

Exhibit 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STATE OF INDIANA, <i>et al.</i>)	
)	
Plaintiffs,)	
v.)	Case No. 1:13-cv-01612-WTL-TAB
)	
INTERNAL REVENUE SERVICE, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF ANNE MARIE COSTELLO

I, Anne Marie Costello, declare as follows:

1. I am the Deputy Director for Policy of the Children and Adults Health Programs Group (CAHPG) in the Center for Medicaid and CHIP Services (CMCS) at the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS). I have held this position since November 17, 2013. In this capacity I oversee the Division of Eligibility, Enrollment and Outreach, which is a component of the Children and Adults Health Programs Group. The Division of Eligibility, Enrollment and Outreach reviews Medicaid state plan amendments relating to the standards for eligibility for all populations. Prior to assuming the role of Deputy Director for CAHPG, I served as the Director of the Division of Eligibility, Enrollment and Outreach. I served in that role from February 26, 2012 until November 16, 2013. The statements made in this declaration are based on my personal knowledge, information contained in agency files, and information furnished to me in the course of my official duties.

2. From before March 23, 2010, and until January 1, 2014, under Indiana’s Medicaid State Plan, parents and other caretaker relatives of dependent children who were new Medicaid applicants were eligible for Medicaid coverage if their income, as determined under the methodology set forth in

the state plan, met the Aid to Families with Dependent Children (AFDC) payment standard in effect as of July 16, 1996 (“1996 AFDC payment standard”). During this same time period, once these parents and other caretaker relatives of dependent children became Medicaid beneficiaries, a different, more generous continued-eligibility standard applied, which used a net income standard of 100 percent of the Federal Poverty Level (FPL) for those recipient families (beneficiaries). *See* IN 98-001 Attachment 2.6-A, Supplement 15 approved on June 17, 1999 with an effective date of October 1, 1998, which is attached as Exhibit A.

3. On October 25, 2013, Indiana sought approval for a state plan amendment (SPA) to its Medicaid State Plan that would be effective January 1, 2014, and it obtained approval from CMS for this SPA. Among other proposed changes to Indiana’s Medicaid State Plan, the proposed SPA included a reduction to the income eligibility threshold for those parents and other caretaker relatives of dependent children beneficiaries seeking redetermination of continued Medicaid eligibility. Specifically, the Indiana SPA reduced the continued-eligibility income threshold for those beneficiaries from 100 percent FPL down to the 1988 AFDC standard used for parents and other caretaker relatives of dependent children who are new Medicaid applicants. Indiana did so by electing to use for both applicants and beneficiaries in this eligibility group the state’s minimum income standard, which is the modified-adjusted-gross-income (MAGI)-equivalent of the state’s May 1, 1988 AFDC payment standard, which in turn equals the MAGI-equivalent of the state’s 1996 AFDC payment standard. *See* IN 13-001-MM1 Medicaid State Plan Eligibility Form S25, effective Jan. 1, 2014, attached as Exhibit B. In short, Indiana’s minimum income standard is more restrictive than the 100 percent FPL income standard previously applicable to existing beneficiaries in this eligibility group.

4. On January 23, 2014, CMS approved this SPA, including the reduction in income threshold for Medicaid eligibility for redetermination of continued Medicaid eligibility of beneficiaries

who are parents and other caretaker relatives of dependent children. In order to approve this SPA, CMS had to determine that the proposed amendment met the conditions of 42 U.S.C. § 1396a(a)(74), which incorporates the maintenance-of-effort (MOE) requirement in 42 U.S.C. § 1396a(gg)(1).

5. The MOE requirement under 42 U.S.C. § 1396a(gg)(1) applies to the period that begins on the date of enactment of the Affordable Care Act (March 23, 2010) and ends on the date when the Secretary determines that an Exchange is fully operational. During that period, to comply with the MOE requirement, a state must not have in effect “eligibility standards, methodologies or procedures” under its state plan that are more restrictive than those in effect on the date of enactment of the Affordable Care Act (March 23, 2010), or meet certain requirements for non-applicability of the MOE for a fiscal year.

