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# 42 U.S. Code § 1397ee

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## Payments to States

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### **(a) Payments**

#### **(1) In general**

Subject to the succeeding provisions of this section, the Secretary shall pay to each State with a plan approved under this subchapter, from its allotment under section 1397dd of this title, an amount for each quarter equal to the enhanced FMAP (or, in the case of expenditures described in subparagraph (D)(iv), the higher of 75 percent or the sum of the enhanced FMAP plus 5 percentage points) of expenditures in the quarter—

(A) for child health assistance under the plan for targeted low-income children in the form of providing medical assistance for which payment is made on the basis of an enhanced FMAP under the fourth sentence of section 1396d(b) of this title;

(B)

[reserved]

(C) for child health assistance under the plan for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 1397cc of this title; and

(D) only to the extent permitted consistent with subsection (c)—

(i) for payment for other child health assistance for targeted low-income children;

(ii) for expenditures for health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children);

(iii) for expenditures for outreach activities as provided in section 1397bb(c)(1) of this title under the plan;

(iv) for translation or interpretation services in connection with the enrollment of, retention of, and use of services under this subchapter by, individuals for whom English is not their primary language (as found necessary by the Secretary for the proper and efficient administration of the State plan); and

(v) for other reasonable costs incurred by the State to administer the plan.

#### **(2) Order of payments**

Payments under paragraph (1) from a State's allotment shall be made in the following order:

(A) First, for expenditures for items described in paragraph (1)(A).

(B) Second, for expenditures for items described in paragraph (1)(B).

(C) Third, for expenditures for items described in paragraph (1)(C).

(D) Fourth, for expenditures for items described in paragraph (1)(D).

#### **(3) Performance bonus payment to offset additional Medicaid and CHIP child enrollment costs resulting from enrollment and retention efforts**

##### **(A) In general**

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In addition to the payments made under paragraph (1), for each fiscal year (beginning with fiscal year 2009 and ending with fiscal year 2013), the Secretary shall pay from amounts made available under subparagraph (E), to each State that meets the condition under paragraph (4) for the fiscal year, an amount equal to the amount described in subparagraph (B) for the State and fiscal year. The payment under this paragraph shall be made, to a State for a fiscal year, as a single payment not later than the last day of the first calendar quarter of the following fiscal year.

**(B) Amount for above baseline Medicaid child enrollment costs**

Subject to subparagraph (E), the amount described in this subparagraph for a State for a fiscal year is equal to the sum of the following amounts:

**(i) First tier above baseline Medicaid enrollees**

An amount equal to the number of first tier above baseline child enrollees (as determined under subparagraph (C)(i)) under subchapter XIX for the State and fiscal year, multiplied by 15 percent of the projected per capita State Medicaid expenditures (as determined under subparagraph (D)) for the State and fiscal year under subchapter XIX.

**(ii) Second tier above baseline Medicaid enrollees**

An amount equal to the number of second tier above baseline child enrollees (as determined under subparagraph (C)(ii)) under subchapter XIX for the State and fiscal year, multiplied by 62.5 percent of the projected per capita State Medicaid expenditures (as determined under subparagraph (D)) for the State and fiscal year under subchapter XIX.

**(C) Number of first and second tier above baseline child enrollees; baseline number of child enrollees**

For purposes of this paragraph:

**(i) First tier above baseline child enrollees**

The number of first tier above baseline child enrollees for a State for a fiscal year under subchapter XIX is equal to the number (if any, as determined by the Secretary) by which—

(I) the monthly average unduplicated number of qualifying children (as defined in subparagraph (F)) enrolled during the fiscal year under the State plan under subchapter XIX; exceeds

(II) the baseline number of enrollees described in clause (iii) for the State and fiscal year under subchapter XIX;

but not to exceed 10 percent of the baseline number of enrollees described in subclause (II).

**(ii) Second tier above baseline child enrollees**

The number of second tier above baseline child enrollees for a State for a fiscal year under subchapter XIX is equal to the number (if any, as determined by the Secretary) by which—

(I) the monthly average unduplicated number of qualifying children (as defined in subparagraph (F)) enrolled during the fiscal year under subchapter XIX as described in clause (i)(I); exceeds

(II) the sum of the baseline number of child enrollees described in clause (iii) for the State and fiscal year under subchapter XIX, as described in clause (i)(II), and the maximum number of first tier above baseline child enrollees for the State and fiscal year under subchapter XIX, as determined under clause (i).

**(iii) Baseline number of child enrollees**

Subject to subparagraph (H), the baseline number of child enrollees for a State under subchapter XIX—

(I) for fiscal year 2009 is equal to the monthly average unduplicated number of qualifying children enrolled in the State plan under subchapter XIX during fiscal year 2007 increased by the population

growth for children in that State from 2007 to 2008 (as estimated by the Bureau of the Census) plus 4 percentage points, and further increased by the population growth for children in that State from 2008 to 2009 (as estimated by the Bureau of the Census) plus 4 percentage points;

(II) for each of fiscal years 2010, 2011, and 2012, is equal to the baseline number of child enrollees for the State for the previous fiscal year under subchapter XIX, increased by the population growth for children in that State from the calendar year in which the respective fiscal year begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 3.5 percentage points;

(III) for each of fiscal years 2013, 2014, and 2015, is equal to the baseline number of child enrollees for the State for the previous fiscal year under subchapter XIX, increased by the population growth for children in that State from the calendar year in which the respective fiscal year begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 3 percentage points; and

(IV) for a subsequent fiscal year is equal to the baseline number of child enrollees for the State for the previous fiscal year under subchapter XIX, increased by the population growth for children in that State from the calendar year in which the fiscal year involved begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 2 percentage points.

