

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-2230-NC]

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: Notice with comment period.

SUMMARY: This notice with comment period describes the procedure 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 such allotments. These redistributed allotments will be available through the end of FY 2005 (September 30, 2005).

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 18, 2005.

Effective Date: January 19, 2005.

ADDRESSES: In commenting, please refer to file code CMS-2230-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to <http://www.cms.hhs.gov/regulations/ecomments> (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2230-NC, P.O. Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500

Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

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

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this notice with comment period to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-2230-NC and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

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I. Background

[If you choose to comment on issues in this section, please include the caption "Background" at the beginning of your comments.]

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 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 are reallocated and continue 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 would be redistributed from the States that did not fully spend such 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

As discussed previously, section 2104(e) of the Act states 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 the allotment for the fiscal year to States that have fully expended their allotments. As discussed previously, 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 did 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, we are required to establish a procedure that provides for the treatment of States' unused SCHIP allotments for FY 2002 and following fiscal years. In particular, 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 such allotments during the 3-year period of availability for such fiscal year (that is, FY 2002 through FY 2004) to States that fully expended their FY 2002 allotments during such 3-year period of availability.

C. Expenditures, Authority for Qualifying States To Use Available SCHIP Allotments for Medicaid Expenditures, and Ordering of 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 their 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 reallocations. 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 This Notice

[If you choose to comment on issues in this section, please include the caption "Provisions of This Notice" at the beginning of your comments.]

The purpose of this notice with comment period is to set forth our procedure for redistributing FY 2002 unexpended allotments. This notice applies solely to the redistribution of FY 2002 unexpended allotments. We anticipate publishing regular notices on redistribution procedures for FY 2003 and subsequent years, unless Congress otherwise amends the Act to set forth procedures for redistributing unexpended allotments.

A. Status of Extended Availability and Redistribution of SCHIP Fiscal Year 1998 Through 2001 Allotments and Qualifying State Provisions

The implementation by CMS of the provisions of Pub. L. 108-74, including the provisions for extension of unexpended FY 1998 and FY 1999 redistributed and/or retained allotments, the methodologies for retention and/or redistribution of SCHIP allotments for FY 2000 and FY 2001, and the qualifying States provisions, was described in the **Federal Register** published on July 23, 2004 (69 FR 44013). The SCHIP statute has not been amended to address further availability of the SCHIP allotments for FY 1998 through FY 2000. Therefore, the unexpended amounts of such allotments became unavailable to States following the end of FY 2004. Neither has the SCHIP statute been amended with respect to the extended availability and redistribution of the FY 2001 allotments. Under the existing SCHIP statute, the FY 2001 reallocations are available to States only until the end of FY 2005. Finally, the SCHIP statute has not been amended with respect to the Qualifying State provisions under section 2105(g) of the Act. The FY 1998 through 2000 allotment funds became unavailable to States at the end of FY 2004. Since the 20 percent allowances related to those years are contingent on the actual availability of the allotments for those years, the FY 1998 through FY 2000 20 percent allowances are not available to the Qualified States, effective with FY 2005. Therefore, only the amounts of the 20 percent allowances related to the FY 2001 allotment funds, which are available in FY 2005, will remain available through the end of FY 2005.

B. Redistribution of the FY 2002 SCHIP Allotments

1. Current Law

Under section 2104(e) of the Act, the amount of a State's allotment for a fiscal year is available to the State for matching allowable State expenditures for an initial 3-year period of availability: the fiscal year for which the funds are allotted, and the two following fiscal years. For the FY 2002 SCHIP allotments, the initial 3-year period of availability is FY 2002 through FY 2004 (October 1, 2002 through September 30, 2004). With respect to the FY 2002 SCHIP allotments, the initial 3-year period of availability (FY 2002 through FY 2004) ended with the end of FY 2004 on September 30, 2004; at that time, the unexpended FY 2002 allotments became unavailable to those States that did not fully expend such allotments. That is, for such States there is no provision under the current SCHIP statute for the retention of any portion of the unexpended amounts of the SCHIP FY 2002 allotments (or the allotments for the following fiscal years).

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 such 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 the shortfalls 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 FY 2002 redistribution described in this notice, only after accounting for the shortfall amounts of

the redistribution States will 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 (after accounting for the total shortfalls for each redistribution State) on the same redistribution methodology as set forth in the BIPA legislation regarding 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 shortfall) by the total of such differences for all redistribution States.

