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IMPLEMENTING EXPRESS LANE ELIGIBILITY IN NEW YORK STATE

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IMPLEMENTING EXPRESS LANE ELIGIBILITY IN NEW YORK STATE

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INTRODUCTION

The recent expansion of health insurance programs for children put a spotlight on the millions of children who are eligible for publicly sponsored insurance, but remain uninsured. More than 11 million children in the United States are without health insurance; of that amount it is estimated that 4.7 million are potentially eligible for Medicaid and another 1.8 million may be eligible for state children's health insurance programs.[1]

Following passage of the State Children's Health Insurance Program (SCHIP) in 1997, President Clinton directed federal agencies to develop plans to reach uninsured children served by programs in their jurisdiction. Research findings from the Urban Institute's 1997 National Survey of America's Families support the logic of this approach: "almost three-quarters of all low-income uninsured children and about 60 percent of all uninsured children live in families that participate in the National School Lunch, WIC, Food Stamps, or Unemployment Compensation programs. . . ." In short, coordinating these programs with Medicaid and SCHIP offers a high-leverage approach to reaching large numbers of uninsured children. However, to ensure that these children are actually enrolled in health insurance programs requires a more focused effort. Recognizing the dual imperative of finding *and* insuring low-income children, policymakers are embracing the concept of *express lane eligibility*, a strategy whereby children who have been found eligible for programs with income standards comparable to Medicaid or SCHIP are enrolled on an expedited and streamlined basis into one of these two insurance programs.

Building on the earlier work of The Kaiser Commission on Medicaid and the Uninsured and The Children's Partnership,[2] this study evaluates the feasibility of using government benefit programs operating in New York State to identify and enroll low-income uninsured children into the state's Medicaid or Child Health Plus (CHP) programs. As a first step, we identified benefit programs likely to reach the target population of low-income uninsured children, including

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1 *Medicaid and Children: Overcoming Barriers to Enrollment.* The Kaiser Commission on Medicaid and the Uninsured, January 2000.

2 *Express Lane Eligibility: How to Enroll Large Groups of Uninsured Children in Medicaid and CHIP.* The Children's Partnership, December 1999.

Food Stamps, Special Supplemental Nutrition Program for Women, Infants and Children (WIC), Head Start, the National School Lunch Program, unemployment insurance, and the Earned Income Tax Credit (EITC) program. We compared the eligibility standards and participation rules of each program with those of Medicaid and CHP, noting whether they were more stringent or less stringent than those of the state's Medicaid and CHP programs. Immigration requirements present the greatest obstacle to the implementation of wholesale enrollment strategies. While not a barrier to implementation of express lane eligibility, general federal and state privacy laws along with program-specific confidentiality requirements add an additional layer of complexity.

Once we had determined where programs meshed or conflicted with Medicaid/CHP, we were in a position to recommend a specific express lane strategy, ranging from automatic enrollment to deemed eligibility to targeted outreach. The report reviews the express lane strategies most appropriate to each public benefit program in New York State. The most promising program, at least in the short run, is the Food Stamp Program, where the key eligibility requirements are as strict or stricter than Medicaid and the program is administered by the same agency as Medicaid. Accordingly, we recommend that children enrolled in the Food Stamp Program be enrolled *automatically* in the Medicaid program. Implementation of an automatic enrollment strategy would appear to require not much more than the addition to the food stamp application of a small amount of relatively straightforward information required by Medicaid. Existing food stamp recipients could be enrolled into Medicaid at the time of their recertification for food stamps.

Over the long run, the National School Lunch Program has the most potential for expanding health insurance coverage since it reaches the largest numbers of low-income children. However, it reaches so many children because it has no immigration restrictions and a flexible enrollment process, two features that make it an inadequate screen for Medicaid, as currently conceived. Any serious national effort to dramatically expand the numbers of insured children should consider linking Medicaid and the National School Lunch Program. Any meaningful linkage, however, would require a change in federal law and, more to the point, a change in national policy with respect to the conditions upon which we, as a nation, are prepared to subsidize health insurance for children.

METHODOLOGY

This study evaluates the feasibility of using existing government benefit programs operating in New York State to identify and enroll low-income uninsured children into the state's Medicaid and CHP programs. A team of three attorneys and one health policy analyst reviewed the eligibility criteria and program standards of a range of public benefit programs and compared each to the state's Medicaid and CHP programs. We had two objectives: first, to identify programs that included

large numbers of low-income children and to the extent possible large numbers of *uninsured* low-income children; and, second, to identify short-term and long-term strategies to facilitate the wholesale enrollment of these children into New York's Medicaid or CHP program. The recommended enrollment strategies were driven, in large part, by the extent to which a program's eligibility standards aligned with those of Medicaid/CHP.

This study focuses on automatic and expedited enrollment strategies that respond to the specific features of benefit programs in New York. In the process, however, the study addresses common issues that are likely to arise in designing and implementing express lane strategies elsewhere and presents a model for pursuing feasibility studies in other states and localities.

Step 1: Identifying the Programs

As a preliminary step, we identified the benefit programs most likely to reach the target population of low-income uninsured children. Most, but not all, of the programs are means-tested programs. For example, unemployment insurance was included among the programs examined because, while benefits are not formally linked to financial standards, receipt of unemployment benefits is likely to coincide with a spell of uninsured status coupled with financial need. At this preliminary stage, minimal consideration was given to the numbers of uninsured children a program could potentially reach. However, that factor was taken into consideration in determining the appropriate express lane strategy to pursue with respect to specific programs. It will also be relevant in prioritizing future implementation efforts.

Step 2: Comparing the Programs with New York State Medicaid/CHP

We next looked at each program's eligibility rules and standards, both financial and non-financial, to determine whether, or to what extent, each program aligned with the Medicaid and CHP programs. The complexity of the eligibility factors for each program made understanding and comparing them an enormous challenge. Not incidentally, the complexity of the individual programs also underscored the merits of express lane strategies, both from the perspective of eligible children whose families are often deterred by the complexity and burden of the separate application processes and from the perspective of states and

localities that are investing significant resources to reach and enroll those children.[3]

Our comparative analysis focused primarily on Medicaid rather than CHP eligibility standards (although CHP's requirements are easier to meet and document) because we realized at the outset that the ability to positively identify Medicaid-eligible children was crucial to implementing any wholesale enrollment strategy for either program. First, federal law requires states to screen all SCHIP applicants for Medicaid eligibility.[4] Accordingly, any wholesale enrollment strategy for CHP must necessarily include a reliable screen for Medicaid eligibility. Second, CHP in New York operates exclusively through managed care plans, which, as a practical matter, appears to foreclose true automatic enrollment for CHP as enrollees must select and enroll with a specific plan.

In the end, the inherent complexity of the benefit programs did not hinder an effective comparative analysis against Medicaid standards, nor did it lead us to rule out wholesale express lane strategies outright. Indeed the comparative analysis became relatively straightforward once we established two analytical parameters. First, we limited our analysis to those eligibility standards directly relevant to New York's determination of a child's eligibility for Medicaid, primarily immigration status and household income.[5] We did not focus attention on the resource standard since New York does not apply a resource test to child

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[3] It is worth noting that on April 7, 2000, the federal Health Care Financing Administration (HCFA) issued a letter to State Medicaid Directors "to provide guidance and information that will build on our joint efforts to improve eligible low-income families' ability to enroll and stay enrolled in Medicaid." The letter specifically addresses the problems created by the delinkage of Medicaid from cash assistance, but, in the process, highlights states' ability and obligation to use existing information sources to advance the objective of securing Medicaid benefits for all individuals who are eligible. As HCFA cogently states: "By relying on information available to the State Medicaid agency [including specifically through TANF, Food Stamps and SSI], States can avoid unnecessary and repetitive requests for information from families that can add to administrative burdens, make it difficult for individuals and families to retain coverage, and cause eligible individuals and families to lose coverage." A copy of that letter is included in Appendix C.

[4] *See* 42 USC § 1397bb(b)(3). Under federal law, SCHIP funds must supplement, not substitute for, other sources of insurance coverage for children, including Medicaid.

[5] Age is also relevant under current law because New York has a higher income ceiling (133 percent of the federal poverty level) for children up to age 6 than for their siblings between 6 and 19 years of age (100 percent of the federal poverty level). However, the state has enacted legislation, which would apply the higher income ceiling to all children up to 19 under specific conditions. *See* Laws of 1998, Chap. 2, § 24-a (codified at New York Social Services Law § 366(4)(t)). The state is awaiting federal approval of State Plan amendments to effectuate that expansion. Our analysis proceeds on the assumption that HCFA will approve the amendments and, accordingly, does not treat age as a separate significant factor.

Medicaid applicants or to CHP applicants. For the same reason, we also culled out, as not dispositive for our purposes, certain program-specific eligibility rules, such as the work requirement under the Food Stamp Program, that do not affect the program eligibility of children in a household.[6] Second, we concluded that, as a practical matter, we needed only to determine whether a benefit program's standards ultimately were more restrictive or less restrictive than the comparable Medicaid standard, and where they were less restrictive (*i.e.,* the program included beneficiaries who would not be eligible for Medicaid or CHP), whether the misalignment could be addressed without creating unjustifiable burdens on, or otherwise disturbing, the benefit structure of the other programs.

Given that one of the study's principal objectives was to identify opportunities for wholesale enrollment of large groups of children, we also looked at program characteristics that could hinder or facilitate such enrollment strategies including the collection and/or use of individual identifiers (*e.g.,* social security numbers); the state or local agency responsible for administering each program; the system by which the agency maintains beneficiary records; and general and program-specific restraints on the disclosure or sharing of information on beneficiaries.

Step 3: Refining the Express Lane Eligibility Concept

Our analysis resulted in the preliminary conclusion that the programs presented somewhat different expedited enrollment opportunities. This helped us flesh out and further refine what express lane eligibility could look like in New York. Three approaches to piggybacking on existing benefit programs ultimately emerged:

> **"Automatic" Eligibility.** A child who receives benefits under one program and requests Medicaid would be enrolled in Medicaid without completing a separate application or taking other actions. This model works if the other benefit program's eligibility standards are more restrictive than comparable standards under Medicaid. This strategy would be difficult to implement with respect to the CHP program where eligibility is determined at the plan, rather than at the program, level.

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[6] We also recognized at this stage that there were certain requirements unique to the Medicaid program, such as the obligation to cooperate in child support enforcement efforts, which may not be addressed in the application process for other benefit programs. Compliance with these requirements is discussed in connection with our recommendations for implementing specific enrollment strategies.

"Deemed" Eligibility When Applying for Medicaid or CHP. Any child presenting proof of enrollment or eligibility for a particular program would be deemed eligible under one or more standards (such as financial eligibility) when applying for Medicaid or CHP. This expedited enrollment strategy is suitable for income-comparable programs that have more liberal immigrant eligibility standards than Medicaid and for CHP, generally, where plan selection is required.

Targeted Outreach. Facilitated enrollment activity could be designed around particular benefit programs with potentially large numbers of targeted children. This strategy is available where a benefit program does not sufficiently align with Medicaid or CHP so as to permit more aggressive enrollment options.

Step 4: Formulating a Suitable Strategy for Each Program

We recognized that more than one approach may be appropriate for a particular benefit program, with the determinative factor likely to be whether the program is more appropriate as part of a long-term or short-term strategy. For example, under a long-term strategy that seeks appropriate federal and/or state law changes, any of the programs could be the vehicle for wholesale enrollment into Medicaid and CHP. However, given the investment of resources that will likely be necessary, a long-term strategy makes more sense for a benefit program with potentially large numbers of uninsured low-income children. Similarly, all of the programs are appropriate vehicles in the short-term for targeted outreach.

In our specific recommendations for each of the programs examined, we attempt to identify an optimal course of action, taking into consideration the current degree of alignment with Medicaid or CHP; whether and how misalignments could be addressed; and the number of children who could potentially be reached through the program.

BENEFIT PROGRAMS EXAMINED

Food Stamp Program

The Food Stamp Program is a federally funded program that helps low-income families buy the food they need for a nutritionally adequate diet. The amount of a household's benefits is determined by comparing its monthly cash resources, after appropriate deductions including for shelter expenses in excess of 50 percent of the household's income, to the federal Department of Agriculture's Thrifty Food Plan, which is an estimate of how much it costs to buy food to prepare nutritious low-cost meals at home. For most households, food stamps may constitute only

part of their food budgets. Households with cash income are expected to use approximately 30 percent of their monthly income for food.

To qualify for food stamps, a household's monthly gross income must be at or below 130 percent of the federal poverty level, *and* its net income (after applicable deductions) must not exceed 100 percent of the federal poverty level. In addition, the household may not have more than $2,000 of countable resources. If at least one member of the household is 60 years of age or older, the resource limit is raised to $3,000. Households in which all members are receiving Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI) are deemed income-eligible for food stamps.

