

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Subsequent updates to the State Plan.	State Government or Qualified State Designated Entity.	56	1	500	28,000
Total .....	.....	.....	.....	.....	589,244

**Terry Nicolosi,**  
*Director, Office of Resources Management;  
 Office of the Chief Information Officer.*  
 [FR Doc. 2010-25918 Filed 10-14-10; 8:45 am]  
 BILLING CODE 4150-45-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**Centers for Medicare & Medicaid Services**

**Delegation of Authorities**

Notice is hereby given that I have delegated to the Administrator, Centers for Medicare & Medicaid Services (CMS), or his or her successor, authorities vested in the Secretary under Section 6409(a) and (b) of the Patient Protection and Affordable Care Act (ACA), Public Law 111-148, as amended hereafter, relating to the development of a Medicare self-referral disclosure protocol and the reduction of amounts due and owing under Section 1877(g) [42 U.S.C. 1395nn(g)] of the Social Security Act.

This delegation of authorities excludes the authority under Section 6409(c) of ACA to submit a report to Congress on the implementation of Section 6409.

This delegation of authorities granted herein may be re-delegated.

These authorities shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations.

I hereby affirm and ratify any actions taken by the Administrator, CMS, or his or her subordinates, which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation of authorities granted herein is effective immediately.

**Authority:** 44 U.S.C. 3101.

Dated: September 29, 2010.

**Kathleen Sebelius,**  
*Secretary.*

[FR Doc. 2010-25976 Filed 10-14-10; 8:45 am]  
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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Medicaid Program: Implementation of Section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 for Adjustments to the Federal Medical Assistance Percentage for Medicaid Federal Matching Funds**

**AGENCY:** Office of the Secretary, Department of Health and Human Services.

**ACTION:** Final notice.

**SUMMARY:** For purposes of Title XIX (Medicaid) of the Social Security Act, the Federal Medical Assistance Percentage (FMAP), defined in section 1905(b) of the Social Security Act, for each State beginning with fiscal year 2006 is subject to adjustment pursuant to section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3. Section 614 provides for a recalculation of the FMAP disregarding identifiable significantly disproportionate employer pension or insurance fund contributions for a State. These contributions, when counted, increase State personal income and, by operation of the statutory formula to calculate the FMAP, would decrease the FMAP for the State. This final notice announces the methodology that the U.S. Department of Health and Human Services will use to determine the need for, and amount of, any such recalculation of the FMAP for a State.

**A. Background**

Section 1905(b) of the Social Security Act defines the Federal Medical Assistance Percentage (FMAP), which is used to determine the share of Federal matching funds paid to each State for medical assistance payments under an approved Medicaid State plan under Title XIX of the Social Security Act. These FMAP rates are also used to determine Federal matching fund rates for State expenditures for assistance payments under certain social service programs under Title IV of the Social Security Act and for child health assistance expenditures under the

Children's Health Insurance Program under title XXI of the Social Security Act. In other **Federal Register** issuances, we have addressed changes to these FMAP rates required under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

This notice addresses adjustments to the FMAP rates that are applicable only to the Medicaid program and required by Section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Section 614 specifies that certain significantly disproportionate employer pension or insurance fund contributions shall be disregarded when computing the per capita income used to calculate the FMAP. The statutory formula for calculating the FMAP is based on the ratio of the State's per capita income to the per capita income of the entire United States. Under this formula, States with higher per capita income levels could have lower FMAP rates than States with lower per capita income levels. Significantly disproportionate employer pension or insurance fund contributions increase State personal income and, by operation of the statutory formula, could result in lower FMAPs than if those contributions were disregarded. CHIPRA requires adjustments to the Fiscal Year 2006 (FY06) through Fiscal Year 2010 (FY10) Medicaid FMAP rates and to any future FMAP calculation.

A notice with comment on the proposed implementation of Section 614 was published in the **Federal Register** on June 7, 2010. Only one person sent in comments during the 30-day period.

**B. Calculation of the FMAP Adjustment Under CHIPRA**

Section 614 of CHIPRA requires that the Title XIX Medicaid FMAP shall be adjusted for any States that had significantly disproportionate employer pension and insurance fund contributions. A significantly disproportionate employer contribution is defined as any identifiable employer contribution towards pension or other employee insurance funds that is estimated to accrue to residents of such

State for a calendar year if the increase exceeds 25 percent of the total increase in State personal income. The personal income data set originally used in calculating FMAP rates shall be used for making this adjustment to the FMAP rates.

