

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 45 CFR Parts 92 and 95

### Health Care Financing Administration

## 42 CFR Parts 447 and 457

[HCFA-2114-F]

RIN 0938-A165

### State Child Health; State Children's Health Insurance Program Allotments and Payments to States

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth the methodologies and procedures to determine the allotments of Federal funds for each Federal fiscal year (FY) available to individual States, Commonwealths and Territories under title XXI of the Social Security Act. This rule also specifies the allotment, payment, and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive Federal financial participation (FFP) for expenditures under the State Children's Health Insurance Program (SCHIP) and related Medicaid program provisions.

Established by section 4901 of the Balanced Budget Act of 1997 (Public Law 105-33), amended by technical amendments (made by Public Law 105-100), and most recently amended by the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106-113, enacted November 29, 1999), the State Children's Health Insurance Program provides Federal matching funds to States to initiate and expand health insurance coverage to uninsured, low-income children. Aggregate Federal funding is limited to a fixed amount for each Federal fiscal year. This aggregate amount is divided into allotments for each State. State allotments are determined based on a statutory formula that divides the total available appropriation among all States with approved child health plans. Once determined, the amount of a State's allotment for a fiscal year is available for 3 years.

We are publishing this final rule in accordance with the provisions of sections 2104 and 2105 of the Act that relate to allotments and payments to States under title XXI.

**DATES:** *Effective Date:* These regulations are effective on June 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Richard Strauss, (410) 786-2019

### SUPPLEMENTARY INFORMATION:

#### I. Background

We published on March 4, 1999 a proposed rule in the **Federal Register** (64 FR 10412), that set forth the methodologies and procedures to determine allotments of federal funds for each federal fiscal year that will be available to individual States, Commonwealths and Territories under title XXI of the Social Security Act (the Act). This rule also specified the allotment, payment, and grant award process that would be used for the States, the Commonwealths and Territories to claim and receive Federal financial participation (FFP) for expenditures under SCHIP and related Medicaid program provisions.

Section 4901 of the Balanced Budget Act of 1997 (BBA), Public Law 105-33, as amended by Public Law 105-100, added title XXI to the Act, to assist State efforts to initiate and expand child health assistance to uninsured, low-income children. Under title XXI, child health assistance is provided primarily for obtaining health benefits coverage through (1) obtaining coverage that meets requirements specified in the law under Section 2103 of the Act; or (2) expanding benefits under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both.

Section 2104(a) of the Act appropriates funds for each of ten fiscal years and directs the Secretary to calculate allotments of these appropriated funds for each State that will be available to match the State expenditures for that fiscal year. Section 2104(b) of the Act sets forth a specific methodology for calculating allotments to the fifty States, while section 2104(c) of the Act sets forth a methodology for calculating allotments to the Commonwealths and Territories. Section 2104(d) of the Act requires the reduction of the title XXI allotment to account for Medicaid expansions funded through the enhanced rate authorized by title XXI. Section 2104(e) of the Act provides for a 3-year period of availability for each State's annual allotment, and section 2104(f) authorizes redistribution of unspent allotments at the end of that period of availability.

Section 2105(a) and (b) of the Act requires the Secretary to make payments to each State with an approved State child health plan from its available allotment equal to a certain percentage (referred to as the enhanced Federal medical assistance percentage (enhanced FMAP)) of the State

expenditures under the plan. These expenditures are primarily for child health assistance for targeted low-income children that meet the health benefits coverage requirements in section 2103 of the Act. Section 2105 of the Act authorizes the Secretary to establish a process for making payments to States for State expenditures under their title XXI programs. According to section 2105(c) of the Act, no more than 10 percent of a State's total expenditures may be used for the total costs of: other child health assistance for targeted low-income children; health services initiatives; outreach; and administrative costs.

This final rule implements these title XXI SCHIP and related title XIX Medicaid program financial provisions, including the allotment process, the payment process, financial reporting requirements, and the grant award process.

#### II. Provisions of the Proposed Rule

Under our March 4, 1999 proposal, the new regulations for the State Children's Health Insurance Program would be set forth in regulations at 42 CFR part 457 subchapter D. The existing regulations for the Medicaid program containing similar general financial and related provisions were used as a model for SCHIP regulations. We note that some sections and subparts would be reserved for regulations currently under development related to other statutory requirements of the State Children's Health Insurance Program. We intend to address these and other statutory requirements in subsequent **Federal Register** documents. In particular, a SCHIP proposed rule was published on November 8, 1999 in the **Federal Register** (64 FR 60882).

We proposed a new subpart B in Part 457 that would address requirements for financial administration of the SCHIP plan. We also proposed a new subpart F that would specify the methodologies and procedures to determine the Federal allotments, and the grant award process that will be used for payment to States.

Specifically, we proposed to add §§ 457.200 through 457.238 in Subpart B to set forth financial administration requirements to govern the documentation of claims for Federal payment, the standard accounting practices to be used in determining claims, and the process for resolving disputes about those claims. We proposed to add §§ 457.600 through 457.632, subpart F, that would implement the provisions of section 2104 of the Act, relating to the process for establishing the national total amounts available and the State specific

allotments for a fiscal year, and section 2105 of the Act, relating to the process for making payments to States from their allotments. We also proposed to add a new section on Medicaid presumptive eligibility at § 447.88 to subpart A.

Certain existing general Departmental regulations in part 45 of the Code of Federal Regulations (CFR) subparts 92 and 95 were conformed to the title XXI program. We revised the sections in these subparts.

### III. Analysis of and Responses to Public Comments

We received one letter of comment on the March 4, 1999 proposed rule. A summary of the comments contained in that letter, and our responses follows.

#### A. Resubmission of Claims

*Comment:* The commenter noted that the proposed regulations seem to confirm that States may carry forward SCHIP claims in excess of their allotments for particular fiscal years and have those claims satisfied out of the following year's allotments, once those funds become available. The commenter suggested that claims exceeding a fiscal year's allotment should not have to be resubmitted.

*Response:* This commenter is concerned that a State should only have to report expenditures once, without having to resubmit them again in the case where the expenditures reported for a fiscal year are in excess of the SCHIP fiscal year allotments available in that fiscal year. This is already the case under the proposed rule as published in the **Federal Register** on March 4, 1999. Under § 457.616(c)(2), a State's reported payments are applied against the State's allotment "based on the quarter in which the expenditures are claimed by the State." This provides the State with flexibility to decide the quarter in which a particular expenditure will be reported and claimed. As further provided in § 457.616(c)(6), if the State reports expenditures in one fiscal year and these expenditures are in excess of the allotment(s) available in that fiscal year, the amount of the excess expenditures are carried over for application against the allotment(s) available in the following fiscal year when they become available. We designed the expenditure reporting system to automatically track and carry over the amounts of excess expenditures. Therefore, States do not need to resubmit expenditures once they are submitted.

#### B. Regulations Related to Provider Related Donations and Health Care Related Taxes

*Comment:* The commenter suggested that HCFA should not issue SCHIP regulations in the area of provider-related donations and health care-related taxes. This commenter indicated that: "In the overview regarding the section, Public Funds as the State Share of Financial Participation (§ 457.220), a statement is made that HCFA is considering whether there is need to issue additional regulations for provider-related donations and health care-related taxes for SCHIP. It does not seem appropriate or warranted under the title XXI legislation to have different regulations regarding provider-related donations and health care-related taxes for various programs. Additions to the current regulations for provider-related donations and health care-related taxes would bring unnecessary confusion and complication to SCHIP. We strongly urge HCFA against promulgating regulations in this area."

*Response:* We agree that there is the potential for confusion if different regulations on the provider-related donations and health care-related taxes provisions applied in the SCHIP and the Medicaid program. The quoted language was intended to reflect recognition that, after we have more experience with the SCHIP program, we may need to clarify how the basic tax and donation principles set forth in the Medicaid statute would apply to a SCHIP program. At this time, we do not intend to incorporate special provisions on provider-related donations and health care-related taxes into the SCHIP regulations. As indicated in the preamble to the proposed rule published on March 4, 1999, in §§ 457.220 and 457.628, we will retain the references to the Medicaid regulatory provisions on this issue contained in 42 CFR subpart B §§ 433.51 through 433.74.

#### C. Carryover of Expenditures and the 10 Percent Limit

*Comment:* The commenter notes that the 10 percent limit on certain categories of costs—administrative costs and costs of outreach, health services initiatives, and payment for services other than coverage—is applied on an annual fiscal year basis. The commenter further noted that SCHIP guidance documents prepared by HCFA would permit States to withhold submission of claims for expenditures, which would have the effect of allowing a carryover period for the 10 percent limit. The commenter requested that the final

regulation expressly authorize such a carryover period for the 10 percent limit.

*Response:* We are clarifying the regulation in this regard. While we agree with the commenter that we would permit States the flexibility to time the submission of claimed expenditures, we would not permit the carryover of claims for administrative costs once claimed in a particular fiscal year (even when no Federal payment is made based on those expenditures paid because they exceed the 10 percent limit for that fiscal year). HCFA believes its position faithfully adheres to the intent of the statute while permitting some administrative flexibility in the submission of claims and administrative simplicity in calculating whether the limit has been exceeded.

As indicated in proposed § 457.616(c)(2), for purposes of applying expenditures against the available fiscal year allotments, we intended to permit States flexibility in deciding the quarter in which they will submit the expenditures. We would make the same flexibility available to States with respect to the 10 percent limit referred to in § 457.618. As specified below, in this final rule, we are amending § 457.618 to make clear that both the expenditures used in calculating the 10 percent limit, and the expenditures applied against the 10 percent limit, are based on the quarter in which the expenditures are claimed by a State. We are also amending § 457.616 to make clear that the expenditures that are within a particular fiscal year's 10 percent limit may be applied against a subsequent fiscal year's available allotment or allotments for purposes of Federal reimbursement. This could occur when the available allotment or allotments for a fiscal year was exhausted. In that case, even though the amounts of the expenditures were within the 10 percent limit, and therefore, otherwise reimbursable, no Federal payment would be available for the expenditures because there would be no available allotment for that fiscal year. Therefore, we are clarifying that expenditures in excess of the 10 percent limit for the fiscal year during which they are claimed may not be applied against an allotment available only in a subsequent fiscal year.

Consistent with this position that expenditures subject to the limits are counted in the fiscal year claimed, we are also clarifying that, for purposes of calculating the 10 percent limit, total program expenditures are counted in the fiscal year claimed as well. These expenditures cannot be used in more than one Federal fiscal year. For

example, the amount of the expenditures referenced in section 2105(a)(1) of the Act as claimed and reported by a State on the 4 quarterly expenditure reports for FY 1998, would be used in calculating a State's 10 percent limit for FY 1998. These expenditures may not be used again for calculating a 10 percent limit for another fiscal year, such as for FY 1999. Similarly, the amount of the expenditures referenced in section 2105(a)(2) of the Act, as reported on the 4 quarterly expenditure reports for FY 1998 would be applied against the 10 percent limit for FY 1998; these expenditures may not be applied against a 10 percent limit for another fiscal year, such as for FY 1999. Therefore, based on when they claim and report expenditures, States have the flexibility to determine the fiscal year 10 percent limit regarding which such expenditures will be applied.

#### IV. Provisions of the Final Regulations

After consideration of the comments reviewed and further analysis of specific issues, we are adopting the March 4, 1999 proposed rule as final with minor editorial clarification and revisions discussed and identified in Section III of this preamble.

