

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid, CHIP, and Survey & Certification

SMDL# 10-010
ARRA# 7

June 21, 2010

RE: Political Subdivisions

Dear State Medicaid Director:

The purpose of this letter is to provide clarification on the interpretation and application of the provision known as the “political subdivision” requirement in section 5001(g)(2) of the American Recovery and Reinvestment Act of 2009 (Recovery Act). This provision was clarified under section 10201(c)(6) of the Patient Protection and Affordable Care Act (Affordable Care Act), which was signed into law on March 23, 2010. The Centers for Medicare & Medicaid Services (CMS) provided initial information to States on the political subdivision requirement through State Medicaid Director letters in June and August of 2009, and also through a Frequently Asked Questions document dated July 7, 2009. Further, each State attests to their compliance with this provision when they access increased FMAP funds provided through their quarterly grant award. However, in light of questions that have arisen since providing this initial information, and the clarification in the Affordable Care Act, CMS believes additional guidance is needed, along with information on how States may demonstrate compliance.

The Recovery Act provision establishes a prerequisite for accessing increased Federal matching funds during the current Recovery Act recession adjustment period (October 1, 2008, through December 31, 2010). This guidance only applies to the Recovery Act and codifies technical assistance that has been offered to States on an as needed basis. A similar provision for accessing certain increased Federal matching funds, enacted in the Affordable Care Act, will be addressed in future guidance.

Background

According to Section 5000 of the Recovery Act, the purpose of title V of the Recovery Act is to “provide fiscal relief to States in a period of economic downturn” and “protect and maintain State Medicaid programs during a period of economic downturn, including by helping to avert cuts to provider payment rates and benefits or services...” Section 5001 provides a temporary increase of the Medicaid Federal medical assistance percentage (FMAP), subject to a series of qualifications and requirements. Particularly, section 5001(g)(2) of the law requires that:

In the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State Medicaid plan required under section 1902(a)(2) of the Social Security Act (42 U.S.C. 1396a(a)(2)), the State is not eligible for an increase in its FMAP under subsection (b) or (c), or an increase in a cap amount under subsection (d), if it requires that such political subdivisions pay for quarters during the recession adjustment period a greater percentage of the non-Federal share of such expenditures, or a greater percentage of the non-Federal share of payments under section 1923, than the respective percentage that would have been required by the State under such plan on September 30, 2008, prior to the application of this section.

This section seeks to prohibit States from shifting Medicaid costs to political subdivisions and to ensure that States share the increased Federal matching dollars generated by the FMAP increase with political subdivisions. In measuring compliance with this provision of the Recovery Act, CMS seeks to ensure that political subdivisions are not shouldering a greater percentage of funding of the Medicaid program without stifling States' ability to manage or modify their Medicaid programs.

Section 10201(c)(6) of the Affordable Care Act amended section 1905 of the Social Security Act to add section (cc) which establishes a similar prohibition on increasing percentage contributions from political subdivisions as a condition of receiving increased Federal funding authorized elsewhere under the Affordable Care Act. In addition, section 1905(cc) contains additional language clarifying the treatment of voluntary contributions by political subdivisions. This additional language specifically indicates that it shall apply to the increased Federal funding in section 5001 of the Recovery Act. The additional language states:

...in the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures required under the State plan under section 1902(a)(2), the State shall not be eligible for an increase in its Federal medical assistance percentage under such subsections if it requires that political subdivisions pay a greater percentage of the non-Federal share of such expenditures, or a greater percentage of the non-Federal share of payments under section 1923, than the respective percentages that would have been required by the State under the State plan under this title, State law, or both, as in effect on December 31, 2009, and without regard to any such increase. Voluntary contributions by a political subdivision to the non-Federal share of expenditures under the State plan under this title or to the non-Federal share of payments under section 1923, shall not be considered to be required contributions for purposes of this subsection. The treatment of voluntary contributions and the treatment of contributions required by a State under the State plan under this title, or State law, as provided by this subsection, shall apply to the increases in the Federal medical assistance percentage under section 5001 of the American Recovery and Reinvestment Act of 2009.

States that have not made any changes to their Medicaid State plan and/or modified the non-Federal share of their Medicaid funding since October 1, 2008, are unlikely to have funding issues which are inconsistent with section 5001(g)(2) of the Recovery Act. However, States that have made changes in their programs and/or modified the non-Federal share of their Medicaid funding since October 1, 2008, must determine if such changes impact the funding of their Medicaid program under section 5001(g)(2). States have several options for demonstrating compliance as described below. If a State violates section 5001(g)(2) it is no longer entitled to the increased FMAP under the Recovery Act.

