



## **Center for Medicaid and State Operations**

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SMDL # 10-004

March 5, 2010

### **Re: Revised Clawback Calculations**

Dear State Medicaid Director:

I am writing to confirm the policy that was announced by Secretary Sebelius on February 18, 2010, to apply the increased Federal medical assistance percentage (FMAP) provided for in the American Recovery and Reinvestment Act of 2009 (ARRA) when calculating States' liability under section 1935(c) of the Social Security Act (the Act) for the phased down State Contribution (State Contribution), also referred to as the "clawback," for prescription drug costs for full-benefit dual eligible individuals enrolled in Medicare Part D. This letter and these enclosures provide further information about this policy, an explanation of how the new calculations will be applied and how each State will be notified of its individual adjusted per capita State Contribution rate.

- Recalculation of State Contribution. This letter informs you of how we plan to proceed with recalculating the State Contribution payment to account for the "FMAP Increase" provided for by section 5001 of the ARRA. This recalculation significantly reduces each State's monthly State Contribution amount and will be in effect for the ARRA recession adjustment period, which under current law is October 1, 2008 through December 31, 2010, and is intended to provide assistance to States during this time of economic hardship.
- Notification of Estimated Phased-Down Per-Capita Rates. This letter provides the initial notification to States of their updated per-capita State Contribution amounts beginning with the October through December 2008 quarter and through the January through March 2010 quarter, as described below. Additional notifications will follow on a quarterly basis, as discussed below.

### **RECALCULATION OF STATE CONTRIBUTION**

Each State is billed monthly for the State Contribution. In general, the State Contribution is based upon a per-capita amount that is then multiplied by the monthly enrollment of Part D full-benefit dual eligible individuals in the State. The per-capita amount is determined using a formula that includes the State-specific FMAP that is generally applicable for determining the Federal share of medical assistance expenditures under the Medicaid program. Therefore, a

higher FMAP for a State would mean a lower non-Federal share percentage for a State, and would effectively reduce the State Contribution amount.

In order to provide fiscal relief for States, section 5001 of ARRA provided for significant increases in the States' FMAPs that would otherwise be determined under section 1905(b) of the Act, for a 9-quarter period beginning October 1, 2008 and ending December 31, 2010. Under ARRA, the increases in States' FMAPs can potentially vary by quarter, related to the levels of unemployment in each State. The increases in States' FMAPs under ARRA were effective retroactively, back to the beginning of Federal fiscal year (FY) 2009, that is, October 1, 2008.

To date, the States have been billed for their monthly State Contributions under the process that existed prior to the enactment of ARRA, with the amount billed to each State calculated using the previously applicable single FY 2009 FMAP or FY 2010 FMAP. We are temporarily modifying this billing process to ensure that States receive the benefit of the ARRA increased FMAP in calculating the State Contribution. This new calculation process will be applied to adjust bills back to October 1, 2008, when the ARRA increased FMAP rates became applicable. The difference between these reduced payments and what CMS would have billed the States will be tracked by CMS as a separate item when reporting on ARRA programs.

Below are some key points explaining how the recalculation, payment, and notification process will work:

- FMAP. Because of the unemployment rate factor, the ARRA increased FMAPs can vary by quarter (potentially resulting in up to four different FMAPs for a fiscal year). Due to the timing related to the availability of final unemployment rate data with respect to a quarter; such increased FMAPs may not be finalized until after the beginning of the applicable quarter (States' FMAPs are officially published in the Federal Register by the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services). Therefore, on a prospective basis, monthly billing for the State Contribution will be based on preliminary FMAPs, and may be subject to later adjustments.

We believe these revisions are appropriate given the intersection of section 5001 of ARRA with section 1935(c) of the Social Security Act. Although section 1935(c)(2)(B) requires the Centers for Medicare & Medicaid Services (CMS) to notify a State of its per-capita State Contribution amount by October 15 of the prior year, the formula now includes an FMAP component that may vary based upon unemployment and eligibility for such increased FMAP in accordance with section 5001 of ARRA. Given this variation, we believe it is appropriate to account for this later-enacted statutory provision by providing either upward or downward adjustments that reflect final unemployment rate data as well as the other conditions of section 5001 of ARRA.