In addition, the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Public Law 106–113, enacted on November 29, 1999) contained certain provisions which are being implemented in this final regulation. As detailed below, these provisions are explicit, clear and straightforward in the statute, and we believe, self-implementing. Therefore, we are implementing the new provisions of BBRA of 1999 discussed below in this final regulation as final without need for public comment.

##### *A. Inapplicability of Enhanced Match Under the SCHIP to Medicaid DSH Payments*

Section 605(a) of the BBRA of 1999 amends section 1905(b) of the Act to preclude the availability of the enhanced Federal medical assistance percentage (enhanced FMAP) for disproportionate share hospital (DSH) payments made by States under section 1923 of the Act. Under section 606(b) of Public Law 106–113, this amendment “takes effect on October 1, 1999, and applies to expenditures made on or after such date.” In general, the Federal matching rate available for expenditures described in sections 1905(u)(2) and (3) of the Act, relating to the Medicaid SCHIP expansion groups, is the enhanced FMAP specified in section 2105(b) of the Act and by reference in

section 1905(b) of the Act. However, section 605(a) of the BBRA of 1999 amended section 1905(b) of the Act to specifically preclude the availability of the enhanced FMAP for DSH payments made under section 1923 of the Act.

Sections 457.616(a)(1) and (2) of this final regulation refer to the reduction of a State's Title XXI allotment by the amount of Medicaid payments made to the State on the basis of the enhanced FMAP. As indicated above, enhanced FMAP is no longer available for DSH expenditures under section 1923 of the Act, regardless of whether the expenditures meet other conditions for enhanced FMAP. Therefore, there is no need to modify these SCHIP regulations, as contained in this **Federal Register** publication. However, we also note that the proposed SCHIP regulations published on November 8, 1999 in the **Federal Register** at sections 42 CFR 433.10 and 433.11 would have provided for the availability of the enhanced FMAP under the Medicaid program. These proposed regulations will need to be revised to reflect the provisions of section 605(a) of the BBRA of 1999, which precludes enhanced match for DSH expenditures under section 1923 of the Act.

##### *B. Stabilizing the SCHIP Allotment Formula*

###### 1. Acceleration of the Phase-in of Low-Income Children.

Section 701(a)(1) of the BBRA of 1999 amended section 2104(b) of the Act to accelerate the phase-in of the blend of the numbers of uninsured low-income children and low-income children specified in the statute, which are used in determining the Number of Children factor. Prior to this legislative change, the Number of Children for FYs 1998 through 2000 would have been based on the total number of low-income uninsured children in the State. As a result of the legislative change, the total number of uninsured low-income children in the State is only used for determining the Number of Children factor for FYs 1998 and 1999. Under section 2104(b) of the Act, as amended by section 701(a)(1) of the BBRA of 1999, for FY 2000 the Number of Children is now calculated as the sum of 75 percent of the low-income, uninsured children in the State, and 25 percent of the number of low-income children in the State. Furthermore, for FY 2001 and succeeding fiscal years through FY 2007, the Number of Children is calculated as the sum of 50 percent of the low-income, uninsured children in the State, and 50 percent of the number of low-income children in

the State. Section 457.608 of the final regulation incorporates this change.

###### 2. Floors and Ceiling in State Allotments.

Section 701(a)(2) of the BBRA of 1999 significantly amended and revised section 2104(b)(4) of the Act to impose floors and ceilings in the determination of the SCHIP allotments for a fiscal year, for the purpose of providing increased stability in SCHIP funding from fiscal year to fiscal year and cumulatively over a number of fiscal years, as compared to FY 1999. For purposes of this provision, the floors and ceilings are only applicable to a “Subsection (b) State,” which as defined in section 2104(b)(4)(D)(ii) of the Act, “means one of the 50 States or the District of Columbia.” More specifically, the floors and ceilings apply only to the determination of the “Allotments to 50 States and District of Columbia” under section 2104(b) of the Act, as distinguished from the determination of the “Allotments to Territories” under section 2104(c) of the Act. The floors and ceilings imposed by section 701(a)(2) of the BBRA of 1999 do not apply with respect to the determinations of allotments for the Commonwealths or Territories as prescribed in section 2104(c) of the Act.

Under section 2104(b)(4)(D) of the Act, as amended by section 701(a)(2) of the BBRA of 1999, for a fiscal year each State is allotted a “proportion” of the total amount available for funding under title XXI to all States for the fiscal year. The term “proportion,” as defined in section 2104(b)(4)(D)(i) of the Act, refers to the amount of the allotment for a State for a fiscal year divided by the total amount available nationally for all States for the fiscal year. The proportion for each State is the State's percentage share of the total amount available nationally for that fiscal year to all States. Therefore, in order for the entire total amount available nationally to be allotted to the States, the sum of the proportions for all States must exactly equal one; in other words, the sum of each State's percentage share, must exactly equal 100 percent. The determination of the proportion for each State is in accordance with the provisions of section 2104(b) of the Act, and as amended by section 701(a)(2) of the BBRA of 1999, the proportions will reflect the application of floors, ceilings, and a reconciliation process, if appropriate.

In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year. In

accordance with the statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a "product" for each State. The determination of the Number of Children and the State Cost Factor are described in other sections. The resulting products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding that State's preadjusted proportion, referring to the State's proportion before the imposition of the floors and ceilings and related reconciliation provisions.

Under the second step, the preadjusted proportions are subject to the application of the floors and ceilings provisions. The amended SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to \$2,000,000 divided by the total of the amount available nationally. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the State's FY 1999 proportion.

Each State's proportion for a fiscal year is limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must not be higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program.

As determined under the first step, which is applied prior to the application of any floors or ceilings, the sum of these preadjusted proportions for all the States will be exactly equal to one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the proportion floors, while other States' proportions may need to be lowered to the maximum proportion ceiling. After application of the fixed floors and ceilings, the sum of the (adjusted)

proportions for all States may not exactly equal one. In that case, section 2104(b)(4)(B) of the Act requires a further "reconciliation" of the proportions, under which the proportions will be adjusted to make the sum of the proportions exactly equal to one. This reconciliation process is determined in accordance to whether the sum of the proportions after application of the fixed floors and ceiling, but before reconciliation, is greater than or less than one.

The sum of the proportions would be greater than one if the application of the fixed floors and ceilings resulted in the raising of the proportions of States (due to the floors) to a greater degree than the lowering of the proportions of other States (due to the ceilings). The sum of the proportions would be lower than one, if the application of the fixed floors and ceilings resulted in the lowering of the proportions of States (due to the ceilings) to a greater degree than the raising of the proportions of other States (due to the floors). It is at least theoretically possible, though highly unlikely, that the sum of the States' proportions would still exactly equal one after the application of the fixed floors and ceilings. In that case, no further reconciliation would be necessary, and the proportions would be the same as the preadjusted proportions.

Finally, section 2104(b)(4)(C) of the Act, requires that the floors and ceilings provisions under section 2104(b)(4) of the Act, must not apply or take into account the amounts of allotments that might be redistributed in accordance with section 2104(f) of the Act. Therefore, the total amount available to States nationally in a fiscal year, would not include any redistributed amounts in that year.

Under the reconciliation process, if the application of the fixed floors and ceilings results in the sum of the States' proportions being greater than one, section 2104(b)(4)(B)(i) of the Act requires the Secretary to establish a maximum percentage increase in States' proportions, such that when applied to the State proportions the sum of the proportions would exactly equal one. If the application of the fixed floors and ceilings results in the sum of the States' proportions being less than one, section 2104(b)(4)(B)(ii) of the Act requires the Secretary to increase States' proportions (as computed before the application of the fixed floors) in a pro rata manner (but not to exceed the 145 percent ceiling), such that when applied to the State proportions the sum of the proportions would exactly equal one.

These final regulations are revised to conform to the provisions of section

701(a)(2) of BBRA of 1999 discussed above, specifically:

Section 457.608(e)(3)(A) specifies the provisions in section 2104(b)(4)(A) of the Act related to the fixed floors and ceilings.

Section 457.608(e)(3)(B) specifies the provisions in section 2104(b)(4)(B) of the Act related to the reconciliation process.

Section 457.608(b) specifies the provision in section 2104(b)(4)(D) of the Act related to the definition of proportion.

Section 457.608(a)(3) specifies the provisions in section 2104(b)(4)(C) of the Act related to the redistribution process.

### 3. Availability of Data From the Bureau of the Census

Under section 2104(b)(2)(B) of the Act, as amended by section 701(a)(3) of the BBRA of 1999, the Number of Children for each State (provided in thousands) for a fiscal year is determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the Current Population Survey (CPS) officially available from the Bureau of the Census before the beginning of the calendar year in which the fiscal year begins. For example, FY 2000 begins on October 1, 1999; that is, FY 2000 begins during calendar year 1999. Therefore, the Number of Children for each State for FY 2000 would be based on the most recent 3 years of the Bureau of the Census CPS data officially available before January 1, 1999 (the beginning of the calendar year in which FY 2000 begins), that is, it would be based on the Bureau of the Census CPS data officially available through December 31, 1998. Section 457.608(e)(2) of the final regulation in the discussion for "Number of Children" incorporates this change.

### 4. Availability of Data From the Bureau of Labor Statistics

Under section 2104(b)(3)(B) of the Act, as amended by section 701(a)(4) of the BBRA of 1999, the State Cost Factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State as reported, determined, available as final, and provided to HCFA by the Bureau of Labor Statistics (BLS) in the Department of Labor for each of the most recent 3 years available before the beginning of the calendar year in which the fiscal year begins. For example, FY 2000

begins on October 1, 1999, that is, FY 2000 begins during calendar year 1999. Therefore, the State cost factor for FY 2000 would be based on the most recent 3 years of BLS data available as final before January 1, 1999 (the beginning of the calendar year in which FY 2000 begins); that is, it would be based on the BLS data available as final through December 31, 1998. Section 457.608(e)(2) of the final regulation in the discussion for "State Cost Factor for a State" incorporates this change.

#### *C. Increased Allotments for Territories Under SCHIP*

Section 702 of the BBRA of 1999, provides for additional funds available for allotment only to the Commonwealths and Territories. Under this new provision, an additional \$34.2 million is made available for allotment to the Commonwealths and Territories in fiscal years 2000 and 2001; \$25.2 million in FYs 2002 through 2004; \$32.4 million for fiscal years 2005 and 2006; and \$40 million for FY 2007. These amounts would be added to the amounts previously available for allotment to the Commonwealths and Territories, that is, the amount determined as .25 percent of the appropriation amount for the fiscal year specified at section 2104(a) of the Act. Section 457.608(d) of these final regulations contains the amounts available for allotment to the Commonwealths and Territories.

#### *D. References to SCHIP and State Children's Health Insurance Program*

Section 704 of the BBRA of 1999 requires the Secretary of the U.S. Department of Health and Human Services or any other Federal officer or employee, with respect to any reference to the program under title XXI of the Act in any publication or official communication, to use the term "SCHIP" instead of the term "CHIP," and the term "State children's health insurance program" instead of "children's health insurance program." This final regulation incorporates the application of these terms, as required by section 704 of the BBRA of 1999.

#### **V. Regulatory Impact Statement**

We have examined the impacts of this final rule as required by Executive Order 12866, the Unfunded Mandate Reform Act of 1995 (Public Law 104-4), and the Regulatory Flexibility Act (RFA) (Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulations are necessary, to select regulatory approaches that maximize net benefits

(including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually).