The Food Stamp Program also includes work requirements: most able-bodied adults between 16 and 60 years of age must register for work, accept an offer of suitable work, and take part in an employment or training program; and, generally, able-bodied adults between 18 and 50 years of age who do not have children and are not pregnant can receive food stamps for only three months in any three-year period unless they are working or participating in a work or workfare program.

According to New York State Office of Temporary and Disability Assistance (OTDA) data, approximately 750,000 households in New York receive food stamp benefits monthly; of these approximately 200,000 are non-TANF non-SSI households.

Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

WIC provides supplemental nutritious foods, nutrition education and counseling, and referrals to other health, welfare, and social services. WIC is available to low-income, nutritionally at-risk pregnant women (up to six weeks postpartum), breastfeeding women (up to the breastfed infant's first birthday), infants (up to their first birthday), and children (up to their fifth birthday). WIC recipients must demonstrate household gross income at or below 185 percent of the federal poverty level. Participation in the Food Stamp Program, Medicaid, or TANF grants automatic income-eligibility for WIC. Across the country, approximately 7 million women, infants, and children receive WIC benefits each month. Approximately 45 percent of babies born in the United States are eligible for WIC, and it is estimated that virtually all of them will participate in WIC. Additionally 20 percent of all new mothers nationwide participate in WIC. According to State Department of Health (DOH) data, approximately 360,000 infants and children in New York State were receiving WIC benefits in January 2000.

Head Start Program

Head Start is a federally funded comprehensive child development program that serves low-income children from birth to age 5. The program has an overall goal of increasing school readiness and fostering healthy development in low-income children. Head Start grantee and delegate agencies provide a wide range of individualized services in the areas of education and early childhood development; medical, dental, nutrition, and mental health services; and parent counseling.

To qualify for Head Start, a child's family must have gross income at or below 100 percent of poverty; however, up to 10 percent of Head Start slots may be filled by children whose families exceed the low-income guidelines. Approximately 46,800 children in New York State are enrolled in Head Start, of which 20,000 are enrolled in New York City.

National School Lunch Program

The National School Lunch Program and the School Breakfast Program are federally assisted meals programs operating in more than 96,000 public and nonprofit private schools and residential child care institutions to provide nutritionally balanced, low-cost, or free meals to low-income children. Participating school districts receive federal cash subsidies and donated commodities from the federal Department of Agriculture.

To qualify for free meals, a child's gross household income may not exceed 130 percent of the federal poverty level; for reduced-price meals the household's income may not exceed 185 percent of the federal poverty level. During the 1998-99 school year, approximately 1.2 million children in New York State were eligible for free meals and approximately 200,000 children in the state were eligible for reduced-price meals.

Virtually all (99 percent) public schools and many private schools in the country participate in the program. Approximately 92 percent of children nationwide have access to the National School Lunch Program.

Earned Income Tax Credits

The Earned Income Tax Credit (EITC) is a federal and state tax benefit for working people who earn low or moderate incomes. Although it is available to taxpayers without dependents, it favors those with children. The credit applies only to "earned" income, which includes wages, tips, union strike benefits, disability benefits, and net earnings from self-employment.

To qualify, the annual adjusted gross income of a taxpayer with no children may not exceed $10,200; the ceiling for taxpayers with one child is $26,928 and $30,580 for taxpayers with two or more children. Approximately 1.3 million families in New York State received the EITC in 1997.

Unemployment Insurance Benefits

Unemployment insurance provides temporary income for workers who become unemployed through no fault of their own and who can demonstrate sufficient past work and wages in covered employment. Eligibility is determined by reference to a "base period," which consists of the first four of the prior five quarters (*i.e.*, the base period excludes the most recent quarter prior to the claim for unemployment insurance). To be eligible, a claimant (1) must have earned at least $1,600 during one quarter of the base period (the "high quarter"); (2) must have worked and earned wages during at least two quarters of the base period; and (3) must have total wages for the base period equal to at least one and one-half times the high quarter earnings.

A claimant's unemployment benefit rate generally equals $1/26^{th}$ of the claimant's high quarter earnings, up to a maximum weekly benefit of $365, and a claimant is generally eligible for 26 weeks of benefits during any benefit year.

Under unemployment insurance reform enacted in 1998, to receive unemployment benefits, a claimant must be ready, willing, and able to work in her usual employment or any other for which she is reasonably fitted by training and experience. As a general matter, after receiving 13 weeks of unemployment benefits, a claimant will be required to accept any job she is capable of performing if the pay is at least equivalent to 80 percent of the claimant's high quarter wages and the pay constitutes the prevailing wage for that occupation in the locality.

PROGRAM STANDARDS REVIEWED AND COMPARED

We reviewed and compared eligibility standards and program rules in order: (1) to determine the extent to which the various programs align with Medicaid and CHP; (2) to identify program elements that conflict with fundamental features of Medicaid and CHP, which would require statutory changes to implement any express lane strategy; and (3) to determine the degree or nature of other incompatibilities with Medicaid and CHP as the basis for recommending regulatory or operational changes.

Immigration Status

Federal limitations barring certain immigrants from receiving Medicaid largely circumscribe the available strategies for enrolling children automatically pursuant to an eligibility determination for another benefit program. All but one of the other programs we examined are open to categories of immigrants statutorily barred from receiving Medicaid and would, therefore, not function as sufficient screens for automatic Medicaid enrollment. Only the Food Stamp Program is subject to stricter limitations on immigrant eligibility than Medicaid, and, thus, is probably the only potential vehicle for operationalizing automatic Medicaid enrollment in New York State absent fundamental changes in federal law.[7] Table A (Appendix A) presents our analysis, aligning the programs (left to right), from most restrictive, with respect to immigrant eligibility.

The immigration provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) are sweeping in effect and impossibly complex in their detail.[8] However, only a few provisions are pertinent to our analysis given the specific limitations applicable to Medicaid.

Eligibility for Medicaid is subject to two principal limitations based on immigration status: (1) Medicaid is not available to legal immigrants who entered the United States after August 22, 1996 (referred to in this report as "recent immigrants") until after a five-year mandatory waiting period, and even after five years the sponsor's income and resources will continue to be deemed available to the sponsored applicant unless the applicant has obtained citizenship or can demonstrate 40 qualifying quarters of work;[9] (2) Medicaid is also not available to

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[7] Indeed, given that New York's Medicaid program has relatively liberal eligibility standards, the Food Stamp Program may be the only potential vehicle in many states.

[8] In its broadest stroke, PRWORA makes *non*-"qualified aliens" categorically ineligible for "Federal public benefit[s]," which include, *inter alia,* "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household or family eligibility unit by an agency of the United States or by appropriated funds of the United States." *See* 8 USC § 1611(a) & (c). Under subsequent provisions, PRWORA then goes on to significantly curtail the eligibility of "qualified aliens"—which refers to legal permanent residents (green card holders) and specified categories of aliens, including refugees and asylees, permitted to enter and remain in the United States typically for humanitarian reasons, *see* 8 USC § 1641(b)—for the principal federal benefits for low-income persons including Medicaid, SSI and Food Stamps.

[9] *See* 8 USC §§ 1613 & 1631. The five-year waiting period and sponsor deeming rules for recent immigrants applies to any "Federal means-tested public benefit." That term is only defined in the statute by negative implication, *i.e.,* only exceptions are specifically set out in the statute. In 1997, the federal Department of Health and Human Services (HHS) announced that, of the

(continued. . .)

undocumented aliens except for pregnant women and for aliens requiring emergency medical care not related to organ transplant services.[10] Recent immigrants can also access Medicaid during their five-year waiting period for prenatal care and emergencies. Aliens permitted to remain in the United States under one of several humanitarian classifications, such as asylees and refugees, are eligible for Medicaid immediately and are not subject to the five-year waiting period for Medicaid.[11] Other than the mandatory waiting period, and the immediate eligibility of asylees and refugees, federal law permits states to decide whether legal immigrants are eligible for Medicaid.[12] New York has opted to make Medicaid available to all legal immigrants who entered the United States prior to August 22, 1996.[13]

The restrictions based on immigration status applicable to the Food Stamp Program are either identical to or even stricter than the limitations applicable to Medicaid. Undocumented aliens are barred from receiving food stamps, without exception.[14] Indeed, following PRWORA, most legal immigrants, including immigrants who entered the United States before welfare reform and were receiving benefits at the time, are permanently barred from receiving food stamps

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programs HHS administers, only Medicaid and TANF will be treated as Federal means-tested public benefits for purposes of PRWORA. *See* 62 Federal Register (Fed. Reg.) 45256 (Aug. 26, 1997).

HHS has not formally amended its interpretation of "Federal means-tested public benefit" to include state child health insurance programs under Title XXI, which were authorized under the Balanced Budget Act of 1997 enacted on August 5, 1997 (three weeks before the HHS notice on means-tested benefits). However, recently published proposed rules for implementing SCHIP indicate that HHS intends to treat SCHIP benefits as federal means-tested public benefits. *See* 64 Fed. Reg. 60882 (Nov. 8, 1999). This, however, should not prohibit a state from extending state-funded child health insurance benefits to even undocumented aliens (as New York has done). PRWORA specifically permits states to extend *state* and *local* benefits to non-"qualified aliens," including the undocumented, through affirmative state legislation enacted after August 22, 1996. *See* 8 USC § 1621(d).

10 *See* 8 USC § 1611(a) & (b)(1)(A).

11 *See* 8 USC § 1613(b). Aliens permitted to stay in the U.S. for humanitarian reasons who are immediately eligible for Medicaid include refugees; asylees; aliens granted withholding of deportation; Cuban/Haitian entrants; certain Amerasians; and persons paroled into the U.S. for at least one year. Veterans and active duty members of the U.S. armed services and their dependents are also exempted from the five-year mandatory waiting period applicable to recent immigrants.

12 *See* 8 USC § 1612(b).

13 *See* Laws of 1997, Chap. 436, Part B, § 7 (codified at New York Social Services Law § 122(1)(b)(i)).

14 *See* 8 USC § 1611(a).

except under very limited circumstances.[15] The principal exception is for immigrants who can demonstrate at least 40 qualifying quarters of employment prior to their application for food stamps.[16] In contrast, any legal immigrant who was admitted before August 22, 1996, is fully eligible for Medicaid in New York on a par with U.S. citizens. As with Medicaid, aliens under humanitarian designations are immediately eligible for food stamps; however, that basis for eligibility expires after seven years. To continue to be eligible for food stamps, such aliens, like other legal immigrants, must become naturalized. Finally, the federal Department of Agriculture has deemed the Food Stamp Program to be a federal means-tested public benefit, like Medicaid, subject to the mandatory five-year waiting period and other restrictions applicable to such programs.[17] Because the Food Stamp Program has more restrictive immigrant eligibility standards than Medicaid, and, accordingly can function as a satisfactory screen for eligible immigrants, it offers a vehicle for automatic enrollment.

In contrast to the Food Stamp Program, most of the other programs we examined have more liberal immigrant eligibility rules. Indeed, most of the other programs are expressly exempted from PRWORA's onerous immigration provisions. For example, PRWORA expressly prohibits disqualification for the National School Lunch and School Breakfast Programs based on citizenship, alienage, or immigration status.[18] With respect to the WIC program, PRWORA provides that states are free to extend such benefits to all immigrants, even to undocumented aliens.[19] Finally, the Head Start program is specifically exempted from designation as a federal means-tested public benefit, and, accordingly,

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[15] Certain elderly, disabled and child food stamp recipients who were receiving food stamps on August 22, 1996, were grandfathered. *See* 8 USC § 1612(a)(2)(E) – (J). In all other cases, to qualify for food stamps or SSI after PRWORA, a legal permanent resident must demonstrate 40 qualifying quarters of employment. *See* 8 USC § 1612(a)(2)(B). Because no more than four quarters may be earned annually, this exception can apply only to immigrants who have lived and worked in the United States for at least ten years.

[16] *See* 8 USC § 1612(a)(2)(B).

[17] *See* 63 Fed. Reg. 366553 (July 7, 1998). Even without that designation, the Food Stamp Program's requirement of 40 qualifying quarters of work would preclude the eligibility of any recently admitted immigrants for food stamps but not Medicaid. This is so because it takes a minimum of ten years to accumulate the required 40 qualifying quarters of work. Accordingly, the earliest a recent immigrant (one who entered after August 22, 1996) could qualify for food stamps is in 2006, well after the same immigrant's Medicaid waiting period would have expired.

[18] *See* 8 USC § 1615(a).

