Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

NEW JERSEY DID NOT COMPLY WITH RECOVERY ACT REQUIREMENTS FOR RECEIVING INCREASED FEDERAL MEDICAID ASSISTANCE

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

Daniel R. Levinson
Inspector General

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Office of Inspector General

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EXECUTIVE SUMMARY

To comply with the political subdivision requirement in the Recovery Act, New Jersey should redistribute approximately $45.2 million in increased Federal Medicaid assistance to its counties and local school districts.

WHY WE DID THIS REVIEW

This audit is part of a series of reviews of States' compliance with the requirements to receive temporary increases in their Federal medical assistance percentage (FMAP) under the American Recovery and Reinvestment Act of 2009 (Recovery Act). We reviewed States' compliance with Recovery Act requirements because of the significant increases in States' Federal Medicaid assistance.

The objective of this review was to determine whether the New Jersey Department of Human Services (State agency) complied with the political subdivision requirement for receiving the temporary increase in FMAP under the Recovery Act.

BACKGROUND

The Recovery Act provided fiscal relief to States to protect and maintain State Medicaid programs during a period of economic downturn. For the period October 1, 2008, through December 31, 2010 (recession-adjustment period), the Recovery Act provided approximately $87 billion in additional Medicaid funding on the basis of temporary increases in States' FMAPs. The recession-adjustment period was extended through June 30, 2011, but we did not review the State agency's compliance with Federal requirements for this 6-month extension period.

States were eligible for the temporary increase in FMAP only if they did not require political subdivisions (e.g., counties and local school districts) to pay a greater percentage of the non-Federal share of Medicaid expenditures during the recession-adjustment period than the percentage required under the State Medicaid plan during the 12-month period ended September 30, 2008 (base period). For the purposes of this review, we refer to this as the political subdivision requirement.

For the recession-adjustment period, the State agency received an estimated $2.1 billion in additional Medicaid funding on the basis of increases in New Jersey's FMAP.

HOW WE CONDUCTED THIS REVIEW

We reviewed aggregate contributions from New Jersey's political subdivisions to the non-Federal share of New Jersey's total Medicaid expenditures reported on the State agency's Forms CMS-64, Quarterly Medicaid Statement of Expenditures, for the base and recession-adjustment periods.

WHAT WE FOUND

New Jersey did not comply with the political subdivision requirement for receiving the increased FMAP under the Recovery Act. In the aggregate, New Jersey's political subdivisions contributed 4.84 percent of the non-Federal share of Medicaid expenditures during the base period and 6.35 percent of the same share during the recession-adjustment period—a difference of 1.51 percent. We calculated that New Jersey could demonstrate compliance with the political subdivision requirement if it redistributed approximately $45.2 million to its political subdivisions.

New Jersey's political subdivisions contributed a greater percentage of the non-Federal share of Medicaid expenditures during the recession-adjustment period than during the base period because the State agency did not adjust its requirements for these contributions to ensure compliance with the political subdivision requirement before the State agency accessed increased FMAP funds.

WHAT WE RECOMMEND

We recommend that the State agency:

- redistribute approximately $45.2 million in increased FMAP funding to its political subdivisions to comply with the political subdivision requirement and

- work with the Centers for Medicare & Medicaid Services to ensure that, for the 6-month Recovery Act extension period ended June 30, 2011, political subdivisions did not contribute a greater percentage of the non-Federal share of Medicaid expenditures than the percentage required under the State Medicaid plan on September 30, 2008.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency partially agreed with our first recommendation (redistribution of funds) and described actions that it plans to take to address our second recommendation. Specifically, the State agency agreed that it was not in compliance with the political subdivision requirement for receiving increased FMAP under the Recovery Act. However, it disagreed with the amount it must redistribute to New Jersey's political subdivisions for it to comply with the requirement.

According to the State agency, it does not rely on the aggregate methodology—one of two CMS-approved methods—for measuring its compliance and would need to distribute no more than $17,061,780 to local jurisdictions to be in compliance under the CMS-approved payment-specific method. The State agency also took issue with how we calculated the amount that it would need to distribute to county nursing facilities during the recession adjustment period. The State agency also argued that it uses certified public expenditures (CPEs) to fund county-operated nursing and psychiatric facilities and that under such a funding mechanism, there is no county share. The State agency forwarded correspondence between State agency and CMS officials in which CMS confirmed that on the basis of the State agency's description of its funding mechanism, the State agency complied with the political subdivision requirement. Finally, the State agency also indicated that it plans to review data for the 6-month Recovery Act extension period ended June 30, 2011, and take appropriate action, depending on how issues in this report are resolved.

After reviewing the State agency's comments, we revised our finding and recommendation related to county nursing facility expenditures. We did not accept the State agency's argument concerning its use of a CPE funding mechanism because the State agency did not completely and accurately describe its funding mechanism to CMS in its correspondence related to county nursing and psychiatric facility expenditures.

Regardless of whether the State agency relies on either the aggregate or payment-specific method, New Jersey is subject to losing all of its increased FMAP funding for the recession-adjustment period if it does not demonstrate compliance with the political subdivision requirement. However, New Jersey could retain the increased FMAP if it properly adjusts its political subdivisions' contributions during the recession-adjustment period. We calculated that the State agency should redistribute approximately $45.2 million to the political subdivisions for it to comply with the political subdivision requirement and, therefore, retain the increased FMAP funding.

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OBJECTIVE

Our objective was to determine whether the New Jersey Department of Human Services (State agency) complied with the political subdivision requirement for receiving the temporary increase in FMAP under the Recovery Act.

BACKGROUND

The Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements.

The Recovery Act: Political Subdivision Requirement

The Recovery Act provided fiscal relief to States to protect and maintain State Medicaid programs in a period of economic downturn. For the period October 1, 2008, through December 31, 2010 (recession-adjustment period), the Recovery Act provided approximately $87 billion in additional Medicaid funding on the basis of temporary increases in States' FMAPs.[1]

States were eligible for the temporary increase in FMAP only if they did not require political subdivisions (e.g., counties and local school districts) to pay a greater percentage of the non-Federal share of Medicaid expenditures during the recession-adjustment period than the percentage required under the State Medicaid plan during the 12-month period ended

[1] Section 201 of the Education, Jobs, and Medicaid Assistance Act (P.L. No. 111-226) extended the recession-adjustment period through June 30, 2011, by amending section 5001(g)(2) of the Recovery Act. We did not review the State agency's compliance with Federal requirements for this 6-month extension period.

September 30, 2008 (base period) (Recovery Act, § 5001(g)(2)).[2] For the purposes of this review, we refer to this subsection as the political subdivision requirement.

Demonstrating Compliance With the Political Subdivision Requirement

In a letter to State Medicaid directors, CMS provided guidance on the political subdivision requirement.[3] In the letter, CMS stated that States attest to their compliance with the political subdivision requirement when they access increased FMAP funds. States could demonstrate compliance with the political subdivision requirement using one of two methods: the payment-specific method[4] (which compares the percentage of the non-Federal share contributed by each political subdivision for each type of expenditure) or the aggregate method[5] (which compares the percentage contributed by all political subdivisions for the total annual program costs).

CMS recommended that States use the payment-specific method to demonstrate compliance with the political subdivision requirement when political subdivisions are required to contribute to the non-Federal share for particular Medicaid expenditures.

CMS further indicated that failure to comply with Recovery Act requirements would make States subject to losing all of their increased FMAP. However, the increased FMAP would be restored if States corrected any issues by adjusting the funding of the non-Federal share by their political subdivisions to reflect the correct percentages as of September 30, 2008.

For details on the Federal requirements and CMS's guidance on the increased FMAP under the political subdivision requirement, see Appendix B.

New Jersey's Requirements for Contributions by Its Political Subdivisions to the Non-Federal Share of Medicaid Expenditures

In New Jersey, the State agency administers the Medicaid program. The State agency submits the Form CMS-64, Quarterly Medicaid Statement of Expenditures (Form CMS-64), to report

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[2] State Medicaid Director Letter (SMDL) #10-010 defined the base period to be the 12-month period ended September 30, 2008 (CMS, SMDL #10-010, issued June 21, 2010).

[3] CMS, SMDL #10-010, issued June 21, 2010.

[4] Under the payment-specific method, States compared the percentage of the non-Federal share of Medicaid expenditures funded by political subdivisions for each type of expenditure (for which States required the political subdivisions to share the funding of the non-Federal share) in the base period with the funding obligation for the same types of expenditure during the recession-adjustment period. States demonstrated compliance if there were no increases in political subdivision funding obligations for any type of expenditure.

[5] The aggregate method included an analysis of total annual program costs (medical and administrative) for the Medicaid program as it existed under States' Medicaid State plans on September 30, 2008. For the base period, States determined the percentage of aggregate funding of the non-Federal share that was required to be furnished by political subdivisions. To determine compliance with the Recovery Act, States compared the percentages of aggregate funding of the non-Federal share required of political subdivisions during the base and recession-adjustment periods. States demonstrated compliance if the percentage during the recession-adjustment period was no greater than the percentage during the base period.

total computable expenditures to CMS and claim the FMAP of reported expenditures for Medicaid reimbursement. The State agency attested to New Jersey's compliance with the political subdivision requirement of the Recovery Act when it accessed increased FMAP funds.

New Jersey is composed of 21 counties. Seventeen of these counties operated 19 nursing facilities, and 6 counties operated psychiatric facilities during our audit period. There are also more than 600 school districts in New Jersey, some of which operate on a countywide level while others serve single municipalities (e.g., townships). These counties and the school districts are political subdivisions.

New Jersey does not require its political subdivisions to contribute to the non-Federal share of all Medicaid expenditures. Rather, it requires its political subdivisions to contribute to the non-Federal share of four categories of Medicaid expenditures: (1) services provided in county nursing facilities, (2) services to uninsured patients in State agency- and county-operated psychiatric facilities, (3) Medicaid-eligible services administered by local school districts, and (4) certain administrative costs incurred by counties. The non-Federal share is derived by subtracting the applicable Federal share from the total computable expenditures for each category as reported on the State agency's Form CMS-64. For details on New Jersey's requirements related to political subdivisions' participation for each of the four expenditure categories, see Appendix C.

For the recession-adjustment period, the State agency received an estimated $2.1 billion in additional Medicaid funding on the basis of increases in the State's FMAP.[6] Although New Jersey requires political subdivisions to contribute to the non-Federal share for only four categories of Medicaid expenditures, the State agency elected to use the aggregate method (as described in footnote 5) to demonstrate New Jersey's compliance with the political subdivision requirement of the Recovery Act.[7]

HOW WE CONDUCTED THIS REVIEW

We compared New Jersey's political subdivisions' aggregate contributions to the non-Federal share of total Medicaid expenditures reported on the State agency's Forms CMS-64 for the base and recession-adjustment periods.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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[6] The FMAP for New Jersey was 50 percent during the base period. The FMAP was increased to 58.78 percent for the period October 1, 2008, through March 31, 2009, and to 61.59 percent for the period April 1, 2009, through December 31, 2010 (recession-adjustment period).

[7] Before our fieldwork, the State agency indicated in a detailed position paper to CMS that it could demonstrate compliance under the aggregate method. Subsequent to the issuance of our draft report, the State agency indicated that it did not rely on this method. The State agency's subsequent indication did not impact our findings and recommendations.

Appendix D contains the details of our audit scope and methodology.

FINDINGS

New Jersey did not comply with the political subdivision requirement for receiving the increased FMAP under the Recovery Act. In the aggregate, New Jersey's political subdivisions contributed 4.84 percent of the non-Federal share of Medicaid expenditures during the base period and 6.35 percent of the same share during the recession-adjustment period—a difference of 1.51 percent. We calculated that New Jersey could demonstrate compliance with the political subdivision requirement if it redistributed approximately $45.2 million to its political subdivisions.[8] Although the difference (1.51 percent) is approximately $145.2 million, this amount differs from what we are recommending New Jersey redistribute because of the way in which States were to calculate their political subdivisions' contributions using the aggregate method and the nature of New Jersey's policies for reimbursing political subdivisions' Medicaid expenditures.

Appendix E contains our calculation of political subdivisions' percentage contribution of the non-Federal share using the aggregate method. Appendix F shows the components of our calculation (i.e., political subdivisions' Medicaid expenditures).

New Jersey's political subdivisions contributed a greater percentage of the non-Federal share of Medicaid expenditures during the recession-adjustment period than during the base period because the State agency did not adjust its requirements for these contributions to ensure compliance with the political subdivision requirement before the State agency accessed increased FMAP funds.