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any year by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted each year for inflation). Because participation in the SCHIP program on the part of States is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the federal government are made voluntarily. These regulations will implement narrowly defined statutory language on the allocation of funds for SCHIP and will not create unfunded mandate on States, tribal or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of Section 604 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of Section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule sets forth the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds available to individual States, Commonwealths and Territories for the new State Children's Health Insurance Program established under title XXI of the Act. This rule also establishes in regulations the payment and grant award process that will be used for the States, the Commonwealths and Territories to claim and receive FFP for expenditures under the SCHIP and related Medicaid program provisions.

Budget authority for title XXI is statutorily specified in Section 2104(a) of the BBA with additional money authorized in Public Law 105-100. The total national amount available for allotment to the 50 States, the District of Columbia, and the Commonwealths and Territories for the life of SCHIP, is established as follows:

#### TOTAL AMOUNT OF ALLOTMENTS

| Year       | Amount          |
|------------|-----------------|
| 1998 ..... | \$4,235,000,000 |
| 1999 ..... | 4,247,000,000   |
| 2000 ..... | 4,249,200,000   |
| 2001 ..... | 4,249,200,000   |
| 2002 ..... | 3,115,200,000   |
| 2003 ..... | 3,175,200,000   |
| 2004 ..... | 3,175,200,000   |
| 2005 ..... | 4,082,400,000   |
| 2006 ..... | 4,082,400,000   |
| 2007 ..... | 5,040,000,000   |

The spending levels shown in the table above are based entirely on the spending and allocation formulas contained in the statute. The Secretary has no discretion over these spending levels and initial allotments of funds allocated to States. In addition, under Public Law 105-277, an additional \$32 million was appropriated for allotment only to the Commonwealths and Territories, and only for FY 1999, and is included in the amount listed for FY 1999 in the chart above. Section 702 of the BBRA of 1999 also provided for additional funds available for allotment only to the Commonwealths and Territories. Under this new provision, an additional \$34.2 million is made available for allotment to the Commonwealths and Territories in fiscal years 2000 and 2001; \$25.2 million in fiscal years 2002 through 2004; \$32.4 million for fiscal years 2005 and 2006; and \$40 million for fiscal year 2007.

Furthermore, under sections 4921 and 4922 of Public Law 105-33, the total amount available for allotment to the 50 States and the District of Columbia is reduced by an additional total of \$60,000,000; \$30,000,000 each for a special diabetes research program for Type I diabetes and special diabetes programs for Indians. The diabetes programs are funded from FYs 1998 through 2002 only.

Administrative resources needed in HCFA's Program Management account to carry out the new responsibilities of the State Children's Health Insurance Program have been estimated at \$10.1 million.

For these reasons, we are not preparing an analysis for either the RFA or Section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

#### IV. Federalism

Under Executive Order 13132, this regulation will not significantly affect the States beyond what is required by title XXI of the Act. It follows the intent and letter of the law and does not preempt State authority beyond what title XXI requires. This regulation describes only the methodologies and procedures to determine the Federal fiscal year allotments of Federal funds and proposes the allotment, payment, and grant award processes applicable to individual States, Commonwealths, and Territories for SCHIP, established under title XXI of the Act.

We have included various provisions throughout this regulation that demonstrate our intention to cooperate with the States. For example, in the implementation of title XXI and the development of these regulations, we established a process under which, during the period when States were developing their programs, SCHIP allotments were determined and "reserved" for each State for the fiscal year, regardless of whether the State had submitted and had an approved State child health plan. Accordingly, for FYs 1998 and 1999, we published "reserved" allotments at the beginning of each fiscal year; the "final" allotments to be published at a later date. By publishing the "reserved" allotments during the early stages of title XXI implementation, our intention was to provide States with the flexibility and time needed to develop their programs and to submit their State child health plans. Every State, Commonwealth and Territory qualified for an allotment by having an approved State child health plan prior to the start of FY 2000. As a result, so long as all States, Commonwealths, and Territories continue to qualify for allotments, the allotments for FY 2000 and future years can be published as "final" rather than "reserved."

In addition, training sessions led by HCFA were held throughout the country in 1998, with almost all States in attendance, on the financial and reporting aspects of title XXI. These presentations were designed to initiate a dialogue with the States and to obtain their input. States also provided substantial input following distribution of a December 8, 1998, all State letter intended to provide guidance to States on reporting for purposes of program monitoring and evaluation, including the submission of quarterly expenditure and financial/statistical reports and the Federal fiscal year 1998 annual reports. States were among those who provided comments on the March 4, 1999,

proposed rule, as well as the **Federal Register** notices of September 12, 1997 (62 FR 48098), and February 8, 1999 (64 FR 6102), both of which listed reserved allotments for the States, District of Columbia, and Commonwealth and Territories.

#### V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved, Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

##### *Section 457.226 Fiscal Policies and Accountability*

A State plan must provide that the SCHIP agency and, where applicable, local agencies administering the plan will: (a) Maintain supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements, (b) retain records for 3 years from date of submission of a final expenditure report, (c) maintain records beyond the 3-year period if audit findings have not been resolved, and (d) retain certain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

We have determined that these record keeping requirements meet the criteria set forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

##### *Section 457.234 State Plan Requirements*

A State plan must describe the policy and the methods to be used in setting payment rates for each type of service included in the State's SCHIP program.

The burden associated with this requirement is captured pursuant to the completion of HCFA collection, HCFA-

R-211, approved under OMB number 0938-0707.

##### *Section 457.238 Documentation of Payment Rates*

The SCHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

We have determined that these record keeping requirements meet the criteria forth in 5 CFR 1320.3, (b)(2) and (b)(3) (usual and customary burden). Therefore, there is no burden imposed by these requirements.

##### *Section 457.606 Conditions for State Allotments and Federal Payments for a Fiscal Year*

In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with Section 2106 of the Act and approved by the end of the fiscal year.

The burden associated with the submission of the State Child Health Plan is currently captured in accordance with the completion of the HCFA-R-211, approved under OMB number 0938-0707.

##### *Section 457.614 General Payment Process*

In order to receive FFP for a State's claims for payment for the State's expenditures, a State must submit budget estimates of quarterly funding requirements for Medicaid and the State Children's Health Insurance Programs and submit an expenditure report.

The burden associated with these reporting requirements are currently captured in accordance with the completion of HCFA collections, HCFA-21, HCFA-37, and HCFA-64. The OMB control numbers for these collections are 0938-0731, 0938-0101, and 0938-0067, respectively.

##### *Section 457.630 Grants procedures*

A State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. In addition a State must submit a budget request for the fourth quarter of the fiscal year.

The State Children's Health Insurance Program Agency must submit Form HCFA-21B (State Children's Health Insurance Program Budget Report for State Children's Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

The State must submit Form HCFA-64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA-21 (Quarterly State Children's Health Insurance

Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

The burden associated with these reporting requirements are currently captured in accordance with the completion of HCFA collections, HCFA-21, HCFA-37, and HCFA-64. The OMB control numbers for these collections are 0938-0731, 0938-0101, and 0938-0067, respectively.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 457.226, 457.234, 457.238, 457.606, 457.614, and 457.630.

If you comment on any of these information collection and recordkeeping requirements, please mail 3 copies directly to the following:

Health Care Financing Administration,  
Office of Information Services,  
Information Technology Investment  
Management Group, Division of  
HCFA Enterprise Standards, Room  
N2-14-16, 7500 Security Boulevard,  
Baltimore, MD 21244-1850. ATTN:  
John Burke, HCFA-2114-F, and  
Office of Information and Regulatory  
Affairs, Office of Management and  
Budget, Room 10235, New Executive  
Office Building, Washington, DC  
20503. ATTN: Allison Herron Eydtt,  
HCFA Desk Officer

#### List of Subjects

##### 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

##### 42 CFR Part 457

Administrative practice and procedure, Grant programs-health, State Children's Health Insurance Program, Reporting and record keeping requirements.

##### 42 CFR Part 92

Accounting, Grant Programs, Indians, Intergovernmental Relations, Reporting & record keeping requirements.

##### 42 CFR Part 95

Claims, Computer technology, Grant programs—Health, Grant programs—Social programs, Reporting and recordkeeping requirements.

42 CFR chapter IV, and 45 CFR subtitle A are amended as set forth below:

A. 45 CFR part 447 is amended as follows:

#### PART 447—PAYMENTS FOR SERVICES

1. The authority citation continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 447.88 is added to read as follows:

##### Subpart A—Payments: General Provisions

##### § 447.88 Options for claiming FFP payment for section 1920A presumptive eligibility medical assistance payments.

(a) The FMAP rate for medical assistance payments made available to a child during a presumptive eligibility period under section 1920A of the Act is the regular FMAP under title XIX, based on the category of medical assistance; that is, the enhanced FMAP is not available for section 1920A presumptive eligibility expenditures.

(b) States have the following 3 options for identifying Medicaid section 1920A presumptive eligibility expenditures and the application of payments for those expenditures:

(1) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended with no further adjustment based on the results of a subsequent actual eligibility determination (if any).

(2) A State may identify Medicaid section 1920A presumptive eligibility expenditures in the quarter expended but may adjust reported expenditures based on results of the actual eligibility determination (if any) to reflect the actual eligibility status of the individual, if other than presumptively eligible.

(3) A State may elect to delay submission of claims for payments of section 1920A presumptive eligibility expenditures until after the actual eligibility determination (if any) is made and, at that time identify such expenditures based on the actual eligibility status of individuals if other than presumptively eligible. At that time, the State would, as appropriate, recategorize the medical assistance expenditures made during the section 1920A presumptive eligibility period based on the results of the actual eligibility determination, and claim them appropriately.

B. A new subchapter D—CHILDREN'S HEALTH INSURANCE PROGRAMS is added, to read as follows:

#### SUBCHAPTER D—STATE CHILDREN'S HEALTH INSURANCE PROGRAMS (SCHIPs)

#### PART 457—ALLOTMENTS AND GRANTS TO STATES

##### Subpart A—[Reserved]

##### Subpart B—General Administration—Reviews and Audits; Withholding for Failure to Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

Sec.

- 457.200 Program reviews.
- 457.202 Audits.
- 457.204 Withholding of payment for failure to comply with Federal requirements.
- 457.206 Administrative appeals under SCHIP.
- 457.208 Judicial review.
- 457.210 Deferral of claims for FFP.
- 457.212 Disallowance of claims for FFP.
- 457.216 Treatment of uncashed or canceled (voided SCHIP checks).
- 457.218 Repayment of Federal funds by installments.
- 457.220 Public funds as the State share of financial participation.
- 457.222 FFP for equipment.
- 457.224 FFP: Conditions relating to cost sharing.
- 457.226 Fiscal policies and accountability.
- 457.228 Cost allocation.
- 457.230 FFP for State ADP expenditures.
- 457.232 Refunding of Federal share of SCHIP overpayments to providers and referral of allegations of waste, fraud or abuse of the Office of Inspector General.
- 457.234 State plan requirements.
- 457.236 Audit of records.
- 457.238 Documentation of payment rates.

