



Bruce Levinson  
Center for Regulatory Effectiveness  
1601 Connecticut Avenue, NW  
Washington, DC 20009

**JUN 17 2014**

Dear Mr. Levinson:

Thank you for your letters and accompanying reports regarding the letter to State Health Officials (SHO) and State Medicaid Directors (SMD) issued by the Centers for Medicare & Medicaid Services (CMS) on September 27, 2013, (SHO-13-006), relating to the impact of the Supreme Court's decision in *United States v. Windsor* on the recognition of same-sex marriages under Medicaid and the Children's Health Insurance Program (CHIP).

In the report, the Center for Regulatory Effectiveness ("Center") expresses concern about individuals eligible for long-term care services and support under Medicaid and the impact of the SHO letter on the applicability of the spousal impoverishment protections to married same-sex couples whose marriage may not be recognized in the state in which the couple lives. The report raises concerns that the SHO violates certain provisions of federal fair housing regulations, and that it may result in some same-sex married couples being deprived of the spousal impoverishment protections provided under Medicaid statute.

We appreciate the concerns raised in the Center's report. As we noted in the SHO letter, it is the policy of the Department of Health and Human Services to treat same-sex marriages on the same terms as opposite-sex marriages, to the greatest extent possible. We also informed states in the SHO that they are permitted and encouraged to recognize same-sex couples who are legally married under the laws of another jurisdiction in which the marriages were celebrated as spouses for purposes of Medicaid and CHIP, even where the marriages are not recognized in the state in which the couples reside.

We recently affirmed in an SMD letter, issued on May 30, 2014, that the policy we adopted for Medicaid applicants and beneficiaries whose eligibility is determined using modified adjusted gross income (MAGI) rules will extend to individuals whose eligibility is determined with reference to Supplemental Security Income (SSI) methodologies. We repeated in the SMD that states are permitted and encouraged to recognize same-sex marriages where the marriages were recognized under the laws of the jurisdiction in which they were celebrated. We also reaffirmed in the SMD the policy we advanced in our June 10, 2011 SMD, in which we established that states may extend certain spousal-related protections of federal Medicaid law to same-sex spouses even where states do not opt to recognize same-sex marriages.

Despite the discretion states may have regarding their treatment of same-sex marriages in the Medicaid program, we recommend that states exercise the authority to recognize same-sex marriages



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in their Medicaid programs to the greatest extent possible, and we have informed states that we are prepared to offer any guidance necessary to help states do this.

Again, thank you for your letter and accompanying report.

Sincerely,

/S/

Cindy Mann  
Director