6. Because the Indiana SPA at issue reduced eligibility for parents and other caretaker relatives of dependent children seeking redetermination of continued Medicaid eligibility, in order to approve the SPA, CMS therefore had to determine that the period during which the MOE was applicable had expired. In approving the SPA, CMS determined that the MOE expired as of January 1, 2014 as to Indiana based on the operations of the Indiana Exchange, which had been established based on the state’s determination to exercise the option under section 1321 of the Affordable Care Act to have a Federally facilitated Exchange.

7. If that MOE requirement had not expired as of January 1, 2014, CMS could not have approved this reduction because the proposed change imposed eligibility standards for parents and other caretaker relatives of dependent children seeking redetermination of continued Medicaid eligibility that were more restrictive than the standards Indiana had in place as of March 23, 2010 for this eligibility group.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 16th day of April, 2014, in Baltimore, Maryland.



Anne Marie Costello

A

Attachment 2.6-A
Supplement 15

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Indiana

ELIGIBILITY UNDER SECTION 1931 OF THE ACT

The State covers low-income families and children under section 1931 of the Act.

In determining eligibility for Medicaid, the agency uses the AFDC standards and methodologies in effect as of July 16, 1996*, with the following modifications.

The agency continues to apply the following waivers of provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996 and approved by the Secretary on or before July 1, 1997.

Section 402(a)(7)(B) of the Act and various provisions of 45 CFR 233.20(a)(3)(i) regarding resources.

The State's resource limit for Indiana Manpower Placement and Comprehensive Training Program (IMPACT) recipient families is \$1500.

Section 402(a)(18) of the Act and various provisions of 45 CFR 233.20(a)(3)(xiii) regarding the gross income test. The State substitutes the Federal Poverty Guidelines for the 185%-of-need standard for IMPACT recipient families.

Section 402(a)(41) of the Act regarding deprivation. Deprivation Requirements are not applied to anyone in the 1931 group.

Section 402(a)(1) and 402 (a)(19)(A) concerning statewideness. The State maintains a control group of TANF recipients to whom the more liberal waiver policies do not apply.

Section 402(a)(19)(G)(i), (ii), and (iii) of the Act concerning sanctions for non-compliance with TANF work requirements as set forth in Section 2.1(k) of the Waiver Terms and Conditions. The agency terminates medical assistance for IMPACT recipients (except for certain pregnant women and children) who fail to meet TANF work requirements.

* Eligibility under the TANF program is determined in the same manner as in the AFDC welfare reform demonstration project for which the Title IV-A waivers were originally approved.

TN No. 98-001

Approval Date 6/7/99

Effective Date 10/1/98

B



Medicaid Eligibility

OMB Control Number 0938-1148
 OMB Expiration date: 10/31/2014

Eligibility Groups - Mandatory Coverage **S25**
Parents and Other Caretaker Relatives

42 CFR 435.110
 1902(a)(10)(A)(i)(I)
 1931(b) and (d)

Parents and Other Caretaker Relatives - Parents and other caretaker relatives of dependent children with household income at or below a standard established by the state.

The state attests that it operates this eligibility group in accordance with the following provisions:

Individuals qualifying under this eligibility group must meet the following criteria:

Are parents or other caretaker relatives (defined at 42 CFR 435.4), including pregnant women, of dependent children (defined at 42 CFR 435.4) under age 18. Spouses of parents and other caretaker relatives are also included.

The state elects the following options:

This eligibility group includes individuals who are parents or other caretakers of children who are 18 years old, provided the children are full-time students in a secondary school or the equivalent level of vocational or technical training.

Options relating to the definition of caretaker relative (select any that apply):

The definition of caretaker relative includes the domestic partner of the parent or other caretaker relative, even after the partnership is terminated.