##### Subparts C through E—[Reserved]

##### Subpart F—Payment to States

- 457.600 Purpose and basis of this subpart.
- 457.602 Applicability.
- 457.606 Conditions for State allotments and Federal payments for a fiscal year.
- 457.608 Process and calculation of State allotments for a fiscal year.
- 457.610 Period of availability for State allotments for a fiscal year.
- 457.614 General payment process.
- 457.616 Application and tracking of payments against the fiscal year allotments.
- 457.618 Ten percent limit on certain State Children's Health Insurance Program expenditures.
- 457.622 Rate of FFP for State expenditures.
- 457.624 Limitations on certain payments for certain expenditures.
- 457.626 Prevention of duplicate payments.
- 457.628 Other applicable Federal regulations.
- 457.630 Grants procedures.

**Authority:** Section 1102 of the Social Security Act (42 U.S.C. 1302).



**Subpart A—[Reserved]****Subpart B—General Administration—Reviews and Audits; Withholding for Failure to Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments****§ 457.200 Program reviews.**

(a) *Review of State and local administration of the SCHIP plan.* In order to determine whether the State is complying with the Federal requirements and the provisions of its plan, HCFA reviews State and local administration of the SCHIP plan through analysis of the State's policies and procedures, on-site reviews of selected aspects of agency operation, and examination of samples of individual case records.

(b) *Action on review findings.* If Federal or State reviews reveal serious problems with respect to compliance with any Federal or State plan requirement, the State must correct its practice accordingly.

**§ 457.202 Audits.**

(a) *Purpose.* The Department's Office of Inspector General (OIG) periodically audits State operations in order to determine whether —

(1) The program is being operated in a cost-efficient manner; and

(2) Funds are being properly expended for the purposes for which they were appropriated under Federal and State law and regulations.

(b) *Reports.* (1) The OIG releases audit reports simultaneously to State officials and the Department's program officials.

(2) The reports set forth OIG opinion and recommendations regarding the practices it reviewed, and the allowability of the costs it audited.

(3) Cognizant officials of the Department make final determinations on all audit findings.

(c) *Action on audit exceptions.* (1) *Concurrence or clearance.* The State agency has the opportunity of concurring in the exceptions or submitting additional facts that support clearance of the exceptions.

(2) *Appeal.* Any exceptions that are not disposed of under paragraph (c)(1) of this section are included in a disallowance letter that constitutes the Department's final decision unless the State requests reconsideration by the Appeals Board. (Specific rules are set forth in § 457.212.)

(3) *Adjustment.* If the decision by the Board requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

**§ 457.204 Withholding of payment for failure to comply with Federal requirements.**

(a) *Basis for withholding.* HCFA withholds payments to the State, in whole or in part, only if, after giving the State notice, a reasonable opportunity for correction, and an opportunity for a hearing, the Administrator finds—

(1) That the plan is in substantial noncompliance with the requirements of title XXI of the Act; or

(2) That the State is conducting its program in substantial noncompliance with either the State plan or the requirements of title XXI of the Act. (Hearings are generally not called until a reasonable effort has been made to resolve the issues through conferences and discussions. These efforts may be continued even if a date and place have been set for the hearing.)

(b) *Noncompliance of the plan.* A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan or the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans.

(c) *Noncompliance in practice.* A question of noncompliance in practice may arise from the State's failure to actually comply with a Federal requirement, regardless of whether the plan itself complies with that requirement.

(d) *Notice, reasonable opportunity for correction, and implementation of withholding.* If the Administrator makes a finding of noncompliance under paragraph (a) of this section, the following steps apply:

(1) *Preliminary notice.* The Administrator provides a preliminary notice to the State—

(i) Of the findings of noncompliance;

(ii) The proposed enforcement actions to withhold payments; and

(iii) If enforcement action is proposed, that the State has a reasonable opportunity for correction, described in paragraph (d)(2) of this section, before the Administrator takes final action.

(2) *Opportunity for corrective action.* If enforcement actions are proposed, the State must submit evidence of corrective action related to the findings of noncompliance to the Administrator within 30 days from the date of the preliminary notification.

(3) *Final notice.* Taking into account any evidence submitted by the State under paragraph (d)(2) of this section, the Administrator makes a final determination related to the findings of noncompliance, and provides a final notice to the State—

(i) Of the final determination on the findings of noncompliance;

(ii) If enforcement action is appropriate—

(A) No further payments will be made to the State (or that payments will be made only for those portions or aspects of the programs that are not affected by the noncompliance); and

(B) The total or partial withholding will continue until the Administrator is satisfied that the State's plan and practice are, and will continue to be, in compliance with Federal requirements.

(4) *Hearing.* An opportunity for a hearing will be provided to the State prior to withholding under paragraph (d)(5) of this section.

(5) *Withholding.* HCFA withholds payments, in whole or in part, until the Administrator is satisfied regarding the State's compliance.

**§ 457.206 Administrative appeals under SCHIP.**

Three distinct types of determinations are subject to Departmental reconsideration upon request by a State.

(a) *Compliance with Federal requirements.* A determination that a State's plan or proposed plan amendments, or its practice under the plan do not meet (or continue to meet) Federal requirements are subject to the hearing provisions of 42 CFR part 430, subpart D of this chapter.

(b) *FFP in State SCHIP expenditures.* Disallowances of FFP in State SCHIP expenditures (mandatory grants) are subject to Departmental reconsideration by the Departmental Appeals Board (the Board) in accordance with procedures set forth in 45 CFR part 16.

(c) *Discretionary grants disputes.* Determinations listed in 45 CFR part 16, appendix A, pertaining to discretionary grants, such as grants for special demonstration projects under Section 1115 of the Act, that may be awarded to an SCHIP agency, are subject to reconsideration by the Departmental Grant Appeals Board.

**§ 457.208 Judicial review.**

(a) *Right to judicial review.* Any State dissatisfied with the Administrator's final determination on approvability of plan material or compliance with Federal requirements (§ 457.204) has a right to judicial review.

(b) *Petition for review.* (1) The State must file a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, within 60 days after it is notified of the determination.

(2) After the clerk of the court files a copy of the petition with the Administrator, the Administrator files in the court the record of the proceedings on which the determination was based.



(c) *Court action.* (1) The court is bound by the Administrator's findings of fact, if they are supported by substantial evidence.

(2) The court has jurisdiction to affirm the Administrator's decision, to set it aside in whole or in part, or, for good cause, to remand the case for additional evidence.

(d) *Response to remand.* (1) If the court remands the case, the Administrator may make new or modified findings of fact and may modify his or her previous determination.

(2) The Administrator certifies to the court the transcript and record of the further proceedings.

(e) *Review by the Supreme Court.* The judgment of the appeals court is subject to review by the U.S. Supreme Court upon certiorari or certification, as provided in 28 U.S.C. 1254.

#### **§ 457.210 Deferral of claims for FFP.**

(a) *Requirements for deferral.*

Payment of a claim or any portion of a claim for FFP is deferred only if—

(1) The Regional Administrator or the Administrator questions its allowability and needs additional information in order to resolve the question; and

(2) HCFA takes action to defer the claim (by excluding the claimed amount from the grant award) within 60 days after the receipt of a Quarterly Statement of Expenditures (prepared in accordance with HCFA instructions) that includes that claim.

(b) *Notice of deferral and State's responsibility.* (1) Within 15 days of the action described in paragraph (a)(2) of this section, the Regional Administrator sends the State a written notice of deferral that—

(i) Identifies the type and amount of the deferred claim and specifies the reason for deferral; and

(ii) Requests the State to make available all the documents and materials the HCFA regional office believes are necessary to determine the allowability of the claim.

(2) It is the responsibility of the State to establish the allowability of a deferred claim.

(c) *Handling of documents and materials.* (1) Within 60 days (or within 120 days if the State requests an extension) after receipt of the notice of deferral, the State must make available to the HCFA regional office, in readily reviewable form, all requested documents and materials except any that it identifies as not being available.

(2) HCFA regional office staff initiates review within 30 days after receipt of the documents and materials.

(3) If the Regional Administrator finds that the materials are not in readily

reviewable form or that additional information is needed, he or she promptly notifies the State that it has 15 days to submit the readily reviewable or additional materials.

(4) If the State does not provide the necessary materials within 15 days, the Regional Administrator disallows the claim.

(5) The Regional Administrator has 90 days, after all documentation is available in readily reviewable form, to determine the allowability of the claim.

(6) If the Regional Administrator cannot complete review of the material within 90 days, HCFA pays the claim, subject to a later determination of allowability.

(d) *Effect of decision to pay a deferred claim.* Payment of a deferred claim under paragraph (c)(6) of this section does not preclude a subsequent disallowance based on the results of an audit or financial review. (If there is a subsequent disallowance, the State may request reconsideration as provided in paragraph (e)(2) of this section.)

(e) *Notice and effect of decision on allowability.* (1) The Regional Administrator or the Administrator gives the State written notice of his or her decision to pay or disallow a deferred claim.

(2) If the decision is to disallow, the notice informs the State of its right to reconsideration in accordance with 45 CFR part 16.

#### **§ 457.212 Disallowance of claims for FFP.**

(a) *Notice of disallowance and of right to reconsideration.* When the Regional Administrator or the Administrator determines that a claim or portion of claim is not allowable, he or she promptly sends the State a disallowance letter that includes the following, as appropriate:

(1) The date or dates on which the State's claim for FFP was made.

(2) The time period during which the expenditures in question were made or claimed to have been made.

(3) The date and amount of any payment or notice of deferral.

(4) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were computed.

(5) Findings of fact on which the disallowance determination is based or a reference to other documents previously furnished to the State or included with the notice (such as a report of a financial review or audit) that contain the findings of fact on which the disallowance determination is based.

(6) Pertinent citations to the law, regulations, guides and instructions supporting the action taken.

(7) A request that the State make appropriate adjustment in a subsequent expenditure report.

(8) Notice of the State's right to request reconsideration of the disallowance and the time allowed to make the request.

(9) A statement indicating that the disallowance letter is the Department's final decision unless the State requests reconsideration under paragraph (b)(2) of this section.

(b) *Reconsideration of FFP disallowance.* (1) The Departmental Appeals Board reviews disallowances of FFP under title XXI.

(2) A State may request reconsideration with a request to the Chair, Departmental Appeals Board, within 30 days after receipt of the disallowance letter, which must include—

(i) A copy of the disallowance letter;

(ii) A statement of the amount in dispute; and

(iii) A brief statement of why the disallowance is wrong.

(c) *Reconsideration procedures.* The reconsideration procedures are those set forth in 45 CFR part 16.

(d) *Implementation of decisions.* If the reconsideration decision requires an adjustment of FFP, either upward or downward, a subsequent grant award promptly reflects the amount of increase or decrease.

#### **§ 457.216 Treatment of uncashed or canceled (voided) SCHIP checks.**

(a) *Purpose.* This section provides rules to ensure that States refund the Federal portion of uncashed or canceled (voided) checks under title XXI.

(b) *Definitions.* As used in this section—

*Canceled (voided) check* means an SCHIP check issued by a State or fiscal agent that prior to its being cashed is canceled (voided) by the State or fiscal agent, thus preventing disbursement of funds.

*Fiscal agent* means an entity that processes or pays vendor claims for the SCHIP agency.

*Uncashed check* means an SCHIP check issued by a State or fiscal agent that has not been cashed by the payee.

*Warrant* means an order by which the SCHIP agency or local agency without the authority to issue checks recognizes a claim. Presentation of a warrant by the payee to a State officer with authority to issue checks will result in release of funds due.