Demonstrating Compliance

Voluntary Contributions

States that wish to utilize new political subdivision financing can demonstrate compliance with section 5001(g)(2) by documenting that the financing is voluntary. In order to show that the local contribution is voluntary, States should provide CMS with a letter from the appropriate official in charge of the political subdivision providing the contribution certifying that the contribution was voluntary and that the State is in no way requiring the subdivision to provide the funding, and describing any relevant contribution parameters (i.e. time period, amount). If the State can demonstrate that a local contribution is voluntary with such a letter, that specific contribution is considered compliant with section 5001(g)(2) of the Recovery Act. This certification may need to be renewed if it is specific to a particular budget period or political subdivision appropriation.

Non-Voluntary Funding

States with non-voluntary changes in local contributions during the recession adjustment period must demonstrate that the percentage of the non-Federal share of payments provided by political subdivisions during the recession adjustment period is no greater than the percentage they were providing on September 30, 2008. This can be demonstrated using one of the two methodologies described below. Under either method, States should exclude any new voluntary contributions that have been certified by the contributing political subdivision during the recession adjustment period (as discussed above).

Option 1: Aggregate Analysis of non-Federal Share Funding

States may elect to demonstrate compliance by measuring aggregate non-voluntary funding contributions. The goal of this analysis is to consider comparable funding comparisons of the State plan as it existed for services and populations for periods both prior to, and subsequent to, the baseline date. The analysis must include total (medical and administrative costs) annual program costs for the Medicaid program as it existed under the Medicaid State plan on September 30, 2008. In order to accurately reflect the State and local percentage funding of the Medicaid program on September 30, 2008 (the baseline), States must measure the funding of administrative costs and medical services provided, based on the State plan approved and in place on September 30, 2008. CMS understands that States operate their Medicaid State plans on annual cycles and that not all payments captured in the State plan occur quarterly; and that some payments, such as supplemental payments and disproportionate share hospital payments funded by localities may occur less than quarterly. We also understand that these types of payments must be included to accurately reflect a State's internal funding process. In order to

accurately reflect the impact of those funding arrangements, the States' analysis should include total annual program costs for the 12 months ending on September 30, 2008, to measure baseline financing of the Medicaid program, but can be adjusted to annualize funding changes that were in effect on September 30, 2008.

For this baseline period, the State must determine the percentage of the baseline aggregate funding that was required to be furnished by political subdivisions. To determine compliance with section 5001(g)(2) of the Recovery Act, the State must then compare that baseline percentage to the percentage of current expenditures that are, or are estimated to be, funded by political subdivisions.

Option 2: Payment Specific Analysis of non-Federal Share Funding

Alternatively, States may elect to demonstrate compliance based on a comparison of percentage funding obligations by specific payments. Under this approach, the State would compare the percentage of the non-Federal share funded by a political subdivision for each type of expenditure in the baseline, with the current or proposed funding obligation for that same type of expenditure in the current period (including payments to providers and administrative expenditures). The State would demonstrate compliance if there were no increases in the political subdivision funding obligation for any type of expenditure. Under this approach, growth in particular program expenditures, which political subdivisions finance, will not affect compliance as long as the percentage contribution for each particular expenditure type does not increase. States that might want to use this methodology are those that require political subdivision contributions to finance the non-Federal share of particular expenditures, such as inpatient hospital services, that may increase in proportion to the overall program (or fluctuate in proportion to the overall program). This methodology enables States to maintain constant financing mechanisms without regard to shifts in utilization or other fluctuations in particular program expenditures.

It is important to note that States should include in both methodologies only expenditures and funding for services that existed under the State plan as of the baseline date. New services that have been added after the baseline date should not be included in the analysis. One example might be a new or expanded mental health benefit under the rehabilitative services benefit category. These services did not exist at the time of the baseline measurement and would therefore distort the comparison.

It is also important to note that States should include in both methodologies new payments for services or administrative activities that existed under the State plan during the baseline period. An example of a new payment that should be included would be a new targeted supplemental payment for services covered under the State plan prior to the baseline date.

If a State performs one of the two demonstrations described above and the demonstration shows that the percentage has increased above the baseline percentage on September 30, 2008, that State would lose all of its Recovery Act-increased FMAP funding beginning with the date it implemented the increased percentage of political subdivision funding. However, a State could correct the problematic funding by adjusting the funding to the political subdivision to reflect the

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correct percentages as of September 30, 2008, and the Recovery Act-increased FMAP funding would be restored for the entire period the State is in compliance with section 5001(g)(2).

We hope you will find this guidance useful. CMS will continue to provide technical assistance to States seeking to demonstrate compliance with section 5001(g)(2) of the Recovery Act. Questions regarding this guidance may be directed to Ms. Dianne Heffron, Director, Financial Management Group, CMCS at 410-786-3247.

Sincerely,

/s/

Cindy Mann
Director

cc:

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