SERVICES IN COUNTY NURSING FACILITIES

New Jersey claims Medicaid reimbursement for county nursing facilities on the basis of actual allowable Medicaid costs incurred by the provider.[9] Funding for such county-administered nursing facilities is composed of a Federal share and the non-Federal share. The non-Federal share is composed of the (1) State (New Jersey) share and (2) contributions from each county (which is the difference between the total non-Federal share and the State share).

New Jersey reimburses counties for services in nursing facilities using a blended rate composed of Federal and New Jersey shares. Contributions made by the counties cover the remainder of their facilities' actual expenditures.

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[8] The political subdivisions' contributions to the non-Federal share of expenditures during the recession-adjustment period totaled $611,175,502. The non-Federal share for the same period totaled $9,627,356,951. Applying the political subdivision percentage from the base period (4.84 percent) to the non-Federal share of expenditures during the recession-adjustment period results in excess contributions of $145,218,212 under the aggregate method of demonstrating compliance: [$611,175,502 – (4.84 x $9,627,256,951)] = $145,218,212.

[9] The State agency establishes interim rates and claims Medicaid reimbursement for each facility using the facility's most recently reviewed and approved cost report, inflated by a factor for projected labor costs and the Consumer Price Index. Medicaid reimbursement claimed is adjusted to the facility's actual costs when the cost report for the applicable rate year is filed.

During the recession-adjustment period, as a result of New Jersey's method for reimbursing its political subdivisions for expenditures in county nursing facilities (i.e., using a "blended rate"), counties contributed a greater percentage of the non-Federal share of expenditures. Specifically, as the FMAP increased during the recession-adjustment period, the reimbursement to the counties, in aggregate, did not increase at the same rate; as a result, counties funded a greater percentage of the non-Federal share of nursing facility expenditures.

For details on the political subdivisions' contributions to the non-Federal share of Medicaid expenditures for county nursing facilities, see Appendix G.

SERVICES TO UNINSURED PATIENTS IN STATE AGENCY- AND COUNTY-OPERATED PSYCHIATRIC FACILITIES

New Jersey requires that counties contribute a portion of the expenditures for uninsured residents in State agency- and county-operated psychiatric facilities. During the base period, New Jersey required its counties to contribute 10 percent of the total expenditures for county residents residing in State agency- and county-operated psychiatric facilities (New Jersey Statutes Annotated (N.J.S.A.) § 30:4-78).

In calendar years (CYs) 2009 and 2010, New Jersey law, which became effective after September 30, 2008 (the date set out in the Recovery Act for measuring compliance with the political subdivision requirement), required New Jersey counties to contribute 12.5 and 15 percent, respectively, of total expenditures for county residents residing in State agency- and county-operated psychiatric facilities (Public Law 2008, chapter 35, and Public Law 2009, chapter 68).[10]

As a result, the State agency increased the political subdivisions' non-Federal share of funding obligations for uninsured patients in State agency- and county-operated psychiatric facilities during the recession-adjustment period.

For details on the political subdivisions' contributions to the non-Federal share of Medicaid expenditures for psychiatric facilities, see Appendix G.

[10] The law setting the CY 2009 rate was passed on June 30, 2008, with an effective date of January 1, 2009. The law setting the CY 2010 rate was passed on June 30, 2009, with an effective date of January 1, 2010. In a November 9, 2010, letter to State Medicaid directors, CMS stated that, to show compliance with the political subdivision requirement, State laws effective after September 30, 2008, should not have increased political subdivisions' percentage contributions to the non-Federal share (SMDL #10-023).

MEDICAID-ELIGIBLE SCHOOL-BASED SERVICES

To comply with the political subdivision requirement, States that use certified public expenditures (CPEs)[11] as a funding mechanism should have ensured that as the Federal share increased, the reduction in the non-Federal share was credited proportionately to the contributing public agency.[12] To comply with this requirement, States were required to review requirements with their political subdivisions to ensure that any agreements where specific dollar amounts are transferred were adjusted so that the overall percentage of the non-Federal share contribution was not increased because of an increase in the FMAP rate and the reduction in the non-Federal share.

Provisions in New Jersey Budget Appropriation Acts for State fiscal years 2008 through 2011 (Public Law 2007 through Public Law 2010) required that each local school district that participated in the Special Education Medicaid Initiative (SEMI) receive Federal revenue that equaled 17.5 percent of the claims (a specific dollar amount) approved by New Jersey. These SEMI expenditures are treated as CPEs. Thus, New Jersey should have ensured that as the Federal share increased, the reduction in the non-Federal share was credited proportionately to the political subdivisions.

The school districts' percentage contribution to the non-Federal share during the recession-adjustment period exceeded the percentage during the base period because the State agency did not credit the school districts proportionately for the reduction in the non-Federal share as the Federal share increased under the Recovery Act. Specifically, as the Federal share increased during the recession-adjustment period, the local school districts continued receiving 17.5 percent of the claims approved by New Jersey, thereby effectively increasing the school districts' contribution percentage of the non-Federal share of Medicaid-eligible services during the recession-adjustment period. As a result, the State agency increased the school districts' funding obligations for the non-Federal share of Medicaid-eligible services in local school districts during the recession-adjustment period.

For details on the political subdivisions' contributions to the non-Federal share of Medicaid expenditures for SEMI, see Appendix G.

CONCLUSION

We determined that New Jersey did not comply with the political subdivision requirement. Therefore, CMS could make New Jersey subject to losing all of its increased FMAP. However, per CMS guidance, the increased FMAP would be restored if New Jersey corrected any issues by adjusting the funding of the non-Federal share by its political subdivisions to reflect the correct percentages as of the end of the base period.

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[11] CPEs are actual expenditures that a governmental entity (e.g., county hospital, local school district) certifies it has incurred in providing eligible Medicaid services (42 CFR 433.51).

[12] CMS, *American Recovery and Reinvestment Act of 2009 Frequently Asked Questions from States*, July 7, 2009.

In the aggregate, political subdivisions contributed 4.84 percent of the non-Federal share during the base period and 6.35 percent of the same share during the recession-adjustment period. Although this is a difference of approximately $145.2 million,[13] New Jersey could demonstrate compliance with the political subdivision requirement if it redistributed approximately $45.2 million to its political subdivisions. For details on our calculation of the amount New Jersey should redistribute to its political subdivisions, see Appendix G.[14]

RECOMMENDATIONS

We recommend that the State agency:

- redistribute approximately $45.2 million in increased FMAP funding to its political subdivisions to comply with the political subdivision requirement and

- work with CMS to ensure that, for the 6-month Recovery Act extension period ended June 30, 2011, political subdivisions did not contribute a greater percentage of the non-Federal share of Medicaid expenditures than the percentage required under the State Medicaid plan on September 30, 2008.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency partially agreed with our first recommendation (redistribution of funds) and described actions that it plans to take to address our second recommendation. Specifically, the State agency agreed that it was not in compliance with the political subdivision requirement for receiving increased FMAP under the Recovery Act. However, it disagreed with the amount it must redistribute to New Jersey's political subdivisions for it to comply with the requirement.

According to the State agency, it does not rely on the aggregate methodology for measuring its compliance and would need to distribute no more than $17,061,780 to local jurisdictions to be in compliance under the payment-specific method. The State agency also took issue with how we calculated the amount that it would need to distribute to county nursing facilities during the recession adjustment period. The State agency also indicated that it plans to review data for the 6-month Recovery Act extension period ended June 30, 2011, and take appropriate action, depending on how issues in this report are resolved.

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[13] This amount is the result of how States were to calculate their political subdivisions' contributions using the aggregate method and the nature of New Jersey's requirements for funding the non-Federal share of Medicaid expenditures.

[14] Our calculation comprises the following expenditure categories: County Nursing Facilities ($20,883,357), State Agency- and County-Operated Psychiatric Facilities ($10,403,984), and School-Based Health Services ($13,916,801). Our calculation of the adjustment does not include political subdivisions' contributions to the non-Federal share of Medicaid expenditures for certain administrative costs incurred by the counties because the State agency did not require the political subdivisions to contribute more to this expenditure category during the recession-adjustment period than it did during the base period.

After reviewing the State agency's comments, we revised our finding and recommendation related to county nursing facility expenditures. Regardless of whether the State agency relies on either the aggregate or payment-specific method, New Jersey is subject to losing all of its increased FMAP funding for the recession adjustment period if it does not demonstrate compliance with the political subdivision requirement. However, New Jersey could retain the increased FMAP if it properly adjusts its political subdivisions' contributions during the recession-adjustment period. We calculated that the State agency should redistribute approximately $45.2 million to the political subdivisions for it to comply with the political subdivision requirement and, therefore, retain the increased FMAP funding awarded during the recession-adjustment period. The State agency's comments appear in their entirety as Appendix H (February 21, 2014) and Appendix I (March 31, 2014). The State agency's comments dated March 31, 2014, addressed only the subject of the State agency's use of CPEs.

PAYMENT-SPECIFIC METHOD

Use of Certified Public Expenditures

State Agency Comments

The State agency stated that it fully complied with the political subdivision requirement for expenditures related to county nursing and psychiatric facilities and that these expenditures were incurred on a CPE basis. In its February 21, 2014, comments, the State agency stated that CMS views reimbursements to counties of the non-Federal share in CPE cases as an *internal matter* (emphasis in original) between States and counties and considers the counties, for Recovery Act purposes, as bearing the cost of all expenditures less the Federal reimbursement the State passed through to counties. The State agency further stated that, for each service type, the amount it reimbursed to the counties exceeded 100 percent of the Federal share.

In its February 21, 2014, comments, the State agency stated that we did not account for county nursing and psychiatric facility expenditures as CPEs and, therefore, significantly overstated the amount the State agency must redistribute to counties. In its March 31, 2014, comments, the State agency forwarded correspondence between State agency and CMS officials in which CMS confirmed that on the basis of the State agency's description[15] of its funding mechanism, the State agency complied with the political subdivision requirement. On the basis of its correspondence with CMS, the State agency requested that we withdraw our recommendation that the State redistribute funds to county nursing homes and county psychiatric facilities.

Office of Inspector General Response

The State agency did not completely and accurately describe its funding mechanism to CMS in its correspondence related to county nursing and psychiatric facility expenditures. Specifically, the State agency did not fully describe the funding mechanism prescribed in its State Medicaid plan for county nursing facility expenditures. The State Medicaid plan (Attachment 4.19-D, § 3.22) provides a funding methodology for county nursing expenditures based on Federal, State,

[15] The State agency described these expenditures in a March 10, 2014, letter to CMS that the State agency included in its comments dated March 31, 2014.

and county shares of costs incurred by the facilities. (A copy of the applicable Medicaid State plan provision is included as part of Appendix C.) The funding methodology requires both the State and each county to contribute to the non-Federal share. As such, each county does not contribute 100 percent of the total non-Federal share.[16] This fact was omitted from the State agency's correspondence with CMS regarding CPEs. The State agency similarly contributed a portion of the non-Federal share for county psychiatric facility expenditures.

We maintain that, during the recession adjustment period, the State agency required counties to contribute a greater percentage toward the non-Federal share of county nursing and psychiatric facility expenditures than during the base period. To illustrate the State's contribution amounts and percentages of the non-Federal share of these expenditures during the base and recession-adjustment periods, we inserted additional columns in Tables 5a, 5b, 6a, and 6b in Appendix G. Table 1 below summarizes these percentages and demonstrates that the State contribution percentage toward the non-Federal share *decreased* while counties' contribution percentages toward the same share *increased* during the recession-adjustment period, as compared to the base period.

Table 1: County Contribution Increased During the Recession-Adjustment Period

	Base Period		Recession-Adjustment Period	
Expenditure Category	**County Contribution**	**State Contribution**	**County Contribution**	**State Contribution**
County Nursing Facilities	52.93%	47.07%	59.54%	40.46%
County Psychiatric Facilities	8.37%	91.63%	10.51%	89.49%

Services in County Nursing Facilities

State Agency Comments

In its February 21, 2014, comments,[17] the State agency restated its position that it paid counties the full amount of the Federal share for expenditures related to services in county-operated nursing facilities during both the base and recession-adjustment periods. Further, the State agency indicated that the draft report focused on county nursing facilities for which OIG determined that the State paid counties a lower percentage of the non-Federal share of expenditures in the recession-adjustment period, as compared to the base period, and ignored those county nursing facilities for which the State paid counties a greater percentage of the non-Federal share of expenditures. According to the State agency, it is appropriate to take into account the aggregated total of State payments to all county nursing facilities. Therefore,

[16] This is not considered a traditional CPE funding mechanism because the State agency bore a portion of the non-Federal share for these expenditures, whereas in a traditional CPE funding mechanism, the entire non-Federal share is borne by the local governmental entity. We note that the State agency uses a traditional CPE funding mechanism to reimburse local school districts for Medicaid-eligible services.