(c) *Refund of Federal financial participation (FFP) for uncashed checks—*(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was

issued; that is, the date of the check, it is no longer regarded as an allowable program expenditure. If the State has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks that remain uncashed beyond a period of 180 days after issuance. The SCHIP agency must refund all FFP that it received for uncashed checks by adjusting the Quarterly Statement of Expenditures for that quarter. If an uncashed check is cashed after the refund is made, the State may file a claim. The claim will be considered to be an adjustment to the costs for the quarter in which the check was originally claimed. This claim will be paid if otherwise allowed by the Act and the regulations issued in accordance with the Act.

(3) If the State does not refund the appropriate amount as specified in paragraph (c)(2) of this section, the amount will be disallowed.

(d) *Refund of FFP for canceled (voided) checks—(1) General provisions.* If the State has claimed and received FFP for the amount of a canceled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the SCHIP agency must identify those checks that were canceled (voided). The State must refund all FFP that it received for canceled (voided) checks by adjusting the Quarterly Statement of Expenditures for that quarter.

(3) If the State does not refund the appropriate amount as specified in paragraph (d)(2) of this section, the amount will be disallowed.

#### § 457.218 Repayment of Federal funds by installments.

(a) *Basic conditions.* When Federal payments have been made for claims that are later found to be unallowable, the State may repay the Federal Funds by installments if the following conditions are met:

(1) The amount to be repaid exceeds 2½ percent of the estimated or actual annual State share for the State SCHIP program; and

(2) The State has given the Regional Administrator written notice, before total repayment was due, of its intent to repay by installments.

(b) *Annual State share determination.* HCFA determines whether the amount to be repaid exceeds 22 percent of the annual State share as follows:

(1) If the State SCHIP program is ongoing, HCFA uses the annual estimated State share of State SCHIP

expenditures. This is the sum of the estimated State shares for four consecutive quarters, beginning with the quarter in which the first installment is to be paid, as shown on the State's latest HCFA-21B form.

(2) If the State SCHIP program has been terminated by Federal law or by the State, HCFA uses the actual State share. The actual State share is that shown on the State's Quarterly Statement of Expenditures reports for the last four quarters before the program was terminated.

(c) *Repayment amounts, schedules, and procedures—(1) Repayment amount.* The repayment amount may not include any amount previously approved for installment repayment.

(2) *Repayment schedule.* The number of quarters allowed for repayment is determined on the basis of the ratio of the repayment amount to the annual State share of State SCHIP expenditures. The higher the ratio of the total repayment amount is to the annual State share, the greater the number of quarters allowed, as follows:

| Total repayment amount as percentage of State share of annual expenditures for State SCHIP | Number of quarters to make repayment |
|--|--------------------------------------|
| 2.5 pct. or less .....   | 1                                    |
| Greater than 2.5, but not greater than 5 .....   | 2                                    |
| Greater than 5, but not greater than 7.5 .....   | 3                                    |
| Greater than 7.5, but not greater than 10 .....  | 4                                    |
| Greater than 10, but not greater than 15 .....   | 5                                    |
| Greater than 15, but not greater than 20 .....   | 6                                    |
| Greater than 20, but not greater than 25 .....   | 7                                    |
| Greater than 25, but not greater than 30 .....   | 8                                    |
| Greater than 30, but not greater than 47.5 .....   | 9                                    |
| Greater than 47.5, but not greater than 65 .....   | 10                                   |
| Greater than 65, but not greater than 82.5 .....   | 11                                   |
| Greater than 82.5, but not greater than 100 .....  | 12                                   |

(3) *Quarterly repayment amounts.* The quarterly repayment amounts for each of the quarters in the repayment schedule may not be less than the following percentages of the estimated State share of the annual expenditures for SCHIP:

| For each of the following quarters | Repayment installment may not be less than these percentages |
|------------------------------------|--|
| 1 to 4 .....                       | 2.5  |
| 5 to 8 .....                       | 5.0  |

| For each of the following quarters | Repayment installment may not be less than these percentages |
|------------------------------------|--|
| 9 to 12 .....                      | 17.5   |

(4) *Extended schedule.* The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100 percent of the estimated State share of annual expenditures. In these circumstances, the repayment schedule in paragraph (c)(2) of this section is followed for repayment of the amount equal to 100 percent of the annual State share. The remaining amount of the repayment is in quarterly amounts equal to not less than 17.5 percent of the estimated State share of annual expenditures.

(5) *Repayment process.* Repayment is accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule. If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages is applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(6) *Offsetting of retroactive claims.* The amount of a retroactive claim to be paid a State is offset against any amounts to be, or already being, repaid by the State in installments. Under this provision, the State may choose to:

(A) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(B) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

(ii) A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more before the beginning of the quarter in which HCFA would pay that claim.

#### § 457.220 Public funds as the State share of financial participation.

(a) Public funds may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The public funds are appropriated directly to the State or local SCHIP agency, or transferred from other public agencies (including Indian tribes) to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP under this section.

(c) The public funds are not Federal funds, or are Federal funds authorized by the Federal law to be used to match other Federal funds.

**§ 457.222 FFP for equipment.**

Claims for Federal financial participation in the cost of equipment under SCHIP are determined in accordance with subpart G of 45 CFR part 95. Requirements concerning the management and disposition of equipment under SCHIP are also prescribed in subpart G of 45 CFR part 95.

**§ 457.224 FFP: Conditions relating to cost sharing.**

(a) No FFP is available for the following amounts, even when related to services or benefit coverage which is or could be provided under a State SCHIP program—

(1) Any cost sharing amounts that beneficiaries should have paid as enrollment fees, premiums, deductibles, coinsurance, copayments, or similar charges.

(2) Any amounts paid by the agency for health benefits coverage or services furnished to individuals who would not be eligible for that coverage or those services under the approved State child health plan, whether or not the individual paid any required premium or enrollment fee.

(b) The amount of expenditures under the State child health plan must be reduced by the amount of any premiums and other cost-sharing received by the State.

**§ 457.226 Fiscal policies and accountability.**

A State plan must provide that the SCHIP agency and, where applicable, local agencies administering the plan will—

(a) Maintain an accounting system and supporting fiscal records to assure that claims for Federal funds are in accord with applicable Federal requirements;

(b) Retain records for 3 years from date of submission of a final expenditure report;

(c) Retain records beyond the 3-year period if audit findings have not been resolved; and

(d) Retain records for nonexpendable property acquired under a Federal grant for 3 years from the date of final disposition of that property.

**§ 457.228 Cost allocation.**

A State plan must provide that the single or appropriate SCHIP Agency will have an approved cost allocation plan on file with the Department in accordance with the requirements

contained in subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

**§ 457.230 FFP for State ADP expenditures.**

FFP is available for State ADP expenditures for the design, development, or installation of mechanized claims processing and information retrieval systems and for the operation of certain systems. Additional HHS regulations and HCFA procedures regarding the availability of FFP for ADP expenditures are in 45 CFR part 74, 45 CFR part 95, subpart F, and part 11, State Medicaid Manual.

**§ 457.232 Refunding of Federal Share of SCHIP overpayments to providers and referral of allegations of waste, fraud or abuse to the Office of Inspector General.**

(a) Quarterly Federal payments to the States under title XXI (SCHIP) of the Act are to be reduced or increased to make adjustment for prior overpayments or underpayments that the Secretary determines have been made.

(b) The Secretary will consider the pro rata Federal share of the net amount recovered by a State during any quarter to be an overpayment.

(c) Allegations or indications of waste fraud and abuse with respect to the SCHIP program shall be referred promptly to the Office of Inspector General.

**§ 457.234 State plan requirements.**

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its State Children's Health Insurance Program and giving assurance that it will be administered in conformity with the specific requirements of title XXI, the applicable regulations in chapter IV, and other applicable official issuance of the Department. The State plan contains all information necessary for HCFA to determine whether the plan can be approved to serve as a basis for FFP in the State plan program.

**§ 457.236 Audits.**

The SCHIP agency must assure appropriate audit of records on costs of provider services.

**§ 457.238 Documentation of payment rates.**

The SCHIP agency must maintain documentation of payment rates and make it available to HHS upon request.

**Subparts C through E—[Reserved]**

**Subpart F Payments to States**

**§ 457.600 Purpose and basis of this subpart.**

This subpart interprets and implements—

(a) Section 2104 of the Act which specifies the total allotment amount available for allotment to each State for child health assistance for fiscal years 1998 through 2007, the formula for determining each State allotment for a fiscal year, including the Commonwealth and Territories, and the amounts of payments for expenditures that are applied to reduce the State allotments.

(b) Section 2105 of the Act which specifies the provisions for making payment to States, the limitations and conditions on such payments, and the calculation of the enhanced Federal medical assistance percentage.

**§ 457.602 Applicability.**

The provisions of this subpart apply to the 50 States and the District of Columbia, and the Commonwealths and Territories.

**§ 457.606 Conditions for State allotments and Federal payments for a fiscal year.**

(a) *Basic conditions.* In order to receive a State allotment for a fiscal year, a State must have a State child health plan submitted in accordance with section 2106 of the Act, and

(1) For fiscal years 1998 and 1999, the State child health plan must be approved before October 1, 1999;

(2) For fiscal years after 1999, the State child health plan must be approved by the end of the fiscal year;

(3) An allotment for a fiscal year is not available to a State prior to the beginning of the fiscal year; and

(4) Federal payments out of an allotment are based on State expenditures which are allowable under the approved State child health plan.

(b) Federal payments for States' Children's Health Insurance Program (SCHIP) expenditures under an approved State child health plan are —

(1) Limited to the amount of available funds remaining in State allotments calculated in accordance with the allotment process and formula specified in §§ 457.608 and 457.610, and payment process in §§ 457.614 and 457.616.

(2) Available based on a percentage of State SCHIP expenditures, at a rate equal to the enhanced Federal medical assistance percentage (FMAP) for each fiscal year, calculated in accordance with § 457.622.

(3) Available through the grants process specified in § 457.630.

**§ 457.608 Process and calculation of State allotments for a fiscal year.**

(a) *General*—(1) State allotments for a fiscal year are determined by HCFA for each State and the District of Columbia with an approved State child health plan, as described in paragraph (e) of this section, and for each Commonwealth and Territory, as described in paragraph (f) of this section.

(2) In order to determine each State allotment, HCFA determines the national total allotment amount for each fiscal year available to the 50 States and the District of Columbia, as described in paragraph (c) of this section, and the total allotment amount available for each fiscal year for allotment to the Commonwealths and Territories, as described in paragraph (d) of this section.

(3) The amount of allotments redistributed under section 2104(f) of the Act will not be applied or taken into account in determining the amounts of a fiscal year allotment for a State and the District of Columbia under this section.

(b) *Definition of Proportion.* As used in this section, *proportion* means the amount of the allotment for a State or the District of Columbia for a fiscal year, divided by the national total allotment amount available for allotment to all States and the District of Columbia, as specified in paragraph (c) of this section, for that fiscal year.

(c) *National total allotment amount for the 50 States and the District of Columbia.* (1) The national total allotment amount available for allotment to the 50 States and the District of Columbia is determined by subtracting the following amounts in the following order from the total appropriation specified in section 2104(a) of the Act for the fiscal year —

(i) The total allotment amount available for allotment for each fiscal year to the Commonwealths and Territories, as determined in paragraph (d)(1) of this section;

(ii) The total amount of the grant for the fiscal year for children with Type I Diabetes under Section 4921 of Public Law 105–33. This is \$30,000,000 for each of the fiscal years 1998 through 2002; and

(iii) The total amount of the grant for the fiscal year for diabetes programs for Indians under Section 4922 of Public Law 105–33. This is \$30,000,000 for each of the fiscal years 1998 through 2002.

