

Scenarios for NPRM Comment

I. Residency Requirements for Medicaid § 435.403 and the Exchange 155.305

The recently released NPRM articulates new residency rules for Medicaid and Qualified Health Plans (QHP) through the Exchange.

Exchange: To meet the residency requirement for a QHP under the Exchange NPRM, an individual over 21 must intend to reside in the State within the service area of the Exchange, including without a fixed address, in which the applicant is requesting coverage.¹ For individuals under age 21, residency is the State within the service area of the Exchange in which he/she is requesting coverage, including with a parent/caretaker, or without a fixed address.² If a tax dependent or spouse lives outside the service area of the Exchange of the primary taxpayer, the applicant may request coverage through the Exchange that services the area where the spouse or tax dependent resides or the service area where the primary taxpayer resides or intends to reside.³

Medicaid: To meet the residency requirement under the Medicaid NPRM, for individual's over age 21, their residency is where they intend to reside, including without a fixed address, or where they entered the State with a job commitment or seeking employment (whether or not currently employed).⁴ For those under 21, who are capable of indicating intent and are emancipated or married, the State of residence is where they intend to reside, without a fixed address.⁵ For those under 21 who are not emancipated or married, residency is either where they reside, including with a custodial parent or caretaker or without a fixed address; or where their parent or caretaker has entered the State with a job commitment or seeking employment.⁶

Issue: Is there alignment between New York's current residency requirement and the Medicaid and Exchange NPRM residency requirement for seasonal migrant workers?

Medicaid and Exchange NPRM: The proposed Medicaid and QHP defines residency as where the applicant "intends to reside" or "where the individual has entered the State with a job commitment or seeking employment, whether or not currently employed."⁷

New York's Current Law: New York currently defines residency based on where the individual is domiciled, providing, "A person's domicile or legal

¹ Exchange NPRM § 155.305(a)(3)(i).

² Exchange NPRM § 155.305(a)(3)(ii).

³ Exchange NPRM § 155.305(a)(3)(iv).

⁴ Medicaid NPRM § 435.403(h)(1)(i) and (ii).

⁵ Medicaid NPRM § 435.403(i)(1)

⁶ Medicaid NPRM § 435.403(i)(2)(i) and (ii).

⁷ Medicaid NPRM § 435.403(h)(1)(i) and (ii); Exchange NPRM § 155.305(a)(3).

residence, is the principal and permanent home to which the person, wherever temporarily located, always intends to return."⁸

Scenario:

John and Mary live in New Jersey and enter New York to work for three months as seasonal migrant workers. They apply for Insurance Affordability Program eligibility through New York's exchange.

- **Outcome under Medicaid NPRM:** John and Mary would meet the Medicaid residency requirement because they entered the State with a job commitment or seeking employment.⁹
- **Outcome under Exchange NPRM:** John and Mary would meet the QHP residency requirement under the Exchange NPRM because they intend to reside in the State.¹⁰
- **Outcome under Current Medicaid Rules:** Under current New York law and practice, John and Mary would not be eligible for Medicaid because they have a permanent domicile in another state.

Comments:

- *Under current New York's residency requirements, seasonal workers, as well as other workers and job seekers who entered New York for employment would not be eligible for Medicaid if they have a permanent domicile in another state. The current rule is not aligned with the Medicaid and Exchange NPRM.*
- *Applying the new NPRM residency requirements may result in individuals being newly eligible that are not currently eligible for Medicaid coverage under New York State rules.*
- *It appears that the new residency rule could potentially encompass a broader group of workers and job seekers, whether or not such individuals intended to reside in New York.*

II. Household Composition Rules

Medicaid NPRM for Tax Filers: Under the proposed Medicaid MAGI household rules for tax filers, the household includes the taxpayer and all dependents.¹¹ In the case of an individual who is claimed as a tax dependent by a taxpayer, the household for the

⁸ NYS DOH Medicaid Reference Guide, Page 513.

⁹ Medicaid NPRM § 435(h)(1)(ii).

¹⁰ Exchange NPRM § 155.305(a)(3)(i). See also Commentary II(A)(1)(b) stating the definition "accommodates those individuals who may transition between service areas of different Exchanges, such as seasonal workers and individuals seeking employment in the State or service area of the Exchange."

