



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 403**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Part 1331**

**RIN 0985-AA11**

**State Health Insurance Assistance Program (SHIP)**

**AGENCY:** Administration for Community Living (ACL), Department of Health and Human Services (HHS) and Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** The Department of Health and Human Services is issuing a final regulation that adopts, without change, the interim final rule (IFR) entitled “State Health Insurance Assistance Program (SHIP).” This final rule implements a provision enacted by the Consolidated Appropriations Act of 2014 and reflects the transfer of the State Health Insurance Assistance Program (SHIP) from the Centers for Medicare & Medicaid Services (CMS), in the Department of Health and Human Services (HHS) to the Administration for Community Living (ACL) in HHS. Prior to the interim final rule, prior regulations were issued by CMS under the authority granted by the Omnibus Budget Reconciliation Act of 1990 (OBRA), Section 4360.

**DATES:** Effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Josh Hodges, Administration for Community Living, telephone (202) 795-7364 (Voice). This is not a toll-free number. This

document will be made available in alternative formats upon request. Written correspondence can be sent to Administration for Community Living, U.S. Department of Health and Human Services, 330 C St. SW, Washington, DC 20201.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The State Health Insurance Assistance Program (SHIP) was created under Section 4360 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Pub. L. 101-508). This section of the law authorized the Centers for Medicare & Medicaid Services (CMS) to make grants to States to establish and maintain health insurance advisory service programs for Medicare beneficiaries. Grant funds were made available to support information, counseling, and assistance activities relating to Medicare, Medicaid, and other related health insurance options such as: Medicare supplement insurance, long-term care insurance, managed care options, and other health insurance benefit information. In January 2014, in the Consolidated Appropriations Act of 2014, Congress transferred the funding for the SHIP program from CMS to the Administration for Community Living (ACL). This transfer reflects the existing formal and informal collaborations between the SHIP programs and the networks that ACL serves.

On February 4, 2016, ACL and CMS issued an IFR (81 FR 5917) that transferred all provisions of the existing SHIP regulations at 42 CFR Part 403 Subpart E, (§§403.500 through 403.512), to a new part at 45 CFR 1331.1-1331.7. The IFR also changed all references to CMS' administration of the program to ACL and made a technical change to reflect new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, codified at 45 CFR part 75. This final rule adopts, without making any changes, the regulatory requirements established in the IFR.

## **II. Comments on the IFR**

HHS received one responsive comment to the IFR. The commenter expressed support for the rule and optimism for the new opportunities that come with the SHIP's transfer to ACL. We are grateful for the commenter's support and look forward to continuing to improve the program's effectiveness and efficiency.

## **III. Regulatory Analysis**

### **A. Executive Order 12866**

This rule is not being treated as a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

### **B. Regulatory Flexibility Analysis**

The Secretary certifies under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L.96-354), that this regulation will not have a significant economic impact on a substantial number of small entities. The primary impact of this regulation is on entities applying for SHIP funding opportunities, specifically researchers, States, public or private agencies and organizations, institutions of higher education, and Indian tribes and Tribal organizations. The regulation does not have a significant economic impact on these entities.

### **C. Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1) (PRA), ACL and CMS have determined that there are no new collections of information contained in this final rule.

### **D. Waiver of Proposed Rulemaking**

Under the Administrative Procedure Act (APA), ACL and CMS are required to publish a

notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule unless it is determined for good cause that the notice and comment procedure is impracticable, unnecessary or contrary to public interest. 5 U.S.C. 553(b). As noted previously, Congress has already transferred the SHIP program to ACL under the Consolidated Appropriations Act of 2014. This final rule makes no changes other than aligning the location of the regulations within the Code of Federal Regulations with other ACL programs; amending the name of the administering agency to ACL; and updating a reference to new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, which have already undergone notice and comment rulemaking, therefore, there is good cause under 5 U.S.C. 553(b)(B) for waiving proposed rulemaking as unnecessary.

#### **E. Waiver of Delayed Effective Date**

Agencies are required to delay the effective date of their final regulations by 30 days after publication, as required under 5 U.S.C. 553(d), unless an exception under subsection (d) applies. Under 5 U.S.C. 553(d), ACL and CMS may waive the delayed effective date requirement if they find good cause and explain the basis for the waiver in the final rulemaking document or if the regulations grant or recognize an exemption or relieve a restriction.

In the present case, there is good cause to waive the delayed effective date for this final rule, because the substance of the regulation, other than the name of the administering agency, is identical to the current regulation.

#### **F. Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in expenditures by State, local, or Tribal governments, in the

aggregate, or by the private sector, of \$100 million, adjusted for inflation, or more in any one year. ACL and CMS have determined that this rule does not result in the expenditure by State, local, and Tribal government in the aggregate or by the private sector of more than \$100 million in any one year.

#### **G. Congressional Review**

This rule is not a major rule as defined in 5 U.S.C. Section 804(2).

#### **H. Assessment of Federal Regulations and Policies on Families**

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations do not have an impact on family well-being as defined in the legislation.

#### **I. Executive Order 13132**

Executive Order 13132 on "federalism" was signed August 4, 1999. The purposes of the Order are: "...to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act..." Executive Order 13132 applies to actions with federalism implications, which are actions that have substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. For actions that have federalism implications and preempt state law or have federalism implications and impose substantial

compliance costs on states and local governments, the agency must consult with state and local officials before publishing the rule and include a federalism statement in the preamble.

The Department certifies that this rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

ACL and CMS are not aware of any specific state laws that would be preempted by the adoption of the regulation.

### **List of Subjects**

#### **42 CFR Part 403**

Grant programs, health insurance, Medicare, reporting and recordkeeping requirements

#### **45 CFR Part 1331**

Grant programs, health insurance, Medicare, reporting and recordkeeping requirements

Accordingly, the interim final rule amending 42 CFR part 403 and adding 45 CFR part 1331 that published on February 4, 2016 (81 FR 5917), is adopted as a final rule without change.

Dated: April 29, 2016.

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**Andrew M. Slavitt,**  
Acting Administrator,  
Centers for Medicare & Medicaid Services.

Dated: May 12, 2016.

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**Kathy Greenlee,**  
Administrator,  
Administration for Community Living.

Approved: May 26, 2016.

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**Sylvia M. Burwell,**  
Secretary,  
U.S. Department of Health and Human Services.

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