[19] *See* 8 USC § 1615(b). That section provides that "[n]othing in this Act shall prohibit or require a State to provide to an individual who is not a citizen or a qualified alien" benefits under certain enumerated programs including the WIC program, which is part of the Child Nutrition Act of 1966.

exempt from the five-year mandatory waiting period applicable to recent immigrants.[20]

The special treatment of these child-oriented benefit programs under PRWORA highlights a genuine conundrum for express lane strategies: the benefit programs that reach the largest groups of low-income uninsured children are also likely to be the programs with less restrictive eligibility standards, which makes them generally less suitable for automatic enrollment strategies. This strongly indicates that, ultimately, federal legislation will be required (whether addressing the immigration hurdles or health insurance directly) to successfully implement express lane eligibility on a large scale.

Household Income Standards

All of the programs, except for unemployment insurance benefits, include income ceilings as a crucial eligibility standard. The income ceilings of the programs examined closely align with the ceilings for Medicaid and CHP. However, the comparative analysis was complicated by the variability in the definition of income (including the availability of program-specific deductions, exclusions, and disregards) and the concept of "household" used by each program. Table B (Appendix A) presents our program-by-program analysis of income standards.[21]

The comparison of income standards was greatly facilitated by two characteristics of the Medicaid household income standard in New York State. First, Medicaid looks at "net available income," while the other programs look at "gross income," in relation to the federal poverty level. Since a family's net income (regardless of what specific deductions go into the calculation of that figure) is likely to be less than its gross income, Medicaid's use of net income in effect allowed us to compare income ceilings directly without delving too deeply into the separate definitions of income. As an example, a family receiving food stamps must demonstrate *gross* income at or below 130 percent of the federal

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20 *See* 8 USC § 1613(c)(2)(J).

21 Our analysis assumes that HCFA will approve the State Plan amendments that raise the Medicaid income ceiling from 100 percent to 133 percent of the federal poverty level for children between 6 and 19 years of age. Without that change, none of the programs examined would be suitable for identifying Medicaid-eligible children between 6 and 19. While Head Start applies the same income ceiling (100 percent of the federal poverty level), the program includes only children 5 years old and under. Additionally, because the National School Lunch Program applies different income ceilings for free (130 percent of the federal poverty level) and reduced cost (185 percent of the federal poverty level) meals, the two benefits are tabulated separately.

poverty level; a child in that family can be presumed to meet Medicaid's standard of *net* income at or below 133 percent of the federal poverty level.

Second, Medicaid's concept of "household" for the purposes of determining the income-eligibility of a child applicant is much less prescriptive than the concept of household applied by the other programs. For a child applicant, Medicaid requires only that the household include the child and parent(s) living with the child.[22] Other relatives, including non-applying siblings, living with the child applicant may be included so long as their income is also included. In effect, this gives the child Medicaid applicant the best chance to meet the income standard. As summarized in Table B, the other programs use more fixed definitions of "household," which look at actual living arrangements, economic dependence, or both. The Food Stamp Program, because it uses household income to determine the benefit level as well as to determine eligibility, permits the least discretion with respect to determining the appropriate "household." For example, a food stamp household may not wholly exclude a disqualified or ineligible member.[23] Rather, an appropriate share of the disqualified/ineligible household member's income must be included in the calculation of household income.[24] The disqualified/ineligible member is not counted in determining household size.

For the purposes of the comparative analysis, Medicaid's less prescriptive treatment of "household" permitted us to conclude that children in families that meet the income standard of the Head Start Program (gross income at or below 100 percent of federal poverty level), the standard for free meals under the National School Lunch Program (gross income at or below 130 percent of federal poverty level), or the Food Stamp Program (gross income at or below 130 percent of the federal poverty level) would be income-eligible for Medicaid.

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22 *See* 18 NYCRR § 360-4-2(a) & 360-1.4(h)(2).

23 A household member may be disqualified from receiving food stamps for failure to comply with work registration or work requirements or for intentional program violations such as fraud. Certain household members may be ineligible under the immigration provisions of PRWORA or for refusal to apply for or provide a social security number.

24 A disqualified member's income, after the applicable earned income deduction, is divided equally among the household members including the disqualified member. All but the disqualified member's pro rata share is included as household income. 18 NYCRR § 387.16(c)(2)(ii). If any portion of the household's allowable shelter and dependent care expenses are billed to or paid by the disqualified member, those expenses are divided equally among all household members and all but the disqualified member's pro rata share is deducted from the household's gross income. *Id.* at 387.16(c)(2)(iii).

Use of Individual Identifiers

For very practical reasons, a program's use of individual identifiers is crucial to automatic enrollment strategies. The specific identifiers used are also significant. Under federal law, states must collect the social security numbers of Medicaid applicants, including child applicants.[25] Accordingly, to effectuate automatic enrollment into Medicaid through another program, that program must collect the social security numbers of the children in the household. Of the programs we examined, only the Food Stamp Program and the EITC program require the collection of social security numbers for children in the household.[26] (See Table C, Appendix A).

All of the other programs require at least the name of the child beneficiary. The National School Lunch Program, however, presents a unique problem in that, under certain circumstances, even the names of specific students eligible for the benefit may not be available. Generally, students are required to apply for national school lunch and school breakfast benefits each year. However, a school, under certain conditions, may elect to participate in a program whereby applications are collected from students every four or every five years, depending on the specific reimbursement scheme elected by the school.[27] After the first (base) year, individual eligibility determinations are not required; the school is reimbursed for the cost of meals based on base year eligibility statistics. Thus, in the years following the base year, there will be no updated identification of individual students actually eligible for free or reduced cost meals. At the end of the four- or five-year period, the school may obtain an extension for a subsequent period of the same duration if it can demonstrate through available socioeconomic data that the income level of the population of the school has remained stable.[28]

As a condition of participation, schools that elect to operate under the multi-year option must serve free meals to all of their students regardless of individual eligibility, and the additional costs must be paid from sources other

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25 *See* 42 USC § 1320b-7(a)(1) & (b)(2). The social security number of a parent who is not also applying for Medicaid is not required.

26 *See* 42 USC § 1320b-7(a)(1) & (b)(4) and 18 NYCRR § 387.9(a)(5) ("All households applying for or participating in the Food Stamp program must provide the social security number of each household member. . . . Failure to apply for or provide an SSN shall result in the disqualification of that individual from participation in the Food Stamp program."). The unemployment insurance program also requires the disclosure of social security numbers, but only for the claimant, not the children in the claimant's household.

27 *See* 42 USC § 1759a.

28 *See id.* at § 1759a(a)(1)(D).

than federal funds.[29] Accordingly, only schools with extremely high ratios of eligible children are likely to elect the multi-year option. These are also the schools that our target population is likely to attend. Fifteen school districts in New York City currently operate their National School Lunch Programs under one of the multi-year options.[30]

Face-to-Face Interviews

New York currently requires a face-to-face interview at initial certification for Medicaid and at each recertification.[31] The only other program reviewed that requires a comparable face-to-face interview is the Food Stamp Program, which also requires an interview at initial certification and each recertification, except under very limited circumstances (Table D, Appendix A).[32] In connection with recently proposed regulations for the Food Stamp Program, the Department of Agriculture clarifies that a food stamp interview may be conducted jointly with an interview for another assistance program.[33]

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29 *See id.* at § 1759a(c) & (E).

30 *See Universal School Meal: Update and Summary*, Community Food Resource Center, January 2000.

31 *See* New York Social Services Law § 366-a & 18 NYCRR § 360-2.2(e). The New York City Human Resources Administration (HRA), which administers Medicaid in the City's five boroughs, has recently proposed a milestone recertification approach for Medicaid households consisting exclusively of children under 19 years of age. The milestone proposal would require less frequent face-to-face interviews. Initially, the milestone approach would require face-to-face interviews only at initial certification and at milestones, including increase in income; change in household membership; and in conjunction with birthdays related to changes in applicable income ceilings (1st, 6th and 19th birthdays). In all other years, annual recertification would be done by mail. HRA ultimately seeks to limit recertification to milestones, eliminating the annual recertification for eligible child-only households all together.

32 *See* 18 NYCRR § 387.7(a). The federal Food Stamp Act (FSA) does not expressly require a face-to-face interview. The federal requirement has always emanated from Department of Agriculture regulations. In recently proposed regulations implementing provisions of PRWORA affecting the Food Stamp Program, the Department has indicated that it intends to continue to require a face-to-face interview at initial certification and at least every 12 months. *See* 65 Fed. Reg. 10856, 10865 (Feb 29, 2000).

33 *See* 65 Fed. Reg. at 10865.

Lead Agency and Maintenance of Beneficiary Records

We looked at the state and/or local administering agency for each program, and the manner in which beneficiary records are maintained, to gauge the feasibility of express lane strategies from a practical perspective (Table F, Appendix A). Again, the Food Stamp Program emerged as a natural vehicle for automatic enrollment because food stamps and Medicaid are administered locally by the same agencies: the Human Resources Administration (HRA) in the five boroughs of New York City and the local social services districts in the other counties.

Food stamp records are also computerized, which enhances the ability to implement automatic enrollment. In contrast, the National School Lunch Program and the Head Start Program keep paper records and do not report child-specific information to any lead agency or the federal government. The state is in the process of computerizing WIC data, but that process is expected to take several more years. Computerization has not even commenced in New York City, which has more than half of the WIC caseload statewide.

Confidentiality Provisions

Implementation of express lane eligibility must take into account federal and state privacy laws which protect against the unauthorized release of personal information. These laws restrict the ability of government agencies to release personally identifying information except under certain limited circumstances. Individual program legislation may expand or further limit the circumstances under which a government agency may share beneficiary information with another agency. For example, the National School Lunch Act contains a virtual ban on the transfer of information about its participants.[34] In contrast, the Food Stamp and WIC Programs authorize the information disclosure required to implement express lane eligibility.

Ultimately, if the information required to implement program linkages does not fall within one of the exceptions to the privacy laws or is not specifically authorized by the applicable program statute, it can always be released with the written consent of the program beneficiary. As a practical matter, this written consent can be obtained in connection with the initial application or at recertification. The memo at Appendix B reviews the generally applicable federal and state privacy laws as well as the privacy provisions of certain government benefit programs.

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[34] *See* 42 USC. § 1758(b)(2)(C)(iii).

SUGGESTED EXPRESS LANE STRATEGIES

Our analysis of the various benefit programs targeting low-income children and families indicates that different strategies will be necessary to reach the uninsured children served by each program. The strategies set forth take into account the following parameters: first, the extent to which program standards align with Medicaid/CHP; second, Medicaid's non-financial conditions of eligibility, including its face-to-face interview requirement;[35] third, confidentiality constraints; and, fourth, the CHP requirement that enrollees select a managed care plan. While not specifically addressed here, the issue of enrollment into a managed care plan will shortly have to be addressed in the context of Medicaid as well, since the pending Medicaid expansion for 6- to 19-year-olds is conditioned on managed care enrollment for this population.[36]

Notwithstanding existing barriers, or at least hurdles, to automatic enrollment, our analysis has identified (1) an automatic Medicaid enrollment strategy using the Food Stamp Program; (2) a blueprint for a federal Medicaid

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[35] In addition to the interview, the other pertinent Medicaid conditions consist of the obligation to assign rights to certain payments for medical care (including from third-party health and liability insurers and from persons liable for medical support) and to disclose other sources of health benefits. *See* 42 USC §§ 1396a(a)(25 & 1396k, and 18 NYCRR § 360-3.2(a). Medicaid also requires custodial parents to cooperate with State child support enforcement activity. *See* 42 USC § 1396k(1)(B) and 18 NYCRR § 360-3.2(c). However, this latter requirement applies to *adult applicants* for Medicaid. The non-cooperation of the custodial parent may not result in the disqualification of child applicants. *See* 99 OTDA Administrative Directive -5 (July 1, 1999) at p. 12 ("An A/R's failure, without good cause, to cooperate renders such person ineligible for Medicaid. Their children under age 21, however, must be authorized to receive Medicaid if they are otherwise eligible.").

It is worth noting that PRWORA gave States the option to require cooperation with child support enforcement activity as a condition of Food Stamp eligibility. *See* 7 USC § 2015(l). Pursuant to that authority, New York now applies the same requirement to adult Food Stamp applicants. *See* New York Social Services Law § 95(9). *See also* Table E (Appendix A) for full comparative analysis.

