

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CHILDREN'S HEALTH INSURANCE  
PROGRAM ENROLLMENT USING  
THE EXPRESS LANE ELIGIBILITY  
OPTION DID NOT ALWAYS MEET  
FEDERAL REQUIREMENTS**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
[Public.Affairs@oig.hhs.gov](mailto:Public.Affairs@oig.hhs.gov).*



Daniel R. Levinson  
Inspector General

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## EXECUTIVE SUMMARY

*States generally determined Children’s Health Insurance Program eligibility using the express lane eligibility option in accordance with Federal requirements. However, we found that States’ eligibility determinations for calendar year 2014 were not always complete and accurate, resulting in an estimated 6,998 potentially ineligible beneficiaries with payments totaling an estimated \$10.6 million. In addition, States did not develop eligibility error rates in accordance with Federal requirements.*

### WHY WE DID THIS REVIEW

The Children’s Health Insurance Program [CHIP] Reauthorization Act of 2009 (CHIPRA) provided States with a new tool, known as Express Lane Eligibility (ELE), to simplify States’ identification, enrollment, and retention of individuals eligible for CHIP or Medicaid. Using the ELE option, a State’s CHIP or Medicaid program can use findings from a different agency within the State to determine eligibility, despite what may be different methods of assessing income or other eligibility factors.

On April 16, 2015, Congress enacted the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), which required the U.S. Department of Health and Human Services, Office of Inspector General, to submit a report to Congress on (1) the number of beneficiaries enrolled in CHIP and Medicaid under the ELE option, (2) whether those beneficiaries met all eligibility requirements, and (3) the estimated dollar value of both proper and improper payments made on behalf of those beneficiaries.

This report addresses the use of the ELE option in CHIP, and we will issue a separate report addressing the use of the ELE option in Medicaid (A-04-15-08043). Together, these reports respond to the MACRA reporting requirement. In addition we will report separately on the results of an evaluation of the benefits of and challenges to State use and expansion of the ELE option (OEI-06-15-00410).

Our objectives were to verify whether State agencies met Federal requirements when (1) making CHIP eligibility determinations using the ELE option and (2) developing eligibility error rates.

### HOW WE DID THIS REVIEW

We reviewed CHIP eligibility determinations made by States that used the ELE option for enrollment or reenrollment at any time in calendar year 2014. With respect to the second element under the reporting requirement of MACRA, section 305, we performed two tests of each eligibility determination supported by the ELE data. First, we reviewed whether the eligibility determination met applicable ELE requirements in the Social Security Act. Second, we reviewed the same eligibility determinations to assess whether the determination met the CHIP requirements for verifying eligibility. These reviews identified eligibility determinations that did not meet Federal requirements under both ELE and CHIP requirements. Beneficiaries enrolled on the basis of determinations that did not meet Federal requirements may not have been eligible for CHIP coverage. We refer to these beneficiaries as “potentially ineligible”

rather than “improperly enrolled” because some of these individuals may have been eligible if the State agency had determined eligibility in accordance with all Federal requirements.

## **BACKGROUND**

### **The Children’s Health Insurance Program**

CHIP provides low-cost health coverage to uninsured children under the age of 19, in families that earn too much money to qualify for Medicaid. Individuals are eligible when they satisfy certain Federal and State requirements such as income, residency, and citizenship or have status as a U.S. national or have eligible immigration status. CHIP is funded jointly by the Federal Government and States based on an approved State plan specific to each State. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. CMS and States monitor the accuracy of eligibility determinations in CHIP using the Payment Error Rate Measurement (PERM) program and Medicaid Eligibility Quality Control (MEQC). However, for Federal fiscal years 2014 through 2016, the eligibility component of PERM and MEQC has been replaced with the Medicaid and CHIP Eligibility Review Pilots. CMS has issued a notice of proposed rulemaking that modifies its PERM requirements to incorporate changes mandated by the Affordable Care Act.

### **Express Lane Eligibility**

Under the ELE option, a State CHIP agency can use findings (e.g., income) from eligibility determinations made by a different agency, e.g., the State agency that determines eligibility for the Temporary Assistance for Needy Families program, within the State to facilitate enrollment into CHIP. These agencies are known as Express Lane agencies. State CHIP agencies must identify the Express Lane agencies in the CHIP State Plan as being capable of making determinations regarding one or more CHIP eligibility requirements using information the Express Lane agencies already collect. However, the State CHIP agency remains responsible for making the ultimate determination of CHIP eligibility. Most CHIP eligibility determinations supported by ELE data are for income-based, mandatory enrollment categories for beneficiaries. However, if a beneficiary is not found to be eligible using the ELE option, the State must then conduct a full, traditional eligibility determination.

States may, but are not required to, rely on a finding from an Express Lane agency, such as a determination of household income, without repeating the data collection, calculation, or verification that an Express Lane agency had already conducted. However, before completing a determination of CHIP eligibility for an individual in this situation, the CHIP agencies must satisfy all other eligibility verification requirements using the processes described in their Medicaid/CHIP verification plans. In particular, States must verify the individual’s status as a citizen, U.S. national, or eligible immigrant.

To take advantage of the ELE option for CHIP, a State must submit a State plan amendment to CMS and obtain CMS’s approval of it. During the period of our review, eight States had obtained CMS’s approval to use the ELE option. State CHIP agencies may apply the Express Lane option to uninsured individuals under the age of 19. The CHIPRA allows States to select

from a variety of other State agencies to serve as the Express Lane agency. In addition, States can use the ELE option for initial identification of potentially eligible enrollees or for retention of existing CHIP enrollees. This flexibility allows States to adapt the ELE option to their specific needs.

The ELE option was originally set to expire in 2013 but has been extended through September 30, 2017.

