

## A CLOSE LOOK AT THE EXPRESS LANE ELIGIBILITY PROVISIONS IN CHIPRA 2009

The Children's Health Insurance Program Reauthorization Act of 2009, Public Law No. 111-3, has been signed into law, giving states new tools and incentives to more effectively reach out to eligible but uninsured children. One of these new tools is Express Lane Eligibility (ELE), which allows states to enroll eligible children based on information they already have stored in their databases. For a more general description of ELE and why it makes sense for your state, go to [www.childrenspartnership.org/ExpressLaneEligibility](http://www.childrenspartnership.org/ExpressLaneEligibility).

This document is designed to provide a deeper look into what the new law says about ELE, with an understanding that the Centers for Medicare & Medicaid Services (CMS) will be issuing regulations governing implementation. However, states that are interested in fully realizing the benefits of ELE need to immediately begin gathering relevant stakeholders and developing plans to make ELE a reality.

- **Medicaid and the Children's Health Insurance Program (CHIP) are now allowed to borrow eligibility findings from other programs to determine eligibility and/or conduct renewals.**

Public Law No. 111-3 gives states the new option to rely on a finding from another need-based program agency to satisfy one or more eligibility components, even where the other program uses a different budget unit, disregard, deeming, or other methodology to make its finding.<sup>1</sup> ELE is not limited to an income finding. For example:

*If a Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) agency determines that an applicant family resides in the county and has an income of 122 percent FPL, under its own rules, then the Medicaid/CHIP agency can borrow those and other eligibility components without gathering the underlying information and recalculating those eligibility factors under its own, different rules.*

However, where the other public program does not make a finding—for instance, WIC does not look at citizenship or immigration status—then the Medicaid/CHIP programs must make a determination as to that eligibility component through other means.

- **States are still required to review immigration status, although the law opens the possibility for satisfying this review through ELE or electronic means.**

The new law removes the five-year ban for legal immigrant women and children, but requires verification of their lawful residence at an initial determination as well as at renewal.<sup>2</sup> While the new law refers to “documentation” of legal residence at initial enrollment, the ELE provisions open up the possibility to borrow another public program's finding or to use electronic means to satisfy this eligibility component.<sup>3</sup>

---

<sup>1</sup> 42 U.S.C. 1396a(e)(13)(A)(i) and (ii). All references to the U.S. Code are newly enacted provisions, unless otherwise indicated. Most relevant provisions in CHIPRA 2009 can be found in Section 203.

<sup>2</sup> 42 U.S.C. 1396b(v)(4)

<sup>3</sup> 42 U.S.C. 1396a(e)(13)(A)(i) and 1396a(dd)

For example:

*The Supplemental Nutrition Assistance (formerly Food Stamps) and Temporary Assistance for Needy Families Programs are among the few other programs that evaluate an applicant's immigration status. Thus, the new law allows a Medicaid/CHIP agency to rely on a finding from either of those program agencies that a child is a lawful resident, despite differences in methodology.*

- **States are also required to verify citizenship and nationality status, but they can use electronic means to do so.**

The new law maintains the requirement that applicants must demonstrate citizenship or nationality for Medicaid, and it also adds this as a CHIP requirement. However, it creates the option to satisfy this requirement through data exchange with the Social Security Administration (SSA) beginning in 2010. When building an ELE procedure, states can incorporate this exchange with the SSA into the process and can explore additional opportunities for data-driven solutions.<sup>4</sup>

- **The new law protects children from being disadvantaged by ELE.**

ELE cannot be used to deny eligibility or renewal. The law states that a child who would be found ineligible based on the finding of another program agency must then be evaluated using regular Medicaid/CHIP procedures.<sup>5</sup>

- **A wide set of public need-based programs can be used for ELE.**

States now have a lot of flexibility to choose among other public programs for ELE. This flexibility allows states to design ELE efforts using the program(s) that function best for them, taking into consideration the state agencies' governance structure, technology, and eligibility rules.

The new law specifically lists an Express Lane agency as any public agency that determines eligibility for assistance under any of the following:

- The Temporary Assistance for Needy Families program funded under part A of Title IV;
- A state program funded under part D of Title IV;
- The state Medicaid plan;
- The state CHIP plan;
- The Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);
- The Head Start Act (42 U.S.C. 9801 et seq.);
- The Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);
- The Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);
- The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.);
- The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.);
- The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.); or
- The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.).