- Retroactive application. Adjustments will be made to the monthly billings issued prior to the period in which we are implementing this temporary new procedure. The adjustments will reflect the application of the ARRA increased FMAPs effective back to October 1, 2008. The retroactive adjustment will be reflected as a credit to be applied as an offset for any prospective monthly State Contributions.

- Billing. The State Contribution monthly bill for February 2010 to be issued at the beginning of March will reflect the adjusted per-capita State Contribution amounts using the increased ARRA FMAPs. This bill will include both an itemization of all monthly State Contributions reflecting the retroactive per capita rate adjustments effective October 2008 through January 2010 and the prospective (that is, beginning February 2010) State Contributions reflecting the per capita rate adjustment relating to the ARRA increased FMAP. Subsequent monthly State Contribution bills will reflect the ARRA FMAP applicable for the month.

Any credit balances resulting from the adjustment to the per capita amounts retroactive to October 2008 will be applied prospectively beginning with the State Contribution for February 2010. In that regard, the State may choose not to pay the State Contribution bill for February and the following months until such time as the credit balance is exhausted (the monthly bills will track payments and credit offsets). However, a State may decide to pay its State Contribution bills (including the February bill) which would in effect delay the application of any credit through the remaining months of the State fiscal year; this could result in the application of the credit to payments otherwise due in the next State fiscal year. CMS expects that States may maintain a credit balance for several months based on this adjustment. Once the credit balance is exhausted, the monthly State Contribution bill will only reflect the per capita amount applicable for the month.

- January payment. The monthly State Contribution bill for January 2010, issued at the beginning of February 2010 and due to be paid at the beginning of March, was based on the regular (non-ARRA) FMAP. Because of the significant credit that will result from the adjustment described in this letter, States that have not already paid the State Contribution bill for January may choose not to pay the bill, without a penalty. The payment choice will ultimately be reflected in the credit amount reported in the monthly billing for March 2010, which will be issued in early April.

## **NOTIFICATION OF ESTIMATED STATE CONTRIBUTION AMOUNTS**

Through the end of the period for which the ARRA increased FMAP is applicable, estimated phased-down per-capita rates will be sent to each State before the beginning of each quarter. Those States whose rates do change because of a change in their unemployment levels will be provided their new rate. Therefore, the estimated FMAP and per-capita payment rate for the upcoming quarter, as well as the actual State Contribution amounts for the current quarter, are enclosed with this letter. This information will be the basis for the monthly phased-down State Contribution payments. These monthly payments are defined by the MMA to be the product of a per-capita State Contribution amount multiplied by the monthly State enrollment of full-benefit dual eligibles in Part D plans. That payment will continue to be computed on a monthly basis. As noted above, CMS expects that States will maintain a credit balance for several months based on this adjustment.

For prior periods, CMS will issue an adjustment to bills previously sent to States based on the enclosed chart with all States' quarterly phased-down State Contribution per-capita rates from October 2008 through March 2010. Also enclosed are the increased FMAPs as determined under ARRA that were used in adjusting the State Contribution bills.

We appreciate States' partnership in administering these critical programs and we look forward to our continuing work together. If you have questions regarding these revised calculations, please contact Mr. Richard Strauss, Senior Financial Advisor, Center for Medicaid and State Operations, who may be reached at (410) 786-2019, or via email at [Richard.strauss@cms.hhs.gov](mailto:Richard.strauss@cms.hhs.gov).

Sincerely,

/s/

Cindy Mann  
Director

**Enclosures:**

Table 1 – Quarterly Phase Down State Contribution Per-Capita Rates

Table 2 -- ARRA Increased Federal Medical Assistance Percentage (FMAP): October –  
December 2002 through January – March 2010

cc:

CMS Regional Administrators

CMS Associate Regional Administrators  
Division of Medicaid and Children's Health

Ann C. Kohler  
NASMD Executive Director  
American Public Human Services Association

Joy Wilson  
Director, Health Committee  
National Conference of State Legislatures

Matt Salo  
Director of Health Legislation  
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Christine Evans, M.P.H.  
Chief, Government Relations  
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.  
Executive Director  
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TABLE 1.