(2) The following formula illustrates the calculation of the national total allotment amount available for

allotment to the 50 States and the District of Columbia for a fiscal year:

$$A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$$

$A_{TA}$  = National total allotment amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$  = Total appropriation for the fiscal year indicated in Section 2104(a) of the Act.

$T_{2104(c)}$  = Total allotment amount for a fiscal year available for allotment to the Commonwealths and Territories; as determined under paragraph (d)(1) of this section.

$D_{4921}$  = Amount of total grant for children with Type I Diabetes under Section 4921 of Public Law 105–33. This is \$30,000,000 for each of the fiscal years 1998 through 2002.

(d) *Total allotment amount available to the Commonwealths and Territories.*

(1) *General.* The total allotment amount available to all the Commonwealths and Territories for a fiscal year is equal to .25 percent of the total appropriation for the fiscal year indicated in section 2104(a) of the Act, plus the additional amount for the fiscal year specified in paragraph (d)(2) of this section.

(2) *Additional amounts for allotment to the Commonwealths and Territories.* The following amounts are available for allotment to the Commonwealths and Territories for the indicated fiscal years in addition to the amount specified in paragraph (d)(1) of this section: For FY 1999, \$32 million; for each of FY 2000 and FY 2001, \$34.2 million; for each fiscal year FY 2002 through 2004, \$25.2 million; for each fiscal year FY 2005 and FY 2006, \$32.4 million; and for FY 2007, \$40 million. The additional amount for allotment for FY 1999 for the Commonwealths and Territories was provided under Public Law 105–277. The additional amounts for allotment for FY 2000 through FY 2007 were provided for the Commonwealths and Territories under section 702 of Public Law 106–113.

(e) *Determination of State allotments for a fiscal year.* (1) *General.* The allotment for a State and the District of Columbia for a fiscal year is the product of:

(i) The proportion for the State or the District of Columbia for the fiscal year, as defined in paragraph (b) of this section, and determined after application of the provisions of paragraphs (e)(2) and (3), related to the preadjusted proportion, and the floors, ceilings, and reconciliation process, respectively; and

(ii)(A) The national total allotment amount available for allotment for the fiscal year, as specified in paragraph (c)

of this section. The State and the District of Columbia's allotment for a fiscal year is determined in accordance with the following general formula:

$$SA_i = P_i \times A_{TA}$$

$SA_i$  = Allotment for a State or District of Columbia for a fiscal year.

$P_i$  = Proportion for a State or District of Columbia for a fiscal year.

$A_{TA}$  = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

(B) There are two steps for determining the proportion for a State and the District of Columbia. The first step determines the preadjusted proportions, and is described under paragraph (e)(2) of this section. The first step applies in determining the proportion for all fiscal years. The second step applies floors and ceilings and, if necessary, applies a reconciliation to the preadjusted proportion. The second step is described in paragraph (e)(3) of this section. The second step applies in determining the proportion only for FY 2000 and subsequent fiscal years. For FY 1998 and FY 1999, the preadjusted proportion is the State or District of Columbia's proportion for the fiscal year.

(2) *Determination of the Preadjusted Proportions for a Fiscal Year.* (i) The methodology for determining the State preadjusted proportion, referring to the determination of the proportion before the application of floors and ceilings and reconciliation for a fiscal year is in accordance with the following formula:

$$PP_i = (C_i \times SCF_i) / \sum (C_i \times SCF_i)$$

$PP_i$  = Preadjusted proportion for a State or District of Columbia for a fiscal year.

$C_i$  = Number of children in a State (section 2104(b)(1)(A)(I) of the Act) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income children for a State for a fiscal year with no health insurance coverage for the fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the 3 most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census, and for FY 2000 and subsequent fiscal years, officially available before the beginning of the calendar year in which the fiscal year begins. For FY 1998 and FY 1999, the availability of the CPS data obtained from the Bureau of the Census is as specified in paragraphs (e)(4) and (5) of this

section, respectively. (section 2104(b)(2)(B) of the Act).

(ii) For each of the fiscal years 1998 and 1999, the number of children is equal to the number of low-income children in the State for the fiscal year with no health insurance coverage. For fiscal year 2000, the number of children is equal to the sum of 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 25 percent of the number of low-income children in the State for the fiscal year. For fiscal years 2001 and thereafter, the number of children is equal to the sum of 50 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage and 50 percent of the number of low-income children in the State for the fiscal year. (section 2104(b)(2)(A) of the Act).

$SCF_i$  = State cost factor for a State (section 2104(b)(1)(A)(ii) of the Act). For a fiscal year, this is equal to:  $.15 + .85 \times (W_i/W_N)$  (section 2104(b)(3)(A) of the Act).

$W_i$  = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I) of the Act).

$W_N$  = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act). The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry (SIC 80), as reported by the Bureau of Labor Statistics of the Department of Labor for each of the most recent 3 years, and for FY 2000 and subsequent fiscal years, finally available before the beginning of the calendar year in which the fiscal year begins. For FY 1998 and FY 1999, the availability of the wage data obtained from the Bureau of Labor Statistics is as specified in paragraphs (e)(4) and (5), respectively. (section 2104(b)(3)(B) of the Act).

$\Sigma(C_i \times SCF_i)$  = The sum of the products of  $(C_i \times SCF_i)$  for each State (section 2104(b)(1)(B) of the Act).

$A_{TA}$  = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year as determined under paragraph (c) of this section.

(3) *Application of floors and ceilings and reconciliation in determining proportion.* (i) *Floors and ceilings in proportions.* The preadjusted State proportions for a fiscal year are subject

to the application of floors and ceilings in paragraphs (e)(3)(i)(A) and (B) of this section.

(A) The proportion floors, or minimum proportions, that apply in determining a State's proportion for the fiscal year are:

(1) \$2,000,000 divided by the total of the amount available nationally;

(2) 90 percent of the State's proportion for the previous fiscal year; and

(3) 70 percent of the State's proportion for FY 1999.

(B) The proportion ceiling, or maximum proportion, for a fiscal year that applies in determining the State's fiscal year proportion is 145 percent of the State's proportion for FY 1999.

(ii) *Reconciliation of State proportions.* If, after the application of the floors and ceilings in paragraph (e)(3)(i), the sum of the States' proportions is not equal to one, the Secretary will reconcile the States' proportions by applying either paragraph (e)(3)(i)(A) or (B) of this paragraph, as appropriate, such that the sum of the proportions after reconciliation equals one. If, after the application of the floors and ceilings in paragraph (e)(3)(i), the sum of the States' proportions is equal to one, no reconciliation is necessary, and the States' proportions will be the same as the preadjusted proportions determined under paragraph (e)(2) of this section.

(A) If, after the application of the floors and ceilings under paragraphs (e)(3)(i)(A) and (B) of this section, the sum of the States' proportions is greater than one, the Secretary will establish a maximum percentage increase in States' proportions, such that when applied to the States' proportions, the sum of the proportions is exactly equal to one.

(B) If, after the application of the floors and ceilings under paragraphs (e)(3)(i)(A) and (B), the sum of the proportions is less than one, the Secretary will increase States' proportions (as computed before the application of the floors under paragraph (e)(3)(i)(A)) in a pro rata manner (but not to exceed the 145 percent ceiling computed under paragraph (e)(3)(i)(B)), such that when applied to the States' proportions, the sum of the proportions is exactly equal to one.

(4) *Data used for calculating the FY 1998 SCHIP allotments.* The FY 1998 SCHIP allotments were calculated in accordance with the methodology described in paragraphs (e)(1) and (2) of this section, using the most recent official and final data that were available from the Bureau of the Census and the Bureau of Labor Statistics,

respectively, prior to the September 1 before the beginning of FY 1998 (that is, through August 31, 1997). In particular, through August 31, 1997, the only official data available on the numbers of children were data from the 3 March CPSs conducted in March 1994, 1995, and 1996 that reflected data for the 3 calendar years 1993, 1994, and 1995.

(5) *Data used for calculating the FY 1999 SCHIP allotments.* In accordance with section 101(f) of Public Law 105-277, the FY 1999 allotments were calculated in accordance with the methodology described in paragraph (e)(2) of this section, using the same data as were used in calculating the FY 1998 SCHIP allotments.

(f) *Methodology for determining the Commonwealth and Territory allotments for a fiscal year.* The total amount available for the Commonwealths and Territories for each fiscal year, as determined under paragraph (d) of this section, is allotted to each Territory and Commonwealth below which has an approved State child health plan. These allotments are in the proportion that the following percentages for each Commonwealth Territory bear to the sum of such percentages, as specified in section 2104(c)(2) of the Act:

Puerto Rico—91.6%  
Guam—3.5%  
Virgin Islands—2.6%  
American Samoa—1.2%  
Northern Mariana Islands—1.1%

(g) *Reserved State allotments for a fiscal year.* (1) For FY 2000 and subsequent fiscal years, HCFA determines and publishes the State reserved allotments for a fiscal year for each State, the District of Columbia, and Commonwealths and Territories in the **Federal Register** based on the most recent official and final data available before the beginning of the calendar year in which the fiscal year begins for the number of children and the State cost factor.

(2) For FY 1998 and FY 1999, HCFA determined and published the State reserved allotments using the available data described in paragraphs (e)(4) and (e)(5) of this section, respectively, on the basis of the statutory allotment formula as it existed prior to the enactment of Public Law 106-113.

(3) If all States, the District of Columbia, and the Commonwealths and Territories have approved State child health plans in place prior to the beginning of the fiscal year, as appropriate, HCFA may publish the allotments as final in the **Federal Register**, without the need for publication as reserved allotments.

(h) *Final allotments.* (1) Final State allotments for FY 1998 and FY 1999 for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of fiscal year 1999, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(2) Final State allotments for a fiscal year after FY 1999 for each State, the District of Columbia, and the Commonwealths and Territories are determined by HCFA based only on those States, the District of Columbia, and the Commonwealths and Territories that have approved State child health plans by the end of the fiscal year, in accordance with the formula and methodology specified in paragraphs (a) through (g) of this section.

(3) HCFA determines and publishes the States' final fiscal year allotments in the **Federal Register** based on the same data, with respect to the number of children and State cost factor, as were used in determining the reserved allotments for the fiscal year.

**§ 457.610 Period of availability for State allotments for a fiscal year.**

The amount of a final allotment for a fiscal year, as determined under § 457.608(h) and reduced to reflect certain Medicaid expenditures in accordance with § 457.616, remains available until expended for Federal payments based on expenditures claimed during a 3-year period of availability, beginning with the fiscal year of the final allotment and ending with the end of the second fiscal year following the fiscal year.

**§ 457.614 General payment process.**

(a) A State may make claims for Federal payment based on expenditures incurred by the State prior to or during the period of availability related to that fiscal year.

(b) In order to receive Federal financial participation (FFP) for a State's claims for payment for the State's expenditures, a State must —

(1) Submit budget estimates of quarterly funding requirements for Medicaid and the State Children's Health Insurance Programs; and

(2) Submit an expenditure report.