## **WHAT WE FOUND**

States generally determined CHIP eligibility using the ELE option in accordance with Federal requirements. From our sample of 120 beneficiaries, States correctly determined eligibility for 110 beneficiaries. We found no eligibility errors in four of the eight States reviewed; however, four States did not determine eligibility for seven beneficiaries in accordance with Federal requirements. Additionally, two States mistakenly identified three additional beneficiaries as having been determined to be eligible using the ELE option, but these beneficiaries were enrolled through traditional eligibility processes. On the basis of our sample, we estimated that 148,375 beneficiaries were eligible, but 6,998 were potentially ineligible. We also estimated that Federal and State CHIP payments on behalf of eligible beneficiaries totaled \$196,877,783, and Federal and State CHIP payments made on behalf of potentially ineligible beneficiaries totaled \$10,577,693. We attribute the enrollment of potentially ineligible beneficiaries to State-specific eligibility determination errors.

In addition, States did not develop the mandated error rates specific to the ELE population because CMS did not provide States with an error rate methodology. Without a methodology for determining an ELE eligibility error rate, contrary to Federal requirements, some States relied on the PERM program to identify eligibility errors before 2014. In addition, even if CMS had provided a methodology, three States had difficulty identifying their ELE population, which would have limited their ability to produce statistically valid error rates.

## **WHAT WE RECOMMEND**

We recommend that CMS:

- monitor States that use the ELE option for CHIP eligibility determinations for compliance with Federal requirements;
- provide technical assistance to States to accurately identify beneficiaries who enroll through the ELE option;
- issue guidance to States to calculate statutorily required eligibility error rates for those enrolled through the ELE option; and
- ensure States appropriately redetermine, if necessary, the current eligibility status of the sample applicants who were enrolled on the basis of eligibility determinations that were not made in compliance with Federal requirements.

## **CMS COMMENTS**

In written comments on our draft report, CMS concurred with our recommendations and described steps it was taking to address the findings in this report. CMS requested that we make available the sample case information so that it can ensure that redetermination efforts are taking place on the eligibility status of the sample applicants that States enrolled on the basis of eligibility determinations found not to be in compliance with Federal requirements. We plan to share the sample case information with CMS.

In addition, CMS provided technical comments on our draft report that we incorporated where appropriate.

## TABLE OF CONTENTS

INTRODUCTION .....	1
Why We Did This Review .....	1
Objectives .....	1
Background .....	1
The Children’s Health Insurance Program .....	1
Express Lane Eligibility.....	2
How We Conducted This Review.....	4
FINDINGS.....	6
States Did Not Always Make Eligibility Determinations in Accordance With Federal Requirements .....	7
Income: States Enrolled Potentially Ineligible Beneficiaries .....	7
Nonfinancial Eligibility: A State Enrolled a Potentially Ineligible Beneficiary.....	8
State Plan Amendment: A State Enrolled a Potentially Ineligible Beneficiary.....	8
States Did Not Develop Eligibility Error Rates in Accordance With Federal Requirements .....	8
RECOMMENDATIONS .....	10
CMS COMMENTS .....	10
OTHER MATTERS.....	10
CMS Did Not Obtain a Statistically Valid Sample of Beneficiaries Enrolled Through Express Lane Eligibility in the Mandatory Evaluation of the Children’s Health Insurance Program.....	10
APPENDIXES	
A: Audit Scope and Methodology .....	12
B: Sample Design and Methodology .....	14
C: Sample Results and Estimates.....	16
D: CMS Comments.....	17

## INTRODUCTION

### WHY WE DID THIS REVIEW

The Children's Health Insurance Program [CHIP] Reauthorization Act of 2009 (CHIPRA, P. L. No. 111-3, § 203(a)) provided States with a new tool, known as Express Lane Eligibility (ELE), to simplify States' identification, enrollment, and retention of individuals eligible for CHIP or Medicaid. Using the ELE option, a State's CHIP or Medicaid program can use findings from a different agency within the State despite different methods of assessing income or other eligibility factors.

On April 16, 2015, Congress enacted the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (P.L. No. 114-10, § 305), which required the U.S. Department of Health and Human Services, Office of Inspector General, to submit a report to Congress on (1) the number of beneficiaries enrolled in CHIP and Medicaid under the ELE option, (2) whether those beneficiaries met all eligibility requirements, and (3) the estimated dollar value of both proper and improper payments made on behalf of those beneficiaries.

This report addresses the use of the ELE option in CHIP, and we will issue a separate report addressing the use of the ELE option in Medicaid.<sup>1</sup> Together, these reports respond to the MACRA reporting requirement. In addition, we will report separately on the results of an evaluation of the benefits of and challenges to State use and expansion of the ELE option.<sup>2</sup>

### OBJECTIVES

Our objectives were to verify whether State agencies met Federal requirements when (1) making CHIP eligibility determinations using the ELE option and (2) developing eligibility error rates.

### BACKGROUND

#### The Children's Health Insurance Program

CHIP provides low-cost health coverage to uninsured children in families that earn too much money to qualify for Medicaid. To participate in CHIP, Federal law requires States to provide coverage for targeted low-income children, as defined by each State (Social Security Act § 2102). Individuals are eligible when they satisfy certain Federal and State requirements such as income, residency, and citizenship, or have status as a U.S. national or have eligible immigration status. For many eligibility groups, income is calculated in relation to a percentage of the Federal poverty level.

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<sup>1</sup> See report A-04-15-08043.

<sup>2</sup> See report OEI-06-15-00410.