[36] Under state law, this Medicaid expansion is conditioned on requiring the expansion population to enroll in the Medicaid managed care program pursuant to Social Services Law § 364-j. *See* New York Social Services Law § 366(4)(t)(4). Accordingly, even if *eligibility* for Medicaid is determined automatically, these children would still be required, as an additional step, to enroll with a managed care plan to access benefits. The Medicaid expansion children, however, are somewhat distinguishable from CHP-eligible children in that auto-assignment under Section 364-j would be available as a last resort, if, following a determination of program eligibility and an opportunity to select a plan, they fail to take the actions necessary to turn on their Medicaid benefits.

initiative around the National School Lunch Program; and (3) potentially effective strategies for substantially streamlining the enrollment process and efficiently targeting outreach in connection with the other programs. As with our analysis overall, the strategies focus on Medicaid, but are equally effective as the required Medicaid screen under CHP and, thus, should work in conjunction with facilitated enrollment to advance the overall objective of securing health insurance for low-income children.

Food Stamp Program

The Food Stamp Program, as administered by New York State, is nearly an ideal vehicle for automatic enrollment into Medicaid. The program's immigrant eligibility criteria are stricter than those applied by the Medicaid program, and Food Stamp Program's gross income standard (130 percent of federal poverty level) is stricter than the current Medicaid standard for children under the age of six (133 percent of federal poverty level). When the Health Care Financing Administration approves the state plan amendments effectuating the higher income ceilings for children between 6 and 19 years of age, these children can also be reached through the Food Stamp Program. Because the program also collects the social security number of each member of the household, identification and documentation of eligible children can be readily accomplished. Finally, nothing bars the institution of joint food stamp/Medicaid interviews, as demonstrated by the Department of Agriculture's recent clarification that joint interviews for the Food Stamp Program and other assistance programs are permitted.

The only other significant Medicaid condition of eligibility that would need to be addressed is Medicaid's required assignments of third-party payments for medical care.[37] Compliance with this requirement could be accomplished through a modification of the food stamp application, which is now permitted. Prior to PRWORA, states were required to use a uniform national food stamp application form developed by the Department of Agriculture. Pursuant to changes in the Food Stamp Program enacted under PRWORA, states now are required to develop their own food stamp applications.[38] With very slight modifications, the food stamp application could be made to function as a joint food stamp/Medicaid application. The only items required to be added would be the Medicaid assignments (which could be accomplished by a notice of

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37 *See* 42 USC §§ 1396a(a)(25) & 1396k and 18 NYCRR § 360-3.2(a).

38 *See* 7 USC § 2020(e)(B)(ii).

assignment above the signature) and a request for information on existing health insurance coverage.

For children in families already receiving food stamps, we expect food stamp recertification to be the occasion for initial Medicaid certification under this automatic enrollment strategy.[39] For these children a separate assignment and health benefit disclosure form would be required.

One final factor making the Food Stamp Program an attractive vehicle for automatic enrollment into Medicaid is that, in New York, the two programs are administered by the same agency: HRA in New York City, and the local social services departments in other counties.

WIC

WIC is not a feasible vehicle for automatic enrollment. It imposes no immigration standard; its income ceiling (185 percent of the federal poverty level) is higher than the Medicaid ceiling in New York for children 1 to 6 years of age (133 percent of the federal poverty level), a group which constitutes about 50 percent of program participants;[40] it does not require applicants to supply social security numbers; and the WIC program is operated through a network of largely voluntary agencies with decentralized recordkeeping. Notwithstanding all of the foregoing, most WIC participants are eligible for Medicaid in New York,[41] and,

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[39] Most food stamp cases are certified for at least three months. Households that have little likelihood of changes in income and household status may be certified for up to six months. Where the entire household consists of unemployable or elderly persons, the household may be certified for up to 12 months. *See* 18 NYCRR § 387.17. Federal law requires that certification periods be no longer than 12 months, except where all adult household members are elderly or disabled, in which case the household may be certified for up to 24 months. States, however, must have at least one "contact" with each certified household at least every 12 months. 7 USC § 2012(c).

[40] *See Study of WIC Participant and Program Characteristics 1996,* Exhibit 2.1, "Distribution of WIC Participants by Participant Category in 1992, 1994, 1996." B. Randall, S. Bartlett, and S. Kennedy. August 1998.

[41] Most infants are likely to be citizens and, in New York, have the benefit of the highest Medicaid income ceiling (185 percent of the federal poverty level). The same Medicaid ceiling applies to pregnant women, and under *Lewis v. Grinker*, 794 F. Supp. 1193 (E.D.N.Y. 1991) (injunction made permanent), *aff'd* 965 F.2d 1206 (2d Cir. 1992), New York is enjoined from denying Medicaid for prenatal care to pregnant alien women residing in the State, if the unborn child would be eligible for Medicaid at the time of the mother's Medicaid application. New York Social Services Law § 122(6), as added by New York's Welfare Reform Act (Laws of 1997, chapter 436), explicitly continues the coverage required under *Lewis v. Grinker* at least for so long as the injunction remains in place.

indeed, according to statistics maintained by the State Department of Health (DOH), approximately 82 percent of the state's WIC participants currently are enrolled in Medicaid.[42] Of the remaining 18 percent, most are likely to be children between 1 and 5 years of age whose family income exceeds 133 percent of the federal poverty level, the applicable Medicaid ceiling for this cohort, although some may be Medicaid-eligible children who fell through the cracks.[43] Of the remaining children not enrolled in Medicaid, some are likely to be enrolled in CHP, and the others who are not Medicaid-eligible are almost certainly eligible for CHP.[44]

To catch the remaining CHP and Medicaid-eligible children, the state is in the process of piloting the Growing Up Healthy joint application for WIC, Medicaid, and CHP. This joint application approach seems to hold the most promise in the short run given the fact that the WIC population, in fact, aligns so substantially with Medicaid/CHP, but its program characteristics make automatic enrollment impossible. It is worth noting that the state has had in place a joint WIC-Medicaid application for the past five years, which has contributed to the current Medicaid enrollment rate. That rate also reflects the fact that most pregnant women and infants enter the WIC program through Medicaid, and that, under federal law, women and children who are receiving Medicaid are automatically income-eligible for WIC.[45]

To the extent the joint application is used by a WIC agency worker, the application and supporting documents still must be forwarded to HRA (for Medicaid) or a plan (for CHP), or the applicant must work through a facilitated enroller, to complete the processing for health insurance. The process could be expedited further by "deeming" applicants eligible for CHP, as part of the determination of WIC eligibility, (1) if a social security number is not supplied or the applicant does not respond affirmatively to the citizenship and immigration status queries and (2) no other source of health insurance is identified. Those applications would be forwarded to the CHP plan selected by the applicant or to a facilitated enroller, if no plan is selected. To ensure that children currently in

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42 Telephone interview of DOH official in the Bureau of Supplemental Food Programs. The state currently does not maintain data on CHP enrollment.

43 A small number may also be breastfeeding women who qualify for WIC but do not receive the special treatment, for Medicaid purposes, of pregnant women.

44 Applicants who have access to other health benefits would not be eligible for CHP.

45 *See* 42 USC § 1786(d)(2)(A)(iii) and 7 CFR § 246.7(d)(2)(vi). Medicaid recipients must also demonstrate "nutritional risk" to qualify for WIC.

WIC also benefit from the new joint application, it should be used for all uninsured child WIC participants at their next recertification.[46]

Head Start

Head Start enrolls a relatively small number of children: 46,800 statewide, with approximately 20,000 in New York City; and approximately 65 percent of Head Start children are already enrolled in Medicaid. Some portion of the remainder is likely to be enrolled in CHP. As with WIC, Head Start is operated through a network of largely voluntary agencies with decentralized recordkeeping. Under the circumstances, a joint Head Start/Medicaid/CHP application and targeted support from facilitated enrollers may be effective in reaching the remainder. Even without a joint application, given the fact that Head Start's income ceiling is 100 percent of the federal poverty level, Head Start participants could be "deemed" income-eligible for Medicaid/CHP, and if no social security number is supplied for the child, presumptively enrolled in CHP. Because the program is relatively small, it may be more feasible to obtain an administrative directive to facilitate the expedited enrollment of Head Start children.

National School Lunch Program

The myriad challenges posed by this program make any deeming or automatic enrollment, under current law, impossible. Indeed, the National School Lunch Program, particularly the multi-year option discussed previously, best illustrates the conundrum for express lane initiatives. By virtue of its mission and size, the School Lunch Program is the most likely place to locate the target population for express lane strategies. However, the very features that ensure the success of the program actually make it untenable as a vehicle for express lane eligibility under current law: no disqualification based on immigration status; minimal administrative burdens for the schools (*i.e.*, minimal record maintenance); and strict prohibitions on the disclosure of program participation and eligibility-related information.[47] Although legislation is pending in Congress that would expressly permit disclosure to Medicaid and SCHIP programs for the purposes of identifying children eligible for those programs,[48] other features of the School Lunch Program make it unsuitable for express lane strategies. Further, given the

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[46] WIC infants may be certified up to their first birthdays; child participants (between 1 and 5 years of age) are certified for six-month periods. *See* 42 CFR § 246.7(g).

[47] *See* 42 USC § 1758(b)(2)(C)(iii).

[48] *See* S. 1570 (106th Cong., 1st Sess.) & H.R. 2807 (106th Cong. 1st Sess.).

importance of the benefit this program provides students on a daily basis, any proposed change to the program that has a potential chilling effect (whether by increasing the burden of applying for it or by stigmatizing the student beneficiaries) would be difficult to justify.

Notwithstanding all of the foregoing, because the school lunch program is probably the single largest program reaching uninsured low-income children, it merits attention. The challenge is two-fold: to develop strategies that link school lunch program participants with health insurance without disrupting the administration of the school lunch program itself. Two strategies come to mind.

First, the school lunch application could be modified to solicit information required by Medicaid and/or CHP (*e.g.*, social security numbers of the children, other sources of health benefits, etc.), which can be completed at the parent/guardian's option. The application would also request consent to share the information with Medicaid and facilitated enrollers who would contact the families requesting screening for health insurance coverage for additional information and final processing. If the pending legislation permitting disclosure is enacted, express consent would not be required, but an appropriate notice of intent to disseminate the information for health insurance purposes could be included. The obvious drawback with this strategy is that it places a heavy burden on school officials who, in the first instance, will have to ensure that the applications are properly forwarded to HRA or facilitated enrollers.

To go further than the enhanced outreach afforded by modification of the school lunch applications would require a genuine sea change premised on fundamental rethinking of who should get health insurance. If the political will can be mustered to support the proposition that it is more important to secure access to health care for children now than to maintain existing barriers in reliance on private and incremental initiatives, the National School Lunch Program presents a significant opportunity to identify and enroll the most needy children. Accordingly, our second strategy for the National School Lunch Program would be to amend the federal Medicaid law to provide that *notwithstanding* any other provision of law, all children receiving free or reduced price lunches under the National School Lunch Program shall be enrolled in Medicaid and issued a Medicaid card.

This second strategy entails many programmatic challenges that will require further examination. As an example, Medicaid recertification poses a real quandary. At Medicaid recertification, we can expect that many children enrolled through a "notwithstanding" provision will not be able independently to meet the Medicaid eligibility requirements. Immigration status may be the principal cause for disqualification. If the child attends a school that determines school lunch eligibility annually, that child would re-access Medicaid at the next school lunch determination, but this could entail unnecessary periods when the child may not be covered by Medicaid. To avoid that turnover effect, Medicaid recertification

for this cohort of could be tied to school lunch determinations. The programmatic difficulty here is that, for children in the school districts that elect the multi-year school lunch option, recertification for Medicaid would occur only once every four or five years.[49] Given that HRA has already proposed a milestone recertification approach, which ultimately may require no recertification between a child's 6th and 19th birthdays, that conceptual difficulty may be surmountable. Moreover, since the multi-year districts are likely to be the districts in the areas with the poorest children, a longer certification period for this cohort may be defensible.

Further, because the federal "notwithstanding" option would reach only school-aged children, it should include provisions to raise the existing income ceilings for pre-school children to 185 percent of the federal poverty level, the income ceiling for reduced price meals. Otherwise, many states, including New York, would face the anomalous situation where school-aged children in a family would be enrolled in Medicaid through the school lunch determination, but their pre-school siblings (with an income ceiling of 133 percent of the federal poverty level) would not be eligible for Medicaid.[50]

The "notwithstanding" provision may also present significant problems for states that do not have Medicaid and SCHIP programs as broad as New York's. In those states, the "notwithstanding" provision may result in very anomalous Medicaid programs dominated by school-aged children. These and other issues require serious examination, but if there is consensus on the premise that all children should have stable access to medical care, the details should be surmountable. Indeed, a middle ground to accommodate states that would face a real Medicaid crisis would be to make the "notwithstanding" vehicle a state option.

Earned Income Tax Credit

Because it focuses only on *earned* income, the EITC has less obvious potential as a vehicle for automatic enrollment. However, the EITC is a promising vehicle for

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[49] Students who enter the school after the base year would be allowed to complete a school lunch application at any time. Accordingly, the multi-year option would not result in the different treatment, for Medicaid purposes, of old and new students.