2. Ordering of Expenditures

In applying State's expenditures against their available SCHIP allotments, we follow the order of expenditures as provided under section 2105(a)(1)(A) through (D) and (a)(2) of the Act as follows:

- (1) Title XIX SCHIP-related expenditures for which payment is made at the enhanced Federal medical assistance percentage (FMAP) (section 2105(a)(1)(A) of the Act);
- (2) Title XIX expenditures for medical assistance provided during a presumptive eligibility period under section 1920A of the Act (section 2105(a)(1)(B) of the Act);
- (3) Child health assistance for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 (section 2105(a)(1)(C) of the Act);
- (4) Expenditures listed in section 2105(a)(1)(D)(i) through (iv) of the Act, respectively: Other child health assistance for targeted low-income children; health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children); expenditures for outreach activities; and administration expenditures.

As discussed previously, Pub. L. 108-74, as amended by Pub. L. 108-127, also added new section 2105(g) to the Act, under which a "Qualifying State" meeting specified criteria could, at its option, elect to use up to 20 percent of any of the State's available SCHIP allotments for FY 1998, 1999, 2000, or

2001 for payments 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 (based on the allotment priority order they both must apply against any available fiscal year allotments), the 20 percent allowance expenditures will be applied first against any remaining 20 percent allowance allotments amounts.

In general, in accordance with the ordering of allotments and expenditures provisions, the expenditures of States eligible for the FY 2002 redistribution will be applied against the FY 2002 redistribution amounts.

3. Ordering Election for FY 2002 Redistributed Amounts

We believe that the States eligible for the FY 2002 redistribution should be afforded the flexibility to decide whether the FY 2002 redistributed funds would be used before or after other available allotment funds to allow them to optimize the use of such funds. Therefore, we offered States that will receive FY 2002 redistributed amounts the option of choosing the order of when the funds would be expended during FY 2005 among the other available allotments during FY 2005. In the previous redistributions for the unexpended FY 1998, FY 1999, and FY 2000 allotments, the redistribution States had the same ordering of allotment choice for the redistributed allotment.

An FY 2002 redistribution State (a State that has fully expended its FY 2002 allotment) may have a maximum of five possible choices for the order of the application of FY 2002 redistribution funds in FY 2005, depending on what other fiscal year allotments are available to the State in FY 2005: (1) before FY 2001 retained allotments; (2) after FY 2001 retained allotments and before FY 2003 allotments; (3) after FY 2003 and before FY 2004 allotments; (4) after FY 2004 allotments and before FY 2005 allotments; and (5) after FY 2005 allotments.

Note, with respect to the unexpended FY 2001 allotments at the end of FY 2003, the FY 2001 "redistribution States" also had the option of selecting the ordering of the FY 2001 redistributed allotments which were provided to such States in FY 2004. Now, with respect to the FY 2002 redistributed allotments, the FY 2002 redistribution States that also had FY

2001 redistributed amounts have the option of ordering the FY 2002 redistributed allotments in reference to their FY 2001 redistributed allotments ordering selections.

As specified in section 2104(e) of the Act, the FY 2002 redistributed amounts for a fiscal year will be available for allowable SCHIP expenditures reported by the redistribution States through the end of the fiscal year in which such amounts are redistributed. Therefore, for FY 2002, the redistributed amounts will be available through September 30, 2005 (the end of FY 2005).

As part of the redistribution process, prior to making FY 2002 redistribution funds actually available, we contact all of the States eligible for the FY 2002 redistribution in order to explain the provisions of this notice and to obtain their ordering elections for the FY 2002 redistributed amounts. In this regard, all of the redistribution States must provide their decision to us regarding their elections for the ordering of the FY 2002 redistributed allotments. This is the same process we have used in prior years for obtaining prior fiscal year redistribution States' ordering elections. Consistent with the past fiscal year redistribution processes, under the FY 2002 redistribution methodology, once a State chooses the order of the FY 2002 redistribution amounts, it cannot change that order at a later date. We then include the States' FY 2002 redistributed amounts and their ordering elections on Form CMS-21C (Allocation of Title XIX and Title XXI Expenditures to the SCHIP Fiscal Year Allotment). Form CMS-21C is used for tracking States' expenditures against their available SCHIP allotments. The FY 2002 redistributed allotment amounts will be automatically entered on this form, and the Medicaid and SCHIP expenditure system will automatically apply expenditures reported on the quarterly expenditure reports for the period of October 1, 2004 through September 30, 2005 against the FY 2002 redistributed amounts available through September 30, 2005 and the other SCHIP allotments available in FY 2005.

