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[FR Doc. 2010-10085 Filed 4-29-10; 8:45 am]

BILLING CODE 4150-41-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Implementation of Section 5001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) for Adjustments to the Second Quarter of Fiscal Year 2010 Federal Medical Assistance Percentage Rates for Federal Matching Shares for Medicaid and Title IV-E Foster Care, Adoption Assistance and Guardianship Assistance Programs

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: This notice provides the adjusted Federal Medical Assistance Percentage (FMAP) rates for the second quarter of Fiscal Year 2010 (FY10) as required under Section 5001 of the American Recovery and Reinvestment Act of 2009 (ARRA). Section 5001 of the ARRA provides for temporary increases in the FMAP rates to provide fiscal relief to States and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn. The increased FMAP rates apply during a recession adjustment period that is defined in ARRA as the period beginning October 1, 2008 and ending December 31, 2010.

DATES: *Effective Date:* These percentages are effective for the quarter beginning January 1, 2010 through March 31, 2010.

A. Background

The FMAP is used to determine the amount of Federal matching for specified State expenditures for assistance payments under programs under the Social Security Act ("the Act"). Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish the FMAP rates each year. The Secretary calculates the percentages using formulas in sections 1905(b) and 1101(a)(8)(B), and statistics from the Department of Commerce of average income per person in each State and for the Nation as a whole. The percentages must be within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified separately in the Act, and thus are not based on the

statutory formula that determines the percentages for the 50 States.

Section 1905(b) of the Act specifies the formula for calculating the FMAP as follows:

The FMAP for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the FMAP shall in no case be less than 50 per centum or more than 83 per centum, and (2) the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

Section 4725 of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the FMAP for the District of Columbia for purposes of titles XIX (Medicaid) and XXI (CHIP) shall be 70 percent. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110-275) amended the FMAP applied to the District of Columbia for maintenance payments under title IV-E programs to make it consistent with the 70 percent Medicaid match rate.

Section 5001 of Division B of the ARRA provides for a temporary increase in FMAP rates for Medicaid and title IV-E Foster Care, Adoption Assistance and Guardianship Assistance programs. The purpose of the increases to the FMAP rates is to provide fiscal relief to States and to protect and maintain State Medicaid and certain other assistance programs in a period of economic downturn, referred to as the "recession adjustment period." The recession adjustment period is defined as the period beginning October 1, 2008 and ending December 31, 2010.

B. Calculation of the Increased FMAP Rates Under ARRA

Section 5001 of the ARRA specifies that the FMAP rates shall be temporarily increased for the following: (1) Maintenance of FMAP rates for FY09, FY10, and first quarter of FY11, so that the FMAP rate will not decrease from the prior year, determined by using as the FMAP rate for the current year the greater of any prior fiscal year FMAP rates between 2008-2010 or the rate calculated for the current fiscal year; (2) in addition to any maintenance increase, the application of an increase in each State's FMAP of 6.2 percentage points; and (3) an additional percentage point increase based on the State's increase in unemployment during the recession adjustment period. The resulting increased FMAP cannot exceed 100 percent. Each State's FMAP

will be recalculated each fiscal quarter beginning October 2008. Availability of certain components of the increased FMAP is conditioned on States meeting statutory programmatic requirements, such as the maintenance of effort requirement, which are not part of the calculation process.

Expenditures for which the increased FMAP is not available under title XIX include expenditures for disproportionate share hospital payments, certain eligibility expansions, services received through an IHS or Tribal facility (which are already paid at a rate of 100 percent and therefore not subject to increase), and expenditures that are paid at an enhanced FMAP rate. The increased FMAP is available for expenditures under part E of title IV (including Foster Care, Adoption Assistance and Guardianship Assistance programs) only to the extent of a maintenance increase (hold harmless), if any, and the 6.2 percentage point increase. The increased FMAP does not apply to other parts of title IV, including part D (Child Support Enforcement Program).

For title XIX purposes only, for each qualifying State with an unemployment rate that has increased at a rate above the statutory threshold percentage, ARRA provides additional relief above the general 6.2 percentage point increase in FMAP through application of a separate increase calculation. For those States, the FMAP for each qualifying State is increased by the number of percentage points equal to the product of the State matching percentage (as calculated under section 1905(b) and adjusted if necessary for the maintenance of FMAP without reduction from the prior year, and after applying half of the 6.2 percentage point general increase in the Federal percentage) and the applicable percent determined from the State unemployment increase percentage for the quarter.

The unemployment increase percentage for a calendar quarter is equal to the number of percentage points (if any) by which the average monthly unemployment rate for the State in the most recent previous 3-consecutive-month period for which data are available exceeds the lowest average monthly unemployment rate for the State for any 3-consecutive-month period beginning on or after January 1, 2006. A State qualifies for additional relief based on an increase in unemployment if that State's unemployment increase percentage is at least 1.5 percentage points.

The applicable percent is: (1) 5.5 percent if the State unemployment

increase percentage is at least 1.5 percentage points but less than 2.5 percentage points; (2) 8.5 percent if the State unemployment increase percentage is at least 2.5 percentage points but less than 3.5 percentage points; and (3) 11.5 percent if the State unemployment increase percentage is at least 3.5 percentage points.

If the State's applicable percent is less than the applicable percent for the preceding quarter, then the higher applicable percent shall continue in effect for any calendar quarter beginning on January 1, 2009 and ending before July 1, 2010.

Under section 5001(b)(2) of ARRA, Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and America Samoa were given the option to make a special one-time election between (1) a 30 percent increase in their cap on Medicaid payments (as determined under subsections (f) and (g) of section 1108 of the Act), or (2) applying the

general 6.2 percentage point increase in the FMAP plus a 15 percent increase in the cap on Medicaid payments. There is no quarterly unemployment adjustment for territories. All territories and the Commonwealth of the Northern Mariana Islands elected the 30 percent increase in their spending cap on Medicaid payments; therefore there is no recalculation of their FMAP rate.

D. Adjusted FMAPs for the Second Quarter of 2010

ARRA adjustments to FMAPs are shown by State in the accompanying table. The hold harmless FY10 FMAP is the higher of the original FY08, FY09, or FY10 FMAP. The 6.2 percentage point increase is added to the hold harmless FY10 FMAP. The unemployment tier is determined by comparing the average unemployment rate for the three consecutive months preceding the start of each fiscal quarter to the lowest consecutive 3-month average unemployment rate beginning

January 1, 2006. The unemployment adjustment is calculated according to the unemployment tier and added to the hold harmless FY10 FMAP with the 6.2 percentage point increase.

FOR FURTHER INFORMATION CONTACT:

Carrie Shelton or Thomas Musco, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690-6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93-596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care; 93.659: Adoption Assistance; 93.090: Guardianship Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act; 93.778: Medical Assistance Program)

Dated: April 13, 2010.

Kathleen Sebelius,
Secretary.

ARRA ADJUSTMENTS TO FMAP Q2 FY10

State	FY08 original FMAP	FY09 original FMAP	FY10 original FMAP	Hold harmless FY10	Hold harmless FY10 FMAP with 6.2% point increase	3-month average unemployment ending Dec 2009	Minimum unemployment	Unemployment difference	Unemployment tier	Unemployment adjustment Q2 FY10	2nd quarter FY10 FMAP unemployment adjustment	2nd quarter FY10 FMAP unemployment hold harmless
Alabama	67.62	67.98	68.01	68.01	74.21	10.9	3.3	7.6	11.5	3.32	77.53	77.53
Alaska	52.48	50.53	51.43	52.48	58.68	8.5	6.0	2.5	8.5	3.78	62.46	62.46
Arizona	66.20	65.77	65.75	66.20	72.40	9.2	3.6	5.6	11.5	3.53	75.93	75.93
Arkansas	72.94	72.81	72.78	72.94	79.14	7.6	4.8	2.8	8.5	2.04	81.18	81.18
California	50.00	50.00	50.00	50.00	56.20	12.3	4.8	7.5	11.5	5.39	61.59	61.59
Colorado	50.00	50.00	50.00	50.00	56.20	7.4	3.6	3.8	11.5	5.39	61.59	61.59
Connecticut	50.00	50.00	50.00	50.00	56.20	8.7	4.3	4.4	11.5	5.39	61.59	61.59
Delaware	50.00	50.00	50.21	50.21	56.41	8.6	3.3	5.3	11.5	5.37	61.78	61.78
Dist of Columbia	70.00	70.00	70.00	70.00	76.20	11.6	5.4	6.2	11.5	3.09	79.29	79.29
Florida	56.83	55.40	54.98	56.83	63.03	11.6	3.3	8.3	11.5	4.61	67.64	67.64
Georgia	63.10	64.49	65.10	65.10	71.30	10.2	4.3	5.9	11.5	3.66	74.96	74.96
Hawaii	56.50	55.11	54.24	56.50	62.70	6.9	2.2	4.7	11.5	4.65	67.35	67.35
Idaho	69.87	69.77	69.40	69.87	76.07	9.0	2.8	6.2	11.5	3.11	79.18	79.18
Illinois	50.00	50.32	50.17	50.32	56.52	10.9	4.4	6.5	11.5	5.36	61.88	61.88
Indiana	62.69	64.26	65.93	65.93	72.13	9.8	4.4	5.4	11.5	3.56	75.69	75.69
Iowa	61.73	62.62	63.51	63.51	69.71	6.5	3.7	2.8	8.5	2.84	72.55	72.55
Kansas	59.43	60.08	60.38	60.38	66.58	6.7	4.0	2.7	8.5	3.10	69.68	69.68
Kentucky	69.78	70.13	70.96	70.96	77.16	10.7	5.4	5.3	11.5	2.98	80.14	80.14
Louisiana	72.47	71.31	67.61	72.47	78.67	7.3	3.5	3.8	11.5	2.81	81.48	81.48
Maine	63.31	64.41	64.99	64.99	71.19	8.1	4.4	3.7	11.5	3.67	74.86	74.86
Maryland	50.00	50.00	50.00	50.00	56.20	7.3	3.4	3.9	11.5	5.39	61.59	61.59
Massachusetts	50.00	50.00	50.00	50.00	56.20	9.2	4.4	4.8	11.5	5.39	61.59	61.59
Michigan	58.10	60.27	63.19	63.19	69.39	14.4	6.7	7.7	11.5	3.88	73.27	73.27
Minnesota	50.00	50.00	50.00	50.00	56.20	7.6	3.9	3.7	11.5	5.39	61.59	61.59
Mississippi	76.29	75.84	75.67	76.29	82.49	10.4	6.0	4.4	11.5	2.37	84.86	84.86
Missouri	62.42	63.19	64.51	64.51	70.71	9.6	4.7	4.9	11.5	3.72	74.43	74.43
Montana	68.53	68.04	67.42	68.53	74.73	6.6	3.2	3.4	8.5	2.41	77.14	77.99
Nebraska	58.02	59.54	60.56	60.56	66.76	4.6	2.8	1.8	5.5	2.00	68.76	68.76
Nevada	52.64	50.00	50.16	52.64	58.84	12.9	4.2	8.7	11.5	5.09	63.93	63.93
New Hampshire	50.00	50.00	50.00	50.00	56.20	6.9	3.4	3.5	11.5	5.39	61.59	61.59
New Jersey	50.00	50.00	50.00	50.00	56.20	9.9	4.2	5.7	11.5	5.39	61.59	61.59
New Mexico	71.04	70.88	71.35	71.35	77.55	8.1	3.5	4.6	11.5	2.94	80.49	80.49
New York	50.00	50.00	50.00	50.00	56.20	8.9	4.3	4.6	11.5	5.39	61.59	61.59
North Carolina	64.05	64.60	65.13	65.13	71.33	10.9	4.5	6.4	11.5	3.65	74.98	74.98
North Dakota	63.75	63.15	63.01	63.75	69.95	4.3	3.0	1.3	0	0.00	69.95	69.95
Ohio	60.79	62.14	63.42	63.42	69.62	10.8	5.3	5.5	11.5	3.85	73.47	73.47
Oklahoma	67.10	65.90	64.43	67.10	73.30	6.9	3.3	3.6	11.5	3.43	76.73	76.73
Oregon	60.86	62.45	62.74	62.74	68.94	10.7	5.0	5.7	11.5	3.93	72.87	72.87
Pennsylvania	54.08	54.52	54.81	54.81	61.01	8.7	4.3	4.4	11.5	4.84	65.85	65.85
Rhode Island	52.51	52.59	52.63	52.63	58.83	12.5	4.8	7.7	11.5	5.09	63.92	63.92

ARRA ADJUSTMENTS TO FMAP Q2 FY10—Continued

State	FY08 original FMAP	FY09 original FMAP	FY10 original FMAP	Hold harmless FY10	Hold harmless FY10 FMAP with 6.2% point increase	3-month average unemployment ending Dec 2009	Minimum unemployment	Unemployment difference	Unemployment tier	Unemployment adjustment Q2 FY10	2nd quarter FY10 FMAP unemployment adjustment	2nd quarter FY10 FMAP unemployment hold harmless
South Carolina	69.79	70.07	70.32	70.32	76.52	12.3	5.5	6.8	11.5	3.06	79.58	79.58
South Dakota	60.03	62.55	62.72	62.72	68.92	4.7	2.7	2.0	5.5	1.88	70.80	70.80
Tennessee	63.71	64.28	65.57	65.57	71.77	10.7	4.5	6.2	11.5	3.60	75.37	75.37
Texas	60.56	59.44	58.73	60.56	66.76	8.2	4.4	3.8	11.5	4.18	70.94	70.94
Utah	71.63	70.71	71.68	71.68	77.88	6.6	2.5	4.1	11.5	2.90	80.78	80.78
Vermont	59.03	59.45	58.73	59.45	65.65	6.7	3.5	3.2	8.5	3.18	68.83	69.96
Virginia	50.00	50.00	50.00	50.00	56.20	6.8	2.8	4.0	11.5	5.39	61.59	61.59
Washington	51.52	50.94	50.12	51.52	57.72	9.2	4.4	4.8	11.5	5.22	62.94	62.94
West Virginia ..	74.25	73.73	74.04	74.25	80.45	8.9	4.2	4.7	11.5	2.60	83.05	83.05
Wisconsin	57.62	59.38	60.21	60.21	66.41	8.6	4.4	4.2	11.5	4.22	70.63	70.63
Wyoming	50.00	50.00	50.00	50.00	56.20	7.5	2.8	4.7	11.5	5.39	61.59	61.59

[FR Doc. 2010-10055 Filed 4-29-10; 8:45 am]

BILLING CODE 4150-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Final rule: Change in effective date.

SUMMARY: The Department of Health and Human Services (HHS) is changing the effective date of the Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) from May 1, 2010, to October 1, 2010. The purpose of this notice is to notify participants in Federal and federally-regulated workplace drug testing programs as soon as possible that they will not be expected to implement the revisions to the Mandatory Guidelines on May 1, 2010, so that they do not unnecessarily expend resources to comply on May 1, or risk compliance problems by prematurely implementing new provisions.

DATES: The revisions to the Mandatory Guidelines will now become effective October 1, 2010. This change in the effective date becomes effective April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Robert L. Stephenson, II, M.P.H., Director, Division of Workplace Programs (DWP), Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), 1 Choke Cherry Road, Room 2-1035, Rockville, MD 20857; Telephone: 240-276-2600;

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Bob.Stephenson@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION: On November 25, 2008, HHS published a Final Notice of Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs in the **Federal Register** (73 FR 71858). A correction providing the effective date of May 1, 2010, was published in the **Federal Register** on December 10, 2008 (73 FR 75122). The Mandatory Guidelines establish the scientific and technical guidelines for Federal workplace drug testing programs and establish standards for certification of laboratories engaged in drug testing for Federal agencies under authority of section 503 of Public Law 100-71, 5 U.S.C. Section 7301 note and Executive Order (E.O.) 12564. The revisions to the Mandatory Guidelines address the collection and testing of urine specimens, the requirements for certification of Instrumented Initial Test Facilities (IITF), and the role of and standards for collectors and Medical Review Officers (MRO).

The Department of Transportation (DOT) publishes the Procedures for Transportation Workplace Drug and Alcohol Testing Programs at 49 Code of Federal Regulations (CFR) Part 40. This DOT regulation requires the drug and alcohol testing of safety-sensitive employees in certain DOT-regulated industries. Consistent with the Omnibus Transportation Employee Testing Act of 1991, the DOT utilizes the HHS laboratory procedures set forth in the Mandatory Guidelines in its regulations.

On February 4, 2010, DOT published a notice of proposed rulemaking (NPRM) in the **Federal Register** (75 FR 5722) announcing revised procedures for transportation workplace drug and alcohol testing programs. DOT's final rule based on this NPRM will not be completed by May 1, 2010. It is

anticipated that DOT's rule will be issued in time to go into effect by October 1, 2010.

Without this change of effective date for the Mandatory Guidelines, laboratories certified under the Mandatory Guidelines would be required to maintain a dual system for testing using the revised Mandatory Guidelines, and testing for DOT-regulated entities covered by the current Mandatory Guidelines, until DOT rules are issued. Further, the National Laboratory Certification Program would be required to certify laboratories utilizing different sets of requirements. The new effective date of October 1, 2010 will allow time for related training in Federal and federally-regulated workplace drug testing programs and will be consistent with the beginning of the new Fiscal Year for Federal agencies.

The Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exemptions in 5 U.S.C. section 553(b)(3)(B) and 553(d)(3), to the extent that 5 U.S.C. title 5 applies. This delay in the effective date is temporary, and necessary to avoid requiring DOT-regulated industries to comply with a different set of rules than federal workplace drug testing programs, which would create a confusing and unfair situation in which similarly situated employees would be treated inconsistently.

The new implementation date will also avoid the unnecessary expenditure of scarce resources on compliance with different standards; allow time for related training in Federal and federally-regulated workplace drug testing programs, including HHS coordination with testing laboratories on implementing new procedures to be used in the federal workplace testing