[17] Throughout the remainder of this report, we refer to these comments as the "State agency's comments" because the State agency's March 31, 2014, comments dealt solely with its use of CPEs.

according to the State agency, the amount to be redistributed to counties would be reduced to $20,883,357.

Office of Inspector General Response

We revised our finding and related recommendation to reflect that the State should redistribute $20,883,357 to the counties to correct the problematic funding and return to the correct percentages as of September 30, 2008.[18]

Services in State Agency- and County-Operated Psychiatric Facilities

State Agency Comments

The State agency stated that it covered far more than the Federal share of Medicaid payments for services at county-operated psychiatric facilities during the base and recession-adjustment periods. Specifically, the State agency stated that it covered at least 85 percent of the total cost of serving uninsured patients at these facilities and the entire cost of patients in these facilities that had not resided for at least 5 years in the county they were being treated in.

Further, according to the State agency, the increase in the county contribution percentage required for expenditures for county residents residing in State agency- and county-operated psychiatric facilities—from 10 percent in CY 2008 to 12.5 percent in CY 2009—was established by State law "enacted on or about July 1, 2008." Therefore, according to the State agency, the increase was the result of State law "in place as of September 30, 2008," which would be allowable under the Recovery Act. The State agency stated that the increase from 12.5 percent in CY 2009 to 15 percent in CY 2010 "might arguably be seen as inconsistent" with the political subdivision requirement. Nevertheless, the State agency stated that it was already fully compliant with the political subdivision requirement for county psychiatric facilities because it distributed the full Federal share of these expenditures to the counties.

Finally, the State agency stated that we did not consider the portion of the State's expenditures for psychiatric hospital reimbursements that exceeded annual disproportionate share hospital (DSH) allotments that the State agency claimed on its Forms CMS-64 and for which it received Federal matching funds. Also, according to the State agency, counties did not participate in all of the expenditures related to State agency-operated hospitals. Therefore, the calculation of the amount billed to the counties in excess of contribution limits needs to consider these factors. According to the State agency, the amount of excess billing to the counties for these expenditures was $3,144,979.

[18] The $20,883,357 represents the net amount of 12 counties' contributions during the recession adjustment period in excess of their percentage contributions during the base period and 5 counties' percentage contributions during the recession adjustment period that were less than what they contributed during the base period. The total of excess contributions by the 12 counties was $32,761,148. For the five counties whose percentage contributions were less than what they were required to pay during the base period, their total contributions were $11,877,791 less during the recession adjustment period. We determined the amount to be redistributed to the counties in accordance with SMDL #10-010 (pages 4–5).

Office of Inspector General Response

We maintain that our finding regarding services to uninsured patients in State agency- and county-operated psychiatric facilities is valid. CMS has interpreted the requirement that the base-period calculation for the political subdivision requirement is established by the "Medicaid State plan or State law as of September 30, 2008," to mean the State plan or State law that was "*in effect* on September 30, 2008" (emphasis added)[19]—not whether the State plan or State law was *enacted* on or before September 30, 2008. Accordingly, the date the State plan or State law was passed or in place is not relevant when calculating base-period calculations.

While the State law increasing the county contribution percentage was enacted "on or about July 1, 2008," as the State agency states, the *effective* date of the increase—from 10 percent to 12.5 percent—was January 1, 2009,[20] 3 months after the political subdivision requirement's "in effect" date.

We disagree with the State agency's assertion that it complied with the political subdivision requirement for services to uninsured patients in State agency- and county-operated psychiatric facilities. As the counties' contribution percentage required for this expenditure category *increased* from 10 percent in CY 2008, to 12.5 percent in CY 2009, and to 15 percent in CY 2010, the State's contribution percentage of the non-Federal share *decreased*. This was inconsistent with the political subdivision requirement.

We agree that we did not consider the portion of State's expenditures for psychiatric hospital reimbursement that exceeded annual DSH allotments. To determine compliance with political subdivision requirements, we were required to review only the portion of expenditures for services to uninsured patients in State agency- and county-operated psychiatric facilities that required Federal matching funds (i.e., annual DSH allotments claimed on Forms CMS-64) and calculated the counties' contributions to the non-Federal share of these expenditures. The remaining State expenditures for psychiatric hospital reimbursements are considered an internal matter between the State and the counties because there is no Federal and non-Federal share amounts associated with these expenditures. Therefore, we maintain that the State should redistribute $10,403,984 to counties for services to uninsured patients in State agency- and county-operated psychiatric facilities.

Medicaid-Eligible School-Based Services

The State agency did not question our calculation that it would need to redistribute $13,916,801 to New Jersey school districts to be in compliance with the political subdivision requirement.

[19] CMS, SMDL # 10-023 (November 9, 2010).

[20] According to New Jersey Public Law 2008, chapter 35: "For all calendar years beginning January 1, 2009, the total amount to be paid by the State … shall not exceed 87.5% ...."

AGGREGATE METHOD

State Agency Comments

The State agency stated that it identified a "methodological error"—not treating county nursing and psychiatric facility expenditures as CPEs—in our calculation of the percentage of the non-Federal share the political subdivisions paid during both the base and recession-adjustment periods. The State agency stated that once this error is corrected, it can demonstrate that political subdivisions contributed 7.8 and 8.87 percent during the base and recession-adjustment periods, respectively, resulting in a discrepancy of just over $100 million, as detailed in Appendix B of the State agency's response. The State agency stated that it does not rely on the aggregate methodology for measuring its compliance with the political subdivision requirement. Rather, the State agency stated that it would need to redistribute no more than $17,061,780 to political subdivisions to be in compliance under the payment-specific method.

Office of Inspector General Response

We maintain that our findings and recommendations are valid. We disagree that our calculation of the percentage contribution toward the non-Federal share that New Jersey political subdivisions contributed during both the base and recession-adjustment periods contained a "methodological error." See our comments under the heading "Use of Certified Public Expenditures." We note that even with the claimed "methodological error," according to State agency's calculations, the political subdivisions contributed a greater percentage of the non-Federal share during the recession adjustment period than during the base period.

Regarding the State agency's statement that it does not rely on the aggregate methodology for measuring its compliance with the political subdivision requirement, we note that this statement is contrary to what the State agency indicated to CMS in memoranda before the start of our audit. Nevertheless, we note that the State agency may elect to use either the aggregate or payment-specific method to demonstrate its compliance with the political subdivision requirement.

CONCLUSION

State Agency Comments

The State agency stated that, to demonstrate compliance with the political subdivision requirement under the payment-specific method, the State need redistribute only $13,916,801 to the school districts for Medicaid-eligible school-based health services and $3,144,979 to counties for excess amounts contributed to them for State agency-operated psychiatric facilities in CY 2010. The State agency's comments appear in their entirety as Appendix H.

Office of Inspector General Response

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid, regardless of whether the State agency relies on either the aggregate or payment-specific method. Using CMS guidance, we calculated that the State agency should redistribute approximately $45.2 million to the political subdivisions for it to comply with the political subdivision requirement and, therefore, retain the increased FMAP funding awarded during the recession-adjustment period.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Table 2: Reviews of States' Eligibility for the Increased Federal Medical Assistance Percentage Under the Recovery and Reinvestment Act

Report Title	Report Number	Date Issued
Review of the Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program in the U.S. Virgin Islands for the Quarter Ended September 30, 2009	A-02-11-01004	4/17/2012
Review of New Jersey's Compliance With the Reserve or Rainy Day Fund Requirement for the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act	A-02-09-01030	9/27/2010
Review of New York State's Compliance With the Prompt Pay Requirements for the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act of 2009	A-02-09-01037	8/5/2010
Review of New York State's Compliance With the Political Subdivision Requirement for the Increased Federal Medical Assistance Percentage Under the American Recovery and Reinvestment Act of 2009	A-02-09-01029	5/26/2010

APPENDIX B: FEDERAL ELIGIBILITY REQUIREMENTS FOR THE INCREASED FEDERAL MEDICAL ASSISTANCE PERCENTAGE UNDER THE RECOVERY ACT

Pursuant to section 5001(g)(2) of the Recovery Act and section 10201(c)(6) of the Affordable Care Act, a State is not eligible for the increased FMAP if it requires its political subdivisions to pay a greater percentage of the non-Federal share of Medicaid expenditures than the percentage required under the State Medicaid plan or State law on September 30, 2008.

In SMDL # 10-010, dated June 21, 2010, CMS indicated that States attested to their compliance with the political subdivision requirement of the Recovery Act when they accessed increased FMAP funds. States could demonstrate compliance with the requirement under either the aggregate or payment-specific method of measuring nonvoluntary contributions by their political subdivisions toward the non-Federal share of Medicaid expenditures.

The aggregate method includes an analysis of total annual program costs (medical and administrative) for the Medicaid program as it existed under the Medicaid State plan on September 30, 2008. To measure base period financing of the Medicaid program, the analysis should include total annual program costs for the 12 months ended on September 30, 2008 (base period). For the base period, the State would determine the percentage of aggregate funding of the non-Federal share that was required to be furnished by political subdivisions. To determine compliance with the Recovery Act, the State would compare the base percentage to the percentage of aggregate funding of the non-Federal share required of the political subdivisions during the recession-adjustment period. The State would demonstrate compliance if the percentage during the recession-adjustment period is no greater than the percentage during the base period.

Under the payment-specific approach, the State would compare the percentage of the non-Federal share funded by political subdivisions for each type of expenditure (for which the State requires the political subdivisions to share the funding of the non-Federal Share) in the base period, with the funding obligation for the same types of expenditure during the recession-adjustment period. The State would demonstrate compliance if there were no increases in the political subdivision funding obligations for any type of expenditure.

Pursuant to section 10201(c)(6) of the Affordable Care Act and SMDL # 10-023, dated November 9, 2010, 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. 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 during the recessionary adjustment period.

In "American Recovery and Reinvestment Act of 2009 Frequently Asked Questions from States, July 7, 2009," CMS stated, that under a CPE financing mechanism, the applicable percentage of the non-Federal share for claiming purposes is no less than 100 percent (but could be more if the State does not share the Federal payment with the subdivision). The State should ensure that, as the Federal share increases, the reduction in the non-Federal share is credited proportionately to the contributing public agency CPEs.

APPENDIX C: NEW JERSEY REQUIREMENTS FOR CONTRIBUTIONS BY POLITICAL SUBDIVISIONS TO THE NON-FEDERAL SHARE OF CERTAIN MEDICAID EXPENDITURES

NEW JERSEY REQUIREMENTS

New Jersey's requirements for contributions by political subdivisions to the non-Federal share of certain categories of Medicaid expenditures are contained in Title 30 of the N.J.S.A., the New Jersey Budget Appropriation Acts, and in the Medicaid State plan.

Pursuant to New Jersey's Medicaid State plan (Attachment 4.19-D, § 3.22), funding for county-administered skilled nursing facilities is composed of: the Federal share, which will be 50 percent of the cost on the basis of recognition of total actual costs incurred; New Jersey's share, which will continue as if there were no governmental peer grouping; and the contribution from each county that has a county-administered skilled nursing facility, which will be the difference between New Jersey's share and the total non-Federal share of the Medicaid rate. (See the following page for a copy of the Medicaid State plan provision related to funding county nursing facilities.)

Pursuant to N.J.S.A. § 30:4-68, each county bears the cost of care and maintenance for a patient who has a legal settlement in the county and is not able to pay the cost of his or her hospitalization. N.J.S.A. § 30:4-78 requires that the county share of payments to State agency- and county-operated psychiatric facilities for the reasonable cost of maintenance of county patients be 10 percent, as of September 30, 2008. Beginning in CY 2009, the county contribution percentage increased to 12.5 percent, per the New Jersey Budget Appropriation Acts (Public Law 2008) and to 15 percent for CY 2010 (Public Law 2009, chapter 68).

Provisions in New Jersey Budget Appropriation Acts for State fiscal years 2008 through 2011 stated that each local school district that participates in SEMI should receive a percentage of the Federal revenue realized for the current year claims. The percentage share should have been 17.5 percent of claims approved by New Jersey by June 30.

Pursuant to New Jersey's Medicaid State plan, § 6.3(a), there is local financial participation in the administration of the Medicaid program. County contributions are determined by the annual budgeting process.

Attachment 4.19-D
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3.22 FUNDING

The funding for Class II Nursing Facilities will be comprised of the following:

1. The federal share will be 50 percent of the cost based upon recognition of total actual costs incurred by the Class II Nursing Facilities.

2. The State share will continue as if there were no governmental peer grouping.

3. The contribution from each county which has a Class II nursing facility will be the difference between the State share and the total non-federal share of the Medicaid rate.

