

fee for all prescriptions. While the State did not follow this recommendation, it did not adequately explain why it chose the dispensing fee for brand name drugs based on the 40th percentile value (\$8.68) and the initial dispensing fee for generics based slightly below the 80th percentile value (\$11.89). The State's current dispensing fee of \$5.51 is one of the highest in the Nation among State Medicaid programs. The proposed dispensing fee for generic drugs would be the highest in the Nation among State Medicaid programs and would be the largest variance in dispensing fees between brand and generic drugs. Accordingly, the State failed to adequately explain why a dispensing fee slightly below the 80th percentile value would not result in most pharmacies being overpaid to dispense generic drugs. Therefore, we do not believe that the State has demonstrated why this is reasonable.

- Despite the fact that the generic dispensing fee was set at the maximum cost in the survey, the State did not adequately explain why it would further increase the generic fee above the 80th percentile to \$12.68. While the State claimed that increasing the dispensing fee would be budget neutral based on a 2.3 percent increase in the proportion of total claims dispensed as generic drugs, it did not explain why a further incentive from the current \$2 differential to a \$4 differential was reasonable.

- In response to our formal concerns, the State indicated that data do not exist to differentiate dispensing cost of brand versus generic drugs. The State indicated that the intent of the proposed dispensing fee is to encourage the use of less costly generics, and thus avoid the higher ingredient reimbursement of a brand. However, the State failed to consider the ingredient cost of

drugs as well as the cost of dispensing, to ensure that both are being paid appropriately. To increase the dispensing fee without considering the ingredient cost payment so that it accurately estimates acquisition cost results in an overall payment that is inconsistent with the requirement of the statute that payments be consistent with efficiency and economy.

I am scheduling a hearing on your request for reconsideration to be held on December 9, 2008, at the CMS Dallas Regional Office, 1301 Young Street, Suite 833, Room 1196, Dallas, Texas 75202, in order to reconsider the decision to disapprove SPA 07-024. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786-3169. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,  
Kerry Weems,  
*Acting Administrator.*

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: October 16, 2008.

**Kerry Weems,**  
*Acting Administrator, Centers for Medicare & Medicaid Services.*  
[FR Doc. E8-25196 Filed 10-22-08; 8:45 am]  
**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level from a State Program Funded Under Part A of Title IV of the Social Security Act.

*OMB No.:* 0970-0004.

*Description:* The Department of Health and Human Services is required to collect these data under section 1124 of Title I of the Elementary and Secondary Education Act, as amended by Public Law 103-382. The data are used by the U.S. Department of Education for allocation of funds for programs to aid disadvantaged elementary and secondary students. Respondents include various components of State Human Service agencies.

*Respondents:* The 52 respondents include the 50 States, the District of Columbia, and Puerto Rico.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Statistical Report on Children in Foster Homes and Children Receiving Payments in Excess of the Poverty Level From a State Program Funded Under Part A of Title IV of the Social Security Act .....	52	1	264.35	13,746.20

*Estimated Total Annual Burden Hours:* 13,746.20.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**.

Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Date: October 15, 2008.  
**Janean Chambers,**  
*Reports Clearance Officer.*  
[FR Doc. E8-25038 Filed 10-21-08; 8:45 am]  
**BILLING CODE 4184-01-M**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Citizenship and Immigration Services**

**Agency Information Collection Activities: Form I-539, Extension of an Existing Information Collection; Comment Request**

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I-539, Application to Extend/Change Nonimmigrant Status; OMB Control No. 1615-0003.