

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**IDAHO RECEIVED MILLIONS  
IN UNALLOWABLE  
BONUS PAYMENTS**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
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March 2018  
A-04-17-08056

# *Office of Inspector General*

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## Report in Brief

Date: March 2018

Report No. A-04-17-08056

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**



### Why OIG Did This Review

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) applied to both the Children's Health Insurance Program and Medicaid. Under CHIPRA, Congress appropriated \$3.2 billion for qualifying States to receive bonus payments 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. Idaho received \$3.8 million in bonus payments for fiscal years (FYs) 2010 through 2013 (audit period).

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

### How OIG Did This Review

We reviewed the bonus payments that Idaho received for the audit period. 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 did not review Idaho's Medicaid eligibility determinations.

## Idaho Received Millions in Unallowable Bonus Payments

### What OIG Found

Some of the bonus payments that Idaho received for the audit period were not allowable in accordance with Federal requirements. Most of the data used in Idaho's bonus payment calculations were in accordance with Federal requirements. However, Idaho overstated its FYs 2010 through 2013 current enrollment in its bonus requests to Centers for Medicare & Medicaid Services (CMS) because it included individuals who did not qualify because of their basis-of-eligibility (BOE) category. CMS guidance instructed States to include in their current enrollment only individuals whom the State identifies and reports as having a BOE of "child" in the Medicaid Statistical Information System, which are BOE categories 4, 6, and 8. In addition to these three BOE categories, Idaho incorrectly included individuals from other BOEs, such as BOE 2, "Blind and Disabled."

As a result of the overstated current enrollment numbers, CMS overpaid Idaho \$3.1 million in bonus payments.

### What OIG Recommends and Idaho Comments

We recommend that Idaho refund \$3.1 million to the Federal Government.

In written comments on our draft report, Idaho did not deny that it had included individuals with BOE categories other than 4, 6, and 8 in its current enrollment. However, Idaho did not concur with our findings or recommendation. Idaho said that the current enrollment numbers it submitted to CMS were in accordance with the intent of statutory criteria for the CHIPRA bonus payments. Additionally, the State agency asserted that CMS's own guidance did not limit the baseline enrollment calculation to BOE codes 4, 6, and 8 and that Congress did not expressly exclude BOE 2 from the baseline enrollment calculation.

After review and consideration of Idaho's comments, we maintain that our findings and recommendation are correct. CMS has consistently and reasonably interpreted the statute and explained its approach in addressing Congress's intent. Therefore Idaho's current enrollment should only include individuals from BOE categories 4, 6, and 8.

**TABLE OF CONTENTS**

INTRODUCTION.....1

    Why We Did This Review .....1

    Objective .....1

    Background .....1

        The Medicaid Program: How It Is Administered.....1

        Idaho’s Medicaid Management Information System and  
        CMS’s Medicaid Statistical Information System .....1

        Bonus Payments.....2

    How We Conducted This Review .....2

FINDINGS.....3

    The State Agency Did Not Calculate Current Enrollment in Accordance With  
    Federal Requirements.....3

    Idaho Received More Than \$3.1 Million in Unallowable Bonus Payments.....4

RECOMMENDATION .....5

STATE AGENCY COMMENTS AND  
OFFICE OF INSPECTOR GENERAL RESPONSE .....5

    State Agency Comments.....5

    Office of Inspector General Response .....5

APPENDICES

    A: Audit Scope and Methodology .....7

    B: Related Office of Inspector General Reports.....9

    C: Current Enrollment Calculations.....10

    D: Federal Requirements Related to Bonus Payments.....12

    E: State Agency Comments .....14

## 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,<sup>1</sup> 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 Idaho received for FYs 2010 through 2013 because preliminary analysis indicated inconsistencies between the enrollment of children in Medicaid that Idaho 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). Idaho received \$3,866,319 in bonus payments for the FYs we reviewed.

### OBJECTIVE

Our objective was to determine whether the bonus payments that Idaho 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. Idaho's Department of Health and Welfare (State agency) administers Idaho's Medicaid program.

#### **Idaho'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

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<sup>1</sup> See Appendix B for details.

retrieval systems. For Medicaid purposes, the mechanized claim processing and information retrieval system is the Medicaid Management Information System (MMIS).

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 data 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 Idaho received for FYs 2010 through 2013. Appendix C contains the details of Idaho's current enrollment calculations for these FYs.