[50] The fact that the existing income ceiling for school aged children (6 to 19) is 100 percent of the federal poverty level (hopefully soon to be 133 percent of the federal poverty level) is less troublesome, and less likely to result in untenable anomalies, since most of these children attend school and will be able to access Medicaid through the National School Lunch Program. The school lunch initiative will, in effect, raise the income ceiling of the 6 to 19 cohort.

targeted outreach and possibly for verification or deeming of income-eligibility. The refund check could be accompanied by a notice of possible eligibility for Medicaid or CHP. Further, because income (at least earned income) is identified by dollar amount for a specific household composition, the state may be able to refer the taxpayer to CHP or to Medicaid specifically.

Unemployment Insurance Benefits

The unemployment insurance program, because it does not target children or families with children, does not present the same kind of express lane opportunities as the other programs. However, because it is a good indicator of circumstances consistent with the goals of express lane eligibility, it affords another potential vehicle for efficient targeted outreach. A notice of possible eligibility for CHP or Medicaid could be included on the unemployment insurance claim form with advice on how and where to initiate the enrollment process. Facilitated enrollment workers could also be stationed at the 81 Community Service Centers operated by the Department of Labor where unemployment insurance applications are processed. Similar to the EITC, the unemployment insurance program's notice of benefits could be used to circumvent some of the income verification steps.

CONCLUSION

Express lane eligibility is the logical outgrowth of the increased interest in children's health insurance initiatives exemplified by the federal SCHIP legislation. It is attractive both in its ultimate objective of enrolling large groups of children in available health insurance programs and in its promise of wringing administrative efficiency out of a public benefit system, which has often imposed barriers inconsistent with reaching its target populations. Closer examination reveals that while express lane remains unassailable in theory, its full potential remains difficult to realize without fundamental changes in national policy. This preliminary analysis makes specific suggestions for pursuing express lane strategies in New York and attempts to highlight the areas that require and merit further attention.

Table A: Comparison of Immigration Status and Program Eligibility

More Restrictive / Less Restrictive

Citizenship/Alien Category	Food Stamps	Medicaid	Head Start	WIC	CHP	School Lunch
I. Citizens/Naturalized Citizens	XEligible	XEligible	XEligible	XEligible	XEligible	XEligible
II. Qualified Aliens						
A. Legal Permanent Residents	As specified	As specified	XEligible	XEligible	XEligible	Participation in the National School Lunch Program is open to all children who are eligible to receive free public education. The PRWORA of 1996 specifically prohibits disqualification for this Program based on citizenship, alienage or immigration status.
1. w/40 quarters of work history	XEligible	XEligible	Expressly exempted from the 5-year mandatory waiting period.	Expressly exempted from the 5-year mandatory waiting period.	Not defined as a Federal means-tested benefit. Thus, the 5-year mandatory waiting period does not apply.	
2. who entered before 8/22/96	Not Eligible Until 40 qualifying quarters have been earned.	XEligible				
AND who are currently under 18	XEligible	XEligible				
3. who entered after 8/22/96	Not Eligible Until 40 qualifying quarters have been earned.[1]	Not Eligible Until after 5-year mandatory waiting period.				
B. Humanitarian Categories[2]	XEligible But only for 1st 7 years.	XEligible Mandatory waiting period does not apply.	XEligible	XEligible	XEligible	
III. Veterans & Active Duty Personnel (and immediate family members)	XEligible	XEligible	XEligible	XEligible	XEligible	
IV. Non-Qualified/Undocumented Aliens	Not Eligible	Not Eligible Except for pregnant women and for aliens requiring emergency medical services not related to organ transplant services.		XEligible The PRWORA of 1996 expressly permits States to provide WIC benefits to persons who are not citizens or qualified aliens.	XEligible The PRWORA of 1996 permits States to provide State-only funded benefits to aliens not lawfully present in the US through affirmative legislation.	

[1] Regardless of amount of earnings, no more than four quarters may be earned annually. Accordingly, the earliest a recent immigrant could qualify under this category is in 2006.

[2] This category includes asylees, refugees, persons for whom deportation has been withheld, Cuban/Haitian entrants, certain Amerasians, and persons paroled into the US for at least one year.

Table B: Comparison of Household Income Standards by Program

More Restrictive / Less Restrictive

Head Start & Early Head Start	Free Meals National School Lunch Program (NSLP)	Food Stamps	Medicaid (1 to 6th birthday) (6 to 19th birthday)[1]	WIC & Reduced Cost NSLP Meals	Medicaid (birth to 1)	Earned Income Tax Credit	CHP
Gross income 100% FPL	Gross income 130% of FPL	Gross income 130% of FPL	Net income 133% of FPL	Gross income 185% of FPL	Net income 185% of FPL	Earned Income Up to: $26,930 for family w/1 $30,580 for family w/2	Net income 208% of FPL[2]
Definition of Income							
Includes gross cash income: wages, unemployment compensation, social security and retirement benefits, and public assistance payments. No exclusions or deductions.	Includes gross cash income: wages, unemployment compensation, social security and retirement benefits, alimony, child support and regular contributions of non-household members.	Includes gross cash income from whatever source, e.g., wages, public assistance etc., but not non-recurring lump-sum payments such as tax refunds and retroactive SSI benefits. Does not include earned income tax credit.	Medicaid uses "net available income," which excludes income such as child support for a non-applicant sibling and also permits the deduction of program-specific "income disregards," deemed "not available" to the child applicant, from gross income which includes any payment in money, goods or services. Does not include EITC.	Identical to School Lunch program. Applicants who receive food stamps or are enrolled in Medicaid are automatically income-eligible for WIC.	Refer to prior column describing Medicaid.	Includes principally earned income. Income noted above are maximum standards. Families with 1 child with earned income up to $23,000 (208% of FPL), and no other income, may be eligible for CHPlus; or up to $14,700 (133% of FPL) may be eligible for Medicaid.	Identical to WIC and School Lunch programs.
Definition of Household/Family							
More prescriptive than Medicaid definition. Looks at actual living arrangements and family relatedness. Includes all persons living together who are supported by the parent/guardian of the Head Start applicant and who are related to such parent/guardian by blood, marriage or adoption.	*More prescriptive than Medicaid definition. Looks at living arrangement, but does not require family relatedness.* Includes related and non-related persons living together as one economic unit.	*More prescriptive than Medicaid definition.* Includes a group of individuals living together who share food expenses. Household income includes all but pro-rata share of ineligible (e.g., alien) members' income; such person(s) are not counted for purposes of family size.	*Minimally prescriptive.* In the case of a child applicant, the household must include only the child applicant and any legally responsible relative(s) living with the child. Other members may be included so long as their income is included. Any member of household receiving public assistance will not be considered part of applicant's household.	*Identical to School Lunch program.* Includes related and non-related individuals living together as one economic unit.	Refer to prior column describing Medicaid.	Taxpayer, spouse and dependents.	CHP does not expressly define family.

[1] State is awaiting HCFA approval of State Plan amendments to effectuate the expansion. The ceiling for this cohort is currently 100% of FPL.

[2] Effective July 1, 2000.

Table C: Use of Individual Identifiers

More Specific / Less Specific

	Food Stamps	Earned Income Tax Credit	Medicaid	WIC	Head Start	CHP	National School Lunch Program
Social Security Number	Required for each member of the household. Members without SSNs must apply for one as a condition of eligibility.	Required for taxpayer and for dependents used as basis for computation of credit.	Required for applicant only. No other household member, including the applicant child's legally responsible adult, needs to supply a SSN.	Not required.	Not required.	Not required.	Not required.
Name(s) of Other Household Members	Required for each member of household.	Required for taxpayer and dependents.	Required for applicant and any legally responsible relative(s) residing with applicant.	Required for those seeking benefits as member of household.	Required for parent/guardian	Required for parent/guardian	Generally required for each member of household. If a school district elects to operate under Universal School Meals option, even students receiving benefit may not be identified by name.

Table D: Interview Requirement

More Strict / Less Strict

WIC	Medicaid	Food Stamps	Head Start	National School Lunch Program	Earned Income Tax Credits	CHP
Required for all applicants. May be waived for certain infants and disabled applicants both for initial certification and re-certification.	Required for all applicants at initial certification and re-certification. NYC has requested waiver of interview requirement except for milestone recertifications.	Required at initial certification and at least every 12 months. May be conducted with any adult household member or authorized representative. Under proposed rules, may be waived in favor of telephone interview or announced home visit; may be conducted jointly with interview for other assistance program.	None.	None.	None.	None.

Table E: Other Conditions of Eligibility

More Onerous / Less Onerous

Condition	Medicaid	CHP	Food Stamps	WIC	Head Start	School Lunch	EITC
Cooperation with State child support enforcement activity	XYes	No	Yes	No	No	No	No
Mandatory assignment of payment rights for medical support payments and other payments for medical care including for third-party liability payments.	XYes	No	No	No	No	No	No
Required disclosure of information on other available sources of health insurance or related to third party liability.	XYes	XYes	No	No	No	No	No

Table F: Lead Agencies and Beneficiary Record Format

Program	State Lead Agency	Local Agencies	Record Format
Medicaid	DOH	LDSS	electronic
CHP	DOH	CHP plans	electronic
Food Stamps	Office of Temporary and Disability Assistance (OTDA)	LDSS	electronic
WIC	DOH	voluntary agencies	paper/electronic
Head Start	none	NYC; voluntary agencies	paper
National School Lunch program	Department of Education	Boards of Education (School Food Authorities)	paper
EITC	Department of Tax and Finance	none	electronic
Unemployment Insurance Benefits	Department of Labor	DOL Community Service Centers	electronic

APPENDIX B: THE IMPACT OF FEDERAL AND STATE PRIVACY LAWS ON EXPRESS LANE ELIGIBILITY STRATEGIES

Express Lane Eligibility strategies contain great promise for uninsured children enrolled in certain federal programs, including Food Stamps, Head Start, WIC, National School Lunch, and Earned Income Tax Credit (EITC). Although generally applicable federal and state privacy laws restrict government's ability to obtain or disclose information about recipients of government benefits, express lane strategies can be crafted within the boundaries imposed by these privacy laws. Strategies that rely on consents to disclosure signed by program applicants or participants are particularly attractive. Consents are relatively easy to include on application or recertification forms and raise virtually no privacy concerns.

Absent consent, government agencies may disclose information obtained from program beneficiaries only if the disclosure is authorized by a specific exception to the applicable federal or state privacy law or by statutes or regulations governing a particular government program.

Section I of this report provides an overview of the federal and New York State laws that limit governmental agencies' ability to disclose information in their files. Section II identifies program-specific measures that narrow or expand a particular agency's authority to disclose information about program beneficiaries.

I. General Privacy Protections of Federal and New York State Law

The federal Privacy Act of 1974[1] as amended by the Computer Matching and Privacy Protection Act of 1988[2], as well as a comparable New York State statute,[3] curb governmental agencies' ability to disclose personal information contained in their files. The type of personal information subject to federal and state protection is broad. Personal information includes any information about an individual that is maintained by an agency that contains the individual's name, an identifying number or symbol, or anything else capable of identifying a specific person, such as a finger or voice print or photograph.[4] Thus, personal information includes an individual's name, address, date of birth, social security number or case number as well as the individual's family status, income, employment history and other social, medical, and financial information.

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[1] Pub. L. No. 93-579, 88 Stat. 1896, codified at 5 USC § 552a (1996).
[2] Pub. L. No. 100-503, 102 Stat. 2507, codified at sections of 5 USC § 552a (1996).
[3] The New York State Personal Privacy Protection Law, New York Public Officers Law, §§ 91-99 (McKinney's 1988 & Supp. 1999).
[4] *See* 5 USC § 552a(4) and N.Y. Pub. Off. L. § 92(7).

Federal and state privacy laws prohibit governmental agencies from disclosing personal information without an individual's written request or prior written consent except under certain conditions.

A. Federal Privacy Law

The federal Privacy Act defines the limits on disclosure of personal information maintained by federal agencies.

In the wake of the Watergate scandal, Congress enacted the Privacy Act of 1974 to promote governmental respect for the privacy of citizens and to curtail abusive information gathering and disclosure practices.[5] The Privacy Act applies to any record[6] containing personal information maintained in any form by any federal agency.[7] It prohibits the disclosure of personal information:

> No agency shall disclose [personal information] to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be [to a list of persons and entities that are exempt from the statute].[8]

The Privacy Act defines many types of disclosure that are exempt from the statute.[9] Most relevant here are the exemptions for consent and "routine use."[10]

Notably, the statute permits individuals to consent to disclosure, either pursuant to a written request for such disclosure or through a previous written consent to the disclosure. Once consent has been provided, there are no additional requirements for disclosure to occur. Thus, for purposes of express lane eligibility, program beneficiaries can be asked to consent to the sharing of certain data with the Medicaid or CHP program during the application or recertification process.

