

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
JFK Federal Building, Government Center
Room 2275
Boston, Massachusetts 02203



Division of Medicaid and Children's Health Operations / Boston Regional Office

December 17, 2009

Brenda M. Harvey, Commissioner
Department of Health and Human Services
11 State House Station
Augusta, Maine 04333-0011

Dear Ms. Harvey:

This is in response to your recent letter concerning the maintenance of eligibility requirements (MOE) under the American Recovery and Reinvestment Act of 2009 (the Recovery Act), Public Law 111-5. Specifically, you asked whether your proposed changes to the level of care (LOC) requirements for intermediate care facilities for mental retardation (ICF-MR) for the Katie Beckett Medicaid eligibility group would violate the MOE requirements. As we understand it, you are making the revisions to the LOC requirements for ICF-MR for individuals eligible under the Katie Beckett group to comply with Federal Medicaid requirements.

Section 5001 of the Recovery Act provides eligible States with an increased Federal medical assistance percentage (FMAP) for 27 months between October 1, 2008, and December 31, 2010. Section 5001(f) of the Recovery Act specifies that a State is not eligible for the increased FMAP if it adopts eligibility standards, methodologies, or procedures, under its State plan or any waiver, that are more restrictive than those in effect on July 1, 2008.

Based on the description in your letter and discussions with your staff on October 26 and December 14, 2009, we do not believe that your proposed changes to the LOC for ICF-MR for the Katie Beckett Medicaid eligibility group as described in your letter violates the MOE requirements under the Recovery Act. As we understand it, you are doing so to comply with Federal Medicaid requirements.

Our State Medicaid director letter dated August 19, 2009 clarifies that we will not consider as more restrictive changes in eligibility policies that were required to comply with Federal statutes, regulations, or provisions of a State plan, demonstration, or waiver program approved as of July 1, 2008. The Recovery Act contains no language indicating that Congress intended to limit ongoing actions required to ensure compliance with program requirements. Furthermore, it is not plausible to require States to choose between the increased FMAP and potential disallowances for expenditures that were inconsistent with applicable Medicaid authorities.

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Please note that this letter does not address whether we approve or disapprove the specific changes, as described in your letter, to LOC criteria for ICF-MR for individuals eligible under the Katie Beckett Medicaid eligibility group. We have not taken a position on this issue.

We hope this information is of assistance to you. Please contact Chong Tieng at (617) 565-9157 if there are questions.

Sincerely,

A handwritten signature in black ink that reads "Richard R. McGreal". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Richard R. McGreal
Associate Regional Administrator

Enclosure

cc: Tony Marple, Director, Office of MaineCare Services