Beginning in 2014, the Patient Protection and Affordable Care Act<sup>3</sup> (ACA) established new income eligibility requirements and many new eligibility and enrollment simplifications for both Medicaid and CHIP. Income eligibility for CHIP beneficiaries is now based on modified adjusted gross income, which uses Federal income tax rules to establish household size and calculate income. Enrollment was simplified to include the use of a single streamlined application (for Medicaid, CHIP, and qualified health plans offered through ACA marketplaces), which can be submitted through multiple channels; primary reliance on electronic verification data; and a data-driven renewal process. States must first attempt to retain enrollees using eligibility information and data available to the agency, including through ELE, and if a beneficiary's eligibility cannot be determined with available information, the State must send the beneficiary a renewal form.

CHIP is funded jointly by the Federal Government and States based on an approved State plan specific to each State. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. CMS and States monitor the accuracy of eligibility determinations in CHIP using the Payment Error Rate Measurement (PERM) and Medicaid Eligibility Quality Control (MEQC) programs. However, for Federal fiscal years 2014 through 2016, the eligibility component of PERM and MEQC has been replaced with the Medicaid and CHIP Eligibility Review Pilots. In June 2016, CMS issued a notice of proposed rulemaking that modifies its PERM requirements to incorporate changes mandated by the ACA.<sup>4</sup>

### **Express Lane Eligibility**

Under the ELE option, a State CHIP agency can use findings (e.g., income) from eligibility determinations made by a different agency within the State to facilitate enrollment into CHIP. These agencies are public agencies known as Express Lane agencies, including agencies that determine eligibility for assistance for any of the following programs or under any of the following authorities: the Temporary Assistance for Needy Families program funded under part A of title IV of the Social Security Act; a State program funded under title IV-D of the Social Security Act (Child Support Enforcement); the State Medicaid or CHIP program; the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program); the Richard B. Russell National School Lunch Act (school lunch programs); the Child Nutrition Act of 1966 (the Special Supplemental Nutrition Program for Women, Infants, and Children, or "WIC"); and others. State CHIP agencies must identify the Express Lane agencies in the CHIP State Plan as being capable of making determinations regarding one or more CHIP eligibility requirements using information the Express Lane agencies already collect. However, the State CHIP agency remains responsible for making the ultimate determination of CHIP eligibility. If a beneficiary is not found to be eligible using the ELE option, the State must then conduct a full, traditional eligibility determination.

States may rely on a finding from an Express Lane agency, such as a determination of household income, without repeating the data collection, calculation, or verification that an Express Lane

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<sup>3</sup> P.L. 111-148 § 2002 (March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (March 30, 2010).

<sup>4</sup> 81 Fed. Reg. 40596 (June 22, 2016).

agency had already conducted. However, before completing a determination of CHIP eligibility for such an individual, the State CHIP agency must satisfy all other eligibility verification requirements using the processes described in its Medicaid/CHIP verification plans. In particular, States must verify the individual's status as a U.S. citizen, U.S. national, or eligible immigrant.

To take advantage of the ELE option for CHIP, a State must submit a State Plan amendment (SPA) to CMS and obtain CMS's approval of it. State CHIP agencies may apply the Express Lane option to uninsured individuals under the age of 19. The CHIPRA allows States to select from a variety of other State agencies to serve as the Express Lane agency. In addition, States can use the ELE option for initial identification of potentially eligible enrollees or for retention of existing CHIP enrollees. This flexibility allows States to adapt the ELE option to their specific needs.

The ELE option was originally set to expire in 2013. However, it has been extended through September 30, 2017, through MACRA's amendment to section 1902(e)(13)(I) of the Social Security Act (MACRA § 302).

### *Eligibility Determinations*

When making a CHIP eligibility determination using the ELE option, States continue to follow the processes outlined in their verification plans. Except for the findings obtained from the Express Lane agency, which do not need to be reverified, the State would verify the individual's Social Security number, U.S. citizenship, status as a U.S. national or eligible immigration status, date of birth and age, State residency, household composition, and household income using the data sources described in its verification plan.

Under the ELE option, a State CHIP agency may rely on findings from an Express Lane agency to make an eligibility determination even if the Express Lane agency uses different information than the State CHIP agency.<sup>5</sup> This could result in the State CHIP agency making an eligibility determination using the ELE option that does not meet the traditional CHIP eligibility requirements because of differences in methodology used by the Express Lane agency and the State CHIP agency. For example, a State may determine eligibility by using an income finding from an Express Lane agency that uses either gross or adjusted gross income obtained from State income tax records or returns, but the CHIP agency may use modified adjusted gross income to determine eligibility.

For citizenship, State CHIP agencies that use the Express Lane option must continue to meet CHIP requirements to verify status for individuals who declare that they are citizens or nationals of the United States or have eligible immigration status (Social Security Act § 1902(e)(13)(A)(i)(IV)). To appropriately verify citizenship, status as a U.S. national, or eligible immigration status, State CHIP agencies generally have multiple options. The CHIPRA,

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<sup>5</sup> A State CHIP agency may "rely on a finding from an Express Lane agency notwithstanding sections 1902(a)(46)(B) and 1137(d) or any differences in budget unit, disregard, deeming or other methodology" (Social Security Act § 1902(e)(13)(A)(i)).

section 211, established a new option for States to verify eligible immigration status through a data match with the Social Security Administration (Social Security Act § 1902(ee)).<sup>6</sup> States can also request documentation from applicants (e.g., birth certificates) (Social Security Act § 1903(x)). States may verify eligible immigration status through a data match with the Department of Homeland Security (42 CFR § 435.949).

### *Enrollment Data*

We obtained aggregate enrollment data from States that used the ELE option for enrollment for calendar years (CYs) 2010 through 2013. We present this unaudited enrollment data in Table 1.