**QUARTERLY PHASEDOWN STATE CONTRIBUTION PER-CAPITA RATES  
WITH ARRA INCREASED FMAP**

**OCTOBER - DECEMBER 2008 THROUGH JANUARY-MARCH 2010 QUARTERS**

STATE	<u>OCT - DEC</u> <u>2008 RATE</u>	<u>JAN - MAR</u> <u>2009 RATE</u>	<u>APR - JUN</u> <u>2009 RATE</u>	<u>JUL - SEPT</u> <u>2009 RATE</u>	<u>OCT - DEC</u> <u>2009 RATE</u>	<u>JAN-MAR 2010</u> <u>RATE*</u>
Alabama	44.41	47.59	45.81	45.81	45.77	47.02
Alaska	113.89	122.05	114.84	114.84	114.84	113.90
Arizona	35.37	37.90	36.50	36.50	36.50	37.49
Arkansas	36.32	38.92	36.46	36.46	36.46	36.07
California	71.56	76.68	76.68	76.68	76.68	78.77
Colorado	98.95	106.03	98.81	98.81	98.81	101.49
Connecticut	117.57	125.99	125.99	121.56	121.56	124.86
Delaware	94.23	100.98	97.43	97.43	96.95	99.58
District of Columbia	39.40	42.22	39.18	39.18	39.18	40.24
Florida	83.38	89.35	89.35	89.35	89.35	91.78
Georgia	56.72	60.78	58.53	58.53	57.30	58.86
Hawaii	58.17	62.34	60.09	60.09	60.09	61.73
Idaho	57.47	61.58	59.27	59.27	59.27	60.89
Illinois	95.37	102.19	98.57	98.57	98.57	101.25
Indiana	66.61	71.38	68.77	68.77	64.82	66.59
Iowa	79.44	85.12	85.12	79.96	74.94	76.98
Kansas	84.87	90.94	85.47	82.50	81.77	84.00
Kentucky	53.05	56.85	52.73	52.73	50.86	52.24
Louisiana	47.24	50.62	50.62	48.75	46.90	48.17
Maine	58.06	62.22	57.83	57.83	56.68	58.22
Maryland	103.99	111.43	107.62	103.84	103.84	106.66
Massachusetts	81.51	87.35	84.36	81.39	81.39	83.61
Michigan	54.41	58.30	56.20	56.20	51.23	52.63
Minnesota	96.94	103.88	100.22	100.22	100.22	102.95
Mississippi	30.37	32.55	31.32	31.32	30.08	30.90
Missouri	85.67	91.81	85.33	85.33	81.62	83.84
Montana	57.33	61.43	59.23	59.23	57.03	58.58
Nebraska	86.44	92.63	87.09	87.09	84.47	86.76
Nevada	82.42	88.32	88.32	88.32	88.32	90.72
New Hampshire	122.84	131.63	123.88	119.64	115.43	118.57
New Jersey	124.38	133.28	124.20	124.20	124.20	127.57
New Mexico	37.24	39.91	37.42	36.05	34.21	35.14
New York	91.71	98.27	94.91	91.57	91.57	94.06
North Carolina	65.48	70.17	67.62	67.62	66.38	68.18
North Dakota	63.58	68.13	68.13	68.13	68.13	69.99
Ohio	89.27	95.66	88.94	88.94	85.31	87.63
Oklahoma	45.90	49.18	49.18	47.44	47.44	46.91
Oregon	70.02	75.03	72.31	72.31	71.63	73.58
Pennsylvania	96.16	103.05	99.51	95.96	95.24	97.83
Rhode Island	86.63	92.84	92.84	92.84	92.76	95.28
South Carolina	36.52	39.14	37.66	37.66	37.26	38.27
South Dakota	76.88	82.38	77.40	77.40	76.98	79.07
Tennessee	73.77	79.05	76.15	76.15	72.78	74.76
Texas	58.83	63.05	63.05	60.85	58.65	60.24
Utah	62.32	66.78	60.30	60.30	57.89	59.47
Vermont	74.39	79.72	74.17	74.17	74.17	76.18
Virginia	104.73	112.23	104.58	104.58	104.58	107.42
Washington	95.68	102.53	95.52	95.52	95.52	98.12
West Virginia	43.72	46.85	43.85	40.62	40.62	41.72
Wisconsin	85.92	92.07	83.54	80.54	78.56	80.70
Wyoming	116.31	124.64	124.64	117.30	109.30	112.27

\*Estimate, subject to change based on updated unemployment information

TABLE 2.