Under the routine use exception, federal agencies may disclose personal information "for a purpose which is compatible with the purpose for which it was

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[5] *See* Senate Report No. 93-1183 (1974), *reprinted in* 1974 USCC.A.N. 6916, 6916-18.
[6] *See* 5 USC § 552a(a)(4)(defining "record" as any information maintained by any agency that contains information about an individual that also contains an individual's name or identifying number or symbol).
[7] Agency is defined to include any department within the executive branch, an independent regulatory body, and a government contractor that operates a program for or on behalf of an agency. *See* § 552a(m)(1), *see also id.* § 552(f)(1996 and Supp. 1999).
[8] *Id.* § 552a(b).
[9] This report does not address the permitted disclosures for specific purposes that are unrelated to Express Lane Eligibility strategies.
[10] *See id.* §§ 552a(b) and (b)(3).

collected."[11] To utilize this exception, however, the agency must notify the individual from whom the information is sought about "the principal purpose for which the information is intended to be used [and] the routine uses which may be made of the information . . . ."[12] This notice must be provided on the form that the agency uses to gather the information or on a separate form that can be retained by the individual.[13] The agency must also publish in the Federal Register the routine use(s) of the personal information that it collects, and must also publish, with 30 days advance notice, any new routine use that it intends to make of such records.[14]

In short, so long as an agency complies with its own routine use regulations published in the Federal Register and provides the appropriate notice to the individual of the routine use(s) that it will make of the information it gathers, it has complied with the Privacy Act.[15] To take advantage of the routine use exception in the context of express lane eligibility, a federal agency would have to define the data it intended to disclose, the agency to which disclosure would occur, and the purpose for which the receiving agency would use the data. This information would have to be published in the Federal Register and provided to program beneficiaries.[16]

B. New York State Privacy Law

The structure of the New York State Personal Privacy Protection Law[17] mirrors that of the federal Privacy Act: there is a general prohibition on the disclosure of personal information followed by numerous, complex exceptions.

The Privacy Protection Law applies to any state agency or office performing a governmental or proprietary function but excludes the legislature, judiciary, any unit of local government, and offices of district attorneys.[18] The law applies to any information concerning an individual that, because of any

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[11] *Id.* § 552a(a)(7).
[12] *Id.* § 552a(e)(3)(B) and (C).
[13] *See id.* § 552a(e)(3).
[14] *See id.* § 552a(e)(4)(D) and (e)(11), *see generally, Britt v. Naval Investigative Service*, 886 F.2d 544, 548 (3rd Cir. 1989)(the agency's definition(s) of routine use must provide "adequate notice to individuals as to what information concerning them will be released and the purposes of such release"). The agency is also required to provide advance notice to both houses of Congress and to the Office of Management and Budget if it plans to make a significant change in its system of records. *See* § 552a(r). It is unclear whether major changes in routine use trigger this advance notice provision.
[15] *Covert v. Harrington*, 876 F.2d 751, 754-55 (9th Cir. 1989).
[16] The Privacy Act as amended by the Computer Matching and Privacy Protection Act also allows for computerized matching of one federal agency's files with those of another federal, state or local agency. *See* 5 USC § 552a(o). Although computer matching is a powerful tool, it can only be conducted pursuant to statutory or regulatory authorization and must follow rigorous procedural requirements, including execution of written "matching agreements" by the agencies involved. *Id.*
[17] New York Public Officers Law, §§ 91-99 (McKinney's 1988 & Supp. 1999).
[18] *See id.* § 92(1).

identifier, can be used to identify that person.[19] The Privacy Protection Law prohibits any agency from disclosing any personal information unless such disclosure is, *inter alia,* (i) pursuant to a written request or consent by the individual who provided the information or (ii) for a routine use or (iii) to another state agency under narrow circumstances.[20]

The New York Privacy Protection Law restricts an agency's flexibility in dealing with personal information and may complicate the implementation of certain express lane strategies. New York State defines the key privacy law concepts of "consent" and "routine use" more narrowly than federal law. Additionally, although the State does permit inter-agency transfer of personal information, it allows such transfers only under limited conditions.

While New York State's definition of consent is more restrictive than that found in federal law, New York law, like federal law, specifically authorizes disclosure with the written consent of the person providing the information. The Privacy Protection Law permits disclosure of personal information:

> pursuant to a written request by or the voluntary written consent of [the person who provided the information], provided that such request or consent... limits and specifically describes:
>
> (i) The personal information which is requested to be disclosed;
> (ii) The person or entity to whom such personal information is requested to be disclosed; and
> (iii) The uses which will be made of such personal information by the person or entity receiving it.[21]

In contrast, federal law simply requires "prior written consent" to the disclosure, without specifying more.[22]

New York State's definition of routine use is likewise more restrictive than the federal definition. Under New York law, a "routine use" is:

> any use of such record or personal information relevant to the purpose for which it was collected, and which use is necessary to the statutory duties of the agency that collected or obtained the record or personal information, or necessary for that agency to operate a program specifically authorized by law.[23]

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[19] *See id.* § 92(7).
[20] *See id.* §§ 96(1) (a), (d) and (f).
[21] *Id.* § 96(1)(a).
[22] 5 USC § 552a(b).
[23] N.Y. Pub. Off. L. § 92(10).

This provision is somewhat opaque, and the legislative history and case law do not help clarify its meaning. As drafted, this would appear to permit a state agency to disclose personal information to a second state agency only when that disclosure is necessary for the first agency to fulfill its statutorily-mandated mission. Although this reading of the routine use exception results in an exceedingly narrow range of information transfers that are permitted, it appears most consistent with the statutory language. Furthermore, New York State agencies are not permitted to define routine use as federal agencies are authorized to do; instead they are limited to the Privacy Protection Act's definition.

The third exception to the Privacy Protection Act's prohibition on disclosure is even more opaque than the routine use exception. New York State expressly permits a state agency to disclose personal information to:

> officers or employees of another governmental unit if each category of information sought to be disclosed is necessary for the receiving governmental unit to operate a program specifically authorized by statute and if the use for which the information is requested is not relevant to the purpose for which it was collected.[24]

Although this language is difficult to understand and apply, and again there is no clarifying case law, it appears that this section allows information transfers between programs having distinctly different goals, and prohibits transfers between similar programs. Thus, this section of the Privacy Protection Act seeks to prevent the growth of a state "mega data base" of personal information among agencies with related purposes. This section does not appear to offer a meaningful basis for information transfer among similar agencies for express lane purposes.

Finally, the New York Privacy Protection Act permits any transfer of personal information "specifically authorized by statute or federal rule or regulation."[25] This provision permits transfers of personal information that are "specifically authorized." Thus, it allows the transfer of information "specifically authorized" by a program-specific statute (*See* Section II). It would not appear to permit transfers of information that would be permitted under the federal routine use exception, as that exception does not "specifically authorize" any particular disclosure of information.

These state privacy protection provisions limit the ease of information transfer. The degree of specificity required in the request/consent to disclosure may restrict certain transfers of information

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[24] *Id.* § 96(1)(d). The statute contains other exceptions to disclosure that are not relevant here.
[25] *See id.* § 96(1)(f).

that were not anticipated when the request/consent was prepared. The narrow, statutorily fixed definition of routine use increases the difficulty of information transfers. Transfers of information that appear sensible for express lane eligibility purposes appear prohibited under the "not relevant" statutory test.

The final "twist" for purposes of express lane eligibility is determining whether federal or state privacy law (or a combination of the two) applies to a disclosure from one particular agency to another. Ultimately, this determination can only be made by examining generally applicable federal and state privacy law in conjunction with program-specific statutory and regulatory privacy protections as applied to specific information and agencies. However, this level of analysis is beyond the scope of this report.

C. Interplay of General Federal and State Protections

Federal and state privacy laws recognize that an individual applying for or receiving public benefits may consent to the release of data provided that the consent is given in advance and, at the state level, specifies the data to be released, the agency to which the data will be released, and the purpose(s) for which the data will be used. Absent this prior consent, federal agencies may disclose personal information either pursuant to a specific statutory authorization or under the routine use exception. State agencies are further limited by a narrow routine use definition and a virtual "fire wall" statutory provision that prohibits some transfers that may be useful for express lane eligibility strategies. However, to the extent that a federal or state statute specifically authorizes disclosure, state law poses no barrier to that disclosure.

II. Program-Specific Privacy Mandates

In addition to the limits on the disclosure of personal information imposed by generally applicable federal and state privacy statutes, public assistance programs are subject to program-specific limitations on and authorizations of information disclosure. The impact of these program-specific measures varies. In some cases, a program-specific measure prohibits information disclosure that would otherwise be allowed under generally applicable privacy law. In other cases, a program-specific measure permits information disclosure that would otherwise be prohibited under generally applicable law. These program-specific measures permit many of the information transfers necessary for express lane purposes.

At the federal level, the National School Lunch Program contains a virtual ban on the transfer of information about its participants. This ban

effectively allows significant numbers of families of undocumented alien to enroll their children in the program without fearing disclosure of their undocumented status. In contrast, the WIC and Food Stamp Programs permit transfers of the type of information required to implement express lane eligibility. Transfers of information from the Head Start and EITC programs are neither banned nor encouraged. Instead, such transfers are governed by background privacy law.

A. National School Lunch Program

The National School Lunch Act[26] contains a statutory prohibition against disclosing personal information about program participants except under limited conditions, none helpful to the implementation of express lane eligibility strategies. The use or disclosure of information obtained from an application for a free or reduced price meal is limited to:

(1) a person directly connected with the administration of the National School Lunch program or programs operated pursuant to the Child Nutrition Act of 1966,
(2) a person directly connected with (i) the administration of a Federal education program, (ii) a State health or education program administered by the State or local health education agency, other than Medicaid, or (iii) a means-tested nutrition program with Eligibility standards comparable to those of the National School Lunch program,
(3) government auditors or law enforcement officials.[27]

Legislation before Congress would add a fourth category to the above list, thereby permitting National School Lunch program personnel to disclose information contained on program participants' applications to persons directly connected with the administration of Medicaid or a State child health plan for the purposes of identifying and enrolling children in such plans.[28]

B. Special Supplemental Nutrition Program for Women, Infants and Children ("WIC")

The WIC program explicitly permits the type of information transfers contemplated by express lane eligibility. The disclosure of personal information concerning WIC program applicants and recipients is restricted to persons directly connected with the administration of WIC and to "representatives of public organizations designated by the chief

[26] June 4, 1946, ch. 281, 60 Stat. 230, codified at 42 USC § 1751 *et seq* (1996).
[27] 42 USC § 1758(b)(2)(C)(iii)(Supp. 1999).
[28] SCHIP Improvement Act of 1999, S. 1570, H.R. 2807, 106th Cong. 1st Sess.

State health officer . . . which administer health or welfare programs that serve persons categorically eligible for the WIC Program."[29] These designated state representatives may employ personal information obtained from the WIC Program to establish the eligibility of WIC applicants and participants for health or welfare programs that they administer.[30] As a result of the express statutory and regulatory authorizations of information transfer, no consent or other mechanism is needed to effect such transfer.

Moreover, WIC regulations require agencies to focus on health care. They define the program's goals as, *inter alia*, the prevention of health problems;[31] award priority in any application to furnish WIC services to those agencies able to provide routine pediatric and obstetric care;[32] and require agencies to make health services available to participants.[33] These provisions indicate that disclosure of personal information to Medicaid and CHP could also be appropriate under the routine use provision, assuming the additional procedural rules are followed.

C. Food Stamp Program

The Food Stamp program also explicitly permits the type of information transfers contemplated by express lane eligibility. The transfer of personal information concerning Food Stamp Program applicant or recipient households is available to six categories of persons, among them "[p]ersons directly connected with the administration [of.....] other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals . . . ."[34] This definition encompasses disclosure to Medicaid and Child Health Plus personnel. This express statutory authorization of information transfer is sufficient to permit the disclosure of information required by Express Lane Eligibility; no consent or other mechanism is needed to effect such transfer.

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[29] 7 C.F.R. § 246.26(d)(2), *see also* 42 USC § 1786(e)(4).
[30] *See* 7 C.F.R. § 246.26(d)(2)(i) and (ii).
[31] *See id.* § 246.1.
[32] *See id.* § 246.5(d)(1)(i).
[33] *See id.* § 246.6(b)(3).
[34] *See id.* § 272.1(c)(1)(i), *see also* 7 USC § 2020(e)(8) (requiring safeguards that limit disclosure of information obtained from applicant households to, *inter alia*, "persons directly connected with the administration or enforcement of Federal assistance programs. . . .").