---

<sup>4</sup> 42 U.S.C. 1396a(e)(13)(A)(i)(IV)

<sup>5</sup> 42 U.S.C. 1396a(e)(13)(A)(i)(I)

Other programs can also be used at the state’s discretion.<sup>6</sup> States can use ELE to smooth the transition between Medicaid and CHIP by allowing the programs to borrow eligibility findings from one another, as appropriate. Furthermore, the law authorizes Medicaid/CHIP to rely on findings of gross income or adjusted gross income from state tax authorities.<sup>7</sup> However, it does specifically exclude private, for-profit organizations and those operating under the Title XX Social Services Block Grant from being Express Lane agencies.

- **“Screen and enroll” requirements are maintained, but new streamlined methods are allowed with ELE.**

Under ELE, states must conduct “screen and enroll” procedures to determine eligibility for Medicaid before enrolling a child in CHIP. However, where the state opts to use ELE, it may either:

1. Set a “screening threshold” where, if a child falls under this threshold, they are deemed Medicaid-eligible, and, if they are above it, they are deemed CHIP-eligible<sup>8</sup>, or
2. Temporarily enroll those children who appear eligible for CHIP into CHIP (based on the borrowed findings), pending a simplified determination of eligibility that does not require families to provide duplicative information.

Under both of these screen-and-enroll options, the state will receive the matching rate that corresponds with the program in which the child is placed, even where that placement may be temporary.<sup>9</sup>

- **The new law removes barriers to automatic or otherwise data-driven enrollment and renewal.**

- Allows for Automatic Enrollment. As an option for states, Medicaid/CHIP can conduct an initial eligibility determination based on available data without a request from the family. Where this results in a child being found eligible, the state must obtain the family’s “affirmative consent” before that child can be enrolled. Such affirmation can be obtained orally or in writing, by phone or via electronic signature, or on the Express Lane agency program application. The family must also be informed about the program and its obligations.<sup>10</sup>
- Reaffirms Acceptability of an Electronic Signature. The law clarifies that, where a signature is required for Medicaid/CHIP, it can be obtained by electronic signature.<sup>11</sup>
- Addresses Signature Under Penalty of Perjury as to Borrowed Eligibility Components. The Medicaid/CHIP agency does not need to obtain a signature under penalty of perjury as to any element of eligibility that is borrowed from an Express Lane Agency or other public agency.<sup>12</sup>

---

<sup>6</sup> 42 U.S.C. 1396a(e)(13)(F)

<sup>7</sup> 42 U.S.C. 1396a(e)(13)(H)

<sup>8</sup> The screening threshold is to be set at 30 percentage points above the highest Medicaid income threshold or, at a state’s option, at some higher level that reflects differences between Medicaid and the other program’s income methodology. When a child is enrolled in CHIP under this option, their parent/guardian must be informed of their potential eligibility for Medicaid and the differences in the programs, and given an opportunity to apply for a determination under standard Medicaid rules.

<sup>9</sup> 42 U.S.C. 1396a(e)(13)(A)(i)(III) and (C)

<sup>10</sup> 42 U.S.C. 1396a(e)(13)(D)

<sup>11</sup> 42 U.S.C. 1396a(dd)

<sup>12</sup> 42 U.S.C. 1396a(dd)

- Provides Access to Additional Relevant Databases. In addition to data-sharing between an Express Lane Agency and Medicaid/CHIP, the agencies using ELE will be able to receive eligibility data from the National Directory of New Hires and any available data regarding enrollment in insurance.<sup>13</sup>
- Limits the Use of Data Shared for Express Lane Eligibility. While the law specifically authorizes the data-sharing that forms the basis of an ELE determination, it establishes that the data can only be used for outreach, enrollment, and verification for Medicaid/CHIP. Furthermore, a family must provide consent, or not object to, disclosure of information that is newly shared for this purpose, although, importantly, the new legislation does not limit data-sharing that was authorized prior to this bill. Also, the legislation requires relevant agencies to enter into an interagency agreement.<sup>14</sup> When necessary, states will probably need to give families the opportunity to opt-out of this disclosure through the other program's application.
- **Some funding is provided to assist states in streamlining enrollment and renewal.**
  - Sets Up a New Performance Bonus System. The bill offers bonus payments when states achieve enrollment of Medicaid-eligible but uninsured children above current levels as long as the state implements five out of eight practices to streamline enrollment and retention. The list of designated practices includes Express Lane Eligibility and the related practice of data-driven, automated renewal. Thus, bonus payments can help fund a state's successful ELE efforts, while ELE can, in turn, help a state qualify for bonus payments.<sup>15</sup>
  - Supports Systems Improvements Through Federal Matching Funds. While there is no dedicated funding in the legislation to help states improve eligibility systems for ELE, Medicaid administrative funds remain available for this purpose, and such funds can sometimes be obtained at an enhanced matching rate.<sup>16</sup>