Definition of domestic partner:

The definition of caretaker relative includes other relatives of the child based on blood (including those of half-blood), adoption or marriage.

Description of other relatives:

Any blood relative within the fifth degree of relationship, including, but not limited to, those of half blood, first cousins once removed, and individuals of preceding generations as denoted by prefixes of grand, great, great-great, or great-great-great (this group includes the sister, brother, aunt, and uncle of the child).

The definition of caretaker relative includes any adult with whom the child is living and who assumes primary responsibility for the dependent child's care.

Options relating to the definition of dependent child (select the one that applies):



Medicaid Eligibility

- The state elects to eliminate the requirement that a dependent child must be deprived of parental support or care by reason of the death, physical or mental incapacity, or absence from the home or unemployment of at least one parent.
- The child must be deprived of parental support or care, but a less restrictive standard is used to measure unemployment of the parent (select the one that applies):

Have household income at or below the standard established by the state.

MAGI-based income methodologies are used in calculating household income. Please refer as necessary to S10 MAGI-Based Income Methodologies, completed by the state.

Income standard used for this group

Minimum income standard

The minimum income standard used for this group is the state's AFDC payment standard in effect as of May 1, 1988, converted to MAGI-equivalent amounts by household size. The standard is described in S14 AFDC Income Standards.

The state certifies that it has submitted and received approval for its converted May 1, 1988 AFDC payment standard.

An attachment is submitted.

Maximum income standard

The state certifies that it has submitted and received approval for its converted income standard(s) for parents and other caretaker relatives to MAGI-equivalent standards and the determination of the maximum income standard to be used for parents and other caretaker relatives under this eligibility group.

An attachment is submitted.

The state's maximum income standard for this eligibility group is:

- The state's effective income level for section 1931 families under the Medicaid state plan as of March 23, 2010, converted to a MAGI-equivalent percent of FPL or amounts by household size.
- The state's effective income level for section 1931 families under the Medicaid state plan as of December 31, 2013, converted to a MAGI-equivalent percent of FPL or amounts by household size.
- The state's effective income level for any population of parents/caretaker relatives under a Medicaid 1115 demonstration as of March 23, 2010, converted to a MAGI-equivalent percent of FPL or amounts by household size.
- The state's effective income level for any population of parents/caretaker relatives under a Medicaid 1115 demonstration as of December 31, 2013, converted to a MAGI-equivalent percent of FPL or amounts by household size.

Enter the amount of the maximum income standard:



Medicaid Eligibility

- A percentage of the federal poverty level: %
- The state's AFDC payment standard in effect as of July 16, 1996, converted to a MAGI-equivalent standard. The standard is described in S14 AFDC Income Standards.
- The state's AFDC payment standard in effect as of July 16, 1996, increased by no more than the percentage increase in the Consumer Price Index for urban consumers (CPI-U) since such date, converted to a MAGI-equivalent standard. The standard is described in S14 AFDC Income Standards.
- The state's TANF payment standard, converted to a MAGI-equivalent standard. The standard is described in S14 AFDC Income Standards.
- Other dollar amount

Income standard chosen:

Indicate the state's income standard used for this eligibility group:

- The minimum income standard
- The maximum income standard
- The state's AFDC payment standard in effect as of July 16, 1996, increased by no more than the percentage increase in the Consumer Price Index for urban consumers (CPI-U) since such date. The standard is described in S14 AFDC Income Standards.
- Another income standard in-between the minimum and maximum standards allowed

There is no resource test for this eligibility group.

Presumptive Eligibility

The state covers individuals under this group when determined presumptively eligible by a qualified entity. The state assures it also covers individuals under the Pregnant Women (42 CFR 435.116) and/or Infants and Children under Age 19 (42 CFR 435.118) eligibility groups when determined presumptively eligible.

- Yes No

PRA Disclosure Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-1148. The time required to complete this information collection is estimated to average 40 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Mail Stop C4-26-05, Baltimore, Maryland 21244-1850.