

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 # 10-023

November 9, 2010

RE: Political Subdivisions

Dear State Medicaid Director:

The purpose of this letter is to clarify that determination of compliance with the “political subdivision provisions” in section 5001(g)(2) of the American Recovery and Reinvestment Act of 2009 (Recovery Act) should be consistent with the provisions of section 1905(cc) of the Social Security Act (Act), which was added by section 10201(c)(6) of the Patient Protection and Affordable Care Act (Affordable Care Act). While we do not believe that this clarification should affect most States, we hope that affected States will find it useful.

Background

Section 5001 of the Recovery Act provided for an increase in the Federal Medical Assistance Percentage (FMAP), which is the Federal share of Medicaid expenditures for medical services, for the duration of a "Recession Adjustment Period". Under section 5001(g)(2), a prerequisite for receipt of such increased Federal funding is that States not increase the percentage of the non-Federal share of Medicaid expenditures that political subdivisions are required to pay from the percentage required under the State plan on September 30, 2008. As we discuss in more detail below, new section 1905(cc) of the Act contains language that affects the treatment of the political subdivision provision under the Recovery Act. And, as indicated in a “CMCS Informational Bulletin” issued on August 18, 2010, the Education, Jobs and Medicaid Assistance Act (P.L. 111-226) extended the increased FMAP under the Recovery Act through June 30, 2011.

In a letter to State Medicaid Directors dated June 21, 2010, available at <http://www.cms.gov/smdl/downloads/SMD10010.pdf>, CMS clarified the application of the political subdivision provision to the treatment of voluntary contributions by political subdivisions to the non-Federal share of Medicaid expenditures, in light of the language of section 1905(cc) of the Act. This discussion of voluntary contributions is still valid. The letter also discussed two options for the treatment of required contributions from political subdivisions under a State plan but that discussion did not fully reflect the provisions of section 1905(cc) of the Act. In addition, CMS previously issued language for State attestations of compliance with the Recovery Act provisions, including those related to political subdivisions; such attestation language has also been included in the grant award letters issued to States related to acceptance of the increased Federal funds associated with the increased FMAP. These attestations did not reflect the effect of section 1905(cc) of the Act.

In this letter, we are clarifying the discussion of the determination of compliance with the political subdivision provision under the Recovery Act, and we are updating the attestations, to give full meaning to the language of section 1905(cc) of the Act as it affects section 5001(g)(2) of the Recovery Act.

Section 1905(cc) of the Act, as added by 10201(c)(6) of the Affordable Care Act

Section 10201(c)(6) of the Affordable Care Act added section 1905(cc) to the Act. The first sentence of section 1905(cc) implements a provision for political subdivisions relative to an increase in States' FMAPs applicable beginning in January 2014. The provision is similar to the provision under section 5001(g)(2) of the Recovery Act, but section 1905(cc) language included some significant changes. The second sentence of section 1905(cc) contains statutory direction on the treatment of voluntary contributions by political subdivisions, as discussed in our June 21, 2010 letter to State Medicaid Directors. The third sentence states that: "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 also apply to the increases in the Federal Medical Assistance Percentage under section 5001 of the American Recovery and Reinvestment Act of 2009."

While the Affordable Care Act did not amend the political subdivision provisions under section 5001(g)(2) of the Recovery Act, the last sentence of the new section 1905(cc) of the Act made a key change in how those provisions apply. Under section 5001(g)(2) of the Recovery Act, compliance was determined by examining the percentage contributions political subdivisions were required to make "under the State Medicaid plan" on September 30, 2008. The new section 1905(cc) states that to comply with the political subdivision provision, the maximum percentage contributions that political subdivisions are required to contribute in any quarter must reflect "the requirements of the Medicaid State plan, or State law, as provided by this subsection" as of September 30, 2008. We read this language to mean that, if the State plan or State law in effect on September 30, 2008 provided for changes in the percentage contributions or dollar amount contributions by political subdivisions, those changes must be given effect as applicable to the current period.

Additional language in the new section 1905(cc) of the Act further affects the determination of compliance with the political subdivision provisions under the Recovery Act. The final phrase in section 5001(g)(2) of the Recovery Act refers to determining the non-Federal share percentage contribution by political subdivisions as would have been required by the State "prior to application of this section." The final phrase in the first sentence of section 1905(cc) of the Act refers to determining the required percentage contribution by the state "without regard to any such increase," referring to the increase in FMAP. We view this language as clarifying that the required contribution by a political subdivision in the period at issue must be measured as a percentage of the non-Federal share that would apply if there were no increased FMAP.

In determining compliance with the political subdivision provisions under section 5001(g)(2) of the Recovery Act, States need to take into account the effect of these provisions of section 1905(cc) of the Act.

Attestation of Compliance with Political Subdivision Provision. We are revising the "attestation language" related to the political subdivisions provision contained in all future Recovery Act grant awards consistent with this guidance. The language will now read as follows:

3. In the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the Medicaid program, the State shall not be eligible for an increase in its FMAP under section (b) or (c) of section 5001 of the Recovery Act, if it requires such political subdivisions to contribute 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 of the Social Security Act (the Act) than the respective percentages that would have been required under the State Medicaid plan, State law, or both, as in effect on September 30, 2008, without regard to 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 of the Act shall not be considered to be required contributions for purposes of this Recovery Act provision. (Section 5001(g)(2) of the Recovery Act, as modified by section 1905(cc) of the Act as amended by section 10201(c)(6) of the Affordable Care Act.)

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 Richard Strauss, Senior Financial Advisor, CMCS at 410-786-2019.

Sincerely,

/s/

Cindy Mann
Director

cc:

CMS Regional Administrators

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

Page 4 – State Medicaid Directors

Richard Fenton
Acting Director
Health Services Division
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Debra Miller
Director for Health Policy
Council of State Governments

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

Carol Steckel
President
National Association of Medicaid Directors

Alan R. Weil, J.D., M.P.P.
Executive Director
National Academy for State Health Policy