D. Head Start Program

Neither the Head Start Act nor the regulations promulgated thereunder contain any specific provisions narrowing or expanding the limits on the disclosure of personal information under federal law. Thus, the background privacy protections of federal govern disclosure of personal information contained in a Head Start agency's file.[35] To obtain information from a Head Start agency, an express lane eligibility initiative would have to obtain the applicant or beneficiary's consent or would have to rely on the federal routine use exception.

While the Head Start Act and regulations do not address the disclosure of personal information, Head Start program regulations mandate that a Head Start agency gather significant amounts of health information and take steps to insure that enrollees have adequate health care. For example, Head Start agencies must determine as quickly as possible whether a child has access to health care and if the child does not, the agencies must help parents locate a source of health care for their child.[36] The agencies also must determine if enrollees are up to date with the recommended preventive measures and track the provision of health care to the child.[37] These provisions and others[38] indicate that disclosure of personal information to Medicaid and Child Health Plus could also be appropriate under the routine use provision, assuming the additional procedural rules are followed.

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[35] Federal law applies because the program is administered through a federal agency and no state agency is involved in the Head Start program.
[36] *See* 45 C.F.R. § 1304.20(a)(i)(1999).
[37] *See id.* § 1304.20(a)(ii) through (iv).
[38] *See e.g., id.* at § 1304.24(responsibilities concerning a child's mental health).

D. Earned Income Tax Credits

Individuals participating in the federal Earned Income Tax Credit Program, administered by the IRS, are provided the same statutory privacy protections as other taxpayers.[39] Except under statutorily defined circumstances, disclosure of information on an individual's return is prohibited.[40] Nonetheless, individuals are permitted to request that the IRS disclose information contained on tax returns to persons that they designate.[41] New York State law contains similar provisions: individuals participating in the New York State version of EITC are provided the same privacy protections as other taxpayers and are permitted to request the disclosure of information contained on tax returns to an authorized representative.[42]

Express lane options are limited. Given the privacy protections in the Internal Revenue Code and New York State Tax Law, the taxing agency may not disclose information obtained from EITC beneficiaries. Without reliance on the consent or routine use exceptions, the taxing agency itself could send information about eligibility for health coverage to recipients of an EITC refund or it could modify the tax form to obtain EITC beneficiaries' consent to disclose such information.

III. Conclusion

Federal and state privacy laws are complex and their application is not always clear. As particular express lane strategies are developed, it will be necessary to evaluate whether general federal and state privacy laws and program-specific privacy provisions pose obstacles to the implementation of these strategies. Ultimately, beneficiary consent offers a reliable fall back basis for the transfer of information to the Medicaid and CHP programs.

April 10, 2000

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[39] *See* 26 USC § 6103 (Supp. 1999).
[40] *See id.*
[41] *See id.* at §6103(c).
[42] *See* New York State Tax Law § 697(e)(1) and (3)(McKinney's 1999).

APPENDIX C: STATE MEDICAID DIRECTOR LETTER (APRIL 7, 2000), HEALTH CARE FINANCING ADMINISTRATION

April 7, 2000

Dear State Medicaid Director:

Over the past few years, States have made enormous progress increasing access to health care coverage for low-income, working families. As a result of eligibility expansions, simplified enrollment procedures, and creative outreach campaigns, millions more low-income children and parents are eligible for health care coverage through Medicaid or through separate State Children's Health Insurance Programs (SCHIP). And yet, at the same time that States have made expansions of coverage a priority, instances in which eligible children and parents have lost out on coverage have come to light.

The delinkage of Medicaid from cash assistance has made it possible for States to offer low-income families health care coverage regardless of whether the family is receiving welfare, but it has created challenges as well as opportunities for States. Last August, President Clinton spoke to the National Governors' Association (NGA) about the importance of ensuring that everyone who is eligible for Medicaid is enrolled, and directed the Department of Health and Human Services (HHS) to take several actions to improve the health care available to low-income families.

Today, I am writing to provide guidance and information that will build on our joint efforts to improve eligible, low-income families' ability to enroll and stay enrolled in Medicaid. We are concerned that some families who left the Temporary Assistance for Needy Families (TANF) program and who remain eligible for Medicaid or Transitional Medical Assistance (TMA) benefits may have lost coverage. In addition, it appears that some children who became ineligible for Supplemental Security Income (SSI) benefits due to a change in the SSI disability rules may not have been continued on Medicaid despite Congressionally mandated requirements.

This letter covers three related topics. First, it outlines a series of actions that all States must take to identify individuals and families who have been terminated improperly and to reinstate them to Medicaid. Second, it clarifies guidance on Federal requirements relating to the process for redetermining Medicaid eligibility. Third, it reviews the obligations imposed by Federal law with regard to the operation of computerized eligibility systems. We have also enclosed a set of questions and answers to help States implement the guidance. We will continue to issue written answers to questions that arise and make those

questions and answers available to States on an ongoing basis. Reinstatement for Improper Medicaid Terminations

Over the past several years, cash assistance rules have changed at both the Federal and State levels. As a result of these changes to promote work and responsibility, and a strengthened economy, many fewer families are receiving cash assistance. When eligibility for cash assistance and Medicaid were delinked, Congress and the Administration took specific actions to assure that Federal law continued to guarantee Medicaid eligibility for children and families who formerly qualified for Medicaid through their receipt of cash assistance.

These changes required a significant retooling of Medicaid eligibility rules and procedures at the State and local level. In some cases, it appears that necessary adjustments to State and/or local policies, systems and procedures have not been made.

Several States have taken action to reinstate coverage for families and children who have been terminated improperly from Medicaid. Reinstatement is compelled by Federal regulations and prior court decisions. Under Federal regulation 42 CFR 435.930, States have a continuing obligation to provide Medicaid to all persons who have not been properly determined ineligible for Medicaid. This includes individuals whose Medicaid has been terminated through computer error or without a proper redetermination of eligibility. Therefore, all States must take steps to identify individuals who have been terminated improperly from Medicaid and reinstate them, as described below.

Identifying Improper Actions

A. Requirements for TANF-related terminations

States must determine whether individuals and families lost Medicaid coverage when their TANF case was closed, or when their TMA coverage period ended without a proper notice or without a proper Medicaid redetermination, including an ex parte review consistent with previous guidance. For example, States should review whether their computer system improperly terminated Medicaid coverage when TANF benefits were terminated, and they should consider whether families whose TANF termination was due to earnings were evaluated with respect to ongoing Medicaid eligibility, including TMA. In addition, if a State did not implement its Section 1931 category until some time after its TANF program went into effect, the State must review Medicaid/TANF terminations that occurred before the State had an operative Section 1931 category.

B. Requirements for terminations of disabled children eligible for Medicaid under Section 4913 of the Balanced Budget Act of 1997

Children who became ineligible for SSI due to the 1996 change in the SSI disability rules and then were terminated from Medicaid either without adequate consideration of their eligibility under Section 4913 of the BBA, or without a proper redetermination, including an ex parte review consistent with previous guidance, must be identified and reinstated. States must compare the Social Security Administration (SSA) list of children whose Medicaid eligibility was protected by Section 4913 and determine which, if any, of those children are not currently receiving Medicaid or are receiving Medicaid but are not identified as a Section 4913 child. The Health Care Financing Administration (HCFA) and SSA will work with States to ensure that States have the information that they need to identify Section 4913 children. The results of these cross-matches should be promptly reported to the HCFA Regional Office.

C. Improper Denials of Eligibility

In some States, eligible individuals applying for both Medicaid and TANF may have been denied Medicaid improperly because eligibility determinations continued to be linked. While HCFA is not requiring States to identify and enroll these applicants, we encourage you to do so.

Reinstatement

If, after a State-wide examination of enrollment policies and practices, it appears that there have been improper terminations since their TANF plan went into effect, States must develop a timetable for reinstating coverage and conducting follow-up eligibility reviews as appropriate. Action to reinstate coverage should be taken as quickly as possible, and States should keep their HCFA regional office informed as they review their policies and practices and develop their plans. This guidance should not delay State actions to reinstate individuals that are already under way.

Because it may not always be clear or easy for the State to determine whether a particular individual was terminated properly, States that determine that problems in policy or practice did cause individuals to lose Medicaid improperly may reinstate coverage without making a specific finding that an individual termination was in fact improper. Such action is consistent with Federal regulations that require that eligibility be determined in a manner consistent with simplicity of administration and the best interests of the applicant or recipient (42 CFR 435.902).

Federal Financial Participation (FFP) will be available for up to 120 days of coverage after reinstatement, pending a redetermination of ongoing eligibility, regardless of the outcome of the redetermination process. States that have

developed reinstatement procedures have typically reinstated individuals and families for a period of 60 or 90 days. Coverage provided during this time period will not be considered for any Medicaid Eligibility Quality Control (MEQC) purpose.

If a State determines that there have been no instances of improper terminations, it should inform the Regional Office of the review undertaken and the basis for its conclusions. HCFA will provide assistance to States throughout this process.

Contacting Individuals and Families

States may have to reinstate individuals and families who have not been in contact with the Medicaid agency for some time, and should take all reasonable steps to identify the individual or family's current address. For example, States could check Food Stamp program records for a more up-to-date address and alert caseworkers to the list of affected individuals so that these individuals are identified if they contact the agency for other reasons. Other outreach efforts might include notices to families receiving child care services and television and radio spots.

Redetermining Eligibility Once Reinstatement is Accomplished

In most situations, States will need to redetermine eligibility after reinstatement to assess whether the family or individual is currently eligible for Medicaid. To ensure that families understand the process and have adequate time to respond to requests for further information, States should allow a reasonable time for the review process. As noted above, FFP will be available for up to 120 days after reinstatement to allow States adequate time to review ongoing eligibility.

Individuals and families whose most recent Medicaid eligibility determination or redetermination occurred less than 12 months before reinstatement may be continued on Medicaid until 12 months from the date of that last eligibility review, without any new redetermination of eligibility. In these situations FFP will not be limited to 120 days. Individuals and families who have earnings may be covered under TMA and therefore would be subject to the State's TMA reporting and review procedures.

When States redetermine the eligibility of children identified by SSA as a Section 4913 child, the child does not lose protection under Section 4913 because of a prior break in eligibility. Continuous eligibility is not a requirement of Section 4913.

Covering Services Provided Prior to Reinstatement

Many of the individuals and families who were terminated improperly will have incurred medical expenses that would have been covered under Medicaid. States

have the option to provide payment to providers and individuals for the cost of services covered under the State's Medicaid plan provided between the time the individual was terminated from Medicaid and reinstatement. FFP will be available to States that provide such retroactive payments, including direct payments by the State to individuals who had out-of-pocket costs for services that would have been covered by Medicaid had the individual not been terminated from the program. FFP in direct payments will be based on the full payment amount. FFP in payments to participating Medicaid providers will be at the Medicaid rate.

Review of Federal Requirements for Eligibility Redeterminations

Over the past few years, HCFA has issued guidance on the redetermination process (see letters issued February 6, 1997, April 22, 1997, November 13, 1997, June 5, 1998 and March 22, 1999). This guidance instructs States that individuals must not be terminated from Medicaid unless the State has affirmatively explored and exhausted all possible avenues to eligibility. It also outlines requirements for ex parte reviews. However, recent reports indicate that inadequate redetermination procedures have caused some eligible individuals and families to lose coverage, and some States have asked for more guidance in this area. As such, this letter restates and clarifies the previous guidance on (1) information that can be required at redeterminations; (2) ex parte reviews; and (3) exhausting all possible avenues of eligibility.

Information Required at Redeterminations

Pursuant to Federal regulations (42 CFR 435.902 and 435.916), States must limit the scope of redeterminations to information that is necessary to determine ongoing eligibility and that relates to circumstances that are subject to change, such as income and residency. States cannot require individuals to provide information that is not relevant to their ongoing eligibility, or that has already been provided with respect to an eligibility factor that is not subject to change, such as date of birth or United States citizenship.

Questions about the proper scope of a redetermination also arise when an individual reports a change in circumstances before the next regularly scheduled redetermination. Federal regulations require a prompt redetermination in such cases, but States may limit their review to eligibility factors affected by the changed circumstances and wait until the next redetermination to consider other factors. For example, if a State generally conducts a redetermination every 12 months and a parent reports new earnings three months after the family's most recent redetermination, the State must assess whether the individuals in the family continue to be eligible for Medicaid in light of the new earnings. However, it may wait until the next regularly scheduled redetermination to consider other eligibility factors.

Ex Parte Reviews

States are required to conduct ex parte reviews of ongoing eligibility to the extent possible, as stated in HCFA's previous guidance. By relying on information available to the State Medicaid agency, States can avoid unnecessary and repetitive requests for information from families that can add to administrative burdens, make it difficult for individuals and families to retain coverage, and cause eligible individuals and families to lose coverage. States should use the following guidelines and enclosed questions and answers in conducting redeterminations.

