

Sandy Wood, Manager
DMAP Research, Education and Development

Authorized Signature

Number: DMAP- IM-10-090

Issue Date: 07/08/2010

Topic: Medicaid Local Match Guidance

Subject: Provider announcement: Guidance for counties wishing to participate in new or expanded Targeted Case Management programs

Applies to (check all that apply):

- All DHS employees
- Area Agencies on Aging
- Children, Adults and Families
- County DD Program Managers
- County Mental Health Directors
- Health Services
- Seniors and People with Disabilities
- Other (please specify): DMAP staff; AMH and Public Health TCM program managers

Message:

DMAP will send the following letter to county health departments and community mental health organizations wishing to participate in the following Targeted Case Management programs recently approved or pending approval by the Centers for Medicare and Medicaid Services (CMS):

- Healthy Homes (Asthma)
- HIV/AIDS
- Substance-Abusing Pregnant Women and Substance-Abusing Parents with Children under Age 18

The letter provides guidance from CMS about how counties can comply with local match requirements outlined in the American Recovery and Reinvestment Act (ARRA) and the Patient Protection and Affordable Care Act (PPACA).

If you have any questions about this information, contact:

Contact(s):	Mary Alexander, DMAP Operations and Policy Analyst		
Phone:	503-947-5101	Fax:	503-373-7689
E-mail:	mary.alexander@state.or.us		



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services
Division of Medical Assistance Programs
500 Summer Street NE, E49
Salem, OR 97301-1079
Voice (503) 945-5772
Fax (503) 947-5359
TTY (503) 378-6791

July 8, 2010



From: Sandy Wood, DMAP Research, Education and Development Manager

Subject: Medicaid Local Match Guidance for Targeted Case Management (TCM) programs

Dear TCM Provider:

The American Recovery and Reinvestment Act (ARRA) and the Patient Protection and Affordable Care Act (PPACA) contain language regarding contributions by political subdivisions (*e.g.*, counties) that provide the local match for Medicaid programs. For the Department of Human Services (DHS), this language especially pertains to the expansion of TCM programs.

The three TCM programs approved for expansion by the Centers for Medicare and Medicaid Services (CMS) are Healthy Homes (Asthma), HIV/AIDS and Substance-Abusing Pregnant Women and Substance-Abusing Parents with Children under Age 18.

DHS requested guidance from CMS to clarify the following aspects of ARRA and PPACA compliance:

- How to document that counties are not contributing a greater local match percentage under ARRA than they were under the State Plan; and
- How to document the voluntariness of local match contributions for new TCM programs.

Covington and Burling LLP, a legal firm retained by CMS, prepared the attached document that provides the following guidance.

Documenting ARRA compliance of local match contributions

Counties can demonstrate compliance with the political subdivision requirement by indicating that the percentage of local match paid during the ARRA period (Oct. 1, 2008, through Dec. 31, 2010) is no greater than the comparable percentage for the year ending Sep. 30, 2008 (the baseline percentage).

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Counties can demonstrate compliance in two ways:

1. **Aggregate approach:** Aggregate the local match percentage paid during the ARRA period (Oct. 1, 2008 – Dec. 31, 2010) for all Medicaid expenditures (services and administration).
2. **Payment-specific approach:** List the current period local match percentage paid for each type of expenditure in which there is political subdivision participation. The guidance does not define each type of expenditure.

Under either approach, do not count new services added after Sep. 30, 2008. Instead, count additional or modified payments for program services or administrative services that existed during the baseline period.

Documenting voluntary local match contributions

CMS will deem new political subdivision financing (*e.g.*, for participation in the new TCM programs) voluntary if the state provides CMS with a letter from the appropriate official of the political subdivision certifying that the contribution was voluntary and not required by the state.

Counties wishing to participate financially in the three new TCM programs should send a notarized letter to Division of Medical Assistance Programs (DMAP) on their agency's letterhead satisfying this guidance. DMAP has prepared a sample letter (attached) to help you in this process.

Questions?

If you have questions about this information, contact Mary Alexander, DMAP Operations and Policy Analyst at 503-947-5101 or mary.alexander@state.or.us.

Thank you for your support of the Oregon Health Plan. We appreciate your patience and cooperation as we address the new opportunities and requirements available through federal health care reform.

ADVISORY | States

June 24, 2010

CMS GUIDANCE ON APPLICATION OF POLITICAL SUBDIVISION CONDITION TO ENHANCED FMAP PAYMENTS

The American Recovery and Reinvestment Act of 2009 (ARRA) makes the enhanced FMAP rate for Medicaid services conditioned on a state not requiring political subdivisions within the state from contributing a greater percentage of the non-federal share of Medicaid expenditures than they were required to make under the state plan as of September 30, 2008. CMS has previously issued guidance on the application of this provision (see our Advisory of March 27, 2009, page 3-4 and CMS' letter of July 7, 2009, to State Health Officials) but a number of important issues remained unresolved relating to compliance with the requirement.

Section 10201 of PPACA includes a similar provision with respect to a State's eligibility for the increase to 100% FMAP for new eligibles covered by the state plan after January 1, 2014. In addition, PPACA clarifies that "voluntary contributions" are not considered to be "required contributions." (CMS had previously taken the position in its July 7th guidance that voluntary contributions were covered by the ARRA prohibition). Moreover, PPACA states that "the treatment of voluntary contributions, and the treatment of contributions required by a State under the State plan under this title, or State law, as provided by this subsection, shall also apply" to the FMAP increases under ARRA.