**Table 1: Aggregate State Children’s Health Insurance Program Express Lane Eligibility Enrollment by Calendar Year**

<b>Calendar Year</b>	<b>Aggregate Enrollment<sup>7</sup></b>
2010	19,206
2011	39,617
2012	55,086
2013	87,620

In addition, we obtained aggregate eligibility determination data for CY 2014, which we audited in detail, for beneficiaries enrolled in CHIP via the ELE option for any time during CY 2014.

### **HOW WE CONDUCTED THIS REVIEW**

We contacted the eight States that CMS identified on their Web site as of May 6, 2015,<sup>8</sup> as having an approved SPA that allows using the ELE option for CHIP enrollment. In addition, we contacted two States, Maryland and South Carolina, that used the ELE option for CHIP enrollment during the course of our audit. Because both Maryland and South Carolina have adopted the Medicaid expansion model for implementing CHIP in their States, they appropriately relied on the CMS-approved Medicaid SPA to support their ELE enrollments. However, Maryland could not distinguish its ELE enrollees (either Medicaid or CHIP) from its traditional enrollees and was therefore excluded from our sample. South Carolina provided a list of individuals who were enrolled through South Carolina’s Medicaid expansion model for implementing CHIP using ELE, which we included in our sample.

We requested the following information regarding the 10 States’ use of the ELE option: CHIP SPAs, number of beneficiaries enrolled using the ELE option, and any information about reviews

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<sup>6</sup> Under the CHIPRA, the requirements to verify citizenship were extended to CHIP effective January 1, 2010.

<sup>7</sup> Maryland could not distinguish individuals determined to be eligible using ELE from regular enrollees. Oregon stopped using ELE in 2013. Therefore, Table 1 includes only the eight States that we reviewed.

<sup>8</sup> As of October 11, 2016, CMS no longer lists Georgia and Utah as States with an approved SPA to use ELE for CHIP enrollment.

or evaluations of the ELE option conducted by the respective States. We also met with CMS to gain an understanding of its management and oversight of States' use of the ELE option.

We reviewed the CHIP eligibility determinations made by Colorado, Georgia, Iowa, Massachusetts, New Jersey, Pennsylvania, South Carolina, and Utah.<sup>9</sup> We reviewed a stratified statistical sample of 120 beneficiaries selected from 155,373 CHIP beneficiaries that had coverage at any time during CY 2014 and whose eligibility determinations involved factors verified through the ELE option. These eligibility determinations were made in either CYs 2013 or 2014 for CHIP coverage effective in CY 2014. We reviewed the supporting documentation to evaluate whether the State determined the applicants' or beneficiaries' eligibility in accordance with Federal requirements. We tested eligibility for CHIP using each State's CHIP eligibility standards in place at the time of enrollment or reenrollment.

To meet the second element under the reporting requirement in MACRA, section 305, we performed two tests of each eligibility determination.<sup>10</sup> First, we reviewed whether the eligibility determination met applicable ELE requirements in the Social Security Act, section 1902(e)(13). This allowed us to review whether the State CHIP agency met specific ELE requirements for determining eligibility, such as by using an Express Lane agency that was included in its ELE SPA. Second, we reviewed documentation from both the CHIP and ELE agencies supporting the eligibility determination to assess whether the beneficiary would have met the State's CHIP eligibility requirements for the category in which he or she was enrolled. This allowed us to review whether the eligibility determination supported by the ELE met the State's CHIP eligibility requirements by, for instance, recalculating a beneficiary's income to assess whether the beneficiary met applicable income thresholds.

These reviews identified eligibility determinations that did not meet Federal requirements. Beneficiaries enrolled on the basis of these determinations may not have been eligible for CHIP coverage. We refer to these beneficiaries as "potentially ineligible" rather than "improperly enrolled" because some of these individuals may have been eligible if the State agency had determined eligibility in accordance with all Federal requirements. We did not assess beneficiaries for other CHIP or Medicaid eligibility categories other than the category they were enrolled in based on the eligibility determination that used the ELE option.<sup>11</sup> For instance, we did not obtain all data sources for income verification that a State uses to make an eligibility determination based on modified adjusted gross income. As a result of these limitations, we did not determine whether beneficiaries were eligible or ineligible for Medicaid or CHIP.

With respect to individual State eligibility determinations, we limited our review of internal controls to those related to (1) verifying applicant or beneficiary identity, (2) determining

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<sup>9</sup> Individuals from Oregon were not included in our sample because Oregon stopped using ELE for CHIP enrollment in 2013.

<sup>10</sup> MACRA, section 305, paragraph 2, required OIG to determine whether beneficiaries met all eligibility requirements.

<sup>11</sup> We did not contact beneficiaries directly to request additional documentation, which is another step States are required to perform before determining a beneficiary is ineligible for CHIP or Medicaid.

applicant or beneficiary eligibility for CHIP enrollment or reenrollment, and (3) coordinating between the respective State CHIP agencies and their Express Lane agencies.

We performed fieldwork from September 2015 through June 2016 in participating States and at CMS’s offices in Baltimore, Maryland.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology, Appendix B contains the details of our sample design and methodology, and Appendix C contains the details of our sample results and estimates.

## FINDINGS

States generally determined CHIP eligibility using the ELE option in accordance with Federal requirements. From our sample of 120 beneficiaries, States correctly determined eligibility for 110 beneficiaries. We found no eligibility errors in four of the eight States reviewed; however, four States did not determine eligibility for seven beneficiaries in accordance with Federal requirements. Additionally, two States mistakenly identified three additional beneficiaries as having been determined to be eligible using the ELE option, but these beneficiaries were enrolled through traditional eligibility processes.<sup>12</sup> Table 2 summarizes these results.