Program records. States must make all reasonable efforts to obtain relevant information from Medicaid files and other sources (subject to confidentiality requirements) in order to conduct ex parte reviews. States generally have ready access to Food Stamp and TANF records, wage and payment information, information from SSA through the SDX or BENDEX systems, or State child care or child support files.

Family records. States must consider records in the individual's name as well as records of immediate family members who live with that individual if their names are known to the State. Again, this should be done in compliance with privacy laws and regulations.

Accuracy of information. States must rely on information that is available and that the State considers to be accurate. Information that the State or Federal government currently relies on to provide benefits under other programs, such as TANF, Food Stamps or SSI, should be considered accurate to the extent that those programs require regular redeterminations of eligibility and prompt reporting of changes in circumstances. Even if benefits are no longer being provided under another program, information from that program should be relied on for purposes of Medicaid ex parte reviews as long as the information was obtained within the State's time period for conducting Medicaid redeterminations unless the State has reason to believe the information is no longer accurate.

Timing of redetermination. States have the option to schedule the next Medicaid redetermination based on either the date of the ex parte review or the date of the last eligibility review by the program whose information the State relied on for the ex parte review. Since the date of the ex parte review will be the later of the two dates, States could reduce their administrative burden by scheduling the next redetermination based on the ex parte review date.

Use of eligibility determinations in other programs. The responsibility for making Medicaid eligibility determinations is generally limited to the State Medicaid agency or the State agency administering the TANF program. However, the State may accept the determination of other programs about particular

eligibility requirements and decide eligibility in light of all relevant eligibility requirements.

Obtaining information from individuals. If ongoing eligibility cannot be established through ex parte review, or the ex parte review suggests that the individual may no longer be eligible for Medicaid, the State must provide the individual a reasonable opportunity to present additional or new information before issuing a notice of termination.

Exhausting All Possible Avenues of Eligibility

The Medicaid program has numerous and sometimes overlapping eligibility categories. For eligibility redeterminations, States must have systems and processes in place that explore and exhaust all possible avenues of eligibility. These systems and processes must first consider whether the individual continues to be eligible under the current category of eligibility and, in the case of a negative finding, explore eligibility under other possible eligibility categories.

The extent to which and the manner in which other possible categories must be explored will depend on the circumstances of the case and the information available to the State. If the ex parte review does not suggest eligibility under another category, the State must provide the individual a reasonable opportunity to provide information to establish continued eligibility. As part of this process, the State will need to explain the potential bases for Medicaid eligibility (such as disability or pregnancy).

In addition, in States with separate SCHIP programs, children who become ineligible for Medicaid are likely to be eligible for coverage in SCHIP. States should develop systems for ensuring that these children are evaluated and enrolled in SCHIP, as appropriate. As is consistent with the statutory requirements, States must coordinate Medicaid and SCHIP coverage.

Computerized Eligibility Systems

Changes in eligibility rules affecting cash assistance and Medicaid have required States with computerized eligibility systems to modify their computer-based systems. If a State has not modified its system properly, some applicants may be erroneously denied enrollment in Medicaid. In addition, some beneficiaries may lose coverage even though they still may be eligible.

States have an obligation under Federal law to ensure that their computer systems are not improperly denying enrollment in, or terminating persons from, Medicaid. The attached questions and answers explain this obligation and present some practical suggestions on how States might meet their responsibilities under the law.

Conclusion

Most States are addressing the challenges associated with changing eligibility rules and systems, and many have developed promising new strategies for ensuring that children and families who are not receiving cash assistance are properly evaluated for Medicaid. HCFA will work with States as they assess the need for reinstatement, provide technical assistance to States implementing reinstatements, and facilitate exchanges among States to promote best practices to improve and streamline redetermination procedures. We anticipate that there will be many questions about the reinstatement process and the redetermination guidelines. We will make every effort to address your questions promptly, and to post and maintain a set of questions and answers on HCFA's website so that all States will be aware of how particular situations should be handled.

As important as it is to correct problems that have led eligible children and families to lose coverage, it is equally important that we improve eligibility redetermination processes and computer systems to prevent problems in the future. We are committed to working with you to implement this guidance to help achieve our mutual goal of an efficient, effective Medicaid program that helps all eligible families.

If you have any questions concerning this letter, please contact your regional office.

Sincerely,

Timothy M. Westmoreland
Director

Attachment

cc:
All HCFA Regional Administrators
All HCFA Associate Regional Administrators For Medicaid and State Operations
Lee Partridge - Director, Health Policy Unit, American Public Human Services Association
Joy Wilson - Director, Health Committee, National Conference of State Legislatures
Matt Salo - Director of Health Legislation, National Governors' Association
Director

QUESTIONS AND ANSWERS

Redeterminations

Q. When should a State rely on information available through other program records?

A. States must rely on all information that is reasonably available and that the State considers to be accurate. Information that the State or Federal government is relying on to provide benefits under other programs, such as TANF, Food Stamps or SSI, should be considered accurate to the extent that those programs require regular redeterminations of eligibility and prompt reporting of changes in circumstances. For example, in the Food Stamp program, Federal law requires States to recertify eligibility on a regular basis, and individuals receiving food stamps are required to report promptly any change in their circumstances that would affect eligibility. Thus, information in Food Stamp files of individuals currently receiving food stamp benefits should be considered accurate for purposes of Medicaid ex parte reviews.

Q. If benefits are no longer being paid under another program, can information from that program be relied on for purposes of Medicaid ex parte reviews?

A. It can be relied on if the information was obtained within the time period established by the State for conducting Medicaid redeterminations unless the State has reason to believe the information is no longer accurate. For example, take the case of a State that normally schedules Medicaid redeterminations every 12 months. If a child was determined financially eligible for SSI in January, 2000 and then loses SSI on disability-related grounds in March, 2000, the SSA financial information should still be considered accurate when the State redetermines Medicaid eligibility in March, 2000.

Q. When can the State schedule the next Medicaid redetermination if it relies on information from another program for its ex parte review?

A. The State may schedule the next Medicaid redetermination based on the date of the ex parte review or the date when the last review of eligibility was conducted in the other program. For example, consider a State that normally schedules Medicaid redeterminations every six months and that determines, based on a Medicaid ex parte review in March, that the family continues to be eligible for Medicaid. If the ex parte review relies on Food Stamp program information, and the last Food Stamp review took place in January, the State may wait until September (six months from March) to schedule its next Medicaid redetermination review, or it may schedule the next redetermination in June (six months after the last Food Stamp recertification).

Q. When can Medicaid accept another program's eligibility requirement determination?

A. When an eligibility requirement under another program applies equally to the Medicaid program, the State may accept the other program's determination with respect to this particular eligibility requirement. For example, if the resource standard and method for determining countable assets under the State's TANF program were the same or more restrictive than the asset rules in the Medicaid program, the Medicaid agency may accept TANF agency's determination that a family's assets fall below the Medicaid asset standard without any further assessment on it own part regarding this requirement. The Medicaid agency would then proceed to make a final determination of eligibility in light of all relevant eligibility requirements.

Q. When an individual reports a change in circumstances before the next regularly scheduled redetermination, must the State conduct a full redetermination at that time?

A. No. The State may limit this redetermination to those eligibility factors that are affected by the changed circumstances and wait until the next regularly scheduled redetermination to consider other eligibility factors. For example, if a State generally conducts a redetermination every 12 months and a parent reports new earnings three months after the family's most recent redetermination, the State must assess whether the individuals in the family continue to be eligible for Medicaid in light of the new earnings. However, it may wait until the next regularly scheduled redetermination to consider other eligibility factors.

Whether the State conducts a full or limited redetermination when an individual reports a change in circumstance, Federal regulations require that the redetermination must be done promptly.

Q. How must the State proceed to consider all possible avenues of eligibility before terminating (or denying) eligibility?

A. The systems and processes used by the State must first consider whether the individual continues to be eligible under the current category of eligibility and, if not, explore eligibility under other possible categories. The extent to which and manner in which other possible categories must be explored will depend on the circumstances of the case and the information available to the State.

For example, if the State has information in its Medicaid files (or other available program files) suggesting an individual is no longer eligible under the poverty-level category but potentially may be eligible on some other basis (e.g., under the disability or pregnancy category), the State should consider eligibility under that category on an ex parte basis. If the ex parte review does not suggest eligibility under another category, the State must provide the individual a reasonable

opportunity to provide information to establish continued eligibility. As part of this process, the State will need to explain the potential bases for Medicaid eligibility (such as disability or pregnancy).

Q. If a State has determined that an individual is no longer eligible under the original category of coverage, does the State have the option to terminate coverage and advise the individual that he or she may be eligible under other categories and could reapply for Medicaid?

A. No. States must affirmatively explore all categories of eligibility before it acts to terminate Medicaid coverage.

Q. Does this requirement to explore all categories of coverage apply to Transitional Medical Assistance? When the TMA period is over, can the State terminate coverage and advise the family to reapply for Medicaid?

A. No. TMA is like any other Medicaid eligibility category. Eligibility under other categories of coverage must be explored before coverage is terminated. In light of expansions in coverage, particularly for children, many children in families receiving TMA will continue to be eligible under other eligibility categories.

Computer Systems

Q. My State's computer system may be erroneously terminating Medicaid coverage when families leave cash assistance. Because of Y2K, programming on a number of priorities has been backed up. The delinking reprogramming is scheduled to take place this fall. Is this an acceptable corrective action?

A. No. HCFA recognizes that Y2K delayed other priorities, and we know that it takes time to make computer changes. However, States have an obligation to move expeditiously to correct computer programming problems that are leading to erroneous Medicaid denials and terminations. HCFA will be working with States to correct computer problems and will provide whatever assistance we can to help resolve the problem.

In the meantime, no person should be denied Medicaid inappropriately due to computer error, and no person should have his/her Medicaid coverage terminated erroneously due to computer error. Once a problem with a State's computerized eligibility system has been identified, the State must take immediate action to correct the problem. If programming changes cannot be made immediately, an interim system to override computer errors must be put in place to ensure that eligible individuals are not denied or losing Medicaid.

HCFA will review State procedures and State plans to adopt new procedures as follow-up to the Medicaid/TANF State reviews.

Q. Have other States experienced these problems? How have they corrected the problems?

A. Each State's issues and processes are unique. The measures that will be effective to remedy computer-based problems will vary from State to State. There are a number of ways States can address these issues:

Correct the Computer Error - The most direct way to remedy the problem is by making the necessary changes to the computer system. This should occur expeditiously.

Implement an Effective Back-Up System to Prevent Erroneous Actions- While corrections to the computer system are being made, States must ensure that erroneous actions do not occur. States that have identified computer-based problems in their systems have adopted different approaches; four different approaches are described below. In each case, the State adopted a formal and systematic approach to correcting computer-based errors. A simple instruction to workers to override or work around computer errors is insufficient to ensure that erroneous denials and terminations will not occur.

Supervisory review - To stop erroneous terminations from occurring due to Medicaid/TANF delinking problems, Pennsylvania required supervisors to review all TANF case closures before any Medicaid termination could proceed. Having trained supervisors review terminations (and denials) can prevent wrongful terminations (and denials) from occurring.

Centralized review - Maryland instituted a system in which local supervisors and a State-level task force review all Medicaid denials and terminations that coincide with a TANF denial or termination. This system has been instrumental in ensuring that thousands of eligible families were not denied or terminated from Medicaid while computer fixes were finalized.

"Peremptory" reinstatement - The State of Washington devised a system in which cases to be terminated were given a next-day audit by caseworkers and managers. Cases that continue to be eligible for Medicaid are 'reinstated' before the case is scheduled to be closed.

Interim hold on case actions - A short-term moratorium on Medicaid case closings based on certain computer codes pending implementation of other solutions might be an option for some States. Medicaid case closings could be held as long as Federal requirements on the frequency of redeterminations are met.

Q. Are there any actions that States must take before they alter their computer systems?

A. Yes. In general, prior authorization from HCFA must be obtained in order for a State to receive federal matching funds for changes it makes to its computer systems. HCFA will work with States and provide technical assistance as early in the planning process as possible in an effort to help States accomplish their objective.

Q. Is there additional funding available to help with the changes in the computer system?

A. Yes. Per our letter of January 6, 2000 concerning the $500 million federal fund established in 1996, there is federal funding available for computer modifications related to delinking. We encourage you to review that letter and the amount your State has available from the enhanced matching funds to make changes needed as a result of the enactment of Section 1931 (the delinking provision). MMIS enhanced funding may also be available for some MMIS changes; please consult with your regional office.