

# PROGRAM MEMORANDUM INSURANCE COMMISSIONERS INSURANCE ISSUERS

Department of Health  
and Human Services

Centers for Medicare &  
Medicaid Services

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**Title:** Insurance Standards Bulletin Series--INFORMATION

**Subject:** Identifying Federally Eligible Individuals in States Electing to Use Alternative Mechanisms to Comply with Guaranteed Availability Requirements under Title XXVII of the PHS Act

**Market:** Individual Market

## I. Purpose

Some states implement a state alternative mechanism (SAM) under section 2744 of the Public Health Service (PHS) Act by using an existing arrangement, such as a risk pool, an issuer of last resort, or an open market approach that also serves individuals who do not qualify as federally eligible. This Bulletin explains why a state with this type of SAM should have an effective way to determine which applicants are federally eligible individuals.

## II. Background

In order to be an acceptable SAM under 45 CFR 148.128, a state's mechanism must be *reasonably designed* to ensure that all federally eligible individuals have:

- A. guaranteed availability of health coverage without any preexisting condition exclusions, and
- B. a choice of health coverage consisting of comprehensive coverage or a standard coverage option available under the state's group or individual health insurance laws.

## III. Discussion

If a SAM is part of a broader arrangement that provides health coverage to individuals who do not necessarily qualify as federally eligible individuals, it is possible that State law would permit the non-federally eligible individuals to be rejected for coverage, or subjected to a preexisting condition exclusion.

During the most recent round of SAM reviews, we became aware that some states with this type of arrangement do not always include clear guidelines or policies for how to determine whether an applicant is federally eligible. We believe that a SAM that is reasonably designed to comply with the federal law would include an effective way to determine if an applicant is federally eligible. Without such a determination, the SAM could not reasonably ensure that federally eligible individuals received their rights.

In future reviews of SAMs in states with broader arrangements, the Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration, will take into consideration whether or not a SAM has an effective means of determining which applicants are federally eligible individuals.

#### **IV. Recommendation**

To help ensure that federally eligible individuals are identified, we recommend that states examine how their alternative mechanisms operate. Do application forms that are used by the high risk pool or the issuer, as the case may be under the mechanism, solicit information that would allow proper identification of all federally eligible individuals? Have issuers, agents, or risk pool personnel who receive applications for coverage been properly trained to identify such individuals at the point of application for coverage through the alternative mechanism? Are qualified individuals advised of the additional protections they have as federally eligible individuals? Have complaints been received alleging that coverage under the mechanism has been inappropriately denied or delayed? If so, what can be done to improve on the identification process?

We encourage states to implement methods, or improve on any existing means, of determining which applicants for coverage under the SAM are federally eligible individuals. An improved process of identifying federally eligible individuals will help States better protect such individuals from mistaken denial of coverage or delays in obtaining coverage from a high risk pool, issuer of last resort, or issuers in an open market arrangement that also serves non-federally eligible individuals.

#### **Where to get more information:**

The regulations cited in this Bulletin are found in Part 148 of Title 45 of the Code of Federal Regulations (45 CFR 148). Information about HIPAA is also available on the CMS website at <http://hipaa.hcfa.gov>

If you have any questions regarding this Bulletin, call the HIPAA Insurance Reform Help Line at (410) 786-1565.