4. Determination of FY 2002 Redistribution Amounts

In Table 2 of this 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 amounts 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.

5. Application of the Maintenance of Effort Provision

The unexpended FY 2002 allotments reflect the application of the "maintenance of effort" (MOE) provisions specified in the SCHIP statute at section 2105(d)(2) of the Act. Under section 2105(d)(2) of the Act, the amount of certain States' allotments in a fiscal year, beginning with fiscal year 1999, is reduced if the State does not meet specified spending levels on children's health insurance. There were no MOE reductions necessary with respect to the FY 2002 allotments.

6. Redistribution for the Commonwealths and Territories for FY 2002 Allocations

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 such 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.

7. Redistribution for the States and the District of Columbia for FY 2002 Allocations

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 notice sets forth the procedure for the FY 2002 redistribution. The attached tables and table descriptions provide detailed information on how the 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 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 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' November 2004 budget quarterly budget report submissions) over such 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 reallotments carried over from FY 2004, any remaining 2003 allotments carried over from FY 2004, any remaining 2004 allotments carried over from FY 2004, 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 is determined for each FY 2002 redistribution State by dividing the difference between such 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.

8. Tables for Calculating the SCHIP FY 2002 Redistributed Allotments

Following is a description of Table 1 and Table 2, which presents 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). In addition, as discussed above, no 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 jurisdictions.

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' November 15, 2004 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.

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TABLE T - FY 2005 SHORTFALL CALCULATION

State	FY 2007 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 Nov. 04 Estimates	Projected FY 2005 Shortfall Not Including FY 2002 Redistribution Col G - F
Alabama	\$0	\$38,780,591	\$54,679,333	\$68,041,101	\$161,501,026	\$1,688,000	NO Shortfall
Alaska	\$13,106,151	\$7,430,465	\$7,156,931	\$8,020,449	\$36,713,946	\$174,286,000	\$47,360,814
Arizona	\$0	\$20,461,690	\$106,473,690	\$106,473,690	\$126,926,186	\$0	NO Shortfall
Arkansas	\$28,978,616	\$34,154,500	\$35,073,372	\$48,661,587	\$144,868,075	\$29,414,000	NO Shortfall
California	\$0	\$548,807,933	\$533,990,797	\$667,443,669	\$1,750,242,399	\$783,733,000	NO Shortfall
Colorado	\$0	\$37,914,522	\$44,865,429	\$57,951,287	\$140,731,238	\$44,707,000	NO Shortfall
Connecticut	\$2,534,685	\$24,361,434	\$27,975,129	\$36,560,995	\$91,431,843	\$5,672,000	NO Shortfall
Delaware	\$2,073,663	\$8,686,068	\$7,817,461	\$9,045,920	\$27,623,112	\$19,663,000	NO Shortfall
District of Columbia	\$132,618,160	\$7,201,920	\$7,198,952	\$9,635,097	\$24,035,969	\$7,694,000	NO Shortfall
Florida	\$24,823,484	\$35,421,360	\$193,614,837	\$249,246,758	\$610,901,115	\$391,991,000	NO Shortfall
Georgia	\$0	\$103,892,954	\$130,915,014	\$130,915,014	\$259,631,452	\$191,945,000	NO Shortfall
Hawaii	\$0	\$9,647,963	\$12,404,524	\$12,404,524	\$31,700,450	\$10,927,000	NO Shortfall
Idaho	\$0	\$16,795,479	\$20,749,545	\$20,749,545	\$54,501,026	\$17,429,000	NO Shortfall
Illinois	\$0	\$59,186,232	\$120,969,843	\$164,935,925	\$345,101,800	\$238,955,000	NO Shortfall
Indiana	\$14,570,905	\$53,709,889	\$73,421,543	\$195,728,997	\$373,308,000	\$73,308,000	NO Shortfall
Iowa	\$0	\$8,644,989	\$28,286,206	\$56,614,618	\$111,156,000	\$45,666,000	NO Shortfall
Kansas	\$14,982,065	\$20,083,084	\$23,541,320	\$28,479,189	\$87,086,258	\$42,797,000	NO Shortfall
Kentucky	\$33,743,149	\$37,984,461	\$39,240,933	\$54,060,786	\$165,075,145	\$78,498,000	NO Shortfall
Louisiana	\$8,706,125	\$44,240,933	\$9,474,540	\$17,477,697	\$40,331,747	\$113,156,000	NO Shortfall
Maine	\$0	\$9,680,881	\$3,474,540	\$12,462,201	\$40,331,747	\$23,091,000	NO Shortfall
Maryland	\$65,648,887	\$33,648,564	\$36,121,348	\$48,348,957	\$183,767,756	\$117,677,000	NO Shortfall
Massachusetts	\$27,707,902	\$46,201,047	\$46,201,047	\$59,401,346	\$179,511,342	\$89,475,000	NO Shortfall
Michigan	\$0	\$96,566,091	\$89,138,280	\$111,345,957	\$287,051,928	\$169,252,000	NO Shortfall
Minnesota	\$0	\$0	\$25,164,277	\$38,614,859	\$63,778,866	\$81,448,000	\$17,667,134
Mississippi	\$13,804,712	\$0	\$0	\$36,877,326	\$98,667,549	\$120,915,000	\$22,247,451
Missouri	\$0	\$20,239,122	\$41,923,481	\$48,185,511	\$116,120,783	\$93,386,000	NO Shortfall
Montana	\$0	\$10,005,270	\$10,153,881	\$53,988,160	\$116,120,783	\$16,148,000	NO Shortfall
Nebraska	\$0	\$0	\$12,482,163	\$12,284,292	\$32,483,443	\$16,354,000	NO Shortfall
Nevada	\$0	\$30,436,463	\$31,163,957	\$40,387,249	\$101,987,669	\$27,629,000	NO Shortfall
New Hampshire	\$3,143,900	\$8,903,739	\$8,272,609	\$20,333,614	\$29,333,614	\$7,645,000	NO Shortfall
New Jersey	\$0	\$25,767,157	\$84,735,099	\$110,502,856	\$242,284,000	\$175,701,000	NO Shortfall
New Mexico	\$25,383,498	\$32,788,696	\$42,156,779	\$153,117,489	\$313,117,489	\$75,701,000	NO Shortfall
New York	\$164,030,940	\$27,517,050	\$27,517,050	\$878,145,860	\$1,166,208,860	\$51,988,000	NO Shortfall
North Carolina	\$40,464,013	\$67,513,855	\$85,753,907	\$303,986,799	\$703,986,799	\$201,153,000	NO Shortfall
North Dakota	\$0	\$5,436,695	\$5,436,695	\$6,384,719	\$17,258,109	\$8,555,000	NO Shortfall
Ohio	\$0	\$60,480,850	\$103,803,316	\$125,842,184	\$290,126,350	\$171,774,000	NO Shortfall
Oklahoma	\$0	\$44,621,756	\$44,621,756	\$57,370,830	\$146,614,342	\$46,985,000	NO Shortfall
Oregon	\$1,399,872	\$40,708,703	\$38,056,795	\$47,255,360	\$127,420,750	\$20,621,000	NO Shortfall
Rhode Island	\$0	\$92,759,160	\$98,747,009	\$130,963,777	\$322,470,746	\$144,137,000	NO Shortfall
Pennsylvania*	\$223,963	\$0	\$0	\$9,578,609	\$9,578,609	\$27,909,000	\$17,930,391
South Carolina	\$43,385,057	\$43,402,180	\$54,305,115	\$64,305,115	\$141,063,352	\$64,520,000	NO Shortfall
South Dakota	\$0	\$4,402,884	\$5,790,144	\$7,886,854	\$14,826,000	\$14,826,000	NO Shortfall
Tennessee	\$43,148,411	\$58,354,512	\$57,957,983	\$76,904,574	\$236,365,480	\$17,259,000	NO Shortfall
Texas	\$0	\$311,503,988	\$449,972,119	\$1,092,327,621	\$3,161,101,000	\$316,101,000	NO Shortfall
Utah	\$0	\$24,693,700	\$24,091,106	\$31,699,161	\$80,483,967	\$30,893,000	NO Shortfall
Vermont	\$0	\$3,813,156	\$4,902,630	\$12,528,942	\$2,558,000	\$2,558,000	NO Shortfall
Virginia	\$0	\$53,437,771	\$56,714,814	\$76,254,851	\$185,407,436	\$83,206,000	NO Shortfall
Washington	\$25,419,765	\$50,326,484	\$64,705,479	\$190,778,212	\$34,580,000	\$34,580,000	NO Shortfall
West Virginia	\$12,081,320	\$18,760,354	\$24,422,724	\$70,905,730	\$32,140,000	\$32,140,000	NO Shortfall
Wisconsin	\$36,731,734	\$0	\$43,504,958	\$51,870,414	\$102,653,000	\$102,653,000	NO Shortfall
Wyoming	\$0	\$5,486,750	\$4,952,110	\$6,384,535	\$16,797,395	\$5,746,000	NO Shortfall
TOTAL STATES ONLY	\$733,125,920	\$2,381,639,402	\$3,022,698,180	\$4,038,875,000	\$10,177,338,502	\$5,300,956,000	\$236,986,934
COMMONWEALTHS AND TERRITORIES							
Puerto Rico	NA	NA	NA	NA	NA	NA	NA
Guernsey	NA	NA	NA	NA	NA	NA	NA
Virgin Islands	NA	NA	NA	NA	NA	NA	NA
American Samoa	NA	NA	NA	NA	NA	NA	NA
N. Mariana Islands	NA	NA	NA	NA	NA	NA	NA
TOTAL	NA	NA	NA	NA	NA	NA	NA
NATIONAL TOTAL	\$733,125,920	\$2,381,639,402	\$3,022,698,180	\$4,038,875,000	\$10,177,338,502	\$5,300,956,000	\$236,986,934

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 such 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 such States, calculated as the percentage 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 additional FY 2002 redistribution amounts totals \$398,883,304. 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 \$236,986,934.

Column K = *Total FY 2002 Redistribution Including FY 2005 Shortfall*. For the redistribution States, this column reflects the total FY 2002 redistribution including the FY 2005 shortfall amount, 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.

BILLING CODE 4120-01-P

III. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption "Regulatory Impact Statement" at the beginning of your comments.]

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 16, 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 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** and allotted to States in FY 2002. This notice with comment period 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 such 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. This 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 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 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 notice was reviewed by the Office of Management and Budget.

IV. Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

[If you choose to comment on issues in this section, please include the caption "Waiver of Notice of Proposed Rulemaking and Delayed Effective Date" at the beginning of your comments.]

We ordinarily publish a proposed notice in the **Federal Register** to provide a period of public comment before the provisions of a notice, such as this, are effective in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice of proposed rulemaking and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the notice.

We find there is good cause to waive notice of proposed rulemaking and the delay in the effective date of this issuance of the FY 2002 redistributed allotments because such notice of proposed rulemaking and the delay in the effective date would be contrary to the public interest.

We determined the amounts of the FY 2002 redistributed allotments as expeditiously as possible in order to make them available to the States as soon as possible. To that end, all States had until November 30, 2004 to submit their required fourth quarter FY 2004 expenditure reports. In determining the FY 2002 redistributed amounts, we used State projected expenditures as contained in the most recent (November, 2004) States' quarterly budget report submissions. The redistributed FY 2002 allotments make available Federal funds to the recipient redistribution States, which is

especially important for those redistribution States that may need such funds.

Furthermore, under section 2104(e) of the Act, redistributed allotments are only available through the end of the fiscal year in which they are redistributed; in the case of the FY 2002 redistributed allotments, that would be until the end of FY 2005 (September 30, 2005). We believe it is important that we issue these redistributed allotments as soon as possible. Therefore, in the interest of ensuring that the FY 2002 redistributed allotments are made available without delay to those States that need such funds, we are waiving notice of proposed rulemaking and the 30-day delay in effective date, and are publishing this issuance of the **Federal Register** as a notice with comment period.

Accordingly, we provisionally will make the FY 2002 redistributed funds available to any State that has spent all of its available SCHIP allotments effective immediately upon publication of this notice with comment period. These FY 2002 redistributed funds are subject to final adjustment based on comments received in response to this notice with comment period. Any such adjustments resulting from review and analysis of comments will be published in the **Federal Register** within 60 days of the close of the comment period. (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: January 5, 2005.

Mark McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: January 14, 2005.

Tommy G. Thompson,

Secretary.

[FR Doc. 05-1139 Filed 1-18-05; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N-0559]

Joint Meeting of the Arthritis Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.