In addition, Public Law No. 111-3 specifically provides an enhanced match for the implementation and maintenance of electronic systems to verify a declaration of citizenship or nationality through the SSA.<sup>17</sup> These specific eligibility systems improvements should be designed in a manner that is consistent with the system needed for ELE and forms a platform for moving forward.
  - Creates New Outreach and Enrollment Grants. The law provides \$100 million in outreach and enrollment grants to states, including \$10 million for a national enrollment campaign. Because ELE uses other programs as a means for outreach and enrollment, states should be able to use these grants to support their ELE efforts. Furthermore, the national enrollment campaign specifically promotes partnerships with the nutrition and education agencies.<sup>18</sup>

---

<sup>13</sup> CHIPRA 2009, Sec. 203(e)

<sup>14</sup> 42 U.S.C. 1942

<sup>15</sup> 42 U.S.C. 1397ee(a)(3)

<sup>16</sup> 42 U.S.C. 1396b(a)(3) provides an enhanced match for mechanized claims processing and information retrieval systems, but specifically excludes eligibility systems from this match in regulation (42 CFR 433.112(c)). However, state experience in the past has shown that there is some flexibility on this point, especially where these systems improvements are integrated into a larger overhaul.

<sup>17</sup> 42 U.S.C. 1396b(a)(3)

<sup>18</sup> 42 U.S.C. 1397aa

- Beyond CHIP, Stimulus Funds May Provide Additional Funding Opportunities. Funds provided for health information technology (HIT) through the federal stimulus package may be available to help with the modernization of enrollment systems. For instance, the stimulus package includes specific funding to upgrade WIC management information systems to support participation in the WIC program, a process that might be used to improve the linkage between WIC and Medicaid/CHIP.<sup>19</sup>

- **The ELE process does not expose states to penalties for errors.**

Public Law No. 111-3 protects states from penalties for erroneous enrollments that occur through the Express Lane Eligibility procedure, though CMS guidance on this point is needed for states to be certain of how this will work. The new law calls upon states to track cases enrolled through ELE and perform a full Medicaid eligibility review on a sample of those cases to determine an eligibility error rate. Where the error rate for this population exceeds three percent, then reductions in federal payments will only be applied to the erroneous payments specifically identified in the sample and no punitive action is to be taken. The law directs states not to include children enrolled using ELE in studies done to comply with MEQC and PERM requirements.<sup>20</sup>

- **States will help evaluate the ELE experience.**

The law provides for an evaluation of the ELE experience by the end of fiscal year 2012, which is the end of the reauthorization period. This will require states to develop a system for tracking the results of the enrollment process and evaluating its costs and savings.<sup>21</sup>

## **MOVING FORWARD WITH ELE**

ELE helps states overcome the fact that need-based program rules are poorly aligned, which has frustrated cross-agency collaboration and administrative streamlining and made enrolling children in health insurance extremely difficult for their parents. As a state begins planning for ELE, it should explore the idea of using multiple programs as “gateways” into coverage and renewal, thus allowing for the possibility that all eligibility components will be available and that the determination can happen on a completely *ex parte* basis (without requiring any action from the family). States should look at which programs work best for ELE, based on current governance, rules, and technology, and they should also look for ways to facilitate the process through technology because electronic data-sharing will enable ELE to proceed most efficiently while improving verification and tracking.

## **FURTHER INFORMATION**

As this issue unfolds at the federal level and in states, you can keep abreast of developments and access useful tools and resources at our Web site at [www.childrepartnership.org/ExpressLaneEligibility](http://www.childrepartnership.org/ExpressLaneEligibility). If you have questions or need more information, contact Ken Kelly, Director, The Children’s Partnership’s Washington, DC Office, at [kkelly@childrepartnership.org](mailto:kkelly@childrepartnership.org) or (202) 429-0033.

---

<sup>19</sup> Title 1 of the American Recovery and Reinvestment Act of 2009 (H.R.1)

<sup>20</sup> 42 U.S.C. 1396a(e)(13)(E)

<sup>21</sup> CHIPRA 2009, Sec. 203(b)