### **HOW WE CONDUCTED THIS REVIEW**

We reviewed the bonus payments that Idaho received for FYs 2010 through 2013 (audit period), totaling \$876,171, \$458,932, \$1,446,004, and \$1,085,212, 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 A 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 Idaho received for the audit period were not allowable in accordance with Federal requirements. Most of the data used in Idaho'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 BOE code. As a result, CMS overpaid Idaho \$3,103,167 in bonus payments.

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

The State agency reported CHIPRA current enrollments of 145,492, 147,311, 160,139, and 163,578 for FYs 2010 through 2013, respectively. According to CMS guidance,<sup>2</sup> 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.

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<sup>2</sup> CMS, State Health Official (SHO) Letter #09-015, CHIPRA #10, and CMS BP-Clarification3.docx.



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.<sup>3</sup>

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 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: Idaho Medicaid Enrollment**

<b>Current Enrollment<sup>4</sup></b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
State-Reported Number	145,492	147,311	160,139	163,578
OIG-Calculated Number	134,565	145,692	151,627	153,520
<b>Overstatement</b>	<b>10,927</b>	<b>1,619</b>	<b>8,512</b>	<b>10,058</b>

**IDAHO RECEIVED MORE THAN \$3.1 MILLION IN UNALLOWABLE BONUS PAYMENTS**

CMS calculated excessive CHIPRA bonus payments to Idaho because the State agency overstated its CHIPRA current enrollments for FYs 2010 through 2013. (See Table 1.) As a result, Idaho received unallowable bonus payments of \$876,171, \$201,522, \$1,046,720, and \$978,754 for FYs 2010 through 2013, respectively. We recalculated the bonus payments using the correct CHIPRA current enrollments for these FYs and found that Idaho should not have received a total of \$3,103,167 in bonus payments for the FYs reviewed (Table 2).

**Table 2: Idaho Bonus Payments**

	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>Total</b>
Bonus Payment Received	\$876,171	\$458,932	\$1,446,004	\$1,085,212	\$3,866,319
Correct Bonus Payment	0	257,410	399,284	106,458	763,152
<b>Bonus Payment Not Allowed</b>	<b>\$876,171</b>	<b>\$201,522</b>	<b>\$1,046,720</b>	<b>\$978,754</b>	<b>\$3,103,167</b>

<sup>3</sup> 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.

<sup>4</sup> See Appendix C, Tables 3 and 4, for the detail of the State agency’s reported current enrollment numbers and our calculated current enrollment numbers.

## RECOMMENDATION

We recommend that the State agency refund \$3,103,167 to the Federal Government.

### STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

#### STATE AGENCY COMMENTS

In written comments on our draft report, the State agency did not deny 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 the current enrollment numbers it submitted to CMS were in accordance with the intent of statutory criteria for the CHIPRA bonus payments.

Additionally, the State agency asserted that CMS's own guidance did not limit the baseline enrollment calculation to BOE codes 4, 6, and 8 and that Congress did not expressly exclude BOE 2 from the baseline enrollment calculation.

The State agency's comments are included in their entirety as Appendix E.

#### OFFICE OF INSPECTOR GENERAL RESPONSE

After 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 Idaho's baseline enrollment. As a result, the State agency's approach overstated Idaho's current enrollment because it included enrollment categories not reflected in CMS's calculation of Idaho'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)<sup>5</sup> 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

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

“child”; we believe this approach appropriately addresses the intent of the statute in a way that is operationally feasible.

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

Under the *Chevron* doctrine, deference is given to an agency’s reasonable interpretation and implementation of a statute that the agency administers.<sup>6</sup> In its guidance to the State agencies, CMS has consistently and reasonably interpreted the statute and explained its approach in addressing Congress’s intent. 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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<sup>6</sup> *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

We reviewed the bonus payments that the State agency received for FYs 2010 through 2013, totaling \$876,171, \$458,932, \$1,446,004, and \$1,085,212, 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 Boise, Idaho, from June 2017 through November 2017.

### 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 calculations<sup>7</sup> of Idaho's bonus payments for FYs 2010 through 2013;
- verified supporting documentation for all data elements used in Idaho'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,

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<sup>7</sup> 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 Idaho’s enrollment and expenditure data from the CMS MSIS State Summary Datamart;
- calculated Idaho’s FYs 2010 through 2013 current enrollment using allowable BOEs;
- recalculated Idaho’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 objective.

**APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS**

<b>Report Title</b>	<b>Report Number</b>	<b>Date Issued</b>
<i>Kansas Received Millions in Unallowable Bonus Payments</i>	<a href="#"><u>A-04-16-08050</u></a>	10/31/2017
<i>Ohio Received Millions in Unallowable Bonus Payments</i>	<a href="#"><u>A-04-16-08049</u></a>	10/31/2017
<i>Colorado Received Millions in Unallowable Bonus Payments</i>	<a href="#"><u>A-04-15-08039</u></a>	8/11/2016
<i>New Mexico Received Millions in Unallowable Bonus Payments</i>	<a href="#"><u>A-04-15-08040</u></a>	11/24/2015
<i>North Carolina Received Millions in Unallowable Bonus Payments</i>	<a href="#"><u>A-04-14-08035</u></a>	7/21/2015
<i>Wisconsin Received Some Unallowable Bonus Payments</i>	<a href="#"><u>A-04-13-08021</u></a>	3/18/2015
<i>Louisiana Received More Than \$7.1 Million in Unallowable Bonus Payments</i>	<a href="#"><u>A-04-14-08029</u></a>	7/10/2014
<i>Washington Received Millions in Unallowable Bonus Payments</i>	<a href="#"><u>A-04-14-08028</u></a>	9/9/2014
<i>Alabama Received Millions in Unallowable Performance Bonus Payments Under the Children’s Health Insurance Program Reauthorization Act</i>	<a href="#"><u>A-04-12-08014</u></a>	8/27/2013

## APPENDIX C: 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 outlines the State agency's reported current enrollments.

**Table 3: State Agency's Reported Current Enrollments**

	Qualifying Children			
	FY 2010	FY 2011	FY 2012	FY 2013
Monthly Average	145,492	147,311	160,139	163,578

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

To calculate Idaho's CHIPRA current enrollments for FYs 2010 through 2013, we had the State agency group its MMIS enrollment data from its current eligibility file into aggregate MSIS BOE categories by month for each year. Then, to determine the monthly average of qualifying children for FYs 2010 through 2013, we included only those individuals whom the State would

identify and report as a BOE of “child” (i.e., BOE codes 4, 6, and 8) when reporting MSIS enrollment for each year. Table 4 outlines our calculated current enrollments.

**Table 4: OIG Calculated Current Enrollments**

<b>Month</b>	<b>Qualifying Children</b>			
	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
Oct	125,653	141,687	148,684	152,622
Nov	127,072	141,995	151,540	153,702
Dec	129,195	143,229	151,290	152,823
Jan	131,665	144,610	153,123	153,713
Feb	133,657	145,133	152,848	153,787
Mar	135,684	146,234	152,480	153,615
Apr	136,253	146,544	152,512	153,492
May	136,852	146,831	150,184	153,417
Jun	137,794	147,431	151,158	153,499
Jul	139,013	147,787	151,656	153,662
Aug	140,454	148,166	151,929	153,908
Sep	141,488	148,662	152,121	153,999
<b>Total</b>	<b>1,614,780</b>	<b>1,748,309</b>	<b>1,819,525</b>	<b>1,842,239</b>
<b>Monthly Average (Total/12)</b>	<b>134,565</b>	<b>145,692</b>	<b>151,627</b>	<b>153,520</b>



## **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.<sup>8</sup> Additional guidance provided by CMS<sup>9</sup> 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 points . . . .<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup>

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<sup>8</sup> Section 2105(a)(3)(A) of the Act.

<sup>9</sup> CMS, SHO Letter #09-015, CHIPRA #10.

<sup>10</sup> Enrollment data for FY 2007 were obtained from the MSIS.

<sup>11</sup> Sections 2105(a)(3)(C)(iii)(II) and (III) of the Act.

<sup>12</sup> CMS, SHO Letter #09-015, CHIPRA #10.

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. 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.<sup>13</sup>

#### **CMS GUIDANCE FOR CURRENT ENROLLMENT CALCULATION**

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

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<sup>13</sup> CMS BP-Clarification3.docx.

