

Enclosure A  
ARRA SMD Letter—Section 1001

The following is information on how the specific requirements of subsection 1001(c) of ARRA apply under Medicaid and, where applicable, under CHIP.

Determining the Amount of the Credit

Section 1001 adds a new section 36A to the Internal Revenue Code. Under this new section, a credit against 2009 and 2010 taxes paid is provided to individuals who meet that section's requirements. According to the Internal Revenue Service's Web site (<http://www.irs.gov/newsroom/article/0,,id=204447,00.html>), for people who receive a paycheck and are subject to withholding, the credit will be handled by their employers through automated withholding changes in early spring 2009. The change in withholding will likely produce more take home pay for those receiving the credit through their paychecks. For others, the credit can be claimed on their 2009 and 2010 tax returns. The credit phases out for married taxpayers whose modified adjusted gross income exceeds \$150,000 and other taxpayers whose modified adjusted gross income exceeds \$75,000.

The credit is the lower of 6.2 percent of the person's earned income, or \$400 (\$800 for a joint return). To determine the dollar amount of the credit, multiply the individual's gross taxable earned income by 6.2 percent. The result is the dollar amount that represents the amount that should be disregarded as directed in the sections that follow. No more than \$400 for an individual, or \$800 for a couple filing a joint return, should be disregarded in any one year.

Treatment as Income Under Medicaid and CHIP

Payments made under section 1001 are not counted as income when determining eligibility under Medicaid or CHIP for the recipient of the payment, or for any other individual. Therefore, in addition to not counting the payment as income to the individual, any payment made is not countable as income, deemed or otherwise, when determining Medicaid or CHIP eligibility for a spouse or other family members. Also, it is not counted as income to someone else even if it is contributed to that person. Under Medicaid, this also applies to States using more restrictive eligibility criteria than are used by the Supplemental Security Income (SSI) program. These States are commonly referred to as 209(b) States.

Treatment as a Countable Resource Under Medicaid and CHIP

Payments made under section 1001 are not counted as an available resource for a period of **two months** following the month of receipt of the payment (the exempt period). As with the treatment of income described above, this means that during the time a payment is exempt from being counted as a resource to the recipient, it also is not countable as a resource to anyone else. Under Medicaid, this also applies in 209(b) States. For both programs, if any portion of the payment is still retained by the individual after the 2-month period expires, that portion then becomes a countable resource.

### Transfers of Assets and Treatment of Trusts Under Medicaid (Not Applicable to CHIP)

In addition to not being counted as income or a resource for eligibility purposes as described above, subsection 1001(c) provides that a credit or refund payment made under section 1001 is not to be counted in determining the amount or extent of benefits or assistance. Under Medicaid, this effectively precludes applying penalties under section 1917(c) of the Social Security Act to individuals who, during the period in which section 1001 payments are not countable either as income or resources, dispose of part or all of the payments in a manner that normally would be considered a transfer of assets for less than fair market value.

Section 1001(c) would also preclude counting as available in any way credit or refund payments that may, during the exempt period, be placed in trusts which would normally be governed by the trust provisions at section 1917(d) of the Act. Assessing a transfer penalty, or counting payments placed in a trust during the exempt period as available income or resources, would effectively treat the payments in a manner that could affect eligibility for, or the amount of benefits under, the Medicaid program. This would violate the requirements of subsection 1001(c) of ARRA. However, if given away or placed in a trust after the end of the exempt period, section 1001 payments would be subject to transfer penalties or being counted under the Medicaid trust provisions, as applicable.

### Post-Eligibility Treatment of Income Under Medicaid (Not Applicable to CHIP)

Tax credit or refund payments made under section 1001 of ARRA are not countable as income for purposes of the post-eligibility treatment of income provisions applicable to institutionalized individuals and certain individuals eligible for services under a home and community-based waiver. Counting these payments as income would result in increasing the individual's income under post-eligibility, which in turn would result in Medicaid reducing its payment to the provider. Therefore, the amount of benefits payable on behalf of the individual would effectively be reduced. Such a reduction would violate the requirements of subsection 1001(c) of ARRA.

Enclosure B  
ARRA SMD Letter-Section 2002

The following is information on how the requirements of subsection 2002(h) of ARRA apply under Medicaid and, where applicable, under CHIP.

Treatment as Income Under Medicaid and CHIP

Increased unemployment compensation benefits paid under section 2002 are not counted as income when determining eligibility under Medicaid or CHIP for the recipient of the payment, or for the recipient's spouse or family. In addition to not counting the payment as income to the individual, any payment made is not countable as income, deemed or otherwise, when determining Medicaid or CHIP eligibility for a spouse or other family members. Under Medicaid, this also applies in 209(b) States.

Post-Eligibility Treatment of Income Under Medicaid (Not Applicable to CHIP)

Increased unemployment compensation benefits paid under section 2002 of ARRA are not countable as income for purposes of the post-eligibility treatment of income provisions applicable to institutionalized individuals and certain individuals eligible for services under a home and community-based waiver. Counting these payments as income would result in increasing the individual's income under post-eligibility, which in turn would result in Medicaid reducing its payment to the provider. The amount of benefits payable on behalf of the individual would effectively be reduced. Such a reduction would violate the requirements of subsection 2002(h) of ARRA.

Enclosure C  
ARRA SMD Letter-Section 2201

The following is information on how the specific requirements of subsection 2201(c) of ARRA apply under Medicaid and, where applicable, under CHIP.

Treatment as Income Under Medicaid and CHIP

Payments made under section 2201 are not counted as income when determining eligibility under Medicaid or CHIP for the recipient of the payment, or for the recipient's spouse or family. In addition to not counting the payment as income to the individual, any payment made is not countable as income, deemed or otherwise, when determining Medicaid or CHIP eligibility for a spouse or other family members. Under Medicaid, this also applies in 209(b) States.

Treatment as a Countable Resource Under Medicaid and CHIP

Payments made under section 2201 are not counted as an available resource for a period of **nine months** following the month of receipt of the payment (the exempt period). As with the treatment of income described above, this means that during the time a payment is exempt from being counted as a resource to the recipient, it also is not countable as a resource when determining eligibility for a spouse or other family members. Under Medicaid, this also applies in 209(b) States. For both programs, if any portion of the payment is still retained by the individual after the 9-month period expires, that portion then becomes a countable resource.

Transfers of Assets and Treatment of Trusts Under Medicaid (Not Applicable to CHIP)

In addition to not being counted as income or a resource for eligibility purposes as described above, subsection 2201(c) provides that a payment made under section 2201 is not to be counted in determining the amount or extent of benefits or assistance. Under Medicaid, this effectively precludes applying penalties under section 1917(c) of the Social Security Act (the Act) to individuals who, during the period in which section 2201 payments are not countable either as income or resources, dispose of part or all of the payments in a manner that normally would be considered a transfer of assets for less than fair market value.

Section 2201(c) would also preclude counting as available in any way payments that may, during the exempt period, be placed in trusts which would normally be governed by the trust provisions at section 1917(d) of the Act. Assessing a transfer penalty, or counting payments placed in a trust during the exempt period as available income or resources, would effectively treat the payments in a manner that could affect eligibility for, or the amount of benefits under, the Medicaid program.

This would violate the requirements of subsection 2201(c) of ARRA. However, if given away or placed in a trust after the end of the exempt period, section 2201 payments would be subject to transfer penalties or being counted under the Medicaid trust provisions, as applicable.

Post-Eligibility Treatment of Income Under Medicaid (Not Applicable to CHIP)

Payments made under section 2201 are not countable as income for purposes of the post-eligibility treatment of income provisions applicable to institutionalized individuals and certain individuals eligible for services under a home and community-based waiver. Counting the payments as income under post-eligibility would result in increased income to the individual, which in turn would result in Medicaid reducing its payment to the provider. Therefore, the amount of benefits payable on behalf of the individual would effectively be reduced. Such a reduction would violate the requirements of subsection 2201(c) of ARRA.

Enclosure D  
ARRA SMD Letter—Section 2202

The following is information on how the specific requirements of subsection 2202(d) of ARRA apply under Medicaid and, where applicable, under CHIP.

Section 2202 of ARRA provides for a \$250 credit against taxes paid (\$500 for joint returns where both spouses are eligible) by certain government retirees who meet the requirements of that section. This credit is effective beginning in 2009. Individuals who receive a payment under section 2201 of ARRA (see Attachment C) are not eligible to receive a credit under section 2202.

Treatment as Income Under Medicaid and CHIP

Payments made under section 2202 are not counted as income when determining eligibility under Medicaid or CHIP for the recipient of the payment, or for any other individual. Therefore, in addition to not counting the payment as income to the individual, any payment made is not countable as income, deemed or otherwise, when determining Medicaid or CHIP eligibility for a spouse or other family members. Also, it is not counted as income to someone else even if it is contributed to that person. Under Medicaid, this also applies in States using more restrictive eligibility criteria than are used by the Supplemental Security Income (SSI) program. These States are commonly referred to as 209(b) States.

