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***CMCS Informational Bulletin***

**DATE:** May 4, 2021

**FROM:** Anne Marie Costello, Acting Deputy Administrator & Director  
Center for Medicaid and CHIP Services

**SUBJECT:** Extension of the Spousal Impoverishment Rules for Married Applicants and Recipients of Home and Community-Based Services

The purpose of this CMCS Informational Bulletin is to advise you that the recently enacted “Consolidated Appropriations Act, 2021” (Pub. L. No. 116-260, enacted on December 27, 2020) modifies section 2404 of the Patient Protection and Affordable Care Act (ACA) to require that state Medicaid agencies apply the spousal impoverishment rules to married applicants and beneficiaries eligible for home and community-based services (HCBS) through September 30, 2023.<sup>1</sup>

The Consolidated Appropriations Act, 2021 provides a temporary extension of the ACA’s spousal impoverishment-related provision, which initially was set to expire on December 31, 2018, but has been extended several times through subsequent legislation.<sup>2</sup> CMS has informed states of prior extensions through CMCS Informational Bulletins.<sup>3</sup> As CMS has noted with regard to previous extensions, states should continue to follow the guidance CMS published in SMDL #15-001 (“Affordable Care Act’s Amendments to the Spousal Impoverishment Statute,” available at <https://www.medicare.gov/federal-policy-guidance/downloads/smd050715.pdf>) relating to the application of the ACA’s spousal impoverishment-related provision so long as section 2404 of the ACA is in effect.

Similar to previous temporary extensions of the ACA’s spousal impoverishment-related provision, section 205(b) of the Consolidated Appropriations Act, 2021 includes a Rule of

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<sup>1</sup> See Division H (“Departments Of Labor, Health And Human Services, and Education, and Related Agencies Appropriations Act, 2021”), Title II (“Department of Health and Human Services”), Section 205(a) (“Extension of the spousal impoverishment protections”), of the Consolidated Appropriations Act, 2021.

<sup>2</sup> See Division A (“Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization”), Title III (“Supporting America’s Health Care System in the Fight Against the Coronavirus”), Subtitle E (“Health and Human Services Extenders”), Part II (“Medicaid Provisions”), Section 3812 (“Extension of spousal impoverishment protections.”) of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act); see also Division C (“Health Extenders”), Title III (“Medicaid Extenders”), Section 2302 (“Extension of spousal impoverishment protections”) of the Continuing Appropriations Act, 2021 and Other Extensions Act; see also Division B (“Health Extenders”), Title I (“Medicare and Medicaid Extenders”), Section 1105 (“Extension of spousal impoverishment protections”) of the Further Continuing Appropriations Act, 2021, and Other Extensions Act.

<sup>3</sup> See <https://www.medicare.gov/federal-policy-guidance/downloads/cib020819.pdf>; <https://www.medicare.gov/federal-policy-guidance/downloads/cib050819.pdf>; <https://www.medicare.gov/federal-policy-guidance/downloads/cib090419.pdf>; and <https://www.medicare.gov/federal-policy-guidance/downloads/cib021020.pdf>.

Construction that addresses how states may apply income and resource disregards authorized under section 1902(r)(2) of the Act to certain individuals eligible for HCBS. The Rule of Construction enables states to target less restrictive financial methodologies at individuals eligible for HCBS, including married individuals whose financial eligibility is determined under the spousal impoverishment rules. CMS expects to provide additional guidance on this matter.

CMCS is available to provide technical assistance as needed. If you have any questions, please contact Gene Coffey at [Gene.Coffey@cms.hhs.gov](mailto:Gene.Coffey@cms.hhs.gov).