04-11-MA(NJ)

TN 04-11
Supersedes TN: 95-14-MA (NJ)

Approval Date JUN - 6 2006
Effective Date OCT - 3 2004

APPENDIX D: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed New Jersey political subdivisions' contributions to the non-Federal portion of total Medicaid expenditures reported on the State agency's Forms CMS-64 for the 12-month base period (ended September 30, 2008) and for the recession-adjustment period (October 1, 2008, through December 31, 2010).

We did not assess the State agency's overall internal control structure. We limited our review of internal controls to those applicable to our objective, which did not require an understanding of all internal controls over the Medicaid program. We reviewed the State agency's procedures for disbursing the increased FMAP benefit to its political subdivisions. We did not assess the appropriateness of Medicaid payments for any of the categories of expenditures for which the State agency requires its political subdivisions to contribute to the non-Federal share of Medicaid expenditures.

We performed our fieldwork at the State agency's offices in Trenton, New Jersey, and at five county government offices from September 2011 through December 2012.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;

- met with CMS financial and program management officials to identify New Jersey's requirements for local financial participation toward Medicaid claims;

- met with State agency and county government officials to gain an understanding of New Jersey's requirements and procedures for determining the political subdivisions' share of Medicaid payments and any changes made to those requirements and procedures beginning October 1, 2008;

- obtained and reviewed total computable Medicaid expenditures (medical and administrative) on the State agency's Forms CMS-64 for all quarters in the base and recession-adjustment periods;

- computed the total non-Federal share of Medicaid expenditures reported on the State agency's Forms CMS-64 for all quarters in the base and recession-adjustment periods, on the basis of Federal requirements for determining the non-Federal share;

- obtained and reviewed the State agency's spreadsheets detailing its political subdivisions' contributions to the non-Federal share of Medicaid expenditures during the base and recession-adjustment periods;

- obtained the source data[21] for the Medicaid expenditures in each of the four expenditure categories for which New Jersey requires political subdivisions to contribute to the non-Federal share of Medicaid expenditures[22] and, for each expenditure category, determined the political subdivisions' contributions and percentages of the non-Federal share of Medicaid expenditures for the base and recession-adjustment periods;

- computed aggregate contributions by the political subdivisions for the four expenditure categories and the respective percentages of non-Federal share for the base and recession-adjustment periods;

- determined the State agency's compliance with the political subdivision requirement of the Recovery Act by comparing the two percentages for the total political subdivisions' contributions to the non-Federal share of Medicaid expenditures;

- summarized results, including the amount of excess contributions to the non-Federal share of Medicaid expenditures by political subdivisions during the recession-adjustment period; and

- discussed our results with State agency officials.

See Appendix E for our calculation of New Jersey's compliance with the political subdivision requirement of the Recovery Act under the aggregate method and Appendix F for the political subdivisions' contributions to the non-Federal share for each of the categories of expenditures for which New Jersey requires local financial participation.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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[21] Source data included county nursing facilities' Medicaid cost reports and reimbursement data obtained from State agency officials, the Medicaid Management Information System, State agency- and county-operated psychiatric facilities' DSH payment and State appropriations information, local school districts' SEMI expenditures information, and county welfare agencies' administrative expenditures reports.

[22] For the quarter ended June 30, 2008, the amount of administrative costs indicated on the source document was $180,000 ($90,000 Federal share) less than what was reported on the Form CMS-64. The State agency stated that this variance was due to a clerical error.

APPENDIX E: AGGREGATE METHOD CALCULATION

Table 3: Political Subdivisions' Percentage Contribution of the Non-Federal Share of Total Medicaid Program Costs

Table 3a: Base Period (10/1/07-9/30/08)

Total Medicaid Expenditures (From CMS-64)	Federal Share (From CMS-64)	Non-Federal Share	Subdivisions' Contribution to the Non-Federal Share
$10,059,236,686	$5,074,091,049	$4,985,145,637	$241,277,535
		100.00%	4.84%

Table 3b: Recession-Adjustment Period (10/1/08-12/31/10)

Total Medicaid Expenditures (From CMS-64)	Federal Share (From CMS-64)	Non-Federal Share	Subdivisions' Contribution to the Non-Federal Share
$23,671,092,593	$14,043,735,642	$9,627,356,951	$611,175,502
		100.00%	6.35%

APPENDIX F: POLITICAL SUBDIVISIONS' CONTRIBUTION TO THE NON-FEDERAL SHARE OF NEW JERSEY'S MEDICAID EXPENDITURES

Table 4a: Base Period (10/1/2007-9/30/2008)

Medicaid Services	Total Expenditures	Federal Share	Non-Federal Share	Subdivision Contribution to the Non-Federal Share
County Nursing Facilities	$358,180,482	$179,090,241	$179,090,241	$94,787,436
State Agency- and County-Operated Psychiatric Facilities	597,177,616	298,588,808	298,588,808	20,799,288
School-Based Services	89,656,852	44,828,426	44,828,426	73,966,903
Certain Administrative Costs Incurred by Counties	163,157,686	84,835,066	78,322,620	51,723,908
Subtotal	1,208,172,636	607,342,541	600,830,095	241,277,535
Subtotal—Other Expenditures	8,851,064,050	4,466,748,508	4,384,315,542	0
Total	**$10,059,236,686**	**$5,074,091,049**	**$4,985,145,637**	**$241,277,535**

Table 4b: Recession-Adjustment Period (10/1/2008-12/31/10)

Medicaid Services	Total Expenditures	Federal Share	Non-Federal Share	Subdivision Contribution to the Non-Federal Share
County Nursing Facilities	$795,761,095	$485,076,117	$310,684,978	$184,993,887
State Agency- and County-Operated Psychiatric Facilities	981,297,723	490,648,862	490,648,862	44,565,613
School-Based Services	351,937,576	215,731,078	136,206,498	290,348,500
Certain Administrative Costs Incurred by Counties	329,840,281	172,885,475	156,954,806	91,267,502
Subtotal	2,458,836,675	1,364,341,532	1,094,495,144	611,175,502
Subtotal—Other Expenditures	21,212,255,918	12,679,394,110	8,532,861,807	0
Total	**$23,671,092,593**	**$14,043,735,642**	**$9,627,356,951**	**$611,175,502**

APPENDIX G: AMOUNTS TO BE REDISTRIBUTED TO POLITICAL SUBDIVISIONS FOR NEW JERSEY TO COMPLY WITH RECOVERY ACT REQUIREMENTS

Table 5a: County Nursing Facility Expenditures
Base Period (10/1/2007-9/30/2008)

County	Total Expenditures	Federal Share	Non-Federal Share	Amount Reimbursed to Counties	County Contribution	State Contribution	County Contribution Percentage to the Non-Federal Share	State Contribution Percentage to the Non-Federal Share
Atlantic	$13,021,968	$6,510,984	$6,510,984	$11,223,350	$1,798,619	$4,712,366	27.62	72.38
Bergen	63,493,085	31,746,542	31,746,542	47,695,010	15,798,074	15,948,468	49.76	50.24
Burlington	14,409,130	7,204,565	7,204,565	11,396,745	3,012,385	4,192,180	41.81	58.19
Camden	24,374,481	12,187,241	12,187,241	19,245,559	5,128,922	7,058,318	42.08	57.92
Cape May	13,906,850	6,953,425	6,953,425	10,598,562	3,308,288	3,645,137	47.58	52.42
Cumberland	11,488,493	5,744,247	5,744,247	10,079,992	1,408,502	4,335,745	24.52	75.48
Gloucester	6,762,138	3,381,069	3,381,069	4,300,247	2,461,891	919,178	72.81	27.19
Hudson	18,038,267	9,019,133	9,019,133	16,687,269	1,350,998	7,668,135	14.98	85.02
Mercer	13,312,348	6,656,174	6,656,174	7,932,140	5,380,208	1,275,966	80.83	19.17
Middlesex	33,129,748	16,564,874	16,564,874	24,465,524	8,664,224	7,900,650	52.30	47.70
Monmouth	24,432,923	12,216,462	12,216,462	18,817,645	5,615,278	6,601,183	45.96	54.04
Morris	26,072,363	13,036,182	13,036,182	18,871,789	7,200,574	5,835,608	55.24	44.76
Passaic	39,603,536	19,801,768	19,801,768	24,059,591	15,543,945	4,257,823	78.50	21.50
Salem	6,634,785	3,317,392	3,317,392	5,088,012	1,546,773	1,770,619	46.63	53.37
Sussex	6,232,630	3,116,315	3,116,315	5,244,991	987,638	2,128,676	31.69	68.31
Union	28,956,895	14,478,447	14,478,447	15,664,559	13,292,335	1,186,112	91.81	8.19
Warren	14,310,842	7,155,421	7,155,421	12,022,062	2,288,780	4,866,641	31.99	68.01
Total	**$358,180,482**	**$179,090,241**	**$179,090,241**	**$263,393,046***	**$94,787,436***	**$84,302,805***	**52.93**	**47.07**

* Differences in total calculations are due to rounding.

Table 5b: County Nursing Facility Expenditures
Recession-Adjustment Period (10/1/2008-12/31/10)

County	Total Expenditures	Federal Share	Non-Federal Share	Amount Reimbursed to Counties	County Contribution	State Contribution	County Contribution Percentage to the Non-Federal Share	State Contribution Percentage to the Non-Federal Share
Atlantic	$29,611,714	$18,056,048	$11,555,666	$25,553,711	$4,058,003	$7,497,663	35.12	64.88
Bergen	127,649,860	77,728,734	49,921,126	111,879,493	15,770,367	34,150,759	31.59	68.41
Burlington	30,991,405	18,888,664	12,102,741	27,171,559	3,819,845	8,282,895	31.56	68.44
Camden	56,494,938	34,444,455	22,050,483	44,257,491	12,237,447	9,813,035	55.50	44.50
Cape May	30,278,368	18,455,519	11,822,849	25,035,161	5,243,207	6,579,642	44.35	55.65
Cumberland	25,281,365	15,405,190	9,876,175	23,018,525	2,262,841	7,613,335	22.91	77.09
Gloucester	15,175,715	9,255,802	5,919,913	9,228,399	5,947,316	0	100.46	0.00
Hudson	43,896,435	26,769,931	17,126,504	42,355,618	1,540,817	15,585,687	9.00	91.00
Mercer	27,741,341	16,907,657	10,833,684	16,304,246	11,437,096	0	105.57	0.00
Middlesex	73,761,985	44,960,441	28,801,544	56,933,752	16,828,233	11,973,311	58.43	41.57
Monmouth	53,460,359	32,593,161	20,867,198	41,460,534	11,999,825	8,867,374	57.51	42.49
Morris	58,646,356	35,767,038	22,879,318	44,139,539	14,506,817	8,372,501	63.41	36.59
Passaic	97,044,684	59,198,863	37,845,821	54,774,592	42,270,092	0	111.69	0.00
Salem	15,776,070	9,622,486	6,153,584	11,539,805	4,236,265	1,917,319	68.84	31.16
Sussex	15,626,673	9,532,099	6,094,574	12,792,098	2,834,575	3,259,999	46.51	53.49
Union	61,944,954	37,752,995	24,191,959	37,278,689	24,666,265	0	101.96	0.00
Warren	32,378,872	19,737,033	12,641,839	27,043,994	5,334,877	7,306,962	42.20	57.80
Total	**$795,761,095**	**$485,076,117**	**$310,684,978**	**$610,767,207***	**$184,993,887***	**$125,691,090***	**59.54**	**40.46**

* Differences in total calculations are due to rounding.

Table 5c: County Nursing Facility Expenditures
Adjustment of Increased Federal Medicaid Assistance

County	County Contribution During Recession-Adjustment Period	Maximum Allowable County Contribution During Recession-Adjustment Period	Adjustment of Increased Federal Medicaid Assistance
Atlantic	$4,058,003	$3,192,180	$865,823
Bergen	15,770,367	24,842,316	(9,071,950)
Burlington	3,819,845	5,060,419	(1,240,573)
Camden	12,237,447	9,279,805	2,957,642
Cape May	5,243,207	5,625,054	(381,847)
Cumberland	2,262,841	2,421,660	(158,819)
Gloucester	5,947,316	4,310,525	1,636,791
Hudson	1,540,817	2,565,421	(1,024,603)
Mercer	11,437,096	8,756,904	2,680,192
Middlesex	16,828,233	15,064,590	1,763,642
Monmouth	11,999,825	9,591,576	2,408,248
Morris	14,506,817	12,637,460	1,869,357
Passaic	42,270,092	29,708,123	12,561,968
Salem	4,236,265	2,869,181	1,367,084
Sussex	2,834,575	1,931,524	903,051
Union	24,666,265	22,210,090	2,456,174
Warren	5,334,877	4,043,702	1,291,176
Total	**$184,993,887**	**$164,110,530**	**$20,883,357**

* Differences in total calculations are due to rounding.

