

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**COLORADO RECEIVED MILLIONS
IN UNALLOWABLE BONUS
PAYMENTS**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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Deputy Inspector General
for Audit Services**

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Office of Inspector General

<http://oig.hhs.gov>

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EXECUTIVE SUMMARY

Colorado received more than \$38 million in unallowable performance bonus payments under the Children's Health Insurance Program Reauthorization Act for fiscal years 2010 through 2013.

WHY WE DID THIS REVIEW

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) directly affects both the Children's Health Insurance Program and Medicaid. Under CHIPRA, Congress appropriated \$3.225 billion for qualifying States to receive performance bonus payments (bonus payments) for Federal fiscal years (FYs) 2009 through 2013 to offset the costs of increased enrollment of children in Medicaid. In previous audits of CHIPRA bonus payments in other States, we found millions of dollars in unallowable bonus payments; therefore, we identified CHIPRA bonus payments as a high-risk area.

We reviewed the bonus payments that Colorado received for FYs 2010 through 2013 because preliminary analysis indicated inconsistencies between the enrollment of children in Medicaid that Colorado reported when requesting bonus payments and the enrollment reflected in the Medicaid Statistical Information System maintained by the Centers for Medicare & Medicaid Services (CMS). Colorado received \$157,519,647 in bonus payments for the FYs we reviewed.

The objective of our audit was to determine whether the bonus payments that Colorado received were allowable in accordance with Federal requirements.

BACKGROUND

CMS administers the Medicaid program at the Federal level and is the agency responsible for determining whether a State meets the requirements to receive a bonus payment and, if so, what the amount of a State's bonus payment should be. CMS makes its determinations, in part, on the basis of Medicaid enrollment information that the States provide in their requests for bonus payments. Colorado's Department of Health Care Policy and Financing (State agency) administers Colorado's Medicaid program and requested the bonus payments that Colorado received for FYs 2010 through 2013 (audit period).

A State is eligible for a bonus payment if, among other requirements, it increases its current enrollment of qualifying children (current enrollment) above the baseline enrollment of qualifying children for a given year as specified in CMS guidance.

WHAT WE FOUND

Some of the bonus payments that Colorado received for the audit period were not allowable in accordance with Federal requirements. Most of the data used in Colorado's bonus payment calculations were in accordance with Federal requirements. However, the State agency overstated its FYs 2010 through 2013 current enrollment in its bonus requests to CMS because it

included individuals who did not qualify because of their basis-of-eligibility code. As a result, CMS overpaid Colorado \$38,373,386 in bonus payments.

WHAT WE RECOMMEND

We recommend that the State agency refund \$38,373,386 to the Federal Government.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency acknowledged that it had included individuals with a basis of eligibility (BOE) code other than 4, 6, and 8 in its current enrollment. However, the State agency did not concur with our findings or recommendation. The State agency said that it complied with the letter and spirit of the CHIPRA bonus payment requirements, as well as the complete guidance that CMS provided in its 2009 guidance.

Specifically, the State agency said that it complied with the Federal statutory definition of “qualifying children,” as well as CMS’s 2009 guidance, by including children who were blind and disabled in current enrollment data for bonus payments. Additionally, the State agency asserted that guidance provided by a CMS official in December 2011 contradicted both CMS’s 2009 guidance and the CHIPRA statute. Accordingly, the State agency requested that we reconsider our findings and recommendation.

After our review and consideration of State agency comments, we maintain that our findings and recommendation are correct.

We disagree that the State agency complied with the Federal requirements for the CHIPRA bonus payments when it included individuals with a BOE code other than 4, 6, and 8 in its current enrollment. The State agency’s current enrollment calculations did not follow the same logic and basis that CMS used to develop Colorado’s baseline enrollment. As a result, the State agency’s approach overstated Colorado’s current enrollment because it included enrollment categories not reflected in CMS’s calculation of Colorado’s baseline enrollment. Allowing the State agency to include individuals from other BOE categories in its current enrollment counts, when those same BOE categories were not included in the baseline calculations, would result in an artificially inflated estimate of growth in children enrolled in the State’s Medicaid program.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) directly affects both the Children's Health Insurance Program and Medicaid. Under CHIPRA, Congress appropriated \$3.225 billion for qualifying States to receive performance bonus payments (bonus payments) for Federal fiscal years (FYs) 2009 through 2013 to offset the costs of increased enrollment of children in Medicaid. In previous audits of CHIPRA bonus payments in other States,¹ we found millions of dollars in unallowable bonus payments; therefore, we identified CHIPRA bonus payments as a high-risk area.

We reviewed the bonus payments that Colorado received for FYs 2010 through 2013 because preliminary analysis indicated inconsistencies between the enrollment of children in Medicaid that Colorado reported when requesting bonus payments and the enrollment reflected in the Medicaid Statistical Information System (MSIS) maintained by the Centers for Medicare & Medicaid Services (CMS). Colorado received \$157,519,647 in bonus payments for the FYs we reviewed.

OBJECTIVE

Our objective was to determine whether the bonus payments that Colorado received were allowable in accordance with Federal requirements.

BACKGROUND

The Medicaid Program: How It Is Administered

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. Each State administers its Medicaid program in accordance with a CMS-approved State plan. Although the State has considerable flexibility in designing and operating its Medicaid program, it must comply with applicable Federal requirements. CMS administers the Medicaid program at the Federal level. Colorado's Department of Health Care Policy and Financing (State agency) administers Colorado's Medicaid program.

Colorado's Medicaid Management Information System and CMS's Medicaid Statistical Information System

Section 235 of the Social Security Amendments of 1972, P.L. No. 92-603, provided for 90-percent Federal financial participation (FFP) for the design, development, or installation and 75-percent FFP for the operation of eligible State mechanized claim processing and information retrieval systems. For Medicaid purposes, the mechanized claim processing and information retrieval system is the Medicaid Management Information System (MMIS).

¹ See Appendix A for details.

The MMIS is an integrated group of procedures and computer processing operations designed to improve Medicaid program and administrative cost controls, service to beneficiaries and providers, operations of claims control and computer capabilities, and management reporting for planning and control.

Under the Balanced Budget Act of 1997, P.L. No. 105-33, States are required to submit Medicaid eligibility and claim data to CMS through the MSIS. The purpose of the MSIS is to collect, manage, analyze, and disseminate information on eligibility, beneficiaries, utilization, and payment for services covered by State Medicaid programs. CMS uses MSIS data to produce Medicaid program characteristics and utilization information. Some of the information that States report for Medicaid-eligible individuals are age, race, sex, and basis of eligibility (BOE).

Bonus Payments

CHIPRA, P.L. No. 111-3, directly affects both the Children's Health Insurance Program under Title XXI of the Social Security Act (the Act) and Medicaid under Title XIX of the Act. Under CHIPRA, qualifying States may receive bonus payments for FYs 2009 through 2013 to offset the costs of increased enrollment of children in Medicaid. A State is eligible for a bonus payment if it increased its current enrollment of qualifying children (current enrollment) above the baseline enrollment of qualifying children (baseline enrollment) for a given year as specified in CMS guidance. A State must also have implemented at least five of the Medicaid enrollment and retention provisions specified in CHIPRA.

CMS is responsible for determining whether a State meets the requirements to receive a bonus payment and, if so, the amount of a State's bonus payment. CMS makes its determinations, in part, on the basis of Medicaid enrollment information that the State provided in its requests for bonus payments. The State agency requested the bonus payments that Colorado received for FYs 2010 through 2013. Appendix B contains the details of Colorado's current enrollment calculations for these FYs.

HOW WE CONDUCTED THIS REVIEW

We reviewed the bonus payments that Colorado received for FYs 2010 through 2013 (audit period), totaling \$18,203,273, \$32,906,502, \$47,490,797, and \$58,919,075, respectively. Our review focused on verifying the accuracy of enrollment information used in the bonus payment calculations and ensuring that the information complied with Federal requirements. We neither assessed the State agency's internal control structure beyond what was necessary to meet our objective nor reviewed the State agency's determinations of Medicaid eligibility. Also, we did not review whether the State agency successfully implemented at least five of the Medicaid enrollment and retention provisions because we determined that there was a low risk of noncompliance.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions

based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C contains the details of our scope and methodology, and Appendix D contains the Federal requirements related to bonus payments.

FINDINGS

Some of the bonus payments that Colorado received for the audit period were not allowable in accordance with Federal requirements. Most of the data used in Colorado's bonus payment calculations were in accordance with Federal requirements. However, the State agency overstated its FYs 2010 through 2013 current enrollments in its bonus requests to CMS because it included individuals who did not qualify because of their BOE code. As a result, CMS overpaid Colorado \$38,373,386 in bonus payments.

THE STATE AGENCY DID NOT CALCULATE CURRENT ENROLLMENT IN ACCORDANCE WITH FEDERAL REQUIREMENTS

The State agency reported CHIPRA current enrollments of 319,961, 350,672, 378,783, and 417,013 for FYs 2010 through 2013, respectively. According to CMS guidance,² a State should calculate CHIPRA current enrollment using the same State institutional data sources, such as the State's MMIS, that it uses for reporting under the MSIS.

Furthermore, the State's current enrollment should include only individuals whom the State identifies and reports as having a BOE of "child" in the MSIS. Specifically, CMS guidance defines BOE codes of "child" as follows:

- Code 4: Child (not Child of Unemployed Adult, not Foster Care Child);
- Code 6: Child of Unemployed Adult (optional); and
- Code 8: Foster Care Child.

CMS established this guidance to ensure that States consistently used the same information and basis (i.e., BOE codes) that CMS uses to develop States' baseline enrollment.³

The State agency correctly used the same State institutional data source to calculate its current enrollment that it used for MSIS reporting. However, the State agency did not follow CMS guidance to include in its CHIPRA current enrollment only individuals with a BOE of "child" in the MSIS. In addition to the above three BOE categories, the State agency incorrectly included individuals from other BOEs, such as BOE code 2, "Blind and Disabled," in its reports of

² CMS, State Health Official (SHO) Letter #09-015, CHIPRA #10, and CMS email to State agency on December 12, 2011.