The required adjustment is a recalculation of the FMAP rate disregarding any significantly disproportionate employer pension or insurance fund contribution in computing the State per capita income, but not disregarding such contributions in computing the United States per capita income used in the FMAP calculation. Section 614(c) provides that in no case shall a State have its FMAP reduced because of the application of this disregard.

Section 614(b)(3) specifies a special adjustment for negative growth in State personal income. In that instance, for the purposes of calculating the FMAP for a calendar year, an employer pension and insurance fund contribution shall be disregarded to the extent that it exceeds 125 percent of the amount of employer contribution in the previous calendar year. The methodology to implement this provision will be addressed in a future **Federal Register** notice.

### C. Analysis of and Responses to Comments

In response to the June 2010 proposed regulation, we received correspondence from one commenter. The commenter posed several questions and suggestions.

#### *Application of FMAP Adjustment*

*Comment:* The commenter asked if HHS anticipates the adjustment applying to only one particular State or is there a reasonable expectation that other States may qualify? In addition, the commenter asked whether HHS will provide guidance to States in the form of thresholds above which a State may determine that a review of employer contributions is warranted for a potential FMAP adjustment.

*Response:* Except for Louisiana with a negative growth in personal income in 2005, all other States had increases in State personal income of between \$359 million and \$1.4 billion or more during the 2003–2008 time period. A contribution attributed to a particular State's personal income of at least 25 percent of these amounts would be necessary to trigger an FMAP adjustment. At this time, HHS knows of only one disproportionate employer contribution, attributed to Michigan in 2003. HHS does not think it is likely that another employer contribution in

2003–2008 would be considered disproportionate, but does not rule out the possibility. It is possible, however, that additional States may qualify at any point in the future. HHS does not intend to issue guidance with each FMAP notice on a State's potential threshold where a review of its employer contributions may be warranted. States can determine for themselves using Department of Commerce Bureau of Economic Analysis (BEA) data, whether an employer's contribution would meet the threshold for triggering an FMAP adjustment.

#### *Definition of Employer Pension and Insurance Fund Contribution*

*Comment:* The commenter asked whether the definition of "employer pension and insurance fund contribution" is the same as the BEA definition.

*Response:* HHS intends to use the BEA definition: contributions consisting of employer payments (including payments-in-kind) to private pension and profit-sharing plans, publicly administered government employee retirement plans, private group health and life insurance plans, privately administered workers' compensation plans, and supplemental unemployment benefit plans, formerly called "other labor income".

#### *Accounting for Employer's Contributions*

*Comment:* The commenter asked if it is the intent of the methodology to identify single employers with disproportionate pension and insurance fund contributions. The commenter also asked whether contributions from any employer (public, private for-profit, private non-profit, self-employed, S Corporations, C corporations, LLCs, etc) are eligible.

*Response:* The legislation states that a significantly disproportionate employer pension and insurance fund contribution is any identifiable employer contribution meeting the threshold. HHS reads this language to refer to the contribution of a single employer. The legislation does not exclude any employer.

#### *Adjustment for Negative Growth in State Income*

*Comment:* The commenter asked whether the cumulative amount of contributions in excess of 125 percent from all such qualifying employers would be disregarded for the special adjustment for negative growth in State personal income.

*Response:* This comment concerns the special adjustment for negative growth

in State personal income, which is not covered in this notice. HHS intends to issue another notice on the special adjustment for negative growth in State personal income.

#### *Acceptable Evidence Submission*

*Comment:* The commenter suggested that it would be beneficial for HHS to describe in more detail what evidence of disproportionate employer pension and insurance fund contribution is acceptable and asked what methodology will be used to determine the amounts of employer contributions estimated to accrue to residents of a State.

*Response:* In order to give States as much flexibility as possible in the type of information that can be submitted to request an adjustment, HHS does not want to prescribe the specific type or format of their submission, but the information should be documented in such a way to permit effective review and verification. HHS will be using the same methodology employed by BEA which is based on a distribution of industry wages to allocate employer contributions to States.

#### *Time Period for Adjustment and Data Submission*

*Comment:* The commenter asked whether it is correct that there is no end date to this provision. The commenter believed that the time frame for submitting data for employer contributions made between 2003 and 2008 by the end of FY 2010 is unreasonable and that States should be given up to 4 years to supply information for future years. The commenter also asked how long the verification process will take in considering a request to adjust a State's FMAP and indicates that States would appreciate a response within their fiscal year.