Table 6a: State Agency- and County-Operated Psychiatric Facility Expenditures
Base Period (10/1/2007-9/30/2008)

State Psychiatric Facility	Total Expenditures	Federal Share	Non-Federal Share	County Contribution	State Contribution	County Contribution Percentage to the Non-Federal Share	State Contribution Percentage to the Non-Federal Share
Ancora	$154,571,944	$77,285,972	$77,285,972	$5,023,601	$72,262,371	6.50	93.50
Trenton	122,091,291	61,045,646	61,045,646	4,176,464	56,869,181	6.84	93.16
Greystone	136,806,669	68,403,335	68,403,335	4,793,715	63,609,620	7.00	92.99
Hagedorn	45,357,098	22,678,549	22,678,549	1,018,167	21,660,382	4.48	95.51
Subtotal	**$458,827,002**	**$229,413,501**	**$229,413,501**	**$15,011,946***	**214,401,555***	**6.54**	**93.46**

County Psychiatric Facility	Total Expenditures	Federal Share	Non-Federal Share	County Contribution	State Contribution	County Contribution Percentage to the Non-Federal Share	State Contribution Percentage to the Non-Federal Share
Camden	$34,436,472	$17,218,236	$17,218,236	$1,358,887	15,859,349	7.89	92.11
Essex	45,840,771	22,920,386	22,920,386	1,757,818	21,162,567	7.66	92.33
Burlington	4,266,128	2,133,064	2,133,064	172,028	1,961,036	8.06	91.94
Bergen Pines	34,781,239	17,390,620	17,390,620	1,698,377	15,692,243	9.76	90.23
Hudson	17,814,136	8,907,068	8,907,068	749,938	8,157,130	8.41	91.58
Union	1,211,868	605,934	605,934	50,293	555,641	8.30	91.70
Subtotal	**138,350,614**	**69,175,307**	**69,175,307**	**5,787,342***	**63,387,965***	**8.37**	**91.63**
Total	**$597,177,616**	**$298,588,808**	**$298,588,808**	**$20,799,288***	**277,789,520***	**6.97**	**93.03**

* Differences in total calculations are due to rounding.

Table 6b: State Agency- and County-Operated Psychiatric Facility Expenditures
Recession-Adjustment Period (10/1/2008-12/31/10)

State Psychiatric Facility	Total Expenditures	Federal Share	Non-Federal Share	County Contribution	State Contribution	County Contribution Percentage to the Non-Federal Share	State Contribution Percentage to the Non-Federal Share
Ancora	$274,905,860	$137,452,930	$137,452,930	$11,958,696	$125,494,234	8.70	91.30
Trenton	169,655,133	84,827,567	84,827,567	7,796,649	77,030,917	9.19	90.81
Greystone	192,956,827	96,478,414	96,478,414	8,577,291	87,901,123	8.89	91.11
Hagedorn	83,090,923	41,545,462	41,545,462	2,539,922	39,005,539	6.11	93.89
Subtotal	**$720,608,743**	**$360,304,372**	**$360,304,372**	**$30,872,559***	**$329,431,813***	**8.57**	**91.43**

County Psychiatric Facility	Total Expenditures	Federal Share	Non-Federal Share	County Contribution	State Contribution	County Contribution Percentage to the Non-Federal Share	State Contribution Percentage to the Non-Federal Share
Camden	$70,336,351	$35,168,176	$35,168,176	$3,512,813	$31,655,362	9.99	90.01
Essex	96,341,920	48,170,960	48,170,960	4,440,633	43,730,327	9.22	90.78
Burlington	4,969,300	2,484,650	2,484,650	269,764	2,214,886	10.86	89.14
Bergen Pines	57,392,127	28,696,064	28,696,064	3,593,700	25,102,364	12.52	87.48
Hudson	18,487,221	9,243,611	9,243,611	1,133,126	8,110,484	12.26	87.74
Union	13,162,061	6,581,031	6,581,031	743,018	5,838,012	11.29	88.71
Subtotal	**260,688,980**	**130,344,490**	**130,344,490**	**13,693,054***	**116,651,436***	**10.51**	**89.49**
Total	**$981,297,723**	**$490,648,862**	**$490,648,862**	**$44,565,613***	**$446,083,249***	**9.08**	**90.92**

* Differences in total calculations are due to rounding.

Table 6c: State Agency- and County-Operated Psychiatric Facility Expenditures
Redistribution of Increased Federal Medicaid Assistance

State Psychiatric Facility	County Contribution During Recession-Adjustment Period	Maximum Allowable County Contribution During Recession-Adjustment Period	Redistribution of Increased Federal Medicaid Assistance
Ancora	$11,958,696	$8,934,462	$3,024,234
Trenton	7,796,649	5,803,514	1,993,135
Greystone	8,577,291	6,761,220	1,816,071
Hagedorn	2,539,922	1,865,208	674,714
Subtotal	**$30,872,559***	**$23,364,405***	**$7,508,153***

County Psychiatric Facility	County Contribution During Recession-Adjustment Period	Maximum Allowable County Contribution During Recession-Adjustment Period	Redistribution of Increased Federal Medicaid Assistance
Camden	$3,512,813	$2,775,521	$737,292
Essex	4,440,633	3,694,344	746,288
Burlington	269,764	200,383	69,381
Bergen Pines	3,593,700	2,802,472	791,228
Hudson	1,133,126	778,274	354,852
Union	743,018	546,228	196,790
Subtotal	**$13,693,054***	**$10,797,223***	**$2,895,831***

Total	**$44,565,613***	**$34,161,629***	**$10,403,984***

* Differences in total calculations are due to rounding.

Table 7a: School-Based Health Services Expenditures
Base Period (10/1/2007-9/30/2008)

School-Based Health Services Expenditures	Federal Share	Non-Federal Share	Distribution to Local School Districts (17.5% x Expenditures)	Local School Districts' Portion of Total Expenditures	Local School Districts' Percentage of Non-Federal Share
$89,656,852	$44,828,426	$44,828,426	$15,689,949*	$73,966,903*	165.00*

* Differences in total calculations are due to rounding.

Table 7b: School-Based Health Services Expenditures
Recession-Adjustment Period (10/1/2008-12/31/10)

School-Based Health Services Expenditures	Federal Share	Non-Federal Share	Distribution to Local School Districts (17.5% x Expenditures)	Local School Districts' Portion of Total Expenditures	Local School Districts' Percentage of Non-Federal Share
$351,937,576	$215,731,078	$136,206,498	$61,589,076*	$290,348,500*	213.70*

* Differences in total calculations are due to rounding.

Table 7c: School-Based Health Services Expenditures
Redistribution of Increased Federal Medicaid Assistance

Quarters End 12/31/2008 and 3/31/2009—58.78 Percent FMAP

School-Based Health Services Expenditures	Federal Share	Non-Federal Share	Decrease in Non-Federal Share	Percentage Decrease in Non-Federal Share	Distribution to Local School Districts (17.5% x Expenditures)	Local School Districts' Proportionate Share of Reduction in the Non-Federal Share
$36,557,844	$21,488,701	$15,069,143	$3,209,779	17.56	$6,397,623*	$1,123,423*

Quarters Ended 6/30/2009 through 12/31/2010—61.59 Percent FMAP

School-Based Health Services Expenditures	Federal Share	Non-Federal Share	Decrease in Non-Federal Share	Percentage Decrease in Non-Federal Share	Distribution to Local School Districts (17.5% x Expenditures)	Local School Districts' Proportionate Share of Reduction in the Non-Federal Share
$315,379,732	$194,242,377	$121,137,355	$36,552,511	23.18	$55,191,453	$12,793,379*

Total Local School Districts' Redistribution of the Proportionate Share of Reduction in the Non-Federal Share During the Recession-Adjustment Period	**$13,916,801***

* Differences in total calculations are due to rounding.

APPENDIX H: STATE AGENCY COMMENTS DATED FEBRUARY 21, 2014

State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

VALERIE HARR
Director

February 21, 2014

James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services, Region II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

Re: New Jersey Response—Draft Audit Report on Political Subdivision Requirement Under the Recovery Act, A-02-11-01039

Dear Mr. Edert:

This letter provides the New Jersey Department of Human Services's ("State" or "DHS") response to the Department of Health and Human Services Office of the Inspector General's ("OIG") draft audit report A-02-11-01039 entitled *New Jersey Did Not Comply with Recovery Act Requirements for Receiving Increased Federal Medicaid Assistance*.

Section 5001(g)(2) of the American Recovery and Reinvestment Act of 2009 ("ARRA"), as clarified by section 10201(c)(6) of the Patient Protection and Affordable Care Act ("ACA"), requires, as a condition of eligibility for the enhanced Federal medical assistance percentage ("FMAP") provided by ARRA, that a state not require political subdivisions to pay a greater percentage of the non-federal share of expenditures subject to the enhanced FMAP, or of disproportionate share hospital ("DSH") expenditures, than would have been required under the state plan, state law, or both, as in effect on September 30, 2008.

DHS does not agree that OIG's findings support the draft audit report's recommendation that the State redistribute approximately $57 million in increased FMAP funding to New Jersey political subdivisions. As explained below, the State would need to distribute only $17,061,780 to local jurisdictions to be fully compliant with the local jurisdictions share requirement. As for the six-month ARRA extension period ended June 30, 2011, we are reviewing the data and will take appropriate action depending on how the issues identified in the draft audit are resolved.

In State Medicaid Director Letter (SMDL) #10-010 ("SMDL 10-010"), issued on June 21, 2010, CMS established two ways that a state may demonstrate compliance with the local jurisdictions share requirement: (1) the payment-specific method and (2) the aggregate method. Letter from Ctr. for Medicaid, CHIP, and Survey & Certification, CMS, to State Medicaid Directors 4 (June 21, 2010), at 3-5.

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I. Payment-Specific Method

Under the payment-specific methodology, a state demonstrates compliance if the percentage of the non-Federal expenditures paid for by the state's political subdivisions, for an expenditure type in the ARRA Period (October 1, 2008 through December 31, 2010), does not increase above the comparable percentage used to measure compliance during the Base Period (October 1, 2007 through September 30, 2008).

OIG's draft report concludes that New Jersey did not comply with the ARRA political subdivision requirement for expenditures for services provided in county nursing facilities, services to uninsured patients in county and state psychiatric hospitals, and Medicaid-eligible health services provided by local school districts. This response discusses a primary flaw in the draft audit report's analysis, which if corrected, demonstrates that the State complied in full with the political subdivision requirement for both county psychiatric facilities and county nursing facilities, before addressing each expenditure type in turn.

A. Compliance in the CPE Context

The draft audit report misreads the ARRA political subdivision requirement as being violated even where, as here, the reported Medicaid expenditure is based on certified public expenditures (CPE) and the State passes through to counties the *full Federal share* of Medicaid expenditures, during both the Base and ARRA Periods. Such a result directly contradicts the purpose of the political subdivision requirement and specific CMS guidance addressing the application of this requirement in the CPE context.

In SMDL 10-010, CMS explained that Section 5001(g)(2) of ARRA "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." SMDL 10-010, at 2 (emphases added). The agency further clarified that "[i]n measuring compliance with this provision . . . , 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." *Id.* (emphasis added). The quoted language expressly provides that CMS understands Congress's intent as requiring States to share increased Federal reimbursement from the enhanced FMAP with political subdivisions.

In a guidance document addressing states' frequently asked questions about ARRA, CMS reiterated that Section 5001(g)(2) of ARRA focuses only on whether the State shares temporary increases in FMAP with its political subdivisions. Specifically, CMS clarified that "[u]nder a CPE financing mechanism[,] the applicable [county] percentage of the non-Federal share for [ARRA Federal] claiming purposes is *no less than 100 percent* (but *could be more if the State does not share with the subdivision the Federal payment*)." Ctr. for Medicaid and State Operations, CMS, American Recovery and Reinvestment Act of 2009 Frequently Asked Questions from States 14 (July 7, 2009) (emphasis added) [hereinafter CMS ARRA FAQs]. Under CMS's interpretation, when states share with counties the *full Federal payment*, the county percentage of the non-Federal share of CPEs for ARRA Federal claiming purposes is *100 percent*.

