

Application to Use Burden/Hours from Generic PRA Clearance:  
Medicaid and CHIP State Plan, Waiver, and Program Submissions  
(CMS-10398, OMB 0938-1148)

**Information Collection #36 Same Sex Marriage Policy**

**July 31, 2014**

Center for Medicaid and CHIP Services (CMCS)  
Centers for Medicare & Medicaid Services (CMS)

## **A. Background**

The Centers for Medicare & Medicaid Services (CMS) work in partnership with States to implement Medicaid and the Children's Health Insurance Program (CHIP). Together these programs provide health coverage to millions of Americans. Medicaid and CHIP are based in Federal statute, associated regulations and policy guidance, and the approved State plan documents that serve as a contract between CMS and States about how Medicaid and CHIP will be operated in that State. CMS works collaboratively with States in the ongoing management of programs and policies, and CMS continues to develop implementing guidance and templates for States to use to elect new options available as a result of the Affordable Care Act or to comply with new statutory provisions. CMS also continues to work with States through other methods to further the goals of health reform, including program waivers and demonstrations, and other technical assistance initiatives.

## **B. Description of Information Collection**

The Balanced Budget Act of 1997 created the Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act. Title XXI enables States to initiate and expand health insurance coverage for uninsured children. In order to be eligible for payment under this legislation, each State submitted an initial Title XXI plan for approval by the Secretary that details how the State intends to use the funds. States may also amend their plans at any time by submitting an amendment for approval by the Secretary. All 56 States and Territories have submitted and received approval for State plans and numerous amendments to their plans. States will continue to amend their plans as necessary to reflect changes to their programs.

Under the law, a State plan or an amendment is considered approved in 90 days unless the Secretary notifies the State in writing that the plan is disapproved or that specified additional information is needed. The plan encompasses all of the child health assistance being provided using Title XXI funding. It is important to note that once a Title XXI plan is approved, the State is obligated to continue operating their program in the same manner as described in that plan until the plan is amended in accordance with the rules governing the program.

On June 26, 2013, the Supreme Court, in *United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013), invalidated Section 3 of the Defense of Marriage Act (DOMA), which provided federal definitions of marriage and spouse that precluded federal recognition of same-sex marriages. Because Section 3 of DOMA no longer controls the definition of marriage or spouse under the federal framework for state Medicaid and CHIP programs, DOMA is no longer a bar to states recognizing same-sex marriages in Medicaid or CHIP. For certain Medicaid and CHIP populations, financial eligibility is determined using modified adjusted gross income (MAGI). Section 1902(e)(14)(G) of the Social Security Act (Act) incorporates the definition of MAGI provided in section 36B(d)(2) of the Internal Revenue Code. Consistent with the Internal Revenue Service (IRS), CMS interprets section 1902(e)(14)(G) to treat lawfully married couples as spouses for purposes of the MAGI calculation. For federal tax purposes, the IRS has adopted a policy that recognizes a same-sex marriage if it is valid in the state in which the couple resides or valid in the jurisdiction where the marriage was celebrated. The Department of Health and Human Services (HHS) has adopted this policy in other contexts, including in the Medicare

program guidance “Impact of United States v. Windsor on Skilled Nursing Facility Benefits for Medicare Advantage Enrollees.”

Thus, to increase consistency among federal programs same-sex marriages are treated on the same terms as opposite-sex marriages, to the greatest extent possible. Therefore, as a general matter, for purposes of the Medicaid and CHIP programs, CMS believes that it is appropriate to recognize same-sex marriages that (1) are recognized by the state or territory in which the applicant or beneficiary resides, or (2) were celebrated in accordance with the laws of any state, territory, or foreign jurisdiction. However, in view of the unique federal-state relationship that characterizes the Medicaid and CHIP programs, we interpret section 1902(e)(14)(G) to permit states and territories to apply their own choice-of-law rules in deciding what law governs the determination of whether a couple is lawfully married; that is, we are permitting states and territories to adopt a different same-sex marriage recognition

### **C. Deviations from Generic Request**

No deviations are requested.

### **D. Burden Hour Deduction**

The total approved burden ceiling of the generic ICR is 86,240 hours, and CMS previously requested to use 58,457 hours, leaving our burden ceiling at 27,783 hours. CMS estimates that each State will complete the collection of data and submission to CMS within 1 hour. There is a potential universe of 56 respondents, so the total burden deducted from the total for this request is 56 hours.

### **E. Timeline**

CMS hopes to deploy this collection as soon as it is approved by OMB.

The following attachment is provided for this information collection:

- DOMA SPA Template
- DOMA CHIP SPA Template