



Center for Medicaid and State Operations, Family & Children's Health Programs Group

APR 15 2009

Dear Associate Regional Administrators:

This letter is to inform you of the impacts on Medicaid eligibility from the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351), enacted on October 7, 2008. The law amends parts B and E of title IV of the Social Security Act (the Act) to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, and improve incentives for adoption. Please forward this letter on your letterhead to State Medicaid representatives in your region.

**Kinship Guardianship Assistance and Eligibility for Title IV-E and Medicaid**

*Effective October 7, 2008*, P.L. 110-351 adds section 471(a)(28) to the Social Security Act, to include kinship guardianship assistance as a third category of assistance under title IV-E along with foster care and adoption assistance. This new section gives States the option to amend their title IV-E plan to provide kinship guardianship assistance payments under title IV-E on behalf of children to grandparents and other relatives who have assumed legal guardianship of children for whom they have cared as foster parents and for whom they have now committed to care on a permanent basis. Federally-recognized Tribes will have this option beginning October 1, 2009. Among the requirements for kinship guardianship assistance payments are that a child must have been eligible for title IV-E foster care maintenance payments while residing in the relative's home for at least six consecutive months.

Section 473(b)(3)(C) of the Act is added to require Medicaid coverage for children for whom title IV-E kinship guardianship assistance payments are made. Currently, Medicaid coverage is required for children receiving title IV-E foster care or adoption assistance. Children receiving title IV-E kinship guardianship assistance payments must be made automatically eligible for Medicaid as IV-E children, without a separate Medicaid application or an annual Medicaid eligibility redetermination. Previously, these children, if they left IV-E foster care or stopped receiving IV-E foster care maintenance payments for other reasons, either became ineligible for Medicaid or were eligible in another Medicaid category or for the State Children's Health Insurance Program (SCHIP).

State Medicaid agencies must be aware of when the State's title IV-E agency amends its State plan to provide kinship guardianship assistance, in order to assure that the children are made automatically eligible for Medicaid. Under section 473(b)(1) of the Act, if a child resides in a State other than the State providing the child's kinship guardianship assistance under IV-E, the child must be made Medicaid-eligible as IV-E in the State of residence, regardless of whether the State of residence covers kinship guardianship assistance under its IV-E State plan.

Over the years, a number of States have had guardianship waiver demonstration projects under title IV-E, with children provided IV-E assistance and services as well as mandatory Medicaid coverage. Prior to the enactment of P.L. 110-351, when these demonstration projects ended, these children have lost their mandatory Medicaid coverage as IV-E children. P.L. 110-351 adds a new section 474(g) to the Act to permit the seven States that had waiver demonstration projects still in effect when the law passed, upon termination of their guardianship waiver, to continue to provide assistance and claim reimbursement under title IV-E for those children who were receiving assistance or services under the State's IV-E guardianship demonstration project as of September 30, 2008. So long as IV-E payments are received, the children must remain automatically eligible for Medicaid as IV-E children, regardless of whether the State opts to amend its IV-E plan to operate the new title IV-E Guardianship Assistance Program.

### **Adoption Assistance and Eligibility for Title IV-E and Medicaid**

Currently, income and resource eligibility is determined for IV-E adoption assistance based on the policies in effect on July 16, 1996 in the State's approved title IV-A State plan for Aid to Families with Dependent Children (AFDC).

*Effective October 1, 2009*, section 473 of the Act will be amended to de-link from AFDC the eligibility requirements for IV-E adoption assistance. Income and resources will no longer be tested to determine eligibility for IV-E adoption assistance, although the AFDC income and resource tests will remain in effect for IV-E foster care and kinship guardianship assistance. This change will be phased in between fiscal year (FY) 2010 and FY 2018, based on the child's age in the year of the adoption assistance agreement, among other factors, until the policy is in effect for all adopted children in FY 2018.

The changes to the adoption assistance program under title IV-E will have the effect of making more adopted children mandatorily eligible for Medicaid as IV-E children, without a separate Medicaid application or an annual Medicaid eligibility redetermination. Previously, these children either were ineligible for Medicaid or were eligible in another Medicaid category or for SCHIP.