## APPENDIX E: STATE AGENCY COMMENTS



C.L. "Butch" Otter - Governor  
Russell S. Barron - Director

# IDAHO DEPARTMENT OF HEALTH & WELFARE

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February 26, 2018

*Sent Via USPS and Email: [Truman.Mayfield@oig.hhs.gov](mailto:Truman.Mayfield@oig.hhs.gov)*

Lori S. Pilcher  
Regional Inspector General for Audit Services  
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Atlanta, GA 30303

*Re: Report #A-04-17-08056, Idaho's Reply to Draft Report Entitled: Idaho Received Millions in Unallowable Bonus Payments*

Dear Ms. Pilcher;

I am writing in response to your January 31, 2018, request for written comments to the draft report issued by the Office of Inspector General (OIG report), U.S. Department of Health and Human Services. On behalf of the Idaho Department of Health and Welfare, I appreciate the opportunity to respond to the findings. Idaho strongly disagrees with the OIG's report and will address the findings in turn below.

The OIG report states that Idaho received nonallowable bonus payments because it included in its bonus requests individuals who did not qualify because of their Basis-of-Eligibility (BOE) code. However, CMS's own guidance does not require the use of BOE codes to determine current enrollment rather, the amount is determined by the definition of "qualifying children."<sup>1</sup> The bonus payments were in part based on the number of "qualifying children" enrollees. Section 2105(a)(3)(F) of the Social Security Act (the Act) defines "qualifying children" as "children who meet the eligibility criteria (including income, categorical eligibility, age, and immigration status criteria) in effect as of July 1, 2008, for enrollment under title XIX, taking into account criteria applied as of such date under title XIX pursuant to a waiver under section 1115." The only children that Congress expressly excluded from this definition were non-citizen children and pregnant women who reside lawfully in the U.S., and children who were enrolled

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<sup>1</sup> See, SHO Letter #09-015, CHIPRA #10.

after October 1, 2013. *Id.* Idaho, like many other states, submitted its baseline enrollment numbers to CMS based on the clear language of the statute.

The OIG report alleges that Idaho should have excluded BOE Child Code 2 (blind and disabled children) and based its enrollment only on children with BOE Child Codes 4, 6 and 8. If Congress intended for Child Code 2 children to be excluded, it would have done so under Section 2105(A)(3)(F)(iii), which sets out the other excluded categories. CMS's interpretation is erroneous, contrary to statute, and does not withstand scrutiny.

In fact, CMS's SHO Letter #09-015 acknowledged several times the statutory language upon which bonus payments are authorized. The SHO Letter stated: "[i]n particular, the Baseline Enrollment for each State was established using all of the 'MSIS Coding Categories' for which States report individuals under the 'Basis-Of-Eligibility' (BOE) for children in their Medicaid programs." (See, SHO Letter, Appendix II, pg. 9.) (emphasis added) Furthermore, CMS stated it would "work with states to obtain the current enrollment level of qualifying children... consistent with the statutory definition." *Id.* at 11. At no point in the SHO Letter does CMS instruct the states to calculate current enrollment of qualifying children using only BOE Child Codes 4, 6 and 8.

The focus of the review by the OIG was to verify accuracy of the enrollment information used to determine the bonus payment calculation and to ensure compliance with federal requirements. Only a small portion of the data used in Idaho's bonus payment calculation was found to be unallowable. However, this resulted in the recommendation that the majority of the bonus payments (\$3.1 million of \$3.8 million total) should be refunded. This recommendation is disproportionate and inequitable especially in light of the conflict between the statute and OIG Report findings.

The Act is clear that performance bonus payments shall be paid to each state that meets the qualifications contained in the statute: "[T]he Secretary shall pay from amounts made available under subparagraph (E), to each State that meets the condition under paragraph (4) for the fiscal year, an amount equal to the amount described in subparagraph (B)."<sup>2</sup> Idaho met the criteria set

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<sup>2</sup> Subparagraph B provides: Amount above baseline Medicaid child enrollment costs. —Subject to subparagraph (E), the amount described in this subparagraph for a State for a fiscal year is equal to the sum of the following amounts:

- (i) First tier above baseline Medicaid enrollees. —An amount equal to the number of first tier above baseline child enrollees (as determined under subparagraph (C)(i)) under title XIX for the State and fiscal year, multiplied by 15 percent of the projected per capita State Medicaid expenditures (as determined under subparagraph (D)) for the State and fiscal year under title XIX.
- (ii) Second tier above baseline Medicaid enrollees. —An amount equal to the number of second tier above baseline child enrollees (as determined under subparagraph (C)(ii)) under title XIX for the State and fiscal year, multiplied by 62.5 percent of the projected per capita State Medicaid expenditures (as determined under subparagraph (D)) for the State and fiscal year under title XIX.

Lori S. