

Medicaid Provisions of the American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act (ARRA), signed into law on February 16, 2009, contains provisions that provide \$87 billion to increase the Federal Medical Assistance Percentage (FMAP) over the next two years and extends or creates moratoria on several Medicaid regulations – including the targeted case management and outpatient clinic services rules. In addition, the ARRA provides clear Congressional support for the repeal of the draft regulation on Medicaid rehabilitative services. The following summary describes these provisions in detail. Have Questions? Email Chris Loftis at <mailto:ChrisL@thenationalcouncil.org>.

Note that there are separate fact sheets for the [HIT](#) and [Other Key Provisions](#) of the ARRA on our policy page.

MEDICAID MORATORIA

Sec. 5003 – Extends or creates moratoria – through June 30, 2009 – on four Medicaid regulations for the following: 1) outpatient hospital and clinic services, 2) targeted case management, 3) provider taxes, and 4) school-based administration and transportation services. Congress also included a Sense of Congress that the Secretary of Health and Human Services should not promulgate three regulations concerning rehabilitative services, intergovernmental transfers, and Graduate Medical Education. It is hoped that this action will result in the Administration repealing these draft regulations.

FEDERAL MEDICAL ASSISTANCE PERCENTAGE

Sec. 5001 provides for an \$87 billion increase to the Medical Assistance Percentage (FMAP) over the next two years (Oct. 1, 2008-Dec. 31, 2010). All states will receive an increase in their FMAP by **6.2 percentage points**. In addition, some states are eligible to receive additional ‘hold harmless’ and unemployment-related FMAP increases. This means that a state’s FMAP rate is equal to its current FMAP rate, plus a 6.2% base increase and ‘hold harmless’ and unemployment adjustments (see below). Lastly, the FMAP increase includes ‘prompt pay’ requirements and a maintenance of effort clause, which is applicable for the next two years.

- The first two quarters of the new funding for FY 2009 (approximately \$15.2 billion) was released February 25th by the [U.S. Department of Health and Human Services](#). See [map](#) on DHHS site for allocations for each state.

Scope of Application

- This increase applies to Medicaid, Foster Care, and Adoption Assistance
- This increase does not apply to: 1) Temporary Assistance to Needy Families (TANF), 2) child welfare, 3) child support enforcement, 4) State Children's Health Insurance (SCHIP), 5) Disproportionate Share Hospital (DSH) Payments, 6) items/services subject to an enhanced match, 7) individuals who become eligible as a result of income eligibility standards (expressed as a percentage of the poverty line) that are higher than those that were in effect on July 1, 2008, including standards that were proposed to be in effect under enacted state law that was not effective on July 1, 2008 or a state plan amendment or waiver request that was pending approval as of that date.
 - In these cases, the regular state FMAP applies.

Hold Harmless

- States that would otherwise experience a drop in their federal medical assistance percentages (FMAPs) under the normal FMAP formula would be held harmless against any decline.
- In FY09: If a state's FY09 FMAP is less than its FY08 FMAP, the FMAP increase will be added to the FY08 FMAP. So, if a state has an FY08 FMAP of 60% and an FY09 FMAP of 58%, the 6.2% increase via the ARRA will be applied to the FY08 rate.
- In FY10: If a state's FY10 FMAP is less than either the levels in FY08 or FY09, the FMAP increase in FY10 will be applied to the greater of the FMAP levels for FY08 and FY09. So, if a state has an FY08 FMAP of 60%, an FY09 FMAP of 58%, and an FY10 FMAP of 59%, the 6.2% increase via the ARRA will be applied to the FY08 rate.
- For the 1st calendar quarter of FY11 (through Dec. 31, 2010): If a state's FY11 is less than the FMAP for FY08, FY09 or FY10, the FMAP increase for the first calendar quarter of FY 2011 will be applied to the greater of the FMAP level of the previous fiscal years. So, if a state has an FY08 FMAP of 60%, an FY09 FMAP of 58%, an FY10 FMAP of 59%, and an FY11 FMAP of 57%, the 6.2% increase via the ARRA will be applied to the FY08 rate.

Unemployment

- \$30.45 billion of the \$87 billion is reserved for the unemployment provision based upon a [formula](#) for each state's unemployment rate during the current economic recession. Under this formula, the FMAP increase and the unemployment bonus are weighted on a 65% (FMAP increase) and 35% (unemployment bonus). [See](#) the initial 2009-2011 projections for individual states.

Maintenance of Effort

- A state will be ineligible for the FMAP increase if eligibility standards, methodologies, or procedures under the Medicaid state plan (including Medicaid and/or Section 1115 waivers) are more restrictive than the eligibility standards, methodologies or procedures under the state plan or waiver that was in effect on July 1, 2008 (see “Special Rule” below for exceptions).
- States retain the flexibility to make changes in benefits and reimbursement.
- State Reinstatement of Eligibility Permitted: A state that has restricted eligibility standards, methodologies, or procedures after July 1, 2008, will become eligible for the FMAP increase beginning with the first calendar quarter in which the state has reinstated eligibility standards, methodologies and procedures that are no more restrictive than those that were in effect on July 1, 2008.
 - Special Rule: A state will not be ineligible for the increased FMAP under the following circumstances: 1) on the basis of a restriction that was applied after July 1, 2008 and before the date of enactment of the ARRA and 2) on the basis of a restriction that was effective under state law as of July 1, 2008, and would have been in effect as of that date if it weren’t for a delay (of no more than one calendar quarter) in the approval of a request for a new waiver under section 1115 with respect to the restriction.

Prompt Pay

- Requires states to report monthly to HHS on the states' compliance with the Medicaid prompt pay requirements in Medicaid Statute (42 U.S.C. 1396a(a)(37)(A)), which specifies that the state must pay 90% of clean claims within 30 days of the date of receipt of the claims and that 99% of claims are paid within 90 days of the date of receipt. States must also provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program.
- Existing prompt payment provisions apply to practitioners, in individual or group practice, and the ARRA amendment extends its application to nursing facilities and hospitals.
- Prevents a state from receiving the increased FMAP claims received by the state for days during any period when the state is out of compliance with the Medicaid prompt pay requirements.
- Permits the Secretary to waive this requirement during any period in which there are exigent circumstances - including natural disasters - that prevent the timely processing of claims or the submission of required compliance reports.