CMS has now issued a State Medicaid Director letter setting forth the manner in which states can demonstrate compliance with the ARRA requirements. A copy of the letter is available [here](#). The guidance document states that it is applicable only to ARRA and that CMS will at a later time issue guidance for applying the comparable provision of PPACA. However, it seems unlikely that CMS would adopt different interpretations of what is essentially the same limitation.

BACKGROUND

A key point in understanding the political subdivision requirement is that, unlike a standard usual maintenance-of-effort type provision, it relates not to the dollar amount of a political subdivision contribution to the cost of Medicaid services, but rather to the percentage of the non-federal share that the local jurisdiction is required to pay. Because of the increased FMAP rates authorized by ARRA, many states have seen their own contributions to Medicaid spending held steady or reduced. Some of those states faced the prospect of a loss of enhanced FMAP unless they adjusted the contribution amounts of their local jurisdictions downward so that their percentage portion did not increase.

COMPLIANCE: AGGREGATE AND SERVICE-SPECIFIC

The latest CMS guidance offers two means of compliance with the political subdivision requirement. The first is the "aggregate" approach. Compliance would be achieved under this option if the percentage of the non-federal share paid by local jurisdictions during the ARRA period for all

Medicaid expenditures (services and administration) is no greater than the comparable percentage for the year ending September 30, 2008 (the baseline). The baseline would be adjusted to annualize the effect of changes that were in effect on September 30, 2008, but not for the entire preceding year. The guidance does not say the time period over which compliance is to be measured: each quarter, or annually, or over the entire applicable period. States are required to certify quarterly as part of their Medicaid expenditure reports that they are compliant with the ARRA requirements, including the political subdivision condition. We believe that states have been making this certification based upon budgeted or estimated expenditures for the entire state fiscal year, and that CMS finds this to be acceptable. Based on this, and on the variability in the timing of Medicaid expenditures during the course of a year, we believe CMS would find a state in compliance as long as it demonstrated compliance over an entire fiscal year, without regard to fluctuations in the local jurisdiction percentage from quarter to quarter, during the fiscal year.

The second means of compliance is “payment specific.” The approach compares the baseline percentage with the “current period” percentage for “each type of expenditure” in which there is local jurisdiction participation. The guidance does not define “each type of expenditure” and we believe that states will be given considerable discretion to select the categories for comparison, though state law may define them in establishing the obligation of local jurisdiction participation.

Under either approach, new services added after the baseline date should not be counted, but additional or modified payments for services or administrative activities that existed during the baseline period would be counted.

CORRECTING A NON-COMPLIANT CONTRIBUTION

A state that is found out of compliance will lose its enhanced FMAP as of the date it implemented a prohibited increase in the percentage of local jurisdiction funding. But CMS will allow a state to correct the problematic funding by adjusting the local jurisdiction contribution requirement retroactively, in which case the enhanced FMAP funds would be restored to the state. We construe this to mean that if the local jurisdiction share turns out to exceed the ARRA limit during a particular fiscal year, the state may avoid a loss of enhanced federal funding by making a payment to the local jurisdiction(s) sufficient to offset the excessive share of Medicaid expenditures in the year. We expect CMS to monitor this on an annual basis. Thus, it would likely not be sufficient to offset an excessive local jurisdiction share in a given year by lowering its share in a subsequent year.

VOLUNTARY CONTRIBUTIONS

The guidance also addresses the issue of “voluntary” contributions, as clarified by PPACA.

The guidance provides that “new” political subdivision financing will be deemed voluntary if the state provides CMS with a letter from the appropriate official of the political subdivision certifying that the contribution was voluntary and not required by the state. We understand that CMS will accept such letters, without further investigation, as proof that contributions are voluntary. Any such voluntary contributions are to be excluded in calculating the local jurisdiction’s percentage portion of the non-federal share. It appears to us that comparable contributions made during the baseline period would not be excluded from the calculation for that period (since there would presumably be no contemporaneous certification of voluntariness from the local jurisdiction). This is favorable from the state standpoint, for it would result in a higher baseline percentage than if the contribution had been excluded.

If you wish to discuss any aspect of the CMS guidance, please contact the following members of our states practice group:

Caroline Brown	202.662.5219	cbrown@cov.com
Charles Miller	202.662.5410	cmiller@cov.com
Rachel Grunberger	202.662.5033	rgrunberger@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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Sample letter to document voluntary local match contributions:

Please use your agency letterhead stationery and have the letter notarized.

Judy Mohr Peterson
DHS Division of Medical Assistance Programs
500 Summer St NE, E49
Salem, OR 97301

Date:

Subject: Medicaid Local Match Voluntary Contributions

Dear Ms. Mohr Peterson:

Following the guidance provided by Covington and Burling LLP for the Centers of Medicare and Medicaid Services (CMS), [AGENCY NAME] submits this letter certifying that the financial contributions provided are voluntary and not required by the state.

These contributions are in support of the following TCM program(s):

- Healthy Homes (Asthma)
- HIV/AIDS
- Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18

These contributions are voluntary for the entire timeframe that [AGENCY NAME] is involved with the program.

Sincerely,

[Signature of appropriate official of the political subdivision]
[Name and title of official]