

**QUARTERLY UPDATE  
TO THE LEGISLATURE**

**IMPLEMENTATION OF THE FEDERAL  
AMERICAN RECOVERY AND  
REINVESTMENT ACT OF 2009**

**Quarterly Update #2  
July 2009 through September 2009**

**Department of Health Care Services**

**DEPARTMENT OF HEALTH CARE SERVICES  
QUARTERLY UPDATE TO THE LEGISLATURE**

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## I. PURPOSE OF THE UPDATE

Under the State Budget Act of 2009, the State Department of Health Care Services (DHCS) is to provide the Legislature with a quarterly update regarding the implementation of the federal American Recovery and Reinvestment Act of 2009 (ARRA) in the Medi-Cal program. The updates shall reflect key issues and fiscal data. This is the second quarterly update, which covers the period from July 1, 2009, through September 30, 2009. Updates, as well as a brief description of ARRA requirements, are provided below on each section of ARRA that impacts the Medi-Cal program.

The documents referenced below, as well as prior quarters' ARRA updates, are available in a companion document entitled "ARRA Overview" available on DHCS' ARRA website: <http://www.dhcs.ca.gov/Pages/A.aspx>.

## II. TEMPORARY FEDERAL MEDICAL ASSISTANCE PERCENTAGE (FMAP) INCREASE – *ARRA Division B Section 5001*

For the recession adjustment period (October 1, 2008, through December 31, 2010), ARRA provides states an across-the-board FMAP increase of 6.2 percentage points and an additional FMAP increase based on states' unemployment rates. For the period October 1, 2008, through June 30, 2010, California will receive an 11.59 percent FMAP increase which includes the 6.2 percent across-the-board increase and a 5.39 percent increase for unemployment. California's increased FMAP may be adjusted for the period July 1, 2010, through December 31, 2010, if the state's unemployment rate declines significantly from its current level.

The federal Centers for Medicare and Medicaid Services (CMS) authorize state Medicaid expenditures on a quarterly basis. Each state is notified of its authorization through a grant award letter, which is sent to the state at the start of each quarter. The expenditures authorized through grant award letters are based on a projection of quarterly Medicaid expenditures and can be increased if a state's actual expenditures exceed projected expenditures. Because the grant award amount is based on an estimate of quarterly spending, it will not equal actual expenditures. Typically the Medi-Cal program does not fully expend its quarterly grant award. During the recession adjustment period, CMS is issuing two separate grant award letters – one for regular FMAP and one for increased FMAP under ARRA.

### **Key Fiscal Data:**

- DHCS' ARRA grant award letter for the quarter July 2009 through September 2009 authorized initial expenditures of \$1,045,398,000.
- On September 25, 2009, DHCS received a supplemental ARRA grant award letter that authorized additional expenditures of \$32,500,000.
- DHCS claimed \$1,077,769,207.86 in increased FMAP during the quarter July 2009 through September 2009.

- In total, DHCS claimed \$3,831,014,456.16 in increased FMAP during the period October 2008 through September 2009.

**Status Update:**

- On July 7, 2009, CMS released a Frequently Asked Questions (FAQ) document.
- On August 19, 2009, CMS released State Medicaid Director (SMD) Letter 09-005, ARRA #5, along with Enclosure A and Enclosure B. These documents provide guidance on the process for accessing the increased FMAP, expenditures for which the increased FMAP is available, and the eligibility “maintenance of effort” requirements under section 5001(f) of ARRA.
- On September 3, 2009, CMS distributed a quarterly data collection document for Section 5001. The document is currently in draft form; however, CMS is asking states to voluntarily complete and submit the information by the end of October 2009. DHCS is working to respond to this request.
- By September 30, 2011, states will have to report to the HHS Secretary regarding how additional federal funds were spent.

**Prompt Payment for FMAP Increase:** Temporarily extends federal requirements for prompt payments to nursing facilities and hospitals, effective June 1, 2009. Prompt payments must be met on a daily basis for the applicable providers.

**Status Update:**

- On July 30, 2009, CMS released SMD Letter 09-004, ARRA #4 and an Appendix, which provide final guidance on ARRA provisions related to prompt payment.
- DHCS was compliant with the prompt payment requirements all days during the quarter July 1, 2009-September 30, 2009.

**III. TEMPORARY INCREASE IN DISPROPORTIONATE SHARE HOSPITAL (DSH) ALLOTMENT – ARRA Division B Section 5002**

ARRA provides a temporary increase of 2.5% in FFY 2009 and 2.5% in FFY 2010 of additional federal funding to the existing DSH Allotment, which is distributed to public and private hospitals that meet certain criteria for the available funding.

**Key Fiscal Data:**

- California’s increased Medicaid DSH allotment for FFY 2009 equals \$26,847,075.
- As of September 30, 2009, DHCS claimed \$20,576,000 in ARRA DSH for FFY 2009. Additional FFY 09 ARRA DSH funds will be claimed in the coming months.

**Status Update:**

- No updates for the period July 1, 2009, through September 31, 2009.

**IV. EXTENSION OF MORATORIA ON CERTAIN MEDICAID FINAL REGULATIONS  
– *ARRA Division B Section 5003***

ARRA extends through June 30, 2009, the moratorium on four finalized Medicaid regulations pertaining to targeted case management, school-based services, health care provider taxes, and outpatient hospital services. On June 30, 2009, CMS published a final rule rescinding in full the school-based services regulation and the outpatient hospital services regulation and partially rescinding the targeted case management regulation. ARRA also expresses intent that CMS should not promulgate final regulations for graduate medical education, cost limit for public providers, and rehabilitative services. Finally, ARRA bars enforcement of the Outpatient Hospital Services regulation retroactive to December 8, 2008.

**Status Update:**

- No updates for the period July 1, 2009, through September 31, 2009.

**V. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA) – *ARRA Division B Section 5004***

ARRA extends the TMA program, known as Transitional Medi-Cal (TMC) in California, until December 31, 2010. TMA provides a period of continuing coverage for families who lose Medi-Cal eligibility due to increased earned income. ARRA also provides states two new eligibility options: (1) change the initial 6 month eligibility period to 12 months; and (2) waive the requirement that beneficiaries have to have received Medicaid in at least 3 of the last 6 months period to qualify for TMA.

**Status Update:**

- On September 3, 2009, CMS distributed a data collection document for TMA. States must complete and submit the document by the end of July 2010.

**VI. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM – *ARRA Division B Section 5005***

ARRA extends the QI program one year through December 31, 2010, and provides additional funding for calendar year 2010. The QI program is one of the Medicare Savings Programs developed to pay all of the Medicare Part B premiums for eligible individuals. Certain low-income individuals who are aged or have disabilities, as defined under the Supplemental Security Income (SSI) program, and are eligible for Medicare, are also eligible to have their Medicare Part B premiums paid for by Medicaid under the Medicare Savings Program (MSP).

Eligible groups include Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), and Qualifying Individuals (QIs). QMBs have incomes no greater than 100% of the federal poverty level (FPL) and assets no greater than \$4,000 for an individual and \$6,000 for a couple. SLMBs meet QMB criteria except that their incomes are greater than 100% of FPL but do not exceed 120% FPL. QIs meet the QMB criteria except that their income is between 120% and 135% of FPL. Further, they are not otherwise eligible for Medicaid.

**Status Update:**

- No updates for the period July 1, 2009, through September 31, 2009.

**VII. PROTECTIONS FOR INDIANS UNDER MEDICAID – *ARRA Division B Section 5006***

**Premiums and Cost Sharing:** ARRA prohibits the use of premium or cost sharing provisions for Indian beneficiaries who receive Medicaid services directly from Indian Health Service, an Indian Tribe, a tribal organization, urban Indian organization or through referral under contract health service. ARRA also prohibits the reduction of payments due to these providers by the amount of cost sharing that would have otherwise applied to an Indian.

**Status Update:**

- No updates for the period July 1, 2009, through September 31, 2009.

**Eligibility Provisions:** ARRA exempts four classes of property from resources in determining Medicaid eligibility determinations under Medicaid for Indians.

**Status Update:**

- No updates for the period July 1, 2009, through September 31, 2009.

**Managed Care Provisions:** ARRA requires that Indians enrolled in a non-Indian Medicaid managed care entity (MCE) with an Indian provider participating as a primary care provider within the plan network be allowed to choose the Indian provider as the primary care provider when the Indian is otherwise eligible to receive services from the provider and the Indian provider has the capacity to provide the primary care services.

**Status Update:**

- DHCS determined that existing Medi-Cal managed care contracts require amendments to comply with Section 5006 of ARRA. CMS approved contract language, and amendments are being made on a flow basis.

**Solicitation of Advice under Medicaid:** ARRA requires states to seek a state plan amendment (SPA) to include the requirement to seek advice from designees of Indian Health Programs and Urban Indian Organizations prior to any SPAs, waiver requests and proposals for demonstration projects likely to directly impact

Indians, Indian Health Programs or Urban Indian Organizations. This provision may include the appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organization to the medical care advisory committee advising the state on its state plan. The SPA must be submitted by September 30, 2009, to be effective July 1, 2009.

**Status Update:**

- On August 4, 2009, DHCS released a letter to all California Indian Health Programs and Urban Indian Organizations summarizing seven SPAs and inviting any comments or questions pertaining to those documents.
- On September 22, 2009, DHCS released a letter to all California Indian Health Programs and Urban Indian Organizations summarizing three SPAs and one waiver and inviting any comments or questions pertaining to these documents.
- On September 23, 2009, DHCS released a draft policy to the Tribal community to initiate discussions regarding the process for solicitation of advice from Indian Health Programs and Urban Indian Organizations.
- DHCS will work with the Tribal community, Indian Health Programs, Urban Indian Organizations, federal Indian Health Services (IHS) and CMS in developing the process for seeking advice from Indian Health Programs and Urban Indian Organizations under this provision.
- DHCS is awaiting formal guidance from CMS on these provisions.

**VIII. HEALTH INFORMATION TECHNOLOGY INCENTIVES FOR MEDICAID PROVIDERS – *ARRA Division B Section 4101***

The Health Information Technology for Economic and Clinical Health (HITECH) Act, a component of ARRA, provides investments in HIT infrastructure and Medicare and Medicaid incentives to encourage providers to use HIT and electronic health information exchange. The federal government is working to develop requirements and guidance for the incentive program.

**Status Update:**

- On July 15, 2009, DHCS released a final Request for Proposal (RFP) for the HITECH Strategy and Planning Scope of Work development.
- DHCS, in collaboration with California Health Care Foundation and FSG Social Impact Advisors (FSG), a nonprofit strategy consulting firm, launched a process to help build a vision for the use of the ARRA funds to increase adoption and meaningful use of electronic health records in California. FSG is working with DHCS executive management and leaders in other state departments to define a clear work plan and success metrics for the development of a proposal for the adoption and meaningful use of EHRs by California's health care services providers under the Medi-Cal program.
- On September 1, 2009, CMS released SMD Letter 09-006, ARRA HIT #1, and six enclosures, which provide initial and preliminary guidance on state

expenses related to activities in support of the administration of incentive payments to providers:

- Enclosure A – State Medicaid HIT Plan
- Enclosure B – Relationship between State Medicaid Management Information Systems (MMIS), Medicaid Information Technology Architecture (MITA), and HIT Adoption
- Enclosure C – The American Recovery and Reinvestment Act of 2009: Roles and Responsibilities of Center for Medicaid and State Operations (CMSO) and the State to Administer and Implement HIT Incentive Payments
- Enclosure D – Office of the National Coordinator Grant Opportunities and CMS Funding Opportunities
- Enclosure E – Medicaid – American Recovery and Reinvestment Act (ARRA) Section 4201: Health Information Technology (HIT) Potentially Eligible for 90 Percent HIT Administrative Match
- Enclosure F – Health Information Technology Resources
- On September 9, 2009, DHCS awarded a contract for development the HITECH Strategy and Planning Scope of Work to the Lewin Group.
- Implementing regulations are due to be released by CMS by December 31, 2009.

**IX. INCOME DISREGARDS - *ARRA Division B Sections 2002 (UI Increase), 2201 (SSI Increase), 2202 (Special Government Employee Credit), 6432 (COBRA Benefit)***

ARRA provides a one-time emergency payment of \$250 to Supplemental Security Income (SSI) recipients, Railroad Retirement recipients, and Veterans compensation or pension recipients. Payments are disregarded for the purpose of determining Medi-Cal eligibility. DHCS issued ACWDLs to provide counties with guidance for implementing various payments and credits provided to individuals through ARRA.

**Status Update:**

- No updates for the period July 1, 2009, through September 31, 2009.