sex couples to premium assistance for the exchanges, but it won't require states to recognize legally married same-sex couples when determining whether residents are eligible for Medicaid or whether their children may be covered by children's Medicaid (CHIP), according to newly issued [Medicaid](#) and [exchange](#) guidance to states. The agency encourages Medicaid programs to recognize same-sex spouses and their children but says states may adopt their own policies because of "the unique federal-state relationship that characterizes the Medicaid and CHIP programs."

Last month, [HHS said](#) same-sex spouses are eligible for the same Medicare benefits as straight married couples, and has followed suit with exchange premium tax credits -- both of which fit into the Supreme Court's Defense of Marriage Act ruling this summer as they are federal programs.

"[W]e are permitting states and territories to adopt a different same-sex marriage recognition policy if they do not recognize same-sex marriages consistent with their laws," CMS states. "Under this approach, with respect to Medicaid and CHIP, a state is permitted and encouraged, but not required, to recognize same-sex couples who are legally married under the laws of the jurisdiction in which the marriage was celebrated as spouses for purposes of Medicaid and CHIP."

The Supreme Court this summer struck a key section of the Defense of Marriage Act, and the Sept. 27 memo updates policies to bring them in line with the ruling in *US v. Windsor*.

Also on Sept. 27, CMS' Center for Consumer Information and Insurance Oversight said same-sex and straight couples will be treated equally when determining eligibility for premium tax credits on the exchanges.

CMS states that a "narrow benefit eligibility gap" could arise in states that choose to not recognize same-sex marriages.

"We are currently considering this issue," CMS states. "As part of that consideration, we will consult with the states."

The Supreme Court ruling applies to federal law, not state law, and states run Medicaid. However, Bruce Levinson of the Center for Regulatory Effectiveness noted that the federal government provides the bulk of funding for Medicaid. Also, the federal government oversees Medicaid programs and sets the regulatory framework.

Levinson said he is "perplexed" by CMS' statement on Medicaid in light of the "Care Without Discrimination" provisions of HHS' 1999 Patients Bill of Rights in Medicare and Medicaid. According to that statement, patients have the right to "considerate, respectful care from all members of the health care industry at all times and under all circumstances."

"Patients must not be discriminated against in the marketing or enrollment or in the provision of health care services, consistent with the benefits covered in their policy and/or as required by law, based on race, ethnicity, national origin, religion, sex, age, current or anticipated mental or physical disability, sexual orientation, genetic information, or source of payment," HHS stated.

That statement should apply to the Medicaid and CHIP guidance that CMS issued Sept. 27 on eligibility, Levinson said. He said the CMS guidance should be subject to correction under the Data Quality Act, which regulates the quality and consistency of information that the federal government disseminates. The Center for Regulatory Effectiveness lobbied for the Data Quality Act.

"Since recipients of Medicaid funds were prohibited from discriminating against patients based on sexual orientation in 1999, when did the 'the unique federal-state relationship' start allowing such discrimination by allowing facilities to potentially engage in just such discrimination by ignoring valid licenses issued by states with marriage equality laws?" Levinson asks. -- *John Wilkerson* (jwilkerson@iwpnews.com)