

Charles N. Kahn III, President, Federation of American Hospitals, Steven S. Reinmund, CEO and Chairman, PepsiCo, Scott P. Serota, President and CEO, Blue Cross Blue Shield Association. From the public sector listed alphabetically: Julie Louise Gerberding, M.D., Director Centers for Disease Control and Prevention, Mark B. McClellan, M.D. Administrator, Centers for Medicare and Medicaid Services, Michelle O'neill, Acting Under Secretary for Technology, Department of Commerce, Jonathan B. Perlin, M.D., Under Secretary for Health, Department of Veterans Affairs, E. Mitchell Roob, Secretary, Indiana Family and Social Services Administration, Linda M. Springer, Director, Office of Personnel Management, Mark J. Warshawsky, Assistant Secretary for Economic Policy, Department of the Treasury, William Winkenwerder Jr., M.D., Assistant Secretary of Defense, Department of Defense.

**FOR FURTHER INFORMATION CONTACT:** <http://www.hhs.gov/healthit>.

**SUPPLEMENTARY INFORMATION:** The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT) and serve as a forum for participation from a broad range of stakeholders to provide input on achieving interoperability of health IT. The Community shall not exceed 17 voting members, including the Chair, and members shall be appointed by the Secretary.

Dated: September 23, 2005.

**Dana Haza,**

*Acting Director of the Office of Programs and Coordination, Office of the National Coordinator.*

[FR Doc. 05-19451 Filed 9-28-05; 8:45 am]

**BILLING CODE 4150-24-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the National Coordinator; American Health Information Community Meeting**

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the first meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability

framework for health information technology (IT).

**DATES:** October 7th, 2005 from 8:30 a.m. to 5 p.m.

**ADDRESSES:** Hubert H. Humphrey building (200 Independence Ave., Southwest, Washington, DC 20201), conference room 705A.

**FOR FURTHER INFORMATION CONTACT:** <http://www.hhs.gov/healthit>.

**SUPPLEMENTARY INFORMATION:**

In accordance with GSA regulations implementing the Federal Advisory Committee Act, ONC intends to publish a **Federal Register** meeting announcement at least 15 calendar days before the date of an American Health Information Community meeting for all dates in the future. The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting notice. Due to the recent events in the gulf coast and the Department of Health and Human Services and Office of the National Coordinator's response to hurricane Katrina it has not been possible for ONC to announce the date and location of the first AHIC meeting before today. It should also be noted that the following meeting may be postponed if DHHS and ONC are involved in a response to hurricane Rita.

The URL for the webcast of the first AHIC meeting has not yet been established and will be announced on the ONC Web site <http://www.hhs.gov/healthit> before the scheduled date above.

Dated: September 23, 2005.

**Dana Haza,**

*Acting Director of the Office of Programs and Coordination, Office of the National Coordinator.*

[FR Doc. 05-19452 Filed 9-28-05; 8:45 am]

**BILLING CODE 4150-24-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[CMS-2230-FN]

**State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriation for Fiscal Year 2002**

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

**ACTION:** Final notice.

**SUMMARY:** This final notice describes and finalizes the procedure, which was previously published in the **Federal**

**Register** on January 19, 2005 (70 FR 3036) as a notice with comment period, for redistribution of States' unexpended Federal fiscal year (FY) 2002 SCHIP allotments remaining at the end of FY 2004 to those States that fully expended the allotments. These redistributed allotments will be available through the end of FY 2005 (September 30, 2005).

**DATES:** The provisions described in this final notice are effective on September 29, 2005.

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

**I. Background**

*A. Extension of Availability and Redistribution of SCHIP Fiscal Year 1998 Through 2001 Allotments*

Title XXI of the Social Security Act (the Act) sets forth the State Children's Health Insurance Program (SCHIP) to enable States, the District of Columbia, and specified Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children. In this notice, unless otherwise indicated, the terms "State" and "States" refer to any or all of the 50 States, the District of Columbia, and the Commonwealths and Territories. States may implement the SCHIP through a separate child health program under title XXI of the Act, an expanded program under title XIX of the Act, or a combination of both.

Under section 2104(e) of the Act, the SCHIP allotments for a Federal fiscal year are available to match expenditures under an approved State child health plan for an initial 3-fiscal year "period of availability," including the fiscal year for which the allotment was provided. After the initial period of availability, the amount of unspent allotments is reallocated and continues to be available during a subsequent period of availability, specified in SCHIP statute. With the exception described below for the allotments made in FYs 1998 through 2001, allotments that are unexpended at the end of the initial 3-year period of availability are redistributed from the States that did not fully spend the allotments to States that fully spent their allotments for that fiscal year.

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted as part of Pub. L. 106-554 on December 21, 2000, amended title XXI of the Act in part by establishing requirements for a subsequent extended period of availability with respect to the amounts of States' FY 1998 and FY 1999 allotments that were unspent during the initial 3-year period of availability.

Under the BIPA amendments, the subsequent period of availability (after the initial 3-year period of availability) for States' unspent FY 1998 and 1999 allotments was extended to the end of FY 2002.

Section 1 of the Extension of Availability of SCHIP Allotments Act, Pub. L. 108-74, enacted on August 15, 2003, amended title XXI of the Act to establish further requirements for the subsequent period of availability associated with the unexpended amounts of States' FYs 1998, 1999, 2000, and 2001 allotments during the initial 3-year period of availability, or subsequent period of availability, relating to those fiscal years. Specifically, Pub. L. 108-74 amended section 2104(g) of the Act to extend the subsequent period of availability associated with the allotments and redistribution of allotments for FYs 1998 through 2000 through the end of fiscal year 2004. Pub. L. 108-74 also extended the subsequent period of availability for the redistributed and extended FY 2001 allotments through the end of fiscal year 2005.

As amended by Pub. L. 108-74, section 2104(g) of the Act prescribes a methodology and process that includes the retention of certain amounts of unspent FY 2000 and FY 2001 allotments that would remain available to the States that did not fully expend their FY 2000 or FY 2001 allotments (retained allotments), and the redistribution of unspent FY 2000 or FY 2001 allotments that would not be retained but which would be redistributed to those other States that fully spent their FY 2000 or FY 2001 allotments (redistributed allotments).

#### *B. Availability and Redistribution of SCHIP Fiscal Year 2002 Allotments*

Section 2104(e) of the Act provides that amounts allotted to a State shall remain available for expenditures by the State through the end of the second succeeding fiscal year, except that amounts reallocated to a State are available for expenditure by the State through the end of the fiscal year in which they are reallocated. Section 2104(f) of the Act requires the Secretary to "determine an appropriate procedure for redistribution of allotments" from States that have not expended their allotments for the fiscal year to States that have fully expended their allotments. Section 2104(g) of the Act, as added by BIPA and amended by Pub. L. 108-74, sets forth the process for reallocating unexpended amounts of SCHIP allotments for FY 1998 through FY 2001 (as well as for the extension of the period of time to expend

allotments). Section 2104(g) of the Act does not address the treatment of States' unexpended SCHIP allotments for FY 2002 and the following fiscal years. Under sections 2104(e) and (f) of the Act, the Secretary is required to establish a procedure that provides for the treatment of States' unused SCHIP allotments for FY 2002 and following fiscal years. In particular, in applying section 2104(f) of the Act, following the initial 3-year period of availability referenced in section 2104(e) of the Act, the Secretary must determine an "appropriate procedure for redistribution" of the amounts of States' FY 2002 SCHIP allotments from States that did not expend the allotments during the 3-year period of availability for that fiscal year (that is, FY 2002 through FY 2004) only to States that fully expended their FY 2002 allotments during the 3-year period of availability.

#### *C. Expenditures, Authority for Qualifying States To Use Available SCHIP Allotments for Medicaid Expenditures, and Ordering of Allotments Elections*

Under section 2105(a)(1)(A) through (D) and (a)(2) of the Act and before enactment of Pub. L. 108-74, only Federal payments for the following Medicaid and SCHIP expenditures were applied against States' available SCHIP allotments in the following order: (1) Medical assistance provided under title XIX (Medicaid) at the SCHIP enhanced Federal medical assistance percentage (FMAP) matching rate with respect to the States' Medicaid SCHIP expansion population; (2) medical assistance provided on behalf of a child during presumptive eligibility under section 1920A of the Act (these funds are matched at the regular Medicaid FMAP rate); (3) child health assistance to targeted low income children that meets minimum benefit requirements under SCHIP; and (4) certain expenditures in the SCHIP that are subject to the 10-Percent Limit on non-primary expenditures (including other child health assistance for targeted low-income children, health services initiatives, outreach, and administrative costs).

However, section 1(b) of Pub. L. 108-74, as amended by Pub. L. 108-127, added new section 2105(g) to the Act under which certain "Qualifying States" that met prescribed criteria may elect to use up to 20 percent of any of the States' available SCHIP allotments for FY 1998, 1999, 2000, or 2001 as additional Federal financial participation for expenditures under the State's Medicaid program, instead of expenditures under

the State's SCHIP. As described in the **Federal Register** published on July 23, 2004 (69 FR 44013), if a Qualified State submits both 20 percent allowance expenditures and other "regular" SCHIP expenditures at the same time in a quarter, the 20 percent allowance expenditures will be applied first against the available fiscal year allotments. However, the 20 percent allowance expenditures may be applied only against the specified available fiscal year allotment funds upon which the 20 percent allowances were based.

## **II. Provisions of the Notice With Comment Period**

### *A. Appropriate Procedure for Redistribution of Unexpended FY 2002 Allotments*

The notice with comment period, published in the **Federal Register** on January 19, 2005 (70 FR 3036), described our proposal for the appropriate procedure for redistribution of States' unexpended FY 2002 SCHIP allotments, as authorized and required under section 2104(f) of the Act.

Under section 2104(f) of the Act, the Secretary must determine an appropriate procedure to redistribute the entire amount of States' unexpended SCHIP allotments following the end of the related initial 3-year period of availability *only* to those States that fully expended the allotments by the end of the initial 3-year period of availability (referred to in this notice as the redistribution States). In determining the appropriate procedure for reallocating the unused FY 2002 allotments, our primary consideration was to address, to the greatest extent possible, any projected State shortfalls for each of the redistribution States that would occur in FY 2005, the fiscal year in which the FY 2002 redistribution would occur. We determined these State shortfalls in FY 2005 by considering for each redistribution State: (1) The projected SCHIP-related expenditures in FY 2005, as reflected in the State's November 15, 2004 quarterly budget submission (Forms CMS-37 and/or CMS-21B); and (2) the total SCHIP allotments available in FY 2005 for the State, *exclusive* of any FY 2002 redistribution. For a redistribution State whose FY 2005 projected SCHIP-related expenditures are greater than its total SCHIP allotments available in FY 2005, the difference between the amounts under (1) and (2) for a State represents that State's "shortfall" for FY 2005.

In the procedure for redistributing the unexpended FY 2002 allotments described in the January 19, 2005 **Federal Register** notice (70 FR 3036),

only after accounting for the FY 2005 shortfall amounts of the Redistribution States did we further redistribute any remaining unexpended FY 2002 allotments to the Redistribution States. For purposes of consistency with previous fiscal year redistribution methodologies, we based the redistribution of the *remaining* unexpended FY 2002 allotments (that is, only after first accounting for the total shortfalls for each Redistribution State) on the same redistribution methodology as set forth in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106-554, enacted on December 21, 2000) amending section 2104(g)(1) of the Act. Specifically, we allocated the remaining amounts of the unexpended FY 2002 allotments based on the difference between each of the Redistribution States' total SCHIP-related expenditures for the 3-year period of availability related to FY 2002 (that is, FY 2002 through FY 2004) and the State's FY 2002 allotment. The allocation basis is the percentage determined by dividing this difference for each Redistribution State (including those Redistribution States with a FY 2005 shortfall) by the total of those differences for all Redistribution States.

### III. Analysis and Responses to Comments on the Notice With Comment Period

We received three comments with respect to the January 19, 2005 **Federal Register** notice, two from States, and one from an organization representing American Indian/Alaska Natives for substance abuse services. The following describes the comments and provides our responses.

*Comment:* One comment from a State Office of Health and Human Services agreed with the methodology used to determine the FY 2002 redistribution amounts, but requested that they be recalculated based on updated information. In particular, the commenter indicated that the use of the expenditure projections for FY 2005 from the State's November 15, 2004 submission to the Centers for Medicare & Medicaid Services did not adequately reflect its actual expenditures for FY 2005. In that regard, the State requested that the FY 2002 redistribution amounts be recalculated based on revised reporting of the State's expenditures projections that more accurately represented the State's expenditures for FY 2005.

*Response:* We agree with the commenter and, in this notice, have recalculated the States' FY 2002 redistribution amounts using States'

updated expenditure projections for FY 2005 from the States' August 15, 2005 submissions to CMS of Forms CMS-37 and CMS-21B. As indicated in the January 19, 2005 **Federal Register** notice, our primary consideration is to address, to the greatest extent possible, any projected State shortfalls for each of the Redistribution States that would occur in FY 2005, the fiscal year in which the FY 2002 redistribution occurs. Accordingly, we believe using the States' most recent expenditure projections for FY 2005, contained in their August 2005 submissions, will provide the best reflection of this information.

*Comment:* One comment received from an organization representing American Indian/Alaska Natives for substance abuse services provided a number of significant observations regarding the SCHIP program with respect to tribal issues. In particular, the commenter recommended that the FY 2002 SCHIP redistribution should not be redistributed without first consulting tribes and tribal governments, and also suggested that the Secretary has discretion to require each State to have meaningful consultation with tribal governments and to develop a plan for spending the redistributions.

*Response:* The commenter discussed significant issues relating to tribal concerns; however, those comments and the related suggestions made are outside the scope of the notice with comment period. In particular, the comment did not address the procedure for calculating the redistribution of the unexpended FY 2002 allotments. Furthermore, with respect to the commenter's suggestion that the FY 2002 redistribution should not occur without giving the tribes an opportunity for consultation, we believe the public comment period with respect to the January 19, 2005 **Federal Register** notice provided that opportunity. Therefore, we have not revised the procedure for redistribution of States' unexpended FY 2002 allotments with respect to this comment.

*Comment:* The third comment, from a State Department of Health and Human Services, commended CMS for addressing the objectives of the program and strongly supported the basic procedure for calculating the FY 2002 redistribution amounts in addressing the objectives of the SCHIP as described in the January 19, 2005 **Federal Register** notice.

*Response:* We appreciate the support expressed by the commenter. As indicated in our response to the first comment above, in this final notice, we are retaining the same procedure for

calculating the States' FY 2002 redistribution amounts methodology as described in the January 19, 2005 **Federal Register** notice with comment period. Again, the only revision we are making to this procedure, in accordance with our stated objective of addressing States' needs to the greatest extent possible, is to base the calculation of the FY 2002 redistribution amounts on the States' updated FY 2005 expenditure projections as contained in States' August 2005 submissions to CMS.

### IV. Provisions of the Final Notice

The only change we are making in this final notice, from the January 19, 2005 **Federal Register** notice with comment period, is to recalculate States' FY 2002 redistribution amounts using States' updated expenditure projections for FY 2005 as provided in their August 15, 2005 submissions to CMS of Forms CMS-37 and CMS-21B. Otherwise, the procedure for calculating States' FY 2002 redistribution amounts is exactly the same as described in the January 19, 2005 **Federal Register** notice with comment period. We believe using the updated FY 2005 expenditure projections most appropriately reflects the States' needs in funding their SCHIP programs.

### V. Final FY 2002 Redistribution Amounts

#### A. Unexpended FY 2002 Allotments

In Table 1 of this final notice, we set forth the shortfall calculation for the 50 States and the District of Columbia. In Table 2 of this final notice, we set forth the amount of States' unexpended FY 2002 allotments as reflected by the States' expenditure submissions through November 30, 2004. These amounts are used in determining the States' FY 2002 redistribution amounts. We established the amount of States' unexpended FY 2002 allotments at the end of the initial 3-year period of availability based on the SCHIP-related expenditures, as reported and certified by States to us on the quarterly expenditure reports (Form CMS-64 and/or Form CMS-21) by November 30, 2004. These expenditures are applied and tracked against the States' FY 2002 allotments (as published in the **Federal Register** on October 26, 2001 (66 FR 54246), and on November 13, 2001 (correction notice (66 FR 56902)), and other available allotments, on Form CMS-21C, Allocation of the Title XIX and Title XXI Expenditures to SCHIP Fiscal Year Allotment.

By November 30, 2004, all States reported and certified their FY 2004 fourth quarter expenditures (representing the last quarter of the 3-

year period of availability for FY 2002). Expenditures reflected in Table 2 below were taken from our Medicaid Budget and Expenditure System/State Children's Health Program Budget and Expenditure System (MBES/CBES) "masterfile," which represents the State's official certified SCHIP and Medicaid expenditure reporting system records related to FY 2002 allotments. Based on States' expenditure reports submitted and certified through November 30, 2004, the total amount of States' FY 2002 SCHIP allotments that were unexpended at the end of the 3-year period ending September 30, 2004, is \$642,617,724.

*B. FY 2002 Redistribution Amounts for the Commonwealths and Territories*

Section 2104(g)(1)(A)(ii) of the Act specifies the methodology for determining the FY 1998 through FY 2001 redistributed allotments for the Commonwealths and Territories that fully expended their SCHIP allotments related to those fiscal years. We applied the same methodology for purposes of determining an appropriate procedure under section 2104(f) of the Act to redistribute the unexpended FY 2002 allotments remaining at the end of FY 2004. Under this procedure, the total FY 2002 allotment amount available for redistribution to the Commonwealths and Territories is determined by multiplying the total amount of the unexpended FY 2002 allotments available for redistribution nationally by 1.05 percent. For the FY 2002 redistribution calculation, this amount is \$6,747,486 (1.05 percent of \$642,617,724). Only those Commonwealths and Territories that have fully expended their FY 2002 allotments will receive an allocation of this amount, equal to a specified percentage of the 1.05 percent amount; with respect to the FY 2002 allotments, all 5 Commonwealths and Territories fully expended those allotments by the end of FY 2004. This specified percentage is the amount determined by dividing the respective SCHIP FY 2002 allotment for each Commonwealth or Territory (that has fully expended its FY 2002 allotment) by the total of all the FY 2002 allotments for those Commonwealths and Territories that fully expended their FY 2002 allotments.

*C. FY 2002 Redistribution Amounts for the States and the District of Columbia*

Section 2104(f) of the Act requires the Secretary to determine an appropriate procedure for calculating the redistribution amounts for each of those States and the District of Columbia that

have fully expended their allotments; this final notice sets forth the procedure for the redistribution of the unexpended FY 2002 allotments. The attached tables and table descriptions provide detailed information on how the FY 2002 reallocation amounts are calculated. Generally, the FY 2002 redistribution amounts for the 50 States and the District of Columbia were determined as follows:

First, the total amount available for FY 2002 redistribution nationally was established by determining the total amount of unexpended FY 2002 allotments remaining at the end of FY 2004, as reported by the States through November 30, 2004.

Second, the total amount available for the FY 2002 redistribution to the States and the District of Columbia (not including the Commonwealths and Territories) was determined by subtracting the total of the FY 2002 redistribution amounts for the Commonwealths and Territories from the total available nationally for redistribution.

Third, the allocation of this total amount available for redistribution to the States and District of Columbia is determined by determining the "shortfall" amounts (if any) for these redistribution States that would occur in FY 2005, the fiscal year in which the unexpended FY 2002 allotments are actually redistributed. The FY 2005 shortfall amount, described previously, was determined as the excess (if any) of the FY 2002 redistribution States' projected FY 2005 expenditures (taken from the States' August 15, 2005 budget quarterly budget report submissions) over those States' total SCHIP allotments available in FY 2005 (not including any potential FY 2002 redistribution amounts). In this regard, the total available allotments in FY 2005 include the following: any remaining FY 2001 reallocations carried over from FY 2004 into FY 2005, any remaining 2003 allotments carried over from FY 2004 into FY 2005, any remaining 2004 allotments carried over from FY 2004 into FY 2005, and the FY 2005 allotments (available beginning with FY 2005).

Fourth, the amount of any unexpended FY 2002 allotments remaining after determining and accounting for the shortfall amounts was multiplied by a percentage specific to each FY 2002 Redistribution State. This percentage was determined for each FY 2002 Redistribution State by dividing the difference between that State's total reported applicable expenditures for the FY 2002 3-year period of availability and the State's FY

2002 allotment related to that period of availability, by the total of these differences for all Redistribution States.

*D. Tables for Calculating the SCHIP FY 2002 Redistributed Allotments*

The following is a description of Table 1 and Table 2, which present the calculation of each Redistribution State's FY 2002 SCHIP redistribution amount.

A total of \$3,115,200,000 was allotted nationally for FY 2002, representing \$3,082,125,000 in allotments to the 50 States and the District of Columbia, and \$33,075,000 in allotments to the Commonwealths and Territories. Based on the quarterly expenditure reports, submitted and certified by November 30, 2003, 28 States fully expended their FY 2002 allotments, 23 States and the District of Columbia did not fully expend their FY 2002 allotments, and all 5 of the Commonwealths and Territories fully expended their FY 2002 allotments. For the States and the District of Columbia that did not fully expend their FY 2002 allotments, their total FY 2002 allotments were \$1,413,648,379 and the total expenditures applied against their FY 2002 allotments were \$771,030,655. Therefore, the total amount of unexpended FY 2002 allotments at the end of FY 2004 equaled \$642,617,724 (\$1,413,648,379 minus \$771,030,655). As discussed in the January 19, 2005 **Federal Register** notice with comment period, no maintenance of effort (MOE) reductions were necessary with respect to the FY 2002 allotments. Therefore, the total amount of the FY 2002 allotments unexpended at the end of FY 2004 equaled \$642,617,724 (\$642,617,724 plus \$0 related to the MOE provision).

In accordance with the redistribution calculation for FY 2002 described above, \$6,747,486 is redistributed to the five Commonwealths and Territories, and \$635,870,238 redistributed to the 28 Redistribution States. The total \$642,617,724 in FY 2002 redistributed allotment amounts will remain available to these States through the end of FY 2005.

*Key to Table 1—FY 2005 Shortfall Calculation*

Table 1 presents the FY 2005 shortfall calculation for the 50 States and the District of Columbia.

*Column/Description*

Column A = *State*. Name of State, District of Columbia, the Commonwealth or Territory. This is the only column in Table 1 that includes Commonwealths and Territories; the

shortfall calculation in Table 1 is not applicable to the Commonwealths and Territories.

Column B = *FY 2001 Retained/Redistributed Allotments Carried Over From FY 2004*. This column contains the amounts of States' FY 2001 redistributed or retained allotments carried over from FY 2004 and available in FY 2005.

Column C = *FY 2003 Allotments Carried Over From FY 2004*. This column contains the amounts of States' FY 2003 allotments carried over from FY 2004 and available in FY 2005.

Column D = *FY 2004 Allotments Carried Over From FY 2004*. This

column contains the amounts of States' FY 2004 allotments carried over from FY 2004 and available in FY 2005.

Column E = *FY 2005 Allotments Initially Available Beginning FY 2005*. This column contains the FY 2005 SCHIP allotments, which are initially available in FY 2005, and were published in the **Federal Register** on August 27, 2004 (69 FR 52700).

Column F = *Total Available Allotments In FY 2005 Not Including FY 2002 Redistribution*. This column contains the States' total allotment amounts (not including any FY 2002 redistribution amounts) available in FY

2005. This amount is the sum of Columns B through E.

Column G = *Projected Expenditures FY 2005*. This column contains the amounts of States' projected FY 2005 SCHIP and SCHIP-related expenditures as contained in the States' August 15, 2005 quarterly budget submission.

Column H = *Projected FY 2005 Shortfall Not Including FY 2002 Redistribution*. This column contains the States' projected FY 2005 shortfall amounts, calculated as Column G minus Column F.

**BILLING CODE 4120-01-P**

**TABLE 1 - FY 2005 SHORTFALL CALCULATION**

State	FY 2001 Retained/ Redistributed Allotments Carried Over From FY 2004	FY 2003 Allotments Carried Over From FY 2004	FY 2004 Allotments Carried Over From FY 2004	FY 2005 Allotments Initially Available Beginning FY 2005	Total Available Allotments In FY 2005 Not Including FY 2002 Redistribution Col B + C + D + E	Projected Expenditures FY 2005 From Aug. 05 Estimates*	Projected FY 2005 Shortfall Not Including FY 2002 Redistribution Col G - F	H
Alabama	\$0	\$38,780,591	\$54,679,333	\$68,041,101	\$161,501,025	\$85,800,000	NO Shortfall	
Alaska	\$13,106,151	\$7,430,455	\$7,156,891	\$9,020,449	\$36,713,946	\$17,119,000	NO Shortfall	
Arizona	\$0	\$20,451,690	\$20,451,690	\$106,473,496	\$126,925,186	\$94,784,000	NO Shortfall	\$67,858,814
Arkansas	\$26,978,616	\$34,154,500	\$48,061,587	\$48,061,587	\$144,868,075	\$30,851,000	NO Shortfall	
California	\$0	\$548,807,833	\$533,990,797	\$667,443,669	\$1,750,242,399	\$721,210,000	NO Shortfall	
Colorado	\$0	\$37,914,522	\$44,865,429	\$57,951,287	\$140,731,238	\$45,448,000	NO Shortfall	
Connecticut	\$2,534,685	\$24,361,434	\$27,975,129	\$36,560,595	\$91,431,843	\$20,939,000	NO Shortfall	
Delaware	\$2,073,663	\$8,686,068	\$7,817,461	\$9,045,920	\$27,623,112	\$8,086,000	NO Shortfall	
District of Columbia	\$0	\$7,201,920	\$7,198,952	\$9,635,097	\$24,035,969	\$8,074,000	NO Shortfall	
Florida	\$132,618,160	\$35,421,360	\$193,614,837	\$249,246,758	\$610,901,115	\$390,435,000	NO Shortfall	
Georgia	\$24,823,484	\$103,892,954	\$103,892,954	\$130,915,014	\$259,631,452	\$203,621,000	NO Shortfall	
Hawaii	\$0	\$9,647,963	\$9,647,963	\$12,404,524	\$31,700,450	\$14,017,000	NO Shortfall	
Idaho	\$0	\$16,795,479	\$16,968,002	\$20,747,545	\$54,501,028	\$19,854,000	NO Shortfall	
Illinois	\$0	\$59,196,232	\$120,969,643	\$164,935,925	\$345,101,800	\$285,846,000	NO Shortfall	
Indiana	\$14,570,905	\$53,709,869	\$54,026,680	\$73,421,543	\$195,728,997	\$95,508,000	NO Shortfall	
Iowa	\$0	\$8,644,989	\$19,703,423	\$28,266,206	\$56,614,618	\$43,067,000	NO Shortfall	
Kansas	\$14,982,065	\$20,083,084	\$23,541,920	\$28,479,189	\$87,086,258	\$43,523,000	NO Shortfall	
Kentucky	\$33,743,149	\$37,984,461	\$39,286,749	\$54,060,786	\$165,075,145	\$78,496,000	NO Shortfall	
Louisiana	\$0	\$44,240,933	\$64,523,178	\$77,477,697	\$186,241,808	\$132,844,000	NO Shortfall	
Maine	\$8,706,125	\$9,688,881	\$9,474,540	\$12,462,201	\$40,331,747	\$23,203,000	NO Shortfall	
Maryland	\$65,648,887	\$33,648,564	\$36,121,348	\$48,348,957	\$183,767,756	\$123,986,000	NO Shortfall	
Massachusetts	\$27,707,902	\$46,201,047	\$46,201,047	\$59,401,346	\$179,511,342	\$102,659,000	NO Shortfall	
Michigan	\$0	\$86,568,091	\$99,138,280	\$111,345,557	\$287,051,928	\$171,113,000	NO Shortfall	\$18,930,134
Minnesota	\$13,604,712	\$0	\$36,897,326	\$48,165,511	\$98,667,549	\$82,709,000	NO Shortfall	\$17,338,451
Mississippi	\$0	\$20,239,122	\$41,923,481	\$53,958,180	\$116,120,783	\$91,512,000	NO Shortfall	
Missouri	\$0	\$10,005,270	\$10,193,881	\$12,284,292	\$32,483,443	\$14,517,000	NO Shortfall	
Montana	\$0	\$0	\$12,482,163	\$17,096,147	\$29,578,310	\$31,283,000	NO Shortfall	\$1,704,680
Nebraska	\$0	\$30,436,463	\$31,163,957	\$40,387,249	\$101,987,669	\$26,982,000	NO Shortfall	
New Hampshire	\$3,143,900	\$8,903,739	\$8,013,366	\$9,272,609	\$29,333,614	\$7,411,000	NO Shortfall	
New Jersey	\$0	\$25,767,757	\$25,767,757	\$84,735,099	\$110,502,856	\$216,497,000	NO Shortfall	\$105,984,144
New Mexico	\$25,383,498	\$32,788,606	\$32,788,606	\$42,156,779	\$133,117,489	\$20,113,000	NO Shortfall	
New York	\$164,030,940	\$227,517,050	\$216,455,790	\$270,142,080	\$878,145,860	\$467,912,000	NO Shortfall	
North Carolina	\$40,464,013	\$67,513,855	\$85,753,907	\$110,255,024	\$303,986,799	\$210,104,000	NO Shortfall	
North Dakota	\$0	\$5,436,695	\$5,436,695	\$6,384,719	\$17,258,109	\$11,000,000	NO Shortfall	
Ohio	\$0	\$60,480,850	\$103,803,316	\$125,842,184	\$290,126,350	\$174,181,000	NO Shortfall	
Oklahoma	\$0	\$44,621,756	\$44,621,756	\$57,370,830	\$146,614,342	\$59,881,000	NO Shortfall	
Oregon	\$1,399,872	\$40,708,703	\$38,056,795	\$47,255,380	\$127,420,750	\$41,996,000	NO Shortfall	
Pennsylvania*	\$223,963	\$0	\$92,759,160	\$130,963,777	\$322,470,746	\$153,422,000	NO Shortfall	\$41,880,391
Rhode Island	\$0	\$43,402,180	\$43,355,057	\$54,306,115	\$141,063,352	\$60,950,000	NO Shortfall	
South Carolina	\$0	\$4,405,684	\$5,790,144	\$7,886,854	\$18,082,882	\$14,316,000	NO Shortfall	
South Dakota	\$0	\$58,354,512	\$57,957,983	\$78,904,574	\$238,365,480	\$2,916,000	NO Shortfall	
Tennessee	\$43,148,411	\$311,503,988	\$330,851,514	\$449,972,119	\$1,092,327,621	\$297,903,000	NO Shortfall	
Texas	\$0	\$24,693,700	\$24,091,106	\$31,699,161	\$80,483,967	\$30,145,000	NO Shortfall	
Utah	\$0	\$3,813,156	\$3,813,156	\$4,902,630	\$12,528,942	\$4,475,000	NO Shortfall	
Vermont	\$0	\$53,437,771	\$55,714,814	\$76,254,851	\$185,407,436	\$80,398,000	NO Shortfall	
Virginia	\$25,419,765	\$50,326,484	\$50,326,484	\$64,705,479	\$190,778,212	\$31,553,000	NO Shortfall	
Washington	\$12,081,320	\$15,641,332	\$18,760,354	\$24,422,724	\$70,905,730	\$34,793,000	NO Shortfall	
West Virginia	\$36,731,734	\$0	\$43,504,958	\$51,870,414	\$132,107,106	\$85,445,000	NO Shortfall	
Wisconsin	\$0	\$5,480,750	\$4,962,110	\$6,364,535	\$16,797,389	\$5,706,000	NO Shortfall	
Wyoming	\$733,125,920	\$2,381,639,402	\$3,022,698,180	\$4,039,875,000	\$10,177,338,502	\$5,283,110,000	NO Shortfall	\$253,706,624
<b>TOTAL STATES ONLY</b>								
<b>COMMONWEALTHS AND TERRITORIES</b>								
Puerto Rico	NA	NA	NA	NA	NA	NA	NA	NA
Guam	NA	NA	NA	NA	NA	NA	NA	NA
Virgin Islands	NA	NA	NA	NA	NA	NA	NA	NA
American Samoa	NA	NA	NA	NA	NA	NA	NA	NA
N. Mariana Islands	NA	NA	NA	NA	NA	NA	NA	NA
<b>TOTAL</b>								
<b>NATIONAL TOTAL</b>	\$733,125,920	\$2,381,639,402	\$3,022,698,180	\$4,039,875,000	\$10,177,338,502	\$5,283,110,000		\$253,706,624

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*Key to Table 2—Calculation of the Schip Redistribution of the Unexpended Allotments for Fiscal Year: 2002*

Table 2 Contains the calculation of States' FY 2002 redistribution.

## Column/Description

Column A = *State*. Name of State, District of Columbia, the Commonwealth or Territory.

Column B = *FY 2002 Allotment*. This column contains the FY 2002 SCHIP allotments for all States, which were published in the **Federal Register** on October 26, 2001 (66 FR 54246) and in the correction notice on November 13, 2001 (66 FR 56902).

Column C = *Expenditures Applied Against FY 2002 Allotment*. This column contains the cumulative expenditures applied against the FY 2002 allotments, as reported and certified by all States through November 30, 2004.

Column D = *Unexpended FY 2002 Allotments Or "Redistribution."* This column contains the amounts of unexpended FY 2002 SCHIP allotments for States that did not fully expend the allotments during the 3-year period of availability for FY 2002 (FYs 2002 through 2004), and is equal to the difference between the amounts in Column B and Column C. For States that did fully expend their FY 2002 allotments during the period of availability, the entry in this column is "REDISTRIBUTION." The MOE amount is added to the total of the amounts of the States' unexpended FY 2002 allotments in this column at the bottom of Column D. However, since the MOE is \$0, \$642,617,724 represents the total amount available for the FY 2002 redistribution (\$642,617,724, the total unexpended FY 2002 allotments, plus \$0, the MOE provision amount).

Column E = *Projected FY 2005 Shortfall*. This column contains the projected "shortfall" amounts for the redistribution States, taken from Column H, Table 1. If there is no projected shortfall for the Redistribution State, the entry in this column is "NO Shortfall." If the State is not a Redistribution State, the entry in this column is "NA." For the Commonwealths and Territories, the entry in Column E is "NA."

Column F = *For Redistribution States Only FY 2002—FY 2004 Expenditures*. For the Redistribution States only (States that have fully expended their FY 2002 allotments), this column contains the total amounts of those States' reported SCHIP/SCHIP-related expenditures for the years FY 2002 through FY 2004, representing the FY 2002 3-year period of availability. For those States, Commonwealths, and Territories that did not fully expend their FY 2002 allotments during the period of availability, the entry in Column F is "NA."

Column G = *Redistribution States Only FY 02-04 Expenditures Minus FY 02 Allotment*. This column contains the amounts of Redistribution States' reported SCHIP/SCHIP-related expenditures for each of the years FY 2002 through FY 2004 minus the FY 2002 allotment, calculated as the entry in Column F minus the entry in Column B.

Column H = *For Redistribution States Percent Of Total Redistribution*. This column contains each Redistribution State's redistribution percentage of the total amount available for redistribution, calculated as the entry in Column G divided by the total (for Redistribution States only, and exclusive of the Commonwealths and Territories) of Column G.

Column I = *FY 2002 Redistributed Allotment Amounts*. This column contains the amounts of States'

unexpended FY 2002 SCHIP allotments that are being redistributed to the Redistribution States in addition to any shortfall amounts being provided to those States. The amount in Column I is calculated as the percentage for each redistribution State in Column H multiplied by the total additional amount available for redistribution. For the 28 States that have fully expended their FY 2002 allotments, the total additional FY 2002 redistribution is \$382,163,614. For the Commonwealths and Territories that have fully expended their FY 2002 allotments, the amounts in Column I represent their respective proportionate shares (allocated based on their FY 2002 allotments) of the total amount available for redistribution to the Commonwealths and Territories, \$6,747,486 (representing 1.05 percent of the total amount for redistribution of \$642,617,724). For those States and the District of Columbia that did not fully expend their FY 2002 allotments during the 3-year period of availability, the entry in Column I is "NA."

Column J = *FY 2005 Shortfall Amount*. This column contains the shortfall amounts for the Redistribution States; the amounts in this column are the same as the entries in Column E. The total shortfall amount is \$253,706,624.

Column K = *Total FY 2002 Redistribution Including FY 2005 Shortfall*. For the Redistribution States, this column reflects the total FY 2002 redistribution calculated as the sum of Column I and Column J. For the States and the District of Columbia, the total FY 2002 redistribution amount in FY 2005 is \$635,870,238. For the Commonwealths and Territories, the total FY 2002 redistribution amount in FY 2005 is \$6,747,486. The total FY 2002 redistribution amount available nationally is \$642,617,724.  
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## VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). We have determined that this final notice is not a major rule. The States' FY 2002 SCHIP allotments, totaling \$3,115,200,000 were originally published in a notice in the **Federal Register** (66 FR 54246) and allotted to States in FY 2002. This final notice does not revise the amount of the 2002 allotment originally made available to the States, but rather, sets forth the procedure for redistributing those FY 2002 allotments, which were unexpended at the end of FY 2004 (the end of the 3-year period of availability referenced in section 2104(e) of the Act), and announces the amount of the FY 2002 allotments to be redistributed to the redistribution States and the availability of the unexpended FY 2002 allotment amounts to the end of 2005. 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.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this final notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this final notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This final notice will not create an unfunded mandate on States, tribal, or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final notice and have determined that it does not significantly affect States' rights, roles, and responsibilities.

Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage. We believe this final notice will have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the FY 2002 allotment's redistribution amounts.

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

## VII. Waiver of Delay in Effective Date

We ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553 (d)). However, we can waive the 30-day delay in effective date if the Secretary finds, for good cause, that

such delay is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the rule issued. 5 U.S.C. 553(d)(3).

The provisions of this final notice need to be effective before September 30, 2005, the end of FY 2005, because with respect to the redistribution of unused allotments under section 2104(e) of the Act, "amounts reallocated to a State under subsection (f) [on redistribution of unused allotments] shall be available for expenditure by the State through the end of the fiscal year in which they are reallocated." Because CMS needed to receive and analyze the States' expenditure estimates as contained in the States' August 15, 2005 submissions, it was impracticable to publish this final notice earlier. Furthermore, we believe that the most up-to-date expenditure projections for FY 2005 from the States' August 2005 budget submissions best reflect the needs of the States in FY 2005. In order to redistribute the FY 2002 allotments by the end of FY 2005 (that is, by September 30, 2005) based on the most recent FY 2005 estimates, this final notice needs to be effective before the end of September 2005, which requires a waiver of the 30-day delay in the effective date. We believe it is contrary to the public interest not to waive the 30-day delay in effective date. Therefore, on the basis that it would be impracticable and contrary to the public interest, we find that good cause exists to waive the requirement for a 30-day delay in the effective date.

**Authority:** (Section 1102 of the Social Security Act (42 U.S.C. 1302) (Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program))

Dated: September 15, 2005.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: September 26, 2005.

**Michael O. Leavitt,**

*Secretary.*

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