The Administration for Children and Families (ACF) will provide guidance on the changes to adoption assistance upon its release. We will notify Regional Administrators with respect to any such guidance.

### **States' Option to Increase Age Limits for Children Covered for IV-E Foster Care, Adoption, or Kinship Guardianship Assistance**

Currently, eligibility for title IV-E foster care maintenance payments usually ends when the youth turns 18 years old, unless the State had a provision in its former AFDC plan to extend AFDC to 18 year olds expected to complete secondary education before age 19. Then, States are allowed to continue to provide title IV-E foster care maintenance payments to 18 year olds up to their graduation or age 19, whichever comes earlier.

P.L. 110-351 offers ways that States may extend IV-E eligibility, and so mandatory categorically needy Medicaid eligibility, up to age 21. States already have the ability to extend title IV-E adoption assistance for adopted children up to the age of 21, if the child has a disability that warrants the continuation of adoption assistance. This option will remain in effect, regardless of other program changes.

*Effective October 1, 2010*, title IV-E assistance must end at age 18 unless a State or Tribe opts to extend IV-E assistance (including foster care maintenance payments, kinship guardianship assistance, and adoption assistance) up to age 19, 20, or 21 for children in foster care under the responsibility of the State and/or children who attained 16 years of age before their IV-E adoption or kinship guardianship assistance agreement took effect, if a youth aged 18 or older:

- Is completing secondary school (or the equivalent), enrolled in post-secondary or vocational school, participating in a program or activity designed to promote or remove barriers to employment, or employed at least 80 hours a month; or
- Is incapable of meeting any of these requirements due to a documented medical condition.

State Medicaid agencies must be aware of when the State's title IV-E agency adopts this option to extend the maximum age of IV-E assistance for those youth who have not yet attained age 21. State Medicaid agencies must also be aware of the IV-E policies in effect in other States because, under section 473(b)(1) of the Act, children receiving the IV-E assistance listed in section 473(b)(3) of the Act must be made automatically eligible for Medicaid in the State of residence.

Children who are IV-E recipients must be made Medicaid eligible without a separate Medicaid application or an annual Medicaid eligibility redetermination. Before P.L. 110-351, these children either were ineligible for Medicaid or were eligible in another Medicaid category or for SCHIP.

#### **Independent Foster Care Adolescents and Eligibility for Title IV-E and Medicaid**

P.L. 110-351 does not impact the Medicaid eligibility requirements for the optional categorically needy eligibility group of independent foster care adolescents. Section 1905(w)(1) of the Act was not amended for this Medicaid eligibility option, which specifies that independent foster care adolescents must have been "in foster care under the responsibility of a State" on their 18<sup>th</sup> birthday. However, the Act will offer additional ways that a State may extend Medicaid eligibility to 18 – 20 year olds as described above.

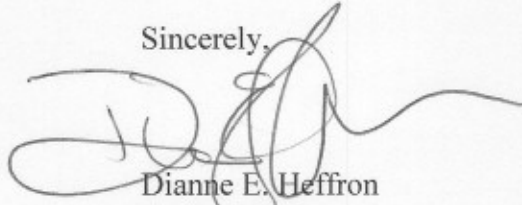
#### **Contacts for Additional Information**

If you have questions about the impact of P.L. 110-351 on Medicaid eligibility policy, please contact Ms. Mary Corddry, who can be reached at (410) 786-6618 or [Mary.Corddry@cms.hhs.gov](mailto:Mary.Corddry@cms.hhs.gov).



For a more complete explanation of P.L. 110-351, we refer you to the attached program instruction issued by ACF. Additional guidance will be issued by ACF, including an instruction about children receiving adoption assistance. A draft compilation of the revised Social Security Act can be found at: <http://www.acf.hhs.gov/programs/cb/index.htm>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dianne E. Heffron', with a long horizontal flourish extending to the right.

Dianne E. Heffron  
Acting Director

Enclosure