(c) Based on the State's quarterly budget estimates, HCFA —

(1) Issues an advance grant to a State as described in § 457.630;

(2) Tracks and applies Federal payments claimed quarterly by each State, the District of Columbia, and each

Commonwealth and Territory to ensure that payments do not exceed the applicable allotments for the fiscal year; and

(3) Track and apply relevant State, District of Columbia, Commonwealth and Territory expenditures reported each quarter against the 10 percent limit on expenditures other than child health assistance for standard benefit package, on a fiscal year basis as specified in § 457.618.

**§ 457.616 Application and tracking of payments against the fiscal year allotments.**

(a) *Categories of payments applied to reduce the State allotments.* In accordance with the principles described in paragraph (c) of this section, the following categories of payments are applied to reduce the State allotments for a fiscal year:

(1) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(2) of the Act.

(2) Payments made to the State for expenditures claimed during the fiscal year under its title XIX Medicaid program, to the extent the payments were made on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for expenditures attributable to children described in section 1905(u)(3) of the Act.

(3) Payments made to a State under section 1903(a) of the Act for expenditures claimed by the State during a fiscal year that are attributable to the provision of medical assistance to a child during a presumptive eligibility period under section 1920A of the Act.

(4) Payments made to a State under its title XXI State Children's Health Insurance Program with respect to section 2105(a) of the Act for expenditures claimed by the State during a fiscal year.

(b) *Application of principles.* HCFA applies the principles in paragraph (c) of this section to —

(1) Coordinate the application of the payments made to a State for the State's expenditures claimed under the Medicaid and State Children's Health Insurance programs against the State allotment for a fiscal year;

(2) Determine the order of these payments in that application; and

(3) Determine the application of payments against multiple State Child Health Insurance Program fiscal year allotments.

(c) *Principles for applying Federal payments against the allotment.* HCFA—

(1) Applies the payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, against the State child health plan allotment for a fiscal year before State child health plan expenditures specified in paragraph (a)(4) of this section are applied.

(2) Applies the payments attributable to Medicaid and State child health plan expenditures specified in paragraph (a) of this section against the applicable allotments for a fiscal year based on the quarter in which the expenditures are claimed by the State.

(3) Applies payments against the State allotments for a fiscal year in a manner that is consistent for all States.

(4) Applies payments attributable to Medicaid expenditures specified in paragraphs (a)(1) through (a)(3) of this section, in an order that maximizes Federal reimbursement for States. Expenditures for which the enhanced FMAP is available are applied before expenditures for which the regular FMAP is available.

(5) Applies payments for expenditures against State Child Health Insurance Program fiscal year allotments in the least administratively burdensome, and most effective and efficient manner; payments are applied on a quarterly basis as they are claimed by the State, and are applied to reduce the earliest fiscal year State allotments before the payments are applied to reduce later fiscal year allotments.

(6) Subject to paragraphs (c)(6)(i) and (ii) of this section, applies payments for expenditures for a fiscal year's allotment against a subsequent fiscal year's allotment; however, the subsequent fiscal year's allotment must be available at the time of application. For example, if the allotment for fiscal year 1998 has been fully expended, payments for expenditures claimed in fiscal year 1998 are carried over for application against the fiscal year 1999 allotment when it becomes available.

(i) In accordance with § 457.618, the amount of non-primary expenditures that are within the 10 percent limit for the fiscal year for which they are claimed may be applied against a fiscal year allotment or allotments available in a subsequent fiscal year.

(ii) In accordance with § 457.618, the amounts of non-primary expenditures that exceed the 10 percent limit for the fiscal year for which they are claimed may not be applied against a fiscal year allotment or allotments available in a subsequent fiscal year.

(7) Carries over unexpended amounts of a State's allotment for a fiscal year for use in subsequent fiscal years through the end of the 3-year period of availability. For example, if the amounts of the fiscal year 1998 allotment are not fully expended by the end of fiscal year 1998, these amounts are carried over to fiscal year 1999 and are available to provide FFP for expenditures claimed by the State for that fiscal year.

(d) *Amount of Federal payment for expenditures claimed.* The amount of the Federal payment for expenditures claimed by a State, District of Columbia, or the Commonwealths and Territories is determined by the enhanced FMAP applicable to the fiscal year in which the State paid the expenditure. For example, Federal payment for an expenditure paid by a State in fiscal year 1998 that was carried over to fiscal year 1999 (in accordance with paragraph(c)(6) of this section), because the State exceeded its fiscal year 1998 allotment, is available at the fiscal year 1998 enhanced FMAP rate.

**§ 457.618 Ten percent limit on certain State Children's Health Insurance Program expenditures.**

(a) *Expenditures.* (1) *Primary expenditures* are expenditures under a State plan for child health assistance to targeted low-income children in the form of a standard benefit package, and Medicaid expenditures claimed during the fiscal year to the extent Federal payments made for these expenditures on the basis of the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act that are used to calculate the 10 percent limit.

(2) *Non-primary expenditures* are other expenditures under a State plan. Subject to the 10 percent limit described in paragraph (c) of this section, a State may receive Federal funds at the enhanced FMAP for 4 categories of non-primary expenditures:

- (i) Administrative expenditures;
- (ii) Outreach;
- (iii) Health initiatives; and
- (iv) Certain other child health assistance.

(b) *Federal payment.* Federal payment will not be available based on a State's non-primary expenditures for a fiscal year which exceed the 10 percent limit of the total of expenditures under the plan, as specified in paragraph (c) of this section.

(c) *10 Percent Limit.* The 10 percent limit is —

- (1) Applied on an annual fiscal year basis;
- (2) Calculated based on the total computable expenditures claimed by the State on quarterly expenditure

reports submitted for a fiscal year. Expenditures claimed on a quarterly report for a different fiscal year may not be used in the calculation; and

(3) Calculated using the following formula:

$$L10\% = (a1 + u2 + u3)/9;$$

**L10%** = 10 Percent Limit for a fiscal year

**a1** = Total computable amount of expenditures for the fiscal year under section 2105(a)(1) of the Act for which Federal payments are available at the enhanced FMAP described in Section 2105(b) of the Act;

**u2** = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(2) of the Act; and

**u3** = Total computable expenditures for medical assistance for which Federal payments are made during the fiscal year based on the enhanced FMAP described in sections 1905(b) and 2105(b) of the Act for individuals described in section 1905(u)(3) of the Act.

(d) The expenditures under section 2105(a)(2) of the Act that are subject to the 10 percent limit are applied —

- (1) On an annual fiscal year basis; and
- (2) Against the 10 percent limit in the fiscal year for which the State submitted a quarterly expenditure report including the expenditures. Expenditures claimed on a quarterly report for one fiscal year may not be applied against the 10 percent limit for any other fiscal year.

(e)(1) The 10 percent limit for a fiscal year, as calculated under paragraph (c)(3) of this section, may be no greater than 10 percent of the total computable amount (determined under paragraph (e)(2) of this section) of the State allotment or allotments available in that fiscal year. Therefore, the 10 percent limit is the lower of the amount calculated under paragraph (c)(3) of this section, and 10 percent of the total computable amount of the State allotment available in that fiscal year.

(2) As used in paragraph (e)(1) of this section, the total computable amount of a State's allotment for a fiscal year is determined by dividing the State's allotment for the fiscal year by the State's enhanced FMAP for the year. For example, if a State allotment for a fiscal year is \$65 million and the enhanced FMAP rate for the fiscal year is 65 percent, the total computable amount of the allotment for the fiscal year is \$100 million (\$65 million/.65). In this example, the 10 percent limit may be no greater than a total computable amount

of \$10 million (10 percent of \$100 million).

**§ 457.622 Rate of FFP for State expenditures.**

(a) *Basis.* Sections 1905(b), 2105(a) and 2105(b) of the Act provides for payments to States from the States' allotments for a fiscal year, as determined under § 457.608, for part of the cost of expenditures for services and administration made under an approved State child health assistance plan. The rate of payment is generally the enhanced Federal medical assistance percentage described below.

(b) *Enhanced Federal medical assistance percentage (Enhanced FMAP)— Computations.* The enhanced FMAP is the lower of the following:

- (1) 70 percent of the regular FMAP determined under section 1905(b) of the Act, plus 30 percentage points; or
- (2) 85 percent.

(c) *Conditions for availability of enhanced FMAP based on a State's expenditures—*The enhanced FMAP is available for payments based on a State's expenditures claimed under the State's title XXI program from the State's fiscal year allotment only under the following conditions:

- (1) The State has an approved title XXI State child health plan;
- (2) The expenditures are allowable under the State's approved title XXI State child health plan;
- (3) State allotment amounts are available in the fiscal year, that is, the State's allotment or allotments (as reduced in accordance with § 457.616) remain available for a fiscal year and have not been fully expended.
- (4) Expenditures claimed against the 10 percent limit are within the State's 10 percent limit for the fiscal year.
- (5) The State is in compliance with the maintenance of effort requirements of Section 2105(d)(1) of the Act.

(d) *Categories of expenditures for which enhanced FMAP are available.* Except as otherwise provided below, the enhanced FMAP is available with respect to the following States' expenditures:

(1) 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 2103 of the Act; and

(2) Subject to the 10 percent limit provisions under § 457.618(a)(2), the following expenditures:

- (i) Payment for other child health assistance for targeted low-income children;
- (ii) Expenditures for health services initiatives under the State child health assistance plan for improving the health



of children (including targeted low-income children);

(iii) Expenditures for outreach activities; and

(iv) Other reasonable costs incurred by the State to administer the State child health assistance plan.

(e) *SCHIP administrative expenditures and SCHIP related title XIX administrative expenditures.* (1) *General rule.* Allowable title XXI administrative expenditures should support the operation of the State child health assistance plan. In general, FFP for administration under title XXI is not available for costs of activities related to the operation of other programs.

(2) *Exception.* FFP is available under title XXI, at the enhanced FFP rate, for Medicaid administrative expenditures attributable to the provision of medical assistance to children described in sections 1905(u)(2) and 1905(u)(3), and during the presumptive eligibility period described in section 1920A of the Act, to the extent that the State does not claim those costs under the Medicaid program.

(3) FFP is not available in expenditures for administrative activities for items or services included within the scope of another claimed expenditure.

(4) FFP is available in expenditures for activities defined in sections 2102(c)(1) and 2105(a)(2)(C) of the Act as outreach to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in such a program.

(5) FFP is available in administrative expenditures for activities specified in sections 2102(c)(2) of the Act as coordination of the administration of the State Children's Health Insurance Program with other public and private health insurance programs. FFP would not be available for the costs of administering the other public and private health insurance programs. Coordination activities must be distinguished from other administrative activities common among different programs.

#### **§ 457.624 Limitations on certain payments for certain expenditures.**

(a) *Abortions.* (1) *General rule.* Payment is not made for any State expenditures to pay for abortions or to assist in the purchase, whole or in part, of health benefit coverage that includes coverage of abortion.

(2) *Exception.* Payment may be made for expenditures for health benefits coverage and services that include

abortions that are necessary to save the life of the mother or if the pregnancy is the result of rape or incest.

(b) *Waiver for purchase of family coverage.* Payment may be made to a State with an approved State child health plan for the purchase of family coverage under a group plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of HCFA that —

(1) Purchase of this coverage is cost-effective relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved; and

(2) This coverage will not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

#### **§ 457.626 Prevention of duplicate payments.**

(a) *General rule.* No payment shall be made to a State for expenditures for child health assistance under its State child health plan to the extent that:

(1) A non-governmental health insurer would have been obligated to pay for those services but for a provision of its insurance contract that has the effect of limiting or excluding those obligations based on the actual or potential eligibility of the individual for child health assistance under the State child health insurance plan.