**Table 2: Summary of Sample Results (120 beneficiaries in total)**

<b>Correctly Enrolled Using ELE</b>	<b>Did Not Meet ELE Requirements</b>	<b>Did Not Meet CHIP Requirements</b>	<b>Not Enrolled Using ELE</b>
110	1	6	3

On the basis of our sample, we estimated that 148,375 beneficiaries were eligible, but 6,998 were potentially ineligible. We also estimated that Federal and State CHIP payments on behalf of eligible beneficiaries totaled \$196,877,783, and Federal and State CHIP payments made on behalf of potentially ineligible beneficiaries totaled \$10,577,693. We attribute the enrollment of potentially ineligible beneficiaries to State-specific eligibility determination errors.

In addition, States did not develop statistically valid eligibility error rates specific to the ELE enrollees in accordance with Federal requirements. This occurred because, first, CMS had not finalized the methodology that States were to use in identifying the error rates. Without a methodology for determining an ELE eligibility error rate, contrary to Federal requirements,

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<sup>12</sup> Because of this misclassification by the States, we did not include the eligibility determinations for these beneficiaries as errors when projecting potentially ineligible beneficiaries and the associated payments made on behalf of those potentially ineligible beneficiaries.

some States relied on the PERM program to identify eligibility errors before 2014. Second, three States had difficulty identifying the ELE population, which may have limited the States' ability to produce statistically valid error rates.

## **STATES DID NOT ALWAYS MAKE ELIGIBILITY DETERMINATIONS IN ACCORDANCE WITH FEDERAL REQUIREMENTS**

State eligibility determinations did not always follow Federal requirements for CHIP or the ELE option. Specifically, States (1) either enrolled beneficiaries with incomes that did not meet CHIP eligibility thresholds or did not verify incomes; (2) did not verify citizenship status, status as a U.S. national, or eligible immigration status; or (3) did not follow their approved SPAs. From our sample of 120 beneficiaries, 4 States made eligibility determinations that did not meet Federal requirements for 7 beneficiaries. On the basis of our sample, we estimated that States enrolled 6,998 potentially ineligible beneficiaries. We also estimated that Federal and State CHIP payments on behalf of those potentially ineligible beneficiaries totaled \$10,577,693.

### **Income: States Enrolled Potentially Ineligible Beneficiaries**

To determine income eligibility for beneficiaries using the ELE option, a State may rely on a finding from an Express Lane agency made without regard to “differences in budget unit, disregard, deeming or methodology” between the Express Lane agency and Medicaid (Social Security Act § 1902(e)(13)(A)(i)). The State must include in each applicant's record facts to support the State's determination of the applicant's eligibility for CHIP (42 CFR § 457.965).

Pennsylvania enrolled four beneficiaries and Iowa enrolled one beneficiary on the basis of information provided by the State ELE agencies. The ELE option specifically allows the State CHIP agencies to rely on findings from their respective ELE agencies for eligibility determinations. However, the eligibility determination for these five beneficiaries did not meet the State's CHIP income eligibility requirements.

In Pennsylvania, three beneficiaries had documented income below the threshold necessary for CHIP enrollment, and one had no income documentation. For the three beneficiaries, CHIP officials in Pennsylvania said that they enrolled the individuals into CHIP by default to avoid “bouncing” them between programs despite the fact that beneficiaries' documented incomes may have qualified them for Medicaid.<sup>13</sup> For one beneficiary in Iowa, supporting income documentation showed that the ELE agency had miscalculated the income for this individual, resulting in an understatement of income and an inaccurate eligibility determination by the CHIP agency.<sup>14</sup>

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<sup>13</sup> In Pennsylvania, these beneficiaries were enrolled in CHIP. After correcting the ELE agency's miscalculation, these three beneficiaries had income that was less than 138 percent of the Federal poverty level, which may have qualified them for Medicaid.

<sup>14</sup> This beneficiary had an income that was 316 percent of the Federal poverty level, which is above Iowa's CHIP eligibility income threshold of 302 percent.

### **Nonfinancial Eligibility: A State Enrolled a Potentially Ineligible Beneficiary**

To properly verify citizenship, status as a U.S. national, or eligible immigration status of beneficiaries enrolled under the ELE option, States must ensure that those individuals declaring to be citizens or nationals of the United States, or who have eligible immigration status, have established that status in accordance with the applicable verification requirements (Social Security Act § 1902(e)(13)(A)(i)(IV)).<sup>15</sup> To satisfy the verification requirements, States must obtain satisfactory documentary evidence or electronically verify citizenship or immigration status with the Social Security Administration or the Department of Homeland Security (42 CFR §§ 435.406, 435.407, and 435.949).

Massachusetts determined one beneficiary eligible for CHIP without verifying citizenship. For this beneficiary, the State relied on information received from the Express Lane agency to verify citizenship status. However, the Express Lane agency relied on the beneficiary's attestation of citizenship instead of requiring documentation or using electronic verification.

### **State Plan Amendment: A State Enrolled a Potentially Ineligible Beneficiary**

State CHIP agencies must determine that the public agency serving as the Express Lane agency is capable of making the determinations for one or more CHIP eligibility requirements and identify the agency in the CHIP SPA implementing the ELE option (Social Security Act § 1902(e)(13)(F)(i)(I) and (II)).

Colorado determined one beneficiary to be eligible for CHIP without following an approved State Plan. Specifically, Colorado had an approved SPA that allowed it to rely on data from the agency for the State's school lunch program. However, instead of relying on the school lunch program data, the State CHIP agency relied on data from the State agency for the SNAP, which was not an approved ELE agency.