## ARRA INCREASED FEDERAL ASSISTANCE PERCENTAGE (FMAP)

OCTOBER - DECEMBER 2008 THROUGH JANUARY - MARCH 2010

STATE	OCT - DEC	JAN - MAR	APR - JUNE	JUL - SEPT	OCT - DEC	JAN - MAR Q2
	Q1 2008 FMAP	Q2 2009 FMAP	Q3 2009 FMAP	Q4 2009 FMAP	Q1 2010 FMAP	2010 FMAP *
Alabama	76.64	76.64	77.51	77.51	77.53	77.53
Alaska	58.68	58.68	61.12	61.12	61.12	62.46
Arizona	75.01	75.01	75.93	75.93	75.93	75.93
Arkansas	79.14	79.14	80.46	80.46	80.46	81.18
California	61.59	61.59	61.59	61.59	61.59	61.59
Colorado	58.78	58.78	61.59	61.59	61.59	61.59
Connecticut	60.19	60.19	60.19	61.59	61.59	61.59
Delaware	60.19	60.19	61.59	61.59	61.78	61.78
District of Columbia	77.68	77.68	79.29	79.29	79.29	79.29
Florida	67.64	67.64	67.64	67.64	67.64	67.64
Georgia	73.44	73.44	74.42	74.42	74.96	74.96
Hawaii	66.13	66.13	67.35	67.35	67.35	67.35
Idaho	78.37	78.37	79.18	79.18	79.18	79.18
Illinois	60.48	60.48	61.88	61.88	61.88	61.88
Indiana	73.23	73.23	74.21	74.21	75.69	75.69
Iowa	68.82	68.82	68.82	70.71	72.55	72.55
Kansas	66.28	66.28	68.31	69.41	69.68	69.68
Kentucky	77.80	77.80	79.41	79.41	80.14	80.14
Louisiana	80.01	80.01	80.01	80.75	81.48	81.48
Maine	72.40	72.40	74.35	74.35	74.86	74.86
Maryland	58.78	58.78	60.19	61.59	61.59	61.59
Massachusetts	58.78	58.78	60.19	61.59	61.59	61.59
Michigan	69.58	69.58	70.68	70.68	73.27	73.27
Minnesota	60.19	60.19	61.59	61.59	61.59	61.59
Mississippi	83.62	83.62	84.24	84.24	84.86	84.86
Missouri	71.24	71.24	73.27	73.27	74.43	74.43
Montana	76.29	76.29	77.14	77.14	77.99	77.99
Nebraska	65.74	65.74	67.79	67.79	68.76	68.76
Nevada	63.93	63.93	63.93	63.93	63.93	63.93
New Hampshire	56.20	56.20	58.78	60.19	61.59	61.59
New Jersey	58.78	58.78	61.59	61.59	61.59	61.59
New Mexico	77.24	77.24	78.66	79.44	80.49	80.49
New York	58.78	58.78	60.19	61.59	61.59	61.59
North Carolina	73.55	73.55	74.51	74.51	74.98	74.98
North Dakota	69.95	69.95	69.95	69.95	69.95	69.95
Ohio	70.25	70.25	72.34	72.34	73.47	73.47
Oklahoma	74.94	74.94	74.94	75.83	75.83	76.73
Oregon	71.58	71.58	72.61	72.61	72.87	72.87
Pennsylvania	63.05	63.05	64.32	65.59	65.85	65.85
Rhode Island	63.89	63.89	63.89	63.89	63.92	63.92
South Carolina	78.55	78.55	79.36	79.36	79.58	79.58
South Dakota	68.75	68.75	70.64	70.64	70.8	70.80
Tennessee	73.25	73.25	74.23	74.23	75.37	75.37
Texas	68.76	68.76	68.76	69.85	70.94	70.94
Utah	77.83	77.83	79.98	79.98	80.78	80.78
Vermont	67.71	67.71	69.96	69.96	69.96	69.96
Virginia	58.78	58.78	61.59	61.59	61.59	61.59
Washington	60.22	60.22	62.94	62.94	62.94	62.94
West Virginia	80.45	80.45	81.7	83.05	83.05	83.05
Wisconsin	65.58	65.58	68.77	69.89	70.63	70.63
Wyoming	56.20	56.20	56.2	58.78	61.59	61.59

\*Estimate, subject to change based on updated unemployment information; official FMAs are published in the Federal Register by the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services