(2) Payment has been made or can reasonably be expected to be made promptly under any other Federally operated or financed health insurance or benefits program, other than a program operated or financed by the Indian Health Service.

(b) *Definitions.* As used in paragraph (a) of this section —

*Non-governmental health insurer* includes any health insurance issuer, group health plan, or health maintenance organization, as those terms are defined in 45 CFR 144.103, which is not part of, or wholly owned by, a governmental entity.

*Prompt payment* can reasonably be expected when payment is required by applicable statute, or under an approved State plan.

*Programs operated or financed by the Indian Health Service* means health programs operated by the Indian Health Service, or Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement or compact with the Indian Health Service under the authority of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*),

or by an urban Indian organization in accordance with a grant or contract with the Indian Health Service under the authority of title V of the Indian Health Care Improvement Act (25 U.S.C. 1601, *et seq.*).

#### **§ 457.628 Other applicable Federal regulations.**

Other regulations applicable to SCHIP programs include the following:

(a) HHS regulations in 42 CFR Subpart B—433.51–433.74 sources of non-Federal share and Health Care-Related Taxes and Provider-Related Donations; these regulations apply to States' SCHIPs in the same manner as they apply to States' Medicaid programs.

(b) HHS Regulations in 45 CFR subtitle A:

Part 16—Procedures of the Departmental Appeals Board.

Part 74—Administration of Grants (except as specifically excepted).

Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services: Effectuation of title VI of the Civil Rights Act of 1964.

Part 81—Practice and Procedure for Hearings Under 45 CFR part 80.

Part 84—Nondiscrimination on the Basis of Handicap in Programs and activities Receiving or Benefiting From Federal Financial Assistance.

Part 95—General Administration—grant programs (public assistance and medical assistance).

#### **§ 457.630 Grants procedures.**

(a) *General provisions.* Once HCFA has approved a State child health plan, HCFA makes quarterly grant awards to the State to cover the Federal share of expenditures for child health assistance, other child health assistance, special health initiatives, outreach and administration.

(1) For fiscal year 1998, a State must submit a budget request in an appropriate format for the 4 quarters of the fiscal year. HCFA bases the grant awards for the 4 quarters of fiscal year 1998 based on the State's budget requests for those quarters.

(2) For fiscal years after 1998, a State must submit a budget request in an appropriate format for the first 3 quarters of the fiscal year. HCFA bases the grant awards for the first 3 quarters of the fiscal year on the State's budget requests for those quarters.

(3) For fiscal years after 1998, a State must also submit a budget request for the fourth quarter of the fiscal year. The amount of this quarter's grant award is based on the difference between a

State's final allotment for the fiscal year, and the total of the grants for the first 3 quarters that were already issued in order to ensure that the total of all grant awards for the fiscal year are equal to the State's final allotment for that fiscal year.

(4) The amount of the quarterly grant is determined on the basis of information submitted by the State (in quarterly estimate and quarterly expenditure reports) and other pertinent information. This information must be submitted by the State through the Medicaid Budget and Expenditure System (MBES) for the Medicaid program, and through the Child Health Budget and Expenditure System (CBES) for the title XXI program.

(b) *Quarterly estimates.* The State Children's Health Insurance Program agency must submit Form HCFA-21B (State Children's Health Insurance Program Budget Report for State Children's Health Insurance Program State expenditures) to the HCFA central office (with a copy to the HCFA regional office) 45 days before the beginning of each quarter.

(c) *Expenditure reports.* (1) The State must submit Form HCFA-64 (Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program) and Form HCFA-21 (Quarterly State Children's Health Insurance Program Statement of Expenditures for title XXI), to central office (with a copy to the regional office) not later than 30 days after the end of the quarter.

(2) This report is the State's accounting of actual recorded expenditures. This disposition of Federal funds may not be reported on the basis of estimates.

(d) *Additional required information.* A State must provide HCFA with the following information regarding the administration of the title XXI program:

(1) Name and address of the State Agency/organization administering the program;

(2) The employer identification number (EIN); and

(3) A State official contact name and telephone number.

(e) *Grant award.* (1) *Computation by HCFA.* Regional office staff analyzes the State's estimates and sends a recommendation to the central office. Central office staff considers the State's estimates, the regional office recommendations and any other relevant information, including any adjustments to be made under paragraph (e)(2) of this section, and computes the grant.

(2) *Content of award.* The grant award computation form shows the estimate of expenditures for the ensuing quarter,

and the amounts by which that estimate is increased or decreased because of an increase or overestimate for prior quarters, or for any of the following reasons:

(i) Penalty reductions imposed by law.

(ii) Deferrals or disallowances.

(iii) Interest assessments.

(iv) Mandated adjustments such as those required by Section 1914 of the Act.

(3) *Effect of award.* The grant award authorizes the State to draw Federal funds as needed to pay the Federal share of disbursements.

(4) *Draw procedure.* The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. (The letter of credit payment system was established in accordance with Treasury Department regulations—Circular No.1075.)

(f) *General administrative requirements.* With the following exceptions, the provisions of 45 CFR part 74, that establish uniform administrative requirements and cost principles, apply to all grants made to States under this subpart:

(1) Subpart G—Matching and Cost Sharing; and

(2) Subpart I—Financial Report Requirement.

C. 45 CFR part 92 is amended as follows:

## **PART 92—UNIFORM ADMINISTRATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**

1. The authority citation for part 92 continues to read as follows:

**Authority:** 42 U.S.C. 301.

2. Section 92.4 is amended by revising paragraphs (a)(3)(iv) and (a)(3)(v), and adding a new paragraph (a)(3)(vi) to read as follows:

### **§ 92.4 Applicability.**

(a) \* \* \*

(3) \* \* \*

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI—AABD of the Act);

(v) Medical Assistance (Medicaid) (title XIX of the Act) not including the State Medicaid Fraud Control program authorized by Section 1903(a)(6)(B); and

(vi) State Children's Health Insurance Program (title XXI of the Act).

\* \* \* \* \*

D. 45 CFR part 95 is amended as follows:

1. The title of part 95 is revised to read as follows:

## **PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL ASSISTANCE AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS)**

2. The authority citation for part 95 is revised to read as follows:

**Authority:** Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a); sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b-2; sec. 306(b), 94 Stat. 530, 42 U.S.C. 1320b-2note, unless otherwise noted.

## **Subpart A—Time Limits for States To File Claims**

3. In § 95.1(a), title XXI is added in numerical order immediately following title XX as follows:

### **§ 95.1 Scope.**

(a) \* \* \*

## **Title XXI—Grants to States for State Children's Health Insurance Programs.**

4. In § 95.4, the definition of "State agency" is revised to read as follows:

### **§ 95.4 Definitions.**

\* \* \* \* \*

*State agency* for the purposes of expenditures for financial assistance under title IV—A and for support enforcement services under title IV—D means any agency or organization of the State or local government which is authorized to incur matchable expenses; for purposes of expenditures under titles XIX and XXI, means any agency of the State, including the State Medicaid agency or State Child Health Agency, its fiscal agents, a State health agency, or any other State or local organization which incurs matchable expenses; for purposes of expenditures under all other titles, see the definitions in the appropriate program's regulations.

\* \* \* \* \*

5. In § 95.13, paragraph (b) and the first sentence of paragraph (d) are revised to read as follows:

### **§ 95.13 In which quarter we consider an expenditure made.**

\* \* \* \* \*

(b) We consider a State agency's expenditure for services under title I, IV—A, IV—B, IV—D, IV—E, X, XIV, XVI (AABD), XIX, or XXI to have been made in the quarter in which any State agency made a payment to the service provider.

\* \* \* \* \*

(d) We consider a State agency's expenditure for administration or training under titles I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI (AABD), XIX, or XXI to have been made in the quarter payment was made by a State agency to a private agency or individual; or in the quarter to which the costs were allocated in accordance with the regulations for each program. \* \* \*

#### Subpart E—Cost Allocation Plans

6. Section 95.503 is revised to read as follows:

##### § 95.503 Scope.

This subpart applies to all State agency costs applicable to awards made under titles I, IV-A, IV-B, IV-C, IV-D, IV-E, X, XIV, XVI (AABD), XIX, and XXI, of the Social Security Act, and under the Refugee Act of 1980, title IV, Chapter 2 of the Immigration and Nationality Act (8 U.S.C. 1521 *et seq.*), and under title V of Pub. L. 96-422, the Refugee Education Assistance Act of 1980.

7. Section 95.507(a)(3) is revised to read as follows:

##### § 95.507 Plan requirements.

(a) \* \* \* (3) Be compatible with the State plan for public assistance programs described in 45 CFR Chapter II, III and XIII, and 42 CFR Chapter IV Subchapters C and D; and

\* \* \* \* \*

#### Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FFP)

8. Section 95.601 is revised to read as follows:

##### § 95.601 Scope and applicability.

This subpart prescribes part of the conditions under which the Department of Health and Human Services will

approve Federal financial participation (FFP) at the applicable rates for the costs of automatic data processing incurred under an approved State plan for titles I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, or XXI of the Social Security Act and title IV chapter 2 of the Immigration and Nationality Act. The conditions of approval of this subpart add to the statutory and regulatory requirements for acquisition of ADP equipment and services under the specified titles of the Social Security Act.

9. In § 95.605, the definitions of “approving component”, “operation”, “regular matching rate”, and “State agency” are revised to read as follows:

##### § 95.605 Definitions.

\* \* \* \* \*

*Approving component* means an organization within the Department that is authorized to approve requests for the acquisition of ADP equipment or ADP services. Family Support Administration (FSA) for cash assistance for titles I, IV-A, X, XIV, and XVI(AABD); Office of Human Development Services (OHDS) for social services for titles IV-B (child welfare services) and IV-E (foster care and adoption assistance); Family Support Administration (FSA) for title IV-D; and Health Care Financing Administration (HCFA) for titles XIX and XXI of the Social Security Act.

\* \* \* \* \*

*Operation* means the automated processing of data used in the administration of State plans for titles I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act. Operation includes the use of supplies, software, hardware, and personnel directly associated with the functioning of the mechanized system. See 45 CFR 205.38 and 307.10 for specific requirements for titles IV-A and

IV-D, and 42 CFR 433.112 and 42 CFR 433.113 for specific requirements for title XIX.

*Regular matching rate* means the normal rate of FFP authorized by titles IV-A, IV-B, IV-D, IV-E, X, XIV, XVI(AABD), XIX, and XXI of the Social Security Act for State and local agency administration of programs authorized by those titles.

\* \* \* \* \*

*State agency* means the State agency administering or supervising the administration of the State plan under titles I, IV, X, XIV, XVI(AABD), XIX or XXI of the Social Security Act.

\* \* \* \* \*

10. In § 95.703 the definition of “Public Assistance Programs” is revised to read as follows:

##### § 95.703 Definitions.

\* \* \* \* \*

*Public Assistance Programs* means programs authorized by titles I, IV-A, IV-B, IV-C, IV-D, IV-E, X, XIV, XVI (AABD), XIX and XXI of the Social Security Act, and programs authorized by the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96-212).

\* \* \* \* \*

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: March 22, 2000.

**Nancy Ann-Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: March 28, 2000.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00-12879 Filed 5-23-00; 8:45 am]

**BILLING CODE 4120-01-P**