### **STATES DID NOT DEVELOP ELIGIBILITY ERROR RATES IN ACCORDANCE WITH FEDERAL REQUIREMENTS**

States are required to annually submit to the Secretary of HHS a statistically valid sample (that is approved by the Secretary) of the beneficiaries who have been enrolled in Medicaid or CHIP through a finding made by an Express Lane agency; States create that statistically valid sample by conducting a full eligibility review for the purposes of determining an eligibility error rate (Social Security Act §§ 1902(e)(13)(E)(i)(II) and (III)). CMS guidance states that “[c]onsistent with the requirements of CHIPRA, States will be required to ensure the accuracy of Express Lane eligibility determinations through eligibility reviews based on a statistically valid sample of the [beneficiaries] enrolled through Express Lane. CMS will specify the process for this error rate measurement in regulation” (SHO #10-003, CHIPRA #14, February 4, 2010, page 6). Additionally, States are required to exclude beneficiaries determined eligible using the ELE

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<sup>15</sup> In 2009, the CHIPRA, section 211(c), added the citizenship documentation requirement for all CHIP eligibility determinations. These are the same documentation requirements that apply to Medicaid eligibility determinations in the Social Security Act, section 1902(a)(46)(B). As a result, States cannot accept self-declarations to verify the eligibility factor for U.S. citizenship or national status.

option from any data or samples used to show compliance with a PERM requirement (Social Security Act § 1902(e)(13)(E)(i)(II)).

In addition, to implement the ELE option, States agree to “assign such codes as the Secretary shall require to the children who are enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an Express Lane agency for the duration of the State’s election under this paragraph” (Social Security Act § 1902(e)(13)(E)).<sup>16</sup> These codes were intended to allow States to accurately identify CHIP beneficiaries who were determined eligible through the ELE option.

States did not develop the mandated error rates specific to the ELE population because CMS did not provide States with an error rate methodology. Without a methodology for determining an ELE eligibility error rate, contrary to Federal requirements, some States relied on the PERM program to identify eligibility errors before 2014. In addition, even if CMS had provided a methodology, three States had difficulty identifying their ELE population, which would have limited their ability to produce statistically valid error rates.

In correspondence with OIG, CMS officials stated that CMS did not specify the methodology for States to use in developing samples or calculating eligibility error rates for the ELE population because “when the Express Lane Eligibility (ELE) option was first established, it was initially set to expire in September 2013. As CMS was considering putting out guidance on error rate methodology, the ELE option was about to sunset. However, given the subsequent congressional action to extend the ELE option, currently through Fiscal Year 2017, CMS is now working to provide additional guidance....”

Some States did not remove the ELE population from their PERM populations before 2014 either because they could not separately identify the ELE population or they failed to follow CMS guidance to remove the ELE beneficiaries from their populations used for PERM calculations.

Maryland, Georgia, and Pennsylvania could not readily identify beneficiaries who had their eligibility determined using the ELE option. Maryland could not separately identify beneficiaries who were determined to be eligible using the ELE option and could not produce eligibility data specific to their ELE population. Georgia and Pennsylvania produced eligibility data that included beneficiaries whose eligibility determinations were not based on the ELE option. Officials in Georgia informed us after we selected our sample that both of our sample items for Georgia should not have been included in the ELE population. Specifically, Georgia CHIP agency officials provided a list of all individuals referred to them rather than a list of beneficiaries who actually were determined eligible using the ELE option. Officials in Pennsylvania told us that 1 of its 80 sample items should not have been included in the ELE population.

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<sup>16</sup> The Secretary must assign codes to Medicaid and CHIP beneficiaries enrolled through Express Lane Eligibility (Social Security Act § 1903(e)(13)). CMS did not assign specific codes but instead addressed this requirement by notifying States that it expected them to have the ability to accurately identify the population of beneficiaries enrolled through the ELE option (SHO #10-003, CHIPRA #14, February 4, 2010).

Without the ability to accurately identify beneficiaries who were determined eligible through the ELE option or a CMS methodology for developing ELE error rates, States could not produce statistically valid error rates for these beneficiaries as required by law.

## **RECOMMENDATIONS**

We recommend that CMS:

- monitor States that use the ELE option for CHIP eligibility determinations for compliance with Federal requirements;
- provide technical assistance to States to accurately identify beneficiaries who enroll through the ELE option; and
- issue guidance to States to calculate statutorily required eligibility error rates for those enrolled through the ELE option; and
- ensure States appropriately redetermine, if necessary, the current eligibility status of the sample applicants who were enrolled on the basis of eligibility determinations that were not made in compliance with Federal requirements.

## **CMS COMMENTS**

In written comments on our draft report, CMS concurred with our recommendations and described steps it was taking to address the findings in this report. CMS requested that we make available the sample case information so that it can ensure that redetermination efforts are taking place on the eligibility status of the sample applicants that States enrolled on the basis of eligibility determinations found not to be in compliance with Federal requirements. CMS's comments are included in their entirety as Appendix D. We plan to share the sample case information with CMS.

In addition CMS provided technical comments on our draft report that we incorporated where appropriate.

## **OTHER MATTERS**

### **CMS DID NOT OBTAIN A STATISTICALLY VALID SAMPLE OF BENEFICIARIES ENROLLED THROUGH EXPRESS LANE ELIGIBILITY IN THE MANDATORY EVALUATION OF THE CHILDREN'S HEALTH INSURANCE PROGRAM**

The CHIPRA, section 203(b)(1), states in part that the Secretary shall conduct a comprehensive, independent evaluation of the ELE option provided under the amendments made by subsection 203(a). That evaluation must include a statistically valid sample of the children who were enrolled and a determination of the percentage of children who were erroneously enrolled (§ 203(b)(1)(A)).

CMS issued two reports in response to this mandate. However, those reports did not address the statistical evaluation of the ELE option enrollment because “CMS had not finalized the methodology that States would use to report error rates.”<sup>17</sup>

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<sup>17</sup> Mathematica, *CHIPRA Mandated Evaluation of Express Lane Eligibility: First Year Findings: Final Report*, 2012; Mathematica, *CHIPRA Mandated Evaluation of Express Lane Eligibility: Final Findings* 2013.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

Our audit covered the following States that used the ELE option for enrollment at any time in calendar year 2014: Colorado, Georgia, Iowa, Massachusetts, New Jersey, Pennsylvania, South Carolina, and Utah.