³ The baseline enrollment level for a State uses a formula that includes such factors as the levels of qualifying children under the Medicaid program and various adjustment factors that account for population growth.

CHIPRA current enrollments to CMS, which inflated its current enrollment numbers. Had it followed Federal requirements, the State agency would have reported the current enrollment for FYs 2010 through 2013 as depicted in Table 1.

Table 1: Colorado Medicaid Enrollment

Current Enrollment⁴	FY 2010	FY 2011	FY 2012	FY 2013
State-reported number	319,961	350,762	378,783	417,013
OIG-calculated number	306,971	339,309	367,005	405,043
Overstatement	12,990	11,453	11,778	11,970

COLORADO RECEIVED MORE THAN \$38 MILLION IN UNALLOWABLE BONUS PAYMENTS

CMS calculated excessive CHIPRA bonus payments to Colorado because the State agency overstated its CHIPRA current enrollments for FYs 2010 through 2013. (See Table 1.) As a result, Colorado received unallowable bonus payments of \$10,483,744, \$9,274,394, \$10,021,827, and \$8,440,421 for FYs 2010 through 2013, respectively. We recalculated the bonus payments using the correct CHIPRA current enrollments for these FYs and found that Colorado should not have received a total of \$38,373,386 in bonus payments for the FYs reviewed (Table 2).

Table 2: Colorado Bonus Payments

	FY 2010	FY 2011	FY 2012	FY 2013	Total
Bonus payment received	\$18,203,273	\$32,906,502	\$47,490,797	\$58,919,075	\$157,519,647
Correct bonus payment	7,719,529	23,479,108	37,468,970	50,478,654	119,146,261
Bonus payment not allowed	\$10,483,744	\$9,427,394	\$10,021,827	\$8,440,421	\$38,373,386

RECOMMENDATION

We recommend that the State agency refund \$38,373,386 to the Federal Government.

⁴ See Appendix B, Tables 3 and 4, for a monthly detail of the State agency’s reported current enrollment numbers and our calculated current enrollment numbers.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency acknowledged that it had included individuals with a BOE code other than 4, 6, and 8 in its current enrollment. However, the State agency did not concur with our findings or recommendation. The State agency said that it complied with the letter and spirit of the CHIPRA bonus payment requirements, as well as the complete guidance that CMS provided in its 2009 SHO letter.

Specifically, the State agency said that it complied with the Federal statutory definition of “qualifying children,” as well as CMS’s 2009 guidance, by including children who were blind and disabled in current enrollment data for bonus payments. Additionally, the State agency asserted that guidance provided by a CMS official in December 2011 contradicted both CMS’s 2009 guidance and the CHIPRA statute. Accordingly, the State agency requested that we reconsider our findings and recommendation.

The State agency’s comments, which include the December 2011 guidance, are included in their entirety as Appendix E.

OFFICE OF INSPECTOR GENERAL RESPONSE

After our review and consideration of the State agency’s comments, we maintain that our findings and recommendation are correct.

We disagree that the State agency complied with the Federal requirements for the CHIPRA bonus payments when it included individuals with a BOE code other than 4, 6, and 8 in its current enrollment. The State agency’s current enrollment calculations did not follow the same logic and basis that CMS used to develop Colorado’s baseline enrollment. As a result, the State agency’s approach overstated Colorado’s current enrollment because it included enrollment categories not reflected in CMS’s calculation of Colorado’s baseline enrollment. CMS acknowledged in its 2009 guidance that the listed eligibility categories were “intended to reflect the eligibility categories for which children *might* be covered” (emphasis added)⁵ and specified that BOE codes 4, 6, and 8 associated with “child” were used for developing the baseline enrollment. This same section further states:

We recognize that the FY 2007 baseline enrollment data obtained from MSIS may not represent an exact one-to-one mapping for each of the above statutory eligibility categories. However, as discussed above, the baseline enrollment data represents all individuals identified and reported by each State with a BOE of “child”; we believe this approach appropriately addresses the intent of the statute in a way that is operationally feasible.

⁵ In October 2009, CMS provided additional guidance to States in a document titled BP-Clarification3.docx.

Under the *Chevron* doctrine, deference is given to an agency's reasonable interpretation and implementation of a statute that the agency administers.⁶ In its guidance to the State agencies, CMS has consistently and reasonably interpreted the statute and explained its approach in addressing Congress's intent. Moreover, the State agency did not object to some blind and disabled children being excluded from CMS's baseline calculation. Allowing the State agency to include individuals from other BOE categories in its current enrollment counts, when those same BOE categories were not included in the baseline calculations, would result in an artificially inflated estimate of growth in children enrolled in the State's Medicaid program.

⁶ *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

APPENDIX A: RELATED OIG REPORTS

Report Title	Report Number	Date Issued
<i>Alabama Received Millions in Unallowable Performance Bonus Payments Under the Children’s Health Insurance Program Reauthorization Act</i>	<u>A-04-12-08014</u>	8/27/2013
<i>Washington Received Millions in Unallowable Bonus Payments</i>	<u>A-04-14-08028</u>	9/9/2014
<i>Louisiana Received More Than \$7.1 Million in Unallowable Bonus Payments</i>	<u>A-04-14-08029</u>	7/10/2014
<i>Wisconsin Received Some Unallowable Bonus Payments</i>	<u>A-04-13-08021</u>	3/18/2015
<i>North Carolina Received Millions in Unallowable Bonus Payments</i>	<u>A-04-14-08035</u>	7/21/2015
<i>New Mexico Received Millions in Unallowable Bonus Payments</i>	<u>A-04-15-08040</u>	11/24/2015

APPENDIX B: CURRENT ENROLLMENT CALCULATIONS

EXPLANATION OF CURRENT ENROLLMENT CALCULATION

In accordance with Federal requirements, the CHIPRA current enrollment for any given FY should be calculated by:

- obtaining the number of qualifying children in every month of the FY,
- summing the monthly count of qualifying children for the FY, and
- dividing the sum for the FY by 12 to obtain the monthly average number of qualifying children for the FY.

STATE AGENCY'S CALCULATION OF FISCAL YEARS 2010 THROUGH 2013 CURRENT ENROLLMENT

The State agency calculated its CHIPRA current enrollments for each of the four FYs (2010 through 2013) using the same enrollment data source that it used for MSIS reporting. However, the State agency used a different methodology from that established in CMS guidance to compile its current enrollment. On the basis of this guidance, a State's CHIPRA current enrollment should include only individuals whom the State identifies and reports as a BOE of "child" when reporting MSIS enrollment data. However, the State agency also included in its CHIPRA current enrollment individuals who were classified as a BOE other than "child," thus overstating its current enrollment numbers. Table 3 on the next page outlines the State agency's reported current enrollments.

Table 3: State Agency’s Reported Current Enrollments

Month	Qualifying Children			
	FY 2010	FY 2011	FY 2012	FY 2013
Oct	303,345	331,501	362,079	389,241
Nov	306,866	334,712	366,768	393,625
Dec	310,167	337,697	368,797	396,057
Jan	314,611	342,741	370,299	405,788
Feb	316,309	345,626	374,926	416,206
Mar	320,106	350,483	378,466	421,362
Apr	322,836	352,170	379,358	422,451
May	323,594	356,208	383,589	428,805
Jun	324,979	359,743	386,319	432,659
Jul	328,349	361,870	387,968	429,361
Aug	332,706	367,036	391,856	432,190
Sep	335,658	369,360	394,972	436,406
Total	3,839,526	4,209,147	4,545,397	5,004,151
Monthly Average (Total/12)	319,961	350,762	378,783	417,013

OFFICE OF INSPECTOR GENERAL’S CALCULATION OF FISCAL YEARS 2010 THROUGH 2013 CURRENT ENROLLMENT

We calculated Colorado’s CHIPRA current enrollments by first having State agency officials map the State’s MMIS enrollment data into aggregate MSIS BOE categories by month. We then subtracted the aggregate enrollment of nonqualifying BOE codes (e.g., BOE 2) for each month from the current enrollment the State agency reported.⁷ Table 4 on the next page outlines our calculated current enrollments.

⁷ The State agency acknowledged that it had a longstanding issue converting some enrollment data from its MMIS to MSIS. Accordingly, we worked with State agency officials as they developed an alternative method for mapping individuals to appropriate BOE codes.

Table 4: OIG-Calculated Current Enrollments

Month	Qualifying Children			
	FY 2010	FY 2011	FY 2012	FY 2013
Oct	290,948	320,489	350,578	377,708
Nov	294,296	323,588	355,202	382,024
Dec	297,540	326,520	357,210	384,414
Jan	301,832	331,439	358,638	393,893
Feb	303,476	334,263	363,261	404,179
Mar	307,158	339,024	366,741	409,308
Apr	309,789	340,638	367,588	410,341
May	310,493	344,638	371,754	416,674
Jun	311,766	348,135	374,444	420,492
Jul	315,033	350,207	376,014	417,222
Aug	319,230	355,254	379,785	420,025
Sep	322,086	357,513	382,839	424,237
Total	3,683,648	4,071,707	4,404,056	4,860,517
Monthly Average (Total/12)	306,971	339,309	367,005	405,043

APPENDIX C: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed the bonus payments that the State agency received for FYs 2010 through 2013, totaling \$18,203,273, \$32,906,502, \$47,490,797, and \$58,919,075, respectively. Our review focused on verifying the accuracy of enrollment information used in the bonus payment calculations and ensuring that the information used complied with Federal requirements. We neither assessed the State agency's internal control structure beyond what was necessary to meet our objective nor reviewed the State agency's determinations of Medicaid eligibility. Also, we did not review whether the State agency successfully implemented at least five of the Medicaid enrollment and retention provisions because we determined that there was a low risk of noncompliance.

We performed fieldwork at the State agency offices in Denver, Colorado, from November 2014 through February 2015.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements;
- held discussions with CMS financial management officials to obtain an understanding of the process that States should follow when requesting bonus payments;
- reviewed CMS's detailed calculations⁸ of Colorado's bonus payments for FYs 2010 through 2013;
- verified supporting documentation for all data elements used in Colorado's bonus payment calculations, including baseline enrollment and projected per capita State Medicaid expenditures;
- conducted a risk assessment of the State agency's noncompliance with Federal requirements;
- met with State agency officials to:
 - discuss the State agency's requests for bonus payments,
 - obtain correspondence between the State agency and CMS,

⁸ Appendix II of CMS, SHO Letter #09-015, CHIPRA #10, describes the data elements, processes, and methodologies for calculating the bonus payments.

- understand the State agency's methodology for determining the current enrollment reported in its requests for bonus payments, and
- understand the State agency's process for reporting MSIS enrollment data;
- analyzed the State agency's documentation supporting its requests for bonus payments;
- reviewed the State agency's MMIS enrollment data;
- reviewed Colorado's enrollment and expenditure data from the CMS MSIS State Summary Datamart;
- calculated Colorado's FYs 2010 through 2013 current enrollment using allowable BOEs;
- recalculated Colorado's bonus payments using revised data; and
- discussed the results with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX D: FEDERAL REQUIREMENTS RELATED TO BONUS PAYMENTS

PURPOSE OF THE BONUS PAYMENTS AND BASELINE CALCULATION METHODOLOGY

Section 2105(a)(3) of the Act states that performance bonus payments are intended to offset additional Medicaid and Children’s Health Insurance Program child enrollment costs resulting from enrollment and retention efforts. The payments are made to a State for a FY as a single payment not later than the last day of the first calendar quarter of the following FY.⁹ Additional guidance provided by CMS¹⁰ requires that payments to qualifying States be made by December 31 of the calendar year (CY) following the end of the FY for which the criteria were implemented. The bonus payments are provided to a State through a grant award.

Section 2105(a)(3)(C)(iii)(I) of the Act states that the baseline number of child enrollees for FY 2009:

is equal to the monthly average unduplicated number of qualifying children enrolled in the State plan under title XIX during FY 2007 increased by the population growth for children in that State from 2007 to 2008 (as estimated by the Bureau of the Census) plus 4 percentage points, and further increased by the population growth for children in that State from 2008 to 2009 (as estimated by the Bureau of the Census) plus 4 percentage points¹¹

For each of FYs 2010, 2011, 2012, and 2013, the baseline number of child enrollees “is equal to the baseline number of child enrollees for the State for the previous FY under title XIX, increased by the population growth for children in that State from the CY in which the respective FY begins to the succeeding CY (as estimated by the Bureau of the Census)” plus 3.5 percentage points for FYs 2010 through 2012 and 3 percentage points for FY 2013.¹²

CMS established the baseline enrollment for each State using all of the “MSIS Coding Categories” for which States report individuals under the BOE of “child” in their Medicaid programs. Specifically, these BOEs are identified as BOEs 4, 6, and 8.¹³

CMS provided further guidance, which states:

The FY 2007 baseline enrollment data obtained from MSIS may not represent an exact one-to-one mapping for each of the above statutory eligibility categories.

⁹ Section 2105(a)(3)(A) of the Act.

¹⁰ CMS, SHO Letter #09-015, CHIPRA #10.

¹¹ Enrollment data for FY 2007 were obtained from the MSIS.

¹² Sections 2105(a)(3)(C)(iii)(II) and (III) of the Act.

¹³ CMS, SHO Letter #09-015, CHIPRA #10.

However ... the baseline enrollment data represents all individuals identified and reported by each State with a BOE of “child;” we believe this approach appropriately addresses the intent of the statute in a way that is operationally feasible.¹⁴

CMS GUIDANCE FOR CURRENT ENROLLMENT CALCULATION

In guidance provided to States in October 2009, CMS requested that, in reporting their current enrollments, States include a description of the data sources and methodologies they used to appropriately identify individuals with a BOE of “child.”

The instructions relating to the average monthly enrollment for children were reiterated in an email from CMS to the State agency on December 12, 2011. The email stated: *“The same logic and basis that was used for developing the FY 2007 baseline should be used by each State for submitting the average monthly enrollment for children for the current fiscal year for which the bonus payment is being determined”* (original emphasis).

¹⁴ CMS BP-Clarification3.docx, October 2009.

APPENDIX E: STATE AGENCY COMMENTS



COLORADO
Department of Health Care
Policy & Financing

1570 Grant Street
Denver, CO 80203

May 31, 2016

Ms. Lori S. Pilcher
Regional Inspector General for Audit Services
Office of Audit Services, Region IV
61 Forsyth Street, SW, Suite 3T41
Atlanta, GA 30303

Dear Ms. Pilcher,

Enclosed is the Department of Health Care Policy and Financing's response to the U.S. Department of Health and Human Services, Office of Inspector General (OIG) draft report entitled *Colorado Received Millions in Unallowable Bonus Payments*.

If you have any questions or concerns, please contact Delora Hughes-Wise, External Audits Compliance Officer, at 303-866-4155 or Delora.Hughes-Wise@state.co.us.

Sincerely,

A handwritten signature in blue ink that reads "John Bartholomew".

John Bartholomew
Finance Office Director/Chief Financial Officer

JB:dhw

cc: Jennifer L. Weaver, First Assistant Attorney General, Colorado
Attorney General's Office

Enclosures: Colorado Department of Health Care Policy and Financing Response to
OIG Report No. A-14-15-08039
Richard Strauss Email December 12, 2011

1570 Grant Street, Denver, CO 80203-1818 P 303.866.2993 F 303.866.4411
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Colorado Department of Health Care Policy and Financing
Response to OIG Report No. A-04-15-08039

**OIG DISQUALIFIES CHILDREN WHO ARE
BLIND OR DISABLED FROM CHIPRA
BONUS PAYMENT PROGRAM**

May 31, 2016

OIG DISQUALIFIES CHILDREN WHO ARE BLIND OR DISABLED FROM CHIPRA BONUS PAYMENT PROGRAM

The Colorado Department of Health Care Policy and Financing (“Department”) has reviewed the draft of Report No. A-04-15-08039 (“Report”), entitled “Colorado Received Millions in Unallowable Bonus Payments,” which was produced by the U.S. Department of Health and Human Services, Office of Inspector General (OIG). The Department does *not* concur with OIG’s findings and recommendations contained in the Report for the following reasons:

- I. The Department complied with the federal statutory definition of “qualifying children” by including children who are blind or disabled in current enrollment data for CHIPRA bonus payments.**

The language of CHIPRA is clear: children (no exceptions or carve-outs for blind or disabled) who meet eligibility criteria in effect as of July 1, 2008 – including income, categorical eligibility, age and immigration status – for enrollment in Medicaid (title XIX [42 USCS §§ 1396 *et seq.*]) must be counted as “qualifying children.” *See* 42 U.S.C. § 1397ee(a)(3)(F)(i).

Colorado has opted to cover children under the age of 19¹ who meet the eligibility criteria specified by section 1902(a)(10)(A) of the Social Security Act (Medicaid), codified as 42 U.S.C. §§ 1396a, *et seq.* *See* C.R.S. § 25.5-1-101(1)(m). Under section 1902(a)(10)(A), persons who are eligible for supplemental security income (SSI) automatically qualify for Medicaid. *See* 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I),(II); 1396a(a)(10)(A)(ii)(I),(IV),(V). To be eligible for SSI, children must be under the age of 18 and either blind or disabled. *See* 42 U.S.C. §§ 1381a and 1382c(a)(1)(A), (c)(i).

As such, blind or disabled children who meet the other eligibility requirements are categorically eligible for Medicaid and count as “qualifying children” under CHIPRA.

¹ Pursuant to section 1905(a)(i) of the Social Security Act, states have the option of covering children under the age of 21, 20, 19, or 18. *See* 42 U.S.C. § 1396d(a)(i). Colorado opted to set the upper end of the threshold at age 19.

Therefore, the Department complied with CHIPRA by including in its current enrollment data SSI-eligible qualifying children – including those who are blind or disabled.

OIG’s disqualification of children who are blind or disabled from the category of “qualifying children” is contrary to the plain language of the statute and therefore incorrect. According to OIG’s interpretation of guidance from the Centers for Medicare and Medicaid Services (CMS), “qualifying children” are those identified in MSIS with Basis of Eligibility (BOE) codes 4, 6, or 8. CMS used those BOE codes to establish each state’s baseline enrollment in a way that was “operationally feasible.” See SHO #09-015, Appendix II, § A.2, at 10.

The Department’s enrollment data included children identified in MSIS with BOE code 2. MSIS BOE code 2 includes children who are under age 20 and qualify for Medicaid by being SSI-eligible blind or disabled persons. These children identified with BOE code 2 meet the *statutory definition* of “qualifying children” because as SSI-eligible persons they are categorically eligible for Medicaid pursuant to 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I),(II); 1396a(a)(10)(A)(ii)(I),(IV),(V).

Thus, the attempt by CMS to operationalize the statute through the use of certain BOE codes cannot supplant the will of Congress. The statutory definition does not restrict qualifying children to those identified in MSIS with BOE codes 4, 6, or 8, only. In fact, BOE codes are not mentioned in the bonus payment provisions of the CHIPRA statute at all. If Congress had intended to limit qualifying children to those coded BOE 4, 6, or 8 only, then the statute would have said so.

For OIG to now recommend excluding children who are categorically eligible for Medicaid because they are blind or disabled is contrary to the plain language of CHIPRA.

II. The Department complied with 2009 guidance from CMS by including children who are blind or disabled in current enrollment data for CHIPRA bonus payments.

On December 15, 2009, CMS issued “Dear State Health Official” letter, SHO #09-015, interpreting the bonus payment provisions of CHIPRA (“2009 SHO” or “SHO”).

In the 2009 SHO, CMS interpreted the CHIPRA bonus payment provisions as a way to “encourage and assist States in reaching and enrolling more uninsured children who are eligible for Medicaid.” *See* SHO #09-015, at 1 ¶ 3. Accordingly, CMS stated that baseline enrollment data for each state was established using all of the “MSIS Coding Categories” for reporting BOE of “child” *with the purpose and intention to “capture every individual considered and reported by each State to be eligible as a ‘child’ under the unique provisions” of the State’s Medicaid program.* *Id.*, Appendix II, § A.1, at 9 (emphasis added).

Nowhere in the 2009 SHO does CMS interpret the law as excluding children who are blind or disabled from the category of “qualifying children.”

This guidance from CMS reflects Congressional intent to reward states for increasing enrollment of *all* eligible children, not just all non-disabled eligible children.

CMS used BOE codes 4, 6, and 8 for developing the FY 2009 baseline enrollment using the FY 2007 baseline enrollment. *Id.* at 10. Recognizing the limitations of using BOE codes 4, 6, and 8 to capture “every individual” eligible as a child under Medicaid, CMS admitted that the “FY 2007 Baseline Enrollment data obtained from MSIS may not represent an exact one-to-one mapping for each of the above statutory eligibility categories.” *Id.* § A.2, at 10. In other words, CMS admitted that MSIS codes 4, 6, and 8 may not capture “every individual” who qualifies for Medicaid as a child under each state’s unique Medicaid program.

Moreover, in the 2009 SHO, CMS goes on to list specific Medicaid eligibility groups of “qualifying children” who could be counted toward current enrollment for CHIPRA bonus payments. *See id.* § A.4 at 12-13. **Some of the eligibility groups listed in the 2009 SHO cover individuals who are considered categorically needy, which, in relevant part, includes those who are blind or disabled.** *See* 42 C.F.R. 435.4 (definition, “categorically needy”).

So, for example, the SHO identifies qualifying children pursuant to section 1902(a)(10)(A)(i)(I) and 1931(b), which includes children who are blind or disabled and receive SSI benefits. Another example is section 1902(a)(10)(A)(ii)(I) and 1905(a)(i), which includes children who are SSI-eligible because they are blind or disabled but are not receiving cash

payments. Or, as is the case here, the Department's enrollment data included medically needy children from section 1902(a)(10)(C)(i)(III) and 1905(a)(i), which is also a "qualifying children" eligibility group identified in the SHO. Some medically needy children are blind or disabled.

But if a child is in any one of these groups because they are blind or disabled, then they are reported as BOE code 2 in MSIS, even though they meet all of the qualifications for the statutory eligibility groups set forth in the SHO.

The Department complied with the express guidance provided by CMS in the 2009 SHO. For OIG to now cherry-pick this guidance and claim that BOE codes 4, 6 and 8, on page 10 of the 2009 SHO, apply, but that the specific statutory eligibility groups enumerated on pages 12 and 13 of the SHO do not apply, is arbitrary and capricious.

III. The December 2011 email guidance from a CMS employee is contradictory to both the 2009 SHO and the CHIPRA statute.

On December 12, 2011, CMS senior financial advisor Richard Strauss sent an email ("Strauss email") to a Department budget division staff employee. In the email, Mr. Strauss repeated the part of the 2009 SHO advising agencies to count children identified by BOE codes 4, 6 or 8, but failed to acknowledge or otherwise dispense with the rest of the guidance regarding specific statutory eligibility groups listed on pages 12 and 13 of Appendix II of the SHO.

An email from a single employee, even if he does purport to represent CMS's position, cannot bind an entire agency when that agency has already issued comprehensive guidance and the employee's advice relies on selective parts of that guidance with no rationale or basis as to how the employee made those selections.

Additionally, the Strauss email included the following instruction:

The same logic and basis that was used for developing the FY 2007 baseline should be used by each State for submitting the average monthly enrollment for children for the current fiscal year for which the bonus payment is being determined.

This is the first time since the bonus program launched that states were instructed to use the CMS method for establishing baseline enrollment to count current enrollment for qualifying children. Moreover, **this guidance from the Strauss email is directly counter to the 2009 SHO guidance that states:**

The CMS will work with States to obtain the current enrollment level of qualifying children for each State, ***consistent with the statutory definition***, the reporting mechanisms, and validation process for such data in the State and/or Nationally.

SHO #09-015, Appendix II, § A.2 at 11 (emphases added). Thus, the 2009 SHO clearly evinces CMS's intent to follow the statutory definition of qualifying children pursuant to CHIPRA. Considering this and given the contradictory advice provided in the Strauss email, the Department elected to follow the CHIPRA statute to identify qualifying children when reporting enrollment for the bonus payments.

CONCLUSION

The Department has dutifully complied with the letter and the spirit of the CHIPRA bonus payment provisions, as well as the complete guidance provided by CMS in its 2009 SHO. Both the statute and the guidance emphasize including *all* children eligible for Medicaid as of July 2008 – with no exceptions, limits, or carve-outs for children who are blind or disabled – who meet the eligibility requirements.

The Department respectfully requests that OIG reconsider its findings and recommendations as represented in the Report.

[REDACTED]

From: Strauss, Richard (CMS/CMCS) <richard.strauss@cms.hhs.gov>
Sent: Monday, December 12, 2011 9:44 AM
To: [REDACTED]
Cc: Ryan, Jennifer (CMS/CMCS); Allen, Richard C. (CMS/CMCHO); Strauss, Richard (CMS/CMCS); Heffron, Dianne E. (CMS/CMCS); Fan, Kristin A. (CMS/CMCS)
Subject: CO - Request for Review of Data Related to Calculation of FY 2011 Performance Bonus Payment-RESPONSE REQUESTED
Attachments: CO-FY07-Avg-Enr-FY11-BP-Calc.xlsx

RESPONSE REQUESTED BY MIDDAY WEDNESDAY, DECEMBER 14, 2011

This email is being sent to you as the listed contact for providing certain Medicaid enrollment data for children which are used as the basis for the calculation of your States' fiscal year (FY) 2011 Performance Bonus Payments. As discussed below, we received from your State a template which provided the Medicaid average monthly enrollment for children which was developed in accordance with the guidance in the State Health Official (SHO) letter #09-015 dated December 16, 2009 (link: http://www.insurekidsnow.gov/images/sho_letter.pdf). We will be issuing the FY 2011 Bonus Payments to States by the end of this month, but we wanted to reiterate the aspects of the instruction as relates to the average monthly enrollment for children metric for FY 2011, as provided by your State, in order to ensure that the metric was developed appropriately.

As discussed on pages 9-10 in Appendix II of the SHO #09-015, the calculation of the bonus payment is based on the monthly average unduplicated number of "qualifying children" for FY 2007. This FY 2007 baseline enrollment number is adjusted for future fiscal years through the application of a growth factor in order to establish a baseline (target) enrolment number for such fiscal year. As indicated in the SHO, the FY 2007 baseline enrollment was established for each State based on States' data submitted through the Medicaid Statistical Information System (MSIS) and using the following "Basis of Eligibility" (BOE) codes for children:

- 4 Child (not child of unemployed Adult, not foster care child)
- 6 Child of Unemployed adult,
- 8 Foster care child

Attached to this email is an Excel file with the following information:

- **Enrollment Data for FY 2007.** In the first worksheet ("FY07 ENROLL FY11 CALC") the first (top) chart contains the actual monthly enrollment data for FY 2007 which illustrates the logic and basis for developing the baseline average monthly enrollment for FY 2007 for your State. This reflects the actual data for each State which was obtained from the MSIS and to which the growth factor was applied to establish the average monthly enrollment baseline ("target") for each fiscal year which is used to calculate the State's bonus payment for such fiscal year. **The same logic and basis that was used for developing the FY 2007 baseline should be used by each State for submitting the average monthly enrollment for children for the current fiscal year for which the bonus payment is being determined.**

[NOTE: the second worksheet ("FROM FY07 DATA MART"), contains the actual MSIS data obtained from the MSIS Data Mart, which was the basis for the top chart in the first worksheet.]

- **FY 2011 Bonus Payment Calculation.** The second (bottom) chart in the first worksheet shows the calculation for the FY 2011 Bonus Payment for each State. Note that Column E “Current Enrollment FY 2011” in the second chart contains the FY 2011 average monthly unduplicated enrollment for children in Medicaid which was provided by each State through the submission of the enrollment template to CMS. This FY 2011 Bonus Payment calculation chart is presented primarily to reiterate that in providing the FY 2011 monthly average unduplicated enrollment for children each State should have used the same logic as was used in establishing the FY 2007 monthly average unduplicated enrollment (as represented in the first chart).

As discussed above, this email is being provided to highlight the logic and basis for provision of the monthly average unduplicated enrollment for children for FY 2011 which is provided by States and is used in the calculation of the FY 2011 bonus payment. In that regard, we would appreciate your review of the metric for FY 2011 as submitted by your State, in order to ensure that the correct logic and basis was used.

We request that you provide your **response to this request by midday Wednesday, December 14, 2012.** Please **also** provide a copy of your response to Jennifer Ryan, Jennifer.Ryan@cms.hhs.gov , and to your servicing CMS, Regional Office.

Thank you for your assistance on this issue.

If you have any questions or wish to discuss this issue, please contact me through email or at (410) 786-2019.

Richard Strauss
Senior Financial Advisor
CMS, CMCS