The county percentage does not decrease below 100 percent even if the State, in addition to passing the full federal contribution to the county, also reimburses the county for any part of the expenditures out of state funds. In effect, CMS views reimbursements to the counties of the non-federal share in CPE cases as an *internal matter* between the State and the counties, and considers the counties, for ARRA purposes, as bearing the cost of all expenditures less the Federal reimbursement the State passed through to the counties.[1]

The State fully complied with the political subdivision requirement for expenditures for county psychiatric facilities and county nursing facilities, both of which were incurred on a CPE basis. Table 1 below lists the total amount certified for each category of expenditure, the federal share, the non-federal share, and the amount of such expenditures reimbursed to counties. All figures have been taken from Tables 4a, 4b, 5a, and 5b of Appendix G to the draft audit report. For each service type, the amount reimbursed to the counties is well in excess of 100 percent, the full amount, of the Federal share. This demonstrates that all of the enhanced FMAP the State received for these services during the ARRA period was passed through in full to the political subdivisions. Thus, the State need not redistribute any additional funds on account of the county nursing or county psychiatric facility claims.

Table 1 - Amount Reimbursed to Counties for Certifying County Facilities Relative to Non-Federal Share

A	B	C	D	E	F
Type of Service	**Total Expenditures Certified**	**Federal Share**	**Non-Federal Share**	**Amount Reimbursed to Counties[2]**	**County Percentage of Non-Federal Share Per CMS Guidance**
Base Period (10/1/2007-9/30/2008)					
County Nursing Facilities	$358,180,482	$179,090,241	$179,090,241	$263,393,046	**100%**
County Psychiatric Facilities	138,350,614	69,175,307	69,175,307	132,563,272	**100%**
ARRA Period (10/1/2008-12/31/2010)					
County Nursing Facilities	795,761,095	485,076,117	310,684,978	610,767,207	**100%**
County Psychiatric Facilities	260,688,980	130,344,490	130,344,490	246,995,926	**100%**

[1] This follows from the fact that in the CPE context, the expenditure reported by the certifying entity, rather than a payment from the State Medicaid agency, is the activity that generates the federal matching payment.

[2] The amount reimbursed to counties for county nursing facilities is provided in Table 4a of the draft audit. For county psychiatric facilities, the amount reimbursed to counties was calculated by subtracting the total county contribution from the total expenditures. See draft audit tables 5a and 5b.

B. Corrections to the OIG Calculations Specific to Particular Provider Types

1. County Nursing Facilities

As already explained, the State fully complied with the ARRA political subdivisions requirement for county nursing facility expenditures because it paid the counties the full amount of the Federal share both during the Base and ARRA period. But, even using OIG's methodology, the draft audit report significantly overstates the amount to be redistributed to the counties relating to county nursing facility expenditures. The draft audit report focuses only on county nursing facilities for which OIG determined that the State paid counties a *lower* percentage of the non-Federal share of expenditures in the ARRA Period, as compared to the Base Period, and ignores the county nursing facilities for which the State paid political subdivisions a *greater* percentage of the non-Federal share of expenditures. CMS has clarified that presenting data on a *combined basis* for all county nursing homes in a State is the appropriate means of demonstrating compliance with the ARRA local jurisdiction requirement. SMDL #10-010 permits the comparison of the percentage of the non-federal share funded by local jurisdictions "for each type of expenditure" in the Base and ARRA Periods. *See* June 21, 2010 SMDL, at 4. CMS used the term "type of expenditure" to refer generally to each category of service, not to particular service providers. It is therefore appropriate to take into account the aggregated total of State payments to all county nursing facilities. As illustrated in Table 2 below, once all county nursing payments are aggregated, the OIG calculation of the amount to be redistributed to the counties would be reduced to $20,883,357.

Table 2 - Cumulative State Payments to Counties for County Nursing Homes Based on OIG Analysis

A	B	C	D
County	**County Contribution During ARRA Period**	**Maximum Allowable County Contribution During ARRA Period**	**Redistribution of Increased Federal Medicaid Assistance**
Atlantic	$4,058,003	$3,192,180	$865,823
Bergen	15,770,367	24,842,316	-9,071,949
Burlington	3,819,845	5,060,419	-1,240,574
Camden	12,237,447	9,279,805	2,957,642
Cape May	5,243,207	5,625,054	-381,847
Cumberland	2,262,841	2,421,660	-158,819
Gloucester	5,947,316	4,310,525	1,636,791
Hudson	1,540,817	2,565,421	-1,024,603
Mercer	11,437,096	8,756,904	2,680,192
Middlesex	16,828,233	15,064,590	1,763,642
Monmouth	11,999,825	9,591,576	2,408,248
Morris	14,506,817	12,637,460	1,869,357
Passaic	42,270,092	29,708,123	12,561,968
Salem	4,236,265	2,869,181	1,367,084
Sussex	2,834,575	1,931,524	903,051

Union	24,666,265	22,210,090	2,456,174
Warren	5,334,877	4,043,702	1,291,176
Total	**$184,993,887**	**$164,110,530**	**$20,883,357**

2. Psychiatric Facilities

As explained above in section I.A, per CMS guidance, the State fully complied with the local jurisdiction requirement for the county psychiatric facilities because both during the Base and ARRA Periods it covered at least 85 percent of the total cost of serving uninsured patients at those facilities.[3] And it covered the entire cost of serving patients in these facilities that had not resided for at least five years in the county. Thus, for county psychiatric facilities the State covered far more than the federal share of Medicaid payments, which even under ARRA remained at 50%.

In addition, the draft audit report, even under the general approach OIG adopted, is flawed by not (1) giving effect to State law regarding the county share of state and county psychiatric facilities that was in effect prior to September 30, 2008, or (2) taking into account that the State's claimed psychiatric facility expenditures were primarily disproportionate share hospital (DSH) claims that substantially exceeded the State's Institutions for Mental Disorders (IMD) annual allotment, so that only a portion of the amounts claimed were actually matched by federal funds.

a) Pre-September 30, 2008 State Law

The New Jersey State Medicaid plan provides for a cost reimbursement methodology based on the certification of expenditures by the state and county hospitals. For state hospitals each county is billed a portion of the cost of serving patients who have been residents of that county for at least five years. For county hospitals, the State reimburses most of the hospitals' expenditures for otherwise uncompensated care. The percentage of cost borne by the counties in either case is established in the annual state appropriations laws normally enacted prior to the commencement of the state fiscal year on July 1 of each year. These rates apply to the calendar year beginning in the middle of the state fiscal year.

For the October to December 2008 quarter, the counties were responsible for 10 percent of the psychiatric hospital costs applicable to the uninsured patients that were resident in the respective counties for at least five years. For calendar year 2009, the applicable percentage was 12.5 percent, but because this rate was established by state law enacted on or about July 1, 2008, it represents state law in place as of September 30, 2008, the measurement data for ARRA compliance. This application of the ARRA local jurisdiction requirement was confirmed by the clarification included in section 10201(c)(6) of ACA, which expressly provided that ARRA compliance would be measured against state law (as well as the state plan) as of September 30, 2008. In State Medicaid Director Letter #10-023 (Nov. 9, 2010), CMS stated that it reads the ARRA language as meaning that if the State Plan or State law "as of September 30, 2008 . . . . provided for changes in the percentage contributions or dollar amount contributions, those

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[3] In 2009, the reimbursement percentage was 87.5 %. In the October to December 2008 period, the percentage was 90%.

changes must be given effect as applicable to the current period." *Id.* at 2. The "State law" establishing the 12.5 percent contribution rate was clearly the law on its books as of September 30, 2008, and must be given effect in applying the local jurisdiction share provision of ARRA.

The increase in the county percentage from 12.5 to 15 percent that took effect as of January 1, 2010, standing alone, might arguably be seen as inconsistent with the ARRA requirement. However, as explained above, the State was already fully compliant with the political subdivision requirement for all county psychiatric facility payments because the State at all times covered far more than the full federal share of the certifying facilities' costs.

b) DSH Payments

All of the state (and county) psychiatric hospitals' expenditures for which the counties had some responsibility were DSH payments.[4] There is a limit in federal law on the amount of a state's annual DSH allotment that can be used for payments to psychiatric facilities (known as the IMD limit). In New Jersey, that limit for each of the ARRA years was $178,685,231. The State's expenditures for psychiatric hospital reimbursement, as claimed on its CMS Form 64 submissions, substantially exceeded the amounts that could be matched, and the State received FFP in DSH expenditures for the psychiatric facilities only up to its annual IMD DSH limit.

Furthermore, the counties did not participate in all of the expenditures of the state psychiatric hospitals contained in the State's CMS 64-filings. The calculation of the amount billed to the counties in excess of the ARRA limit needs to take these two factors into consideration. **Appendix A** shows the proper calculations for the state psychiatric facilities for calendar year 2010. The amount of the excess billing to the counties was $3,144,979.[5]

C. School-Based Health Services

The State does not question the OIG's calculation that it would need to redistribute $13,916,801 to the school districts in order to be in compliance with the local jurisdiction share requirement of ARRA. *See* draft audit report, App'x G, Tbl. 6(c). The State notes that it provides a very substantial amount of financial support to the school districts outside the Medicaid program, which represents only a small fraction of the total State funding for the schools.

II. Aggregate Method

The aggregate method of compliance takes into account all annual program service and administrative costs under the Medicaid program in effect as of September 30, 2008, and the political jurisdictions' share of those costs. *See* SMDL 10-010. The method then considers

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[4] There was a relatively small amount of services provided by the psychiatric hospitals to county residents that qualified for regular Medicaid reimbursement (e.g., patients over age 64). But the State did not require the counties to pay for any portion of the cost of serving these patients.

[5] In federal fiscal year 2009 the combined DSH claims for psychiatric hospitals also exceeded by a substantial amount the IMD DSH limit applicable to that year. It is not necessary to calculate the effect of this excess claim, because, as shown in the text, the county share of payments in that year did not exceed the permissible level.

comparable costs for the ARRA Period. If the local jurisdiction percentage of the total non-federal share of program expenditures is no greater than in the pre-ARRA period, the State is deemed to be in compliance with the local jurisdiction requirement.

OIG concluded that in the aggregate, political subdivisions contributed 4.84 percent of the non-Federal share in the Base Period, and 6.35 percent of the same share during the ARRA Period, resulting in a difference of approximately $145.2 million.

The State has identified a methodological error in the OIG's calculation of the percentage of the non-Federal share that New Jersey political divisions paid during both the Base and ARRA Periods. Once this error is corrected, the State can demonstrate that local jurisdictions contributed 7.8 and 8.87 percent during the Base and ARRA Periods, respectively, resulting in a discrepancy of just over $100 million. DHS has detailed its reasoning and calculations in **Appendix B** to this letter. However, the State does not rely upon the aggregate methodology for measuring its compliance. As shown below, the State would need to distribute no more than $17,061,780 million to local jurisdictions to be in compliance under the payment-specific method.

III. Conclusion

For the reasons explained above, the State need only redistribute $13,916,801 to the school districts and $3,144,979 to the counties for excess amounts contributed by them for state psychiatric hospital expenditures in calendar year 2010 in order to be in full compliance with the local jurisdiction share requirement for the period covered by the OIG audit.

Thank you for providing the State with an opportunity to comment on the draft audit report. Should you have any questions, please contact me or Richard Hurd at (609) 588-2550 or by e-mail at Richard.H.Hurd@dhs.state.nj.us.

Sincerely,

Valerie Harr
Director

c: Jennifer Velez
Richard Hurd

Enclosures

APPENDIX A: Amounts Billed to Counties for State Psychiatric Hospital Services Compared to Permissible Amount in Calendar Year 2010

Calendar year 2010 is the only year covered by the OIG draft audit for which there is a potential liability to the counties for excess billing of state psychiatric hospital expenditures. As explained above in Section I.B.2.a, the billing rate for calendar year 2009 was established in State law enacted prior to September 30, 2008, and therefore could be employed without incurring any ARRA liability.

The calculation of the calendar year 2010 potential excess billing takes into account the following: (1) state psychiatric hospital claims were for DSH payments, for which the State is subject to the IMD-DSH limitation; (2) IMD-DSH claims in federal fiscal years (FFY) 2010 and 2011 exceeded the annual state IMD-DSH allotment; (3) counties participated in only a portion of all state psychiatric hospital expenditures.

Table A-1 calculates the percentage of the total state psychiatric hospital expenditures in which the counties participate, which was 63.54 percent in calendar year 2010. The data for total hospital expenditures (column B) and for the amounts billed to the counties (column C) were taken from the State's CMS-64 forms.

Table A-2 calculates the excess billing to counties during the last three quarters of FFY 2010. There was no excess billing in the first quarter (October to December 2009) because the billing rate to the counties in that quarter was established in state law prior to September 30, 2008. The calculation subtracts the county psychiatric hospital claims and the first quarter state psychiatric hospital claims from the IMD-DSH limit for the year. The balance is the amount of FFP paid with respect to state psychiatric hospital claims in the last three quarters of FFY 2010. The percentage of those claims in which the counties participated was derived from Table A-1. The counties were billed 15 percent of total expenditures (which is shown by doubling the non-Federal Share and multiplying the result by 0.15). The previous billing rate was 12.5 percent, so that the excess portion is one-sixth of the amount billed (2.5/15).

Table A-3 provides a similar calculation designed to determine the excess billing amount for the October to December 2010 quarter, which was the first quarter of FFY 2011. The calculation is done for three quarters, and the result divided by three to obtain the excess billing amount for the October to December quarter.

Table A-1: County Percentage Share of State Psychiatric Hospital Expenditures[6]

A	B	C	D	E
Period	**Total Expenditures**	**County Payments**	**Total Expenditures in Which County Participated (C / 15%)**	**County Participation as Percentage of Total Expenditures (D / B)**
Jan-Mar 2010	$114,465,170	$10,909,310	$72,728,733	63.54%
Apr-Jun 2010	114,465,170	$10,909,310	72,728,733	63.54%
Jul-Sept 2010	114,465,170	$10,909,310	72,728,733	63.54%
Oct-Dec 2010	114,465,170	$10,909,310	72,728,733	63.54%
Total	**$457,860,680**	**$43,637,240**	**$290,914,933**	**63.54%**

Table A-2: Excess Amount Billed to Counties in Last Three Quarters of FFY 2010[7]

F	G	H	I	J	K	L
Annual State IMD DSH Allotment	**Federal Share of County Psychiatric Hospital IMD DSH Claims Paid**	**Federal Share of State Psychiatric Hospital IMD DSH Claims Paid in First Quarter**	**Remaining IMD-DSH Availibility (F - G - H)**	**County Participation Percentage of Remaining IMD-DSH Availability (E x I)**	**Portion of Total Expenditures Billed to Counties (J x 2 x 15%)**	**Excess Amount Billed to Counties (K / 6)**
$178,685,231	$65,053,020	$42,476,108	$70,156,103	$45,211,074	$13,563,322	**$2,260,554**

[6] The quarterly expenditures in Columns B and C were calculated by taking a quarter of the total annual expenditures reported on the State's CMS-64 forms.

[7] Columns G and H include all claims applied against the FFY 2010 IMD allotment, including subsequent adjustments.

Table A-3: **Excess Amount Billed to Counties in First Quarter of FFY 2011**[8]

M	N	O	P	Q	R	S
State IMD DSH Allotment for First Three Quarters	**Federal Share of County Psychiatric Hospital IMD DSH Claims Paid in First Three** Quarters	Remaining IMD-DSH **Availibility in First Three Quarters (M - N)**	**County Participation Percentage of Remaining IMD-DSH Availability in First Three Quarters (E x O)**	Portion of Total **Expenditures** Billed to Counties in First Three Quarters (P x 2 x 15%)	Excess Amount Billed to Counties in First Three Quarters (Q / 6)	**Excess Amount Billed to Counties in First Quarter** (R / 3)
$134,013,920	$49,131,015	$84,882,905	$53,932,792	$16,179,837	$2,696,640	**$898,880**

Total Excess Amount Billed to Counties in Calendar Year **2010** (L + S): **$3,144,979**

[8] Columns N and O include all claims applied against the FFY 2011 IMD allotment, including subsequent adjustments.

APPENDIX B: Aggregate Approach

In calculating its compliance with the ARRA requirements for enhanced temporary FMAP during the ARRA Period, the State assumes *arguendo* that the underlying data OIG used to perform its calculations, as detailed in Appendix F of the draft audit report, are correct. Nonetheless, the State has determined that OIG's calculation of New Jersey political subdivisions' percentage contribution of the non-Federal share using the aggregate method contains a methodological error: OIG did not account for the fact that county nursing facilities and county-operated psychiatric facilities are paid on a CPE basis.

In its ARRA Frequently Asked Questions guidance document, CMS clarified that "[u]nder a CPE financing mechanism[,] the applicable [county] percentage of the non-Federal share for [ARRA Federal] claiming purposes is *no less than 100 percent* (but could be more if the State does not share with the subdivision the Federal payment)." CMS ARRA FAQs, at 14 (emphasis added). Under CMS's interpretation, when services are paid by CPEs, the county percentage does not decrease below 100 percent even if the State uses state funds to reimburse a portion of the expenditures. This follows from the fact that the CPE, rather than a payment from the State Medicaid agency, is the event that triggers the federal matching payment.

In New Jersey, county nursing facilities and psychiatric facilities operated by counties are paid on a CPE basis. Yet, Appendix F of the Draft Report calculates the political subdivisions' contribution to the non-Federal share during both the Base and ARRA Periods to be considerably less than the non-Federal share, in other words, well short of 100 percent. Applying CMS's guidance on the CPE method, the State has adjusted the aggregate method calculation to make the county percentage of the non-Federal share for ARRA Federal claiming purposes 100 percent in both the Base and ARRA Periods.

The chart below corrects the error and demonstrates that the amount to be redistributed to political subdivisions under the aggregate method would be only $102.3 million, not the $145.2 million calculated by OIG.

B-1

Table B-1: State Compliance with Political Subdivision Requirement Under Aggregate Approach

A	B	C	D	E	F	G	H
Type of Service	**Total Expenditures**	**Federal Share**	**Non-Federal Share**	**Subdivision Contribution (OIG Calculation)**	**Subdivision Contribution (Modified)**	**Subdivision Contribution Percentage to Non-Federal Share (OIG Calculation)**	**Subdiv Contri Percer to Federa Share (Modif**
Base Period (10/1/2007-9/30/2008)							
County Nursing Facilities	$358,180,482	$179,090,241	$179,090,241	$94,787,436	$179,090,241	52.93%	100.00
State Agency-Operated Psychiatric Facilities	458,827,002	229,413,501	229,413,501	15,011,946	15,011,946	6.54%	6.54%
County-Operated Psychiatric Facilities	138,350,614	69,175,307	69,175,307	5,787,342	69,175,307	8.37%	100.00
School Based Health Services Costs	89,656,852	44,828,426	44,828,426	73,966,903	73,966,903	165.00%	165.00
Administrative Costs	163,157,686	84,835,066	78,322,620	51,723,908	51,723,908	66.04%	66.04%
Subtotal	1,208,172,636	607,342,541	600,830,095	241,277,535	603,369,860	40.16%	64.74%
Subtotal - Other Expenditures	8,851,064,050	4,466,748,508	4,384,315,542	0	0		
Aggregate Total for Base Period -- All Medicaid Services	**$10,059,236,686**	**$5,074,091,049**	**$4,985,145,637**	**$241,277,535**	**$603,369,860**	**4.84%**	**7.80%**
ARRA Period (10/1/2008-12/31/2010)							
County Nursing Facilities	$795,761,095	$485,076,117	$310,684,978	$184,993,887	$310,684,978	59.54%	100.00
State-Agency-Operated Psychiatric Facilities	720,608,743	360,304,372	360,304,371	30,872,559	30,872,559	8.57%	8.57%
County-Operated Psychiatric Facilities	260,688,980	130,344,490	130,344,490	13,693,054	130,344,490	10.51%	100.00
School Based Health Services Costs	351,937,576	215,731,078	136,206,498	290,348,500	290,348,500	213.17%	213.17
Administrative Costs	329,840,281	172,885,475	156,954,806	91,267,502	91,267,502	58.15%	58.15%

Subtotal	2,458,836,675	1,364,341,532	1,094,495,144	611,175,502	1,182,949,842	55.84%	108.08
Subtotal-Other Expenditures	21,212,255,918	12,679,394,110	8,532,861,807	0	0		
Aggregate Total for Base Period-All Medicaid Services	**$23,671,092,593**	**$14,043,735,642**	**$9,627,356,951**	**$611,175,502**	**$1,182,939,842**	**6.35%**	**8.87%**

B-3

APPENDIX I: STATE AGENCY COMMENTS DATED MARCH 31, 2014

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO BOX 712
TRENTON, NJ 08625-0712

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

VALERIE HARR
Director

March 31, 2014

James P. Edert
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of Inspector General
Office of Audit Services, Region II
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3900
New York, NY 10278

Re: Supplement to New Jersey Response–Draft Audit Report on Political Subdivision Requirement Under the Recovery Act, A-02-11-01039

Dear Mr. Edert:

I am writing to supplement the above-captioned response to your Draft Audit Report A-02-11-01039, entitled *New Jersey Did Not Comply with Recovery Act Requirements for Receiving Increased Federal Medical Assistance,* which was sent to us under cover of your letter dated December 17, 2013.

The Draft Report included recommendations that the State, in order to be in compliance with the Recovery Act, redistribute $32,761,148 to county nursing homes and $2,895,831 to county psychiatric facilities. The State's response disputed these recommendations. Based on its understanding of the Centers for Medicare and Medicaid Services's (CMS) policies concerning compliance in the Certified Public Expenditure (CPE) context, the State believes that it was in full compliance with respect to both county nursing homes and county psychiatric facilities. *See* Response of Feb. 21, 2014, at 2-3.

We have now received confirmation from CMS that our understanding is correct. I am enclosing a letter from Kristin Fan, Deputy Director of the Financial Management Group within the Center for Medicaid and CHIP Services, dated March 20, 2014. Ms. Fan's letter was in response to my letter to her dated March 10, 2014, seeking confirmation of our understanding of the CMS policies in the CPE context. Ms. Fan reviewed the CPE information relating to county nursing facilities and county psychiatric facilities, and agreed with our conclusion that "New Jersey was in compliance with the political subdivision requirements as established under section 5001(g)(2) of ARRA."

I am enclosing copies of my March 10, 2014 letter to Ms. Fan and her March 20, 2014 letter to me. Based on this correspondence, which confirms the position set forth in our response of February 21, 2014, I request that your office withdraw its recommendation that the State redistribute funds to county nursing homes and county psychiatric facilities.

Should you have any questions, please contact me or Richard Hurd at 609-588-2550 or by e-mail at Richard.H.Hurd@dhs.state.nj.us.

Sincerely,

Valerie Harr

Valerie Harr
Director

VH:H
Enclosures
c. C. Bailey
R. Hurd

State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JENNIFER VELEZ
Commissioner

VALERIE HARR
Director

March 10, 2014

Ms. Kristin Fan
Deputy Director, Financial Management Group
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Ms. Fan:

This is to request confirmation from the Centers for Medicare and Medicaid Services (CMS) of the interpretation of the State of New Jersey of the local jurisdiction share requirement of the American Recovery and Reinvestment Act (ARRA) in the circumstances described below. The issue arises in connection with an audit by the Office of Inspector General (OIG) of the State's compliance with the ARRA requirement during the period October 2008 through December 2010.

New Jersey's Medicaid program covers services in county-owned nursing homes and county psychiatric facilities. As public entities, these facilities certify their costs to the Department of Human Services, Division of Medical Assistance and Health Services, and the certified expenditures are the basis for the claims for federal reimbursement for these services. Prior to ARRA the matching rate for the services was 50 percent. During the ARRA period the matching for the nursing facilities rose as high as 61.59 percent. The certified expenditures for the psychiatric facilities were claimed as DSH payments, for which the FMAP rate was 50 percent throughout the ARRA period.

The long standing practice in New Jersey has been for the State to reimburse most of the counties' costs of operating their nursing homes and psychiatric facilities. In the case of the nursing homes the reimbursement is pursuant to a statutory formula under which the percentage of costs reimbursed varies by county but in total is substantially greater than the federal share of the costs. In the case of the psychiatric facilities, the state reimburses the counties a set percentage of costs for those patients (other than Medicaid eligibles) who have been residents of the county for at least five years, and 100 percent for all other patients (including Medicaid eligible patients). In calendar year 2008 the reimbursement percentage, established in the state's appropriation law, was 90 percent. In calendar year 2009 (established in an appropriation law enacted well before the beginning of federal fiscal year 2009) the rate was 87.5 percent. In calendar year 2010 the rate was 85 percent.

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The following charts show (in the aggregate), for the ARRA base period and for the ARRA period October 2008 through December 2010, the total amounts certified, the federal and non-federal shares, the amounts reimbursed to the counties, the federal share percentage of the certified costs and the percentage of certified costs reimbursed to the counties by the State.

County Nursing Facilities

	Total Certified Expenses	Federal Share	Non-Federal Share	Amount Reimbursed to Counties	FMAP	Percent Reimbursed to Counties
Base Period 10/07-9/08	$358,180,482	$179,090,241	$179,090,241	$263,393,046	50.00%	73.53%
ARRA Period 10/08-12/10	$795,761,095	$485,076,117	$310,684,978	$610,767,207	up to 61.59%	76.75%

County Psychiatric Facilities

	Total Certified Expenses	Federal Share	Non-Federal Share	Amount Reimbursed to Counties	FMAP	Percent Reimbursed to Counties
Base Period 10/07-9/08	$138,350,614	$69,175,307	$69,175,307	$132,563,272	50.00%	95.81%
ARRA Period 10/08-12/10	$260,688,980	$130,344,490	$130,344,490	$246,995,926	50.00%	94.74%

As can be seen, throughout the ARRA period the counties were reimbursed for far more than the federal share of their certified expenditures for both the county nursing facilities and the county psychiatric facilities.[1]

On July 7, 2009, Cindy Mann, Director, Center for Medicaid and State Operations, issued a letter to State Health Officials attaching answers to Frequently Asked Questions that were intended as guidance in the implementation of ARRA. The answer to question 34a (page 14, attached) addressed the treatment of Certified Public Expenditure (CPE) financing mechanisms, and explained that the applicable percentage of the non-federal share for claiming purposes is no less than 100 percent (but could be more if the State does not share the federal payment with the local jurisdiction). To be compliant with the local jurisdiction share of ARRA, the guidance stated that, even if a state were to switch to an Intergovernmental Transfer method, it could not ask a local jurisdiction to contribute more of the non-federal share than it would have through a CPE methodology. Since the local jurisdiction share in a CPE system is never less than 100 percent, the state would be in compliance so long as it did not require the local jurisdiction to bear more than 100 percent of the non-federal share during the ARRA period.

In New Jersey during the ARRA period, the counties did not bear more than 100 percent of the non-federal share of the amounts certified. To the contrary, as the tables show, the counties

[1] During the ARRA period the State's reimbursement of county nursing homes exceeded the federal share in the aggregate by over $125 million. Its reimbursement of county psychiatric facilities exceeded the federal share in the aggregate by over $116 million.

actually bore substantially less than the non-federal share. This means that the State passed through in full (and more) the enhanced FMAP (in the case of nursing facilities), and much more than the federal share in the case of psychiatric facilities.

We request that CMS confirm our understanding that a state that passes through to a local jurisdiction at least the full amount of the federal share of certified expenditures during the ARRA period is compliant with the local jurisdiction share requirement of ARRA. It is our intention to provide the CMS confirmation to the OIG, in order to resolve the portion of its current audit that relates to certified expenditures of county nursing homes and psychiatric facilities in New Jersey.

Thank you very much for your consideration of this request.

Sincerely,

Valerie Harr

Valerie Harr
Director

Enclosure
c: Christopher Bailey
Richard Hurd

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

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Center for Medicaid and State Operations

American Recovery and Reinvestment Act of 2009
Frequently Asked Questions from States
July 7, 2009

Division B, Title I, Section 1001 - Making Work Pay Credit

Question 1: Unlike last year's stimulus payment and regular tax refunds, the Making Work Pay credit is not being sent as a separate check, or just included in a tax refund. People who are working will start getting it in their paychecks as early as April. The tax withheld from their gross pay will go down, resulting in them receiving more take home pay. However, the ARRA says that this amount of credit is not counted as income for determining eligibility for federally funded programs. We are not sure what we are supposed to do. Are we supposed to reduce the amount of the person's gross earned income by the amount of this credit that they will be receiving in each check? Or do we continue to count the person's gross income? Has CMS discussed any method of identifying what the amount would be that we would not count or how we would figure that out?

Answer: Section 1001 of the Recovery Act adds a new section to the Internal Revenue Code. Under this new section, a credit against taxes paid is provided to individuals who meet that section's requirements. According to the Internal Revenue Service's Web site (http://www.irs.gov/newsroom/article/0,,id=204447,00.html) for people who receive a paycheck and are subject to withholding, the credit will be handled by their employers through automated withholding changes in early spring.

The change in withholding is likely to produce more take home pay for those receiving credit through their paychecks. For others, the credit can be claimed on their 2009 and 2010 tax returns. The credit is the lower of 6.2 percent of the person's earned income, or $400 ($800 for a joint return).

To determine the dollar amount of the credit, multiply the individual's earned income (as defined for tax purposes) by 6.2 percent. The result is the dollar amount that should be disregarded. No more than $400 for an individual, or $800 for a couple filing a joint return, should be disregarded in any one year.

such as education, or to maintain aspects of their Medicaid program that may have been previously cut due to budgetary constraints. The important factor is that the States spend the entirety of their increased FMAP funds and report on specific uses of these funds to CMS on an ongoing basis. Instructions for reporting on the use of these funds will be issued to States shortly.

Local Government Share in the State's Medicaid Match

Question 32: ARRA makes States ineligible for increased FMAP if they increase the local government's share of the State Medicaid match to a percentage greater than was in place under the State plan on September 30, 2008. Our State policy makers have posed the following scenario (the numbers in the example are made up for simplicity) and asked if it would constitute a violation of the proposed restriction language:

> Under current law, a formula is used to calculate the amount of funding counties are required to pay for a certain program with the State's generally paying about 50% of the growth and the counties paying about 50% of the growth. If that formula is changed, requiring the counties to pay 100% of the growth in FY 2010, however, the overall county percentage is still below what they contributed in FY 2008 (due to higher growth in the overall State match), would that make the State ineligible for the increased FMAP?

Will CMS score this restriction based entirely on the percentages paid at the end of the recession period, or will a change to the methodology used to calculate county contribution (resulting in a greater contribution) be considered a violation?

Answer: Under section 5001(g)(2), during the recession adjustment period (October 1, 2008 – December 31, 2010), States may not require the **percentage** of a State's non-Federal share of expenditures contributed by political subdivisions within a State to be greater than the percentage required under the State's plan on September 30, 2008. This test is applied on a percentage basis and **not** on a dollar basis. For example, if on September 30, 2008, a State required its political subdivision to contribute 10 percent of the non-Federal share of its Medicaid expenditures, then, during the recession adjustment period, the political subdivisions must continue to contribute no more than 10 percent of the non-Federal share in order for the State to continue to be in compliance with the ARRA requirements.

Question 33: Our State's legislature has cut funding for Graduate Medical Education and other Medicaid programs. The counties have approached the State with the possibility of voluntarily providing the non-Federal share for some of these expenditures that have been cut by the State legislature. Section 5001(g)(2) of ARRA prohibits States from *requiring* political subdivisions to contribute a greater percentage toward the non-Federal share of expenditures than otherwise would have been required on September 30, 2008. If this is done on a voluntary basis and at the request of the State's political subdivisions, would that violate provisions on maintaining the ratio of local share?

Answer: As noted above, if the percentage of the political subdivisions' non-Federal share increases during the recession period, even on a "voluntary" basis, the State would be in violation of the ARRA requirement.

Question 34a: There are some facilities that have been and currently are using Certified Public Expenditures (CPEs) as the funding mechanism. These facilities include a local public hospital and the State's university hospital. Another group includes the State-owned Institutes for Mental Disease (IMD). The State has been exploring the possibility of converting to the use of Intergovernmental Transfers (IGTs) as the funding mechanism instead of CPEs. The question is, would converting from CPE to IGT be considered a violation of attestation #3, in which the State attests that they do not require political subdivisions to contribute a greater percentage of the non-Federal share of expenditures beginning October 1, 2008?

Answer: Not necessarily. Under a CPE financing mechanism the applicable percentage of the non-Federal share for claiming purposes is no less than 100 percent (but could be more if the State does not share with the subdivision the Federal payment). By moving to an IGT financing mechanism, the non-Federal share contribution could not be any more than 100 percent of the non-Federal share, or such higher level as is represented by the CPEs. That is, under a CPE funding mechanism, the political subdivision is contributing at least 100 percent of the non-Federal share of its expenditures. Therefore, if a State moved to an IGT funding mechanism during the recession adjustment period the political subdivision making the IGT could not contribute more than the percentage of the non-Federal share that it would have through CPEs. In doing so, the State must credit the political subdivision with the reduction in the non-Federal share resulting from the increased FMAP under ARRA.

Question 34b: How are transfers from departments within a State treated for purposes of this provision? If the State's Department of Mental Health normally transfers funds it was appropriated from the State to the Medicaid Department for Medicaid payments, do these transfers have to be in the same percentage or can they remain at the same dollar amount?

Answer: These are considered transfers between Departments within the State itself and not contributions or transfers from political subdivisions. Therefore, such transfers between Departments within the State government are not bound by the requirements at section 5001(g)(2) of ARRA.

Question 34c: Is section 5001(g)(2) applicable to the following: IGTs, CPEs, and health care related taxes?

Answer: IGTs from a political subdivision to the State would have to comply with this provision. Therefore, the amount of the IGTs from a political subdivision may not increase on a percentage basis from what was transferred as of September 30, 2008. States should carefully review requirements with their political subdivisions to ensure that any agreements where specific dollar amounts are transferred are adjusted so that the overall percentage of the non-Federal share contribution is not increased due to the increase in the FMAP rate and the reduction in the non-Federal share.

Under a CPE financing mechanism the applicable percentage of the non-Federal share for claiming purposes is no less than 100 percent (but could be more if the State does not share with the subdivision the Federal payment). The State should ensure that, as the Federal share increases, the reduction in the non-Federal share is credited proportionately to the contributing public agency certifying public expenditures.

We do not believe that health care-related taxes are impacted by this provision. Health care-related taxes are not requirements imposed upon political subdivisions for purposes of financing the non-Federal share of Medicaid payments. The health care-related tax is assessed against health care providers for the provision of certain health care items or services. In order to be considered a permissible source of non-Federal share financing, a healthcare-related tax must meet other statutory requirements at section 1903(w) of the Act.

Question 34d: What is the definition of a "political subdivision" and what relationship does this have to any of the regulations CMS published regarding the definition of a unit of government?

Answer: States have considerable discretion to create and define "political subdivisions" but must apply the same definitions under Medicaid as they do for other purposes under State law. There are no CMS regulations in effect at this time that would establish another definition of political subdivision so we would accept the State's designation of its political subdivisions.

Question 34e: What if a State has a program established where local governments pay a fixed percentage of a total allotted amount (e.g., the State's DSH allotment or available room under their UPL)? Is it CMS' interpretation of this section that the State cannot require the political subdivision of the State, to continue to pay a fixed percentage of the total amount for the State to be eligible for increased FMAP funds under ARRA? To be eligible for increased FMAP funds is the State required to revise this agreement to provide that during the recession adjustment period the political subdivision must pay the regular State Medical Assistance Percentage (S-MAP)? To be eligible for increased FMAP funds, is the State required to revise this agreement to provide that, during the recession adjustment period, the political subdivision must pay some other percentage of the total amount? If so, what percentage must it pay?

Answer: The State must evaluate the percentage of the non-Federal share the political subdivision was previously providing (as of September 30, 2008). The State must then determine if this percentage has effectively increased with any of the changes authorized under ARRA. The State must ensure that the percentage of the non-Federal share contribution from the political subdivision is no more than what it was required to contribute as of September 30, 2008. If, as a result of the ARRA changes, the political subdivision's percentage contribution of the non-Federal share has increased then the State would be in violation of ARRA.

Drawing Down Funds and Reporting

Question 35: When CMS says "able to access" does that mean States are being sent money for two quarters based on estimated need and then a reconciliation will occur, or are the funds going

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

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

MAR 20 2014

Valerie Harr
Director
Division of Medical Assistance and Health Services
Department of Human Services
P.O. Box 712
Trenton, New Jersey 08625-0712

Dear Ms. Harr:

Thank you for your letter regarding New Jersey's use of certified public expenditures (CPEs) within its Medicaid program and their interaction with the local jurisdiction share requirement of the American Recovery and Reinvestment Act (ARRA).

As you mentioned, section 5001(g)(2) of ARRA stipulated that states may not, during the recovery period (October 1, 2008-December 31, 2010), require the percentage of a state's non-federal share of Medicaid expenditures contributed by political subdivisions within a state to be greater than the percentage required under the state's plan on September 30, 2008. In addition to a letter to all states on how to implement this provision, the Centers for Medicare & Medicaid Services (CMS) also issued additional guidance on July 7, 2009 in the form of a question and answer document. In that document, CMS reiterated that compliance with this requirement was to be applied on a percentage basis.

CMS also clarified that for purposes of a CPE, the applicable percentage of the non-federal share for claiming purposes is never less than 100 percent of the non-federal share. In your letter, you provided information regarding application of CPEs with your county nursing facilities as well as your county psychiatric facilities. In both of these instances, New Jersey has documented that the counties were not required to contribute more than 100 percent of the non-federal share of the total payments.

Therefore, CMS would agree that New Jersey was in compliance with the political subdivision requirements as established under section 5001(g)(2) of ARRA. I hope this information is helpful and let me know if you have any additional questions.

Sincerely,

Kristin Fan
Deputy Director