We limited our review of internal controls to those related to determining an applicant's eligibility for enrollment in CHIP and the States' development of the ELE option error rate. Our testing of controls included a review of supporting documentation at both the State CHIP and the ELE agencies to evaluate whether the State determined the applicant's eligibility in accordance with Federal and State requirements. We did not assess the ELE beneficiaries' eligibility for alternative CHIP eligibility categories or contact beneficiaries to obtain additional supporting documentation.

We performed fieldwork from September 2015 through May 2016 in various States throughout the country and in Baltimore, Maryland.

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements, CMS guidance, and SPAs regarding the implementation and use of the ELE option;
- reviewed the CMS contractor's final report entitled *CHIPRA Mandated Evaluation of Express Lane Eligibility: First Year Findings*, dated December 2012;
- reviewed the CMS Contractor's final report entitled *CHIPRA Mandated Evaluation of Express Lane Eligibility: Final Finding*, dated December 2013;
- conducted phone conferences with congressional staff to reach agreement on how to proceed with this review;
- conducted an entrance conference with CMS officials to understand the guidance and oversight they provided to the States regarding the implementation and use of the ELE option;
- met with and held telephone conferences with various State CHIP agency officials to:
  - obtain their policies and procedures for implementing the ELE option, identifying beneficiaries enrolled through the ELE option, determining the error rate of the ELE option enrollees, and reducing the error rate of ineligible ELE option enrollees;

- obtain a data file containing all beneficiaries enrolled in CHIP at any time during CY 2014 who were determined to be eligible through the ELE option;
- obtain an annual count of beneficiaries determined to be eligible for CHIP through the ELE option since the implementation of the ELE option;
- obtain interagency agreements between the Express Lane agencies and the various State CHIP agencies;
- obtain all correspondence between the State agencies and CMS concerning approval and implementation of the ELE option; and
- understand the State agency's methodology for determining CHIP eligibility;
- selected a stratified random sample of 120 beneficiaries from a total of 155,373 beneficiaries that States determined to be eligible for CHIP through the ELE option and:
  - contacted the various State CHIP agencies to obtain documentation to verify the CHIP eligibility of each sampled beneficiary,
  - obtained the final paid claim amounts for each service received in CY 2014 for each sampled beneficiary,<sup>18</sup> and
  - contacted the various Express Lane agencies to obtain documentation to verify the CHIP eligibility of each sampled beneficiary;
- analyzed the State agency's documentation supporting beneficiaries' CHIP eligibility; and
- discussed the results of our review with CMS officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>18</sup> We did not review individual claims payments for accuracy as part of this review. Instead, we categorized all claims payments on behalf of individuals who were determined to be ineligible as improper payments and all payments made on behalf of individuals who were determined to be eligible as proper payments.

## APPENDIX B: SAMPLE DESIGN AND METHODOLOGY

### TARGET POPULATION

The target population consisted of individuals who were determined to be eligible using the ELE option and enrolled in CHIP at any time during CY 2014. We removed the individuals from Maryland from the target population States because Maryland could not identify those individuals enrolled through the use of the ELE option.

### SAMPLING FRAME

The sampling frame consisted of an Excel spreadsheet containing CHIP individuals from eight States (Colorado, Georgia, Iowa, Massachusetts, New Jersey, Pennsylvania, South Carolina, and Utah) whom the States enrolled in CHIP at some time during CY 2014 and whom the States determined to be eligible using the ELE option. Specifically, the sampling frame consisted of 155,373 CHIP beneficiaries.

### SAMPLE UNIT

The sample unit was a CHIP beneficiary.

### SAMPLE DESIGN

We used a stratified random sample. We separated the beneficiaries from Pennsylvania and obtained payment information for the beneficiaries from the State. The Pennsylvania beneficiaries represented approximately 79 percent of the total sampling frame of individuals determined to be eligible through the ELE option during the audit period. We then sorted the individuals from Pennsylvania by dollar amount of payment. Individuals from all the other States (Colorado, Georgia, Iowa, Massachusetts, New Jersey, South Carolina, and Utah) were assigned to stratum 3. This assignment resulted in three total strata as shown in Table 3.

**Table 3: Individuals by Stratum**

<b>Stratum</b>	<b>Range</b>	<b>Description</b>	<b>Number of Individuals</b>
1	\$1,199.99 and below	PA beneficiaries	65,848
2	\$1,200 and above	PA beneficiaries	56,678
3		CO, GA, IA, MA, NJ, SC, and UT beneficiaries	32,847

## **SAMPLE SIZE**

We selected 120 individuals for detailed review of eligibility as follows in Table 4.

**Table 4: Sample by Stratum**

<b>Stratum</b>	<b>Number of Individuals</b>	<b>Number of Sample Items</b>
1	65,848	30
2	56,678	50
3	32,847	40

## **SOURCE OF RANDOM NUMBERS**

We generated the random numbers using the Office of Inspector General, Office of Audit Services (OIG/OAS), RAT-STATS statistical software.

## **METHOD FOR SELECTING SAMPLE UNITS**

We consecutively numbered the beneficiaries in each stratum of our Excel spreadsheet. After generating the random numbers for each stratum, we selected the corresponding individuals in the sample frame for our sample.

## **ESTIMATION METHODOLOGY**

We calculated point estimates and 90-percent confidence intervals for the total amount of eligible and ineligible CHIP payments for beneficiaries for which the State agency claimed reimbursement and for the total number and percent of potentially ineligible beneficiaries. These calculations were performed using the OIG/OAS variable appraisal programs in RAT-STATS. The one exception is the percent of potentially ineligible beneficiaries. This percent was calculated using the R statistical computing language because it was based on the combined ratio estimator rather than the difference estimator.

Our sample design did not allow us to report separate error rates for each State.

**APPENDIX C: SAMPLE RESULTS AND ESTIMATES**

**SAMPLE RESULTS**

**Table 5: Sample Results**

<b>Stratum</b>	<b>Frame Size (Individuals)</b>	<b>Sample Size</b>	<b>Value of Sample</b>	<b>Potentially Ineligible Beneficiaries</b>	<b>Value of Potentially Improper Payments</b>
1	65,848	30	\$20,681	0	\$0
2	56,678	50	87,664	4	6,216
3	32,847	40	76,342	3	4,300
<b>Totals</b>	<b>155,373</b>	<b>120</b>	<b>\$184,687</b>	<b>7</b>	<b>\$10,516</b>

**ESTIMATES**

**Table 6: Estimated Values for the Audit Period**  
*Limits Calculated at the 90-Percent Confidence Level*

	<b>Point Estimate</b>	<b>Lower Limit</b>	<b>Upper Limit</b>
Number of Potentially Ineligible Beneficiaries	6,998	2,728	11,267
Percentage of ELE Enrollees Who Were Potentially Ineligible	4.59%	1.79%	7.38%
Proper Payments	\$196,877,783	\$180,259,660	\$213,495,906
Potentially Improper Payments	\$10,577,693	\$3,918,661	\$17,236,726

## APPENDIX D: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW  
Washington, DC 20201

**DATE:** SEP 16 2016

**TO:** Daniel R. Levinson  
Inspector General

**FROM:** Andrew M. Slavitt   
Acting Administrator

**SUBJECT:** Office of Inspector General (OIG) Draft Report: Children's Health Insurance Program Enrollment Using the Express Lane Eligibility Option Did Not Always Meet Requirements (A-04-15-08045)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft reports on Express Lane Eligibility (ELE) in Medicaid and Children's Health Insurance Program (CHIP). CMS takes seriously its commitment to supporting states in complying with Express Lane Eligibility requirements.

The ELE option, as authorized in the Children's Health Insurance Program Reauthorization Act of 2009, has helped states successfully enroll individuals into Medicaid and/or CHIP coverage. The ELE option allows state CHIP agencies to rely on findings made by public agencies as specified in the statute in determining eligibility for coverage, therefore providing another way for state agencies to identify and enroll children who may be eligible for CHIP but who remain without health coverage. ELE has helped address shortfalls in enrollment in these programs and provide coverage stability for these beneficiaries.

Other ELE benefits include significant flexibility provided to states to develop ELE policies for enrollment and retention that meet their unique state needs using the ELE option, streamlining enrollment and renewal through reduced staff time on processing beneficiary cases and improved coordination across ELE partner agencies that administer need-based programs by sharing findings on eligibility determinations.

Given the success of the ELE program, CMS takes seriously OIG's findings and is committed to providing technical assistance to the select states OIG identified in this study.

OIG's recommendations and CMS' responses are below.

### **OIG Recommendation**

OIG recommends that CMS monitor States that use the ELE option for CHIP eligibility determinations for compliance with Federal requirements.

### **CMS Response**

CMS concurs with OIG's recommendation. CMS is working to provide guidance to states clarifying Federal requirements around the ELE option, including recently proposed changes to the Payment Error Rate Measurement (PERM) methodology issued on June 20, 2016 that would not exclude monitoring of ELE cases. In addition, when state site visits are conducted in the future, CMS will consider including a review of the state's ELE process as a component of the visit.

**OIG Recommendation**

OIG recommends that CMS provide technical assistance to States for accurately identifying beneficiaries who enroll through the ELE option.

**CMS Response**

CMS concurs with OIG's recommendation. CMS is committed to providing individual technical assistance to the State agencies identified in the OIG's report to further clarify how to accurately identify beneficiaries in the states' eligibility systems who enroll or renew through the ELE option. This can be achieved through the regular technical assistance CMS provides to states via monthly conference calls with the Eligibility Technical Advisory Group (ETAG). In addition, CMS will work with the Systems Technical Advisory Group (S-TAG) and directly with state systems staff to provide information around the system changes necessary to accurately identify beneficiaries who enroll/renew through the ELE option.

**OIG Recommendation**

OIG recommends that CMS issue guidance to States for calculating statutorily required eligibility error rates for those enrolled through the ELE option.

**CMS Response**

CMS concurs with OIG's recommendation. At the time CMS was considering issuing guidance on error rate methodology, the ELE option was initially set to sunset in September 2013. However, given subsequent congressional action to extend the ELE option, through Fiscal Year 2017, CMS will work to develop guidance clarifying a process/methodology for calculating an ELE error rate. In addition, the PERM changes that CMS issued on June 20, 2016, as part of a notice of proposed rulemaking, would no longer exclude ELE cases.

**OIG Recommendation**

OIG recommends that CMS ensure States appropriately redetermine, if necessary, the current eligibility status of the sample applicants who were enrolled on the basis of eligibility determinations that were not made in compliance with Federal requirements.

**CMS Response**

CMS concurs with OIG's recommendation. Should OIG make available the specific case information, CMS will work with the States from OIG's study, if still necessary, to ensure that redetermination efforts are taking place on the eligibility status of the sample applicants that were enrolled on the basis of eligibility determinations found to be not in compliance with Federal requirements. While the sample was taken from 2014, CMS will work to confirm whether these errors in eligibility determinations were corrected.

CMS appreciates OIG's input and feedback on enrollment in CHIP through the ELE option and looks forward to working with OIG on this and other issues in the future.