¹¹ Medicaid NPRM § 435.603(f)(1).

dependent is the same as the household for the taxpayer claiming him or her, except that non-filer rules apply in the cases of:

- (1) individuals other than a spouse or a biological, adopted or step-child claimed as a tax dependent by another taxpayer;
- (2) individuals under age 21 living with both parents if the parents are not married;
- (3) individuals under age 21 claimed as a tax dependent by a non-custodial parent.¹²

Medicaid NPRM for Non-Tax Filers: The household for individuals who do not file taxes includes the individual and, if living with the individual, the following: (1) spouse; (2) biological, adopted and step-children under age 19 or, if such a child is a full-time student, under the age of 21; and (3) for those under 19 (or full time student and under 21) household is biological, adopted and step-parents and adoptive and step-siblings under age 19 or, if such sibling is a full-time student, under age 21.¹³

IRS NPRM: A taxpayer's family for eligibility for an APTC "means the individuals for whom the taxpayer properly claims a deduction for a personal exemption under section 151 for the taxable year."¹⁴

NY Current Medicaid Law: Parents are financially responsible for children under the age of 21 regardless of a child's student status.¹⁵ Legally responsible relatives living together are required to be included in the Medicaid household whether or not they are applying for Medicaid.¹⁶

A. Household Composition Rules for 20 Year Olds

Scenario 1: Non-Filers with a 20 Year Old Non-student Living at Home.

John and Mary are married. They have a 20 year old daughter, Sally, who lives with them. Sally is not a full-time student. John and Mary do not file taxes. Sally applies for Insurance Affordability Program eligibility through New York's exchange.

- **Outcome Under Current NY Law:** Sally's household includes herself and her parents with whom she lives with because her parents are legally responsible for her. Household of 3.
- **Outcome Under Medicaid NPRM:** Because Sally is 20 years old and not a full-time student, she is not included in the household. Sally is her own household of 1.

¹² Medicaid NPRM § 435.603(f)(2)(i)-(iii).

¹³ Medicaid NPRM § 435.603(f)(3).

¹⁴ IRS NPRM § 1.36B-1.

¹⁵ Medicaid Reference Guide, Page 406.

¹⁶ Medicaid Reference Guide, Page 572.

Comment: New York will need to modify its rule to conform to the Medicaid NPRM.

Scenario 2: Filers with a 20 Year Old Non-student Living Outside the Home. John and Mary are married and claim their daughter Sally, 20, as a dependent on their taxes. Sally lives outside the home (non-student). Sally applies for Insurance Affordability Program eligibility through New York’s exchange.

- **Outcome Under Current NY Law:** Under current New York law, Sally is not living with her parents. Sally is a household of 1.
- **Outcome Under Medicaid NPRM:** There are two possible outcomes that appear internally inconsistent.
 - (1) We could apply the rule as outlined in the Medicaid NPRM Commentary that “families in which parents claim as tax dependents children living outside the home” shall have the 36B household composition rules apply.¹⁷ Under that application, Sally would be a household of 3.
 - (2) We could also apply the exception for tax dependents of a non-custodial parent, where non-filer rules apply. Under that scenario, Sally does not live with her parents, they are not in her household. Sally is a household of one.

Comment: The final rule should resolve this inconsistency.

B. Relative Caregivers

Issue: How will the New York Exchange verify income for relative caregivers, who are not considered part of the household composition for Medicaid eligibility determinations?

Medicaid NPRM for Tax Dependents: For individuals claimed as tax dependents, the NPRM proposes the basic rule that the household is the “household of the taxpayer claiming such individual as a tax dependent.”¹⁸ The NPRM proposes exceptions to this rule which include:

- (1) individuals other than a spouse or biological, adopted or step-child who are claimed as a tax dependent by another tax payer;
- (2) individuals under age 21 living with both parents, if the parents are not married;

¹⁷ Medicaid NPRM § II.B(b)(1).

¹⁸ Medicaid NPRM § 435.603(f)(2).

- (3) individuals under the age of 21 claimed as a tax dependent by a non-custodial parent.¹⁹

New York Current Law: Spouses are legally responsible for each other as are parents of children under the age of 21.²⁰ Relative caregivers are not counted as persons legally responsible and are not required to be considered in the household composition.

Relative Care Giver Eligibility Scenario: Grandmother, Susan, is caring for her grand-daughter, Mary. Grandmother claims Mary as a tax dependent. Susan applies for Insurance Affordability Programs for herself and Mary through the New York Exchange.

- **Outcome Under Medicaid NPRM:** Because Mary is Susan's grand-daughter, Mary falls under the Medicaid NPRM exception and therefore they are each a household of 1. The regulations are unclear as to how the Exchange will verify separately Susan's income and Mary's income, each as a household of 1, if they are using IRS income data where Susan has claimed Mary as her dependent.
- **Outcome Under the APTC Screen:** Susan's household includes Mary and herself, household of 2, because Susan claims Mary as a dependent. Mary's household includes Susan and herself, household of 2, because she is claimed as a dependent by Susan.
- **Current New York Law:** Eligibility for Susan and Mary is first determined as a household of 2. If ineligible as a household of two, then Susan and Mary would each be budgeted as a household of 1.

Comment: This scenario highlights the need for access to real time data broken out by income source through the federal hub to enable automated eligibility determinations for both MAGI and MAGI exceptions.

¹⁹ Medicaid NPRM § 435.603(f)(2)(i)-(iii).

²⁰ Medicaid Reference Guide, Page 406.