Treatment as a Countable Resource Under Medicaid and CHIP

Payments made under section 2202 are not counted as an available resource for a period of **two months** following the month of receipt of the payment (the exempt period). As with the treatment of income described above, this means that during the time a payment is exempt from being counted as a resource to the recipient, it also is not countable as a resource to anyone else. Under Medicaid, this also applies in 209(b) States. For both programs, if any portion of the payment is still retained by the individual after the 2-month period expires, that portion then becomes a countable resource.

Transfers of Assets and Treatment of Trusts Under Medicaid (Not Applicable to CHIP)

In addition to not being counted as income or a resource for eligibility purposes as described above, subsection 2202(d) provides that a credit or refund payment made under section 2202 is not to be counted in determining the amount or extent of benefits or assistance. Under Medicaid, this effectively precludes applying penalties under section 1917(c) of the Social Security Act (the Act) to individuals who, during the period in which section 2202 payments are not countable either as income or resources, dispose of part or all of the payments in a manner that normally would be considered a transfer of assets for less than fair market value.

Section 2202(d) would also preclude counting as available in any way credit or refund payments that may, during the exempt period, be placed in trusts which would normally be governed by the trust provisions at section 1917(d) of the Act. Assessing a transfer penalty, or counting payments placed in a trust during the exempt period as available income or resources, would

effectively treat the payments in a manner that could affect eligibility for, or the amount of benefits under, the Medicaid program.

This would violate the requirements of subsection 2202(d) of ARRA. However, if given away or placed in a trust after the end of the exempt period, section 2202 payments would be subject to transfer penalties or being counted under the Medicaid trust provisions, as applicable.

#### Post-Eligibility Treatment of Income Under Medicaid (Not Applicable to CHIP)

Tax credit or refund payments made under section 2202 are not countable as income for purposes of the post-eligibility treatment of income provisions applicable to institutionalized individuals and certain individuals eligible for services under a home and community-based waiver. Counting these payments as income would result in increasing the individual's income under post-eligibility, which in turn would result in Medicaid reducing its payment to the provider. Therefore, the amount of benefits payable on behalf of the individual would effectively be reduced. Such a reduction would violate the requirements of subsection 2202(d) of ARRA.

Enclosure E  
ARRA SMD Letter - Section 5001

Scope of Application (Section 5001(e))

On page three of the Fact Sheet issued on March 25, 2009 regarding Section 5001 on the Federal Medical Assistance Percentage (FMAP) increase, CMS discussed the availability of increased FMAP for certain expenditures related to expanded eligibility populations. Specifically, the guidance stated:

“There is no availability of increased FMAP for expenditures for eligibility expansion populations added after July 1, 2008 unless the State can demonstrate the eligibility income standard was enacted in State law as of July 1, 2008 or that the State had an amendment or waiver request pending with CMS at that time. Eligibility expansions authorized under State law and submitted to CMS after July 1, 2008 are not eligible for increased FMAP.”

This passage does not reflect the narrow scope of the statutory provision at issue; we clarify that the restriction on the availability of increased FMAP applies only for expenditures for individuals made eligible due to an increased income standard that is based upon a percentage of the Federal poverty level. The restriction would not limit the increased FMAP for expenditures for individuals made eligible for other reasons (due to more liberal income methodologies, or income standards that are not based upon the Federal poverty level, for example).

Reductions in Eligibility under the Home and Community-Based Waiver Program

Elements of the March 25, 2009 guidance related to home and community-based waiver slots as restrictions on eligibility that would prevent a State from receiving increased FMAP included:

3. d. Reducing occupied waiver capacity for section 1915(c) HCBS waivers.
3. e. Reducing or eliminating section 1915(c) waiver slots that were approved, but unoccupied as of July 1, 2008.

The waiver slot issue requires clarification to better reflect the availability of waiver slots as of July 1, 2008. In particular, certain changes to the maximum number of waiver slots in an approved waiver would be permissible if the State can demonstrate that the applicable number of waiver slots available as of July 1, 2008, to be considered with respect to the maintenance of effort requirements of the Recovery Act, is the higher of the number of waiver slots that are occupied, or the number the State legislature actually funded. Any such changes must be expressly identifiable in State law. Funding may not be reduced to a level below that which was available on July 1, 2008.

CMS will continue to clarify its policy around this provision in response to growing knowledge of States' concerns. To that end, we continue to ask States to submit questions to the designated mailbox. Answers to submitted questions will be posted on a continual basis at [http://www.cms.hhs.gov/Recovery/09\\_Medicaid.asp#TopOfPage](http://www.cms.hhs.gov/Recovery/09_Medicaid.asp#TopOfPage).