#### **(D) Projected per capita State Medicaid expenditures**

For purposes of subparagraph (B), the projected per capita State Medicaid expenditures for a State and fiscal year under subchapter XIX is equal to the average per capita expenditures (including both State and Federal financial participation) for children under the State plan under such subchapter, including under waivers but not including such children eligible for assistance by virtue of the receipt of benefits under subchapter XVI, for the most recent fiscal year for which actual data are available (as determined by the Secretary), increased (for each subsequent fiscal year up to and including the fiscal year involved) by the annual percentage increase in per capita amount of National Health Expenditures (as estimated by the Secretary) for the calendar year in which the respective subsequent fiscal year ends and multiplied by a State matching percentage equal to 100 percent minus the Federal medical assistance percentage (as defined in section 1396d(b) of this title) for the fiscal year involved.

#### **(E) Amounts available for payments**

##### **(i) Initial appropriation**

Out of any money in the Treasury not otherwise appropriated, there are appropriated \$3,225,000,000 for fiscal year 2009 for making payments under this paragraph, to be available until expended.

##### **(ii) Transfers**

Notwithstanding any other provision of this subchapter, the following amounts shall also be available, without fiscal year limitation, for making payments under this paragraph:

##### **(I) Unobligated national allotment**

###### **(aa) Fiscal years 2009 through 2012**

As of December 31 of fiscal year 2009, and as of December 31 of each succeeding fiscal year through fiscal year 2012, the portion, if any, of the amount appropriated under subsection (a) for such fiscal year that is unobligated for allotment to a State under subsection (m) <sup>[1]</sup> for such fiscal year or set aside under subsection (a)(3) or (b)(2) of section 1397kk of this title for such fiscal year.

###### **(bb) First half of fiscal year 2013**

As of December 31 of fiscal year 2013, the portion, if any, of the sum of the amounts appropriated under subsection (a)(16)(A) <sup>[2]</sup> and under section 108 of the Children's Health Insurance Reauthorization Act of 2009 for the period beginning on October 1, 2012, and ending on March 31,

2013, that is unobligated for allotment to a State under subsection (m)<sup>1</sup> for such fiscal year or set aside under subsection (b)(2) of section 1397kk of this title for such fiscal year.

**(cc) Second half of fiscal year 2013**

As of June 30 of fiscal year 2013, the portion, if any, of the amount appropriated under subsection (a) (16)(B)<sup>2</sup> for the period beginning on April 1, 2013, and ending on September 30, 2013, that is unobligated for allotment to a State under subsection (m)<sup>1</sup> for such fiscal year or set aside under subsection (b)(2) of section 1397kk of this title for such fiscal year.

**(II) Unexpended allotments not used for redistribution**

As of November 15 of each of fiscal years 2010 through 2013, the total amount of allotments made to States under section 1397dd of this title for the second preceding fiscal year (third preceding fiscal year in the case of the fiscal year 2006, 2007, and 2008 allotments) that is not expended or redistributed under section 1397dd(f) of this title during the period in which such allotments are available for obligation.

**(III) Excess child enrollment contingency funds**

As of October 1 of each of fiscal years 2010 through 2013, any amount in excess of the aggregate cap applicable to the Child Enrollment Contingency Fund for the fiscal year under section 1397dd(n) of this title.

**(iii) Proportional reduction**

If the sum of the amounts otherwise payable under this paragraph for a fiscal year exceeds the amount available for the fiscal year under this subparagraph, the amount to be paid under this paragraph to each State shall be reduced proportionally.

**(F) Qualifying children defined**

**(i) In general**

For purposes of this subsection, subject to clauses (ii) and (iii), the term “qualifying children” means children who meet the eligibility criteria (including income, categorical eligibility, age, and immigration status criteria) in effect as of July 1, 2008, for enrollment under subchapter XIX, taking into account criteria applied as of such date under subchapter XIX pursuant to a waiver under section 1315 of this title.

**(ii) Limitation**

A child described in clause (i) who is provided medical assistance during a presumptive eligibility period under section 1396r-1a of this title shall be considered to be a “qualifying child” only if the child is determined to be eligible for medical assistance under subchapter XIX.

**(iii) Exclusion**

Such term does not include any children for whom the State has made an election to provide medical assistance under paragraph (4) of section 1396b(v) of this title or any children enrolled on or after October 1, 2013.

**(G) Application to commonwealths and territories**

The provisions of subparagraph (G) of section 1397dd(n)(3) of this title shall apply with respect to payment under this paragraph in the same manner as such provisions apply to payment under such section.

**(H) Application to States that implement a Medicaid expansion for children after fiscal year 2008**

In the case of a State that provides coverage under section 115 of the Children’s Health Insurance Program Reauthorization Act of 2009 for any fiscal year after fiscal year 2008—

(i) any child enrolled in the State plan under subchapter XIX through the application of such an election shall be disregarded from the determination for the State of the monthly average unduplicated number of qualifying children enrolled in such plan during the first 3 fiscal years in which such an election is in effect; and

(ii) in determining the baseline number of child enrollees for the State for any fiscal year subsequent to such first 3 fiscal years, the baseline number of child enrollees for the State under subchapter XIX for the third of such fiscal years shall be the monthly average unduplicated number of qualifying children enrolled in the State plan under subchapter XIX for such third fiscal year.

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