*Response:* The commenter correctly noted that the legislation does not indicate an end date to this provision. HHS finds the commenter's suggestion for a longer time frame for submitting initial data for the years 2003 through 2008 reasonable. HHS therefore extends the time frame for submitting data for employer contributions made between 2003 and 2008 to the end of FY 2011. Similarly, HHS agrees to extend the time frame for submitting data from 2009 and beyond such that the deadline for submission of data from 2009 and beyond will be the end of the second fiscal year following the year end of the employer's annual financial statement that includes the disproportionate employer contribution.

Because it is not known what information a State may submit as

justification for an FMAP adjustment, we cannot predetermine how much time will be required to verify the information, but will review and verify a State's submission and request for an adjustment to its FMAP as expeditiously as possible.

#### **D. Methodology Utilized in the Calculation of the Adjustment to the Medicaid FMAP**

This Final Notice announces the methodology that the U.S. Department of Health and Human Services (HHS) will use in implementing the employer contribution disregard required by Section 614 of CHIPRA. The approach reflects the absence of a Federal source of reliable and timely data on pension and insurance contributions by individual employer and State.

We will use the BEA definition of pension and insurance contributions: contributions consisting of employer payments (including payments-in-kind) to private pension and profit-sharing plans, publicly administered government employee retirement plans, private group health and life insurance plans, privately administered workers' compensation plans, and supplemental unemployment benefit plans, formerly called "other labor income".

We will identify significantly disproportionate employer pension or insurance contributions for a State by reviewing contributions identified by the State. We believe that States may have greater access to timely and relevant data on such contributions than is available from Federal data sources. We would request that any State that believes an individual employer has made a significantly disproportionate employer or insurance contribution provide data on that individual employer contribution to HHS. The State may submit official audited financial statements for the employer for the year of the contribution (starting with the year 2003) and the prior year. If the State does not submit official audited financial statements for the employer, the State may submit other evidence that the increase in the employer's contribution is likely to exceed 25 percent of the increase in the State's personal income in that year.

After a State submits written notification that such a contribution occurred, HHS will verify the State's data. As part of this verification process, HHS will search the Security Exchange Commission (SEC) filings or the Internal Revenue Service (IRS) 5500 Annual Return/Report of Employee Benefit Plan database to find the employer's contributions for the relevant two-year period. If HHS is unable to verify the

State's submitted data, no FMAP adjustment will be made.

After the State's data for an employer is verified, HHS will allocate employer contributions in both years to the State according to the methodology used by the BEA. Under that methodology, employer contributions to pension and insurance funds are distributed according to State wages and salaries by the employer's industry subsector. Then, HHS will determine whether the State increase in the employer contribution exceeds the trigger of 25 percent of the increase in total State personal income.

If the employer contribution is significantly disproportionate, HHS will disregard the State-allocated contribution, *i.e.*, subtract it from the State's personal income in that year. HHS will calculate the FMAP adjustment for the State using the revised State per capita income based on the newly calculated State personal income. Since the FMAP calculation involves the average per capita income for three years, the FMAP adjustment will be calculated for each fiscal year affected by the State's revised per capita income. For instance, a significantly disproportionate employer contribution in 2003 would affect the FMAPs for FY06 (based on State per capita income for calendar years 2001, 2002, and 2003), FY07 (based on State per capita income for calendar years 2002, 2003, and 2004), and FY08 (based on State per capita income for calendar years 2003, 2004, and 2005).

States may submit data on disproportionate employer contributions made between 2003 and 2008 to HHS by the end of FY 2011. The deadline for 2009 and beyond will be the end of the second fiscal year following the year end of the employer's annual financial statement that includes the disproportionate employer contribution.

To summarize this methodology, after receipt of a State submission, HHS will verify the employer contributions from SEC filings or IRS 5500 reports for the year of the contribution and the prior year. If the employer contributions are verified, HHS will allocate the employer contributions for the State for both years and determine whether the State increase in the employer contribution exceeds the trigger of 25 percent of the increase in the State's personal income. If the employer contribution meets the definition of significantly disproportionate by exceeding the trigger, HHS will recalculate the FMAP rates for the corresponding fiscal years. The Centers for Medicare & Medicaid Services (CMS) will then calculate the

changes in Federal medical assistance payments resulting from the adjusted FMAP rates for the State's applicable fiscal years. If HHS is unable to verify the State's submitted data, then no FMAP adjustment will be made.

**DATES: Effective Dates:** This final notice is effective 30 days after publication and sets forth a methodology for adjusted percentages applicable under title XIX of the Social Security Act for fiscal years 2006 and beyond, beginning October 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rose Chu or Thomas Musco, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690-6870.

Dated: September 10, 2010 .

**Kathleen Sebelius,**  
*Secretary.*

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**BILLING CODE 4210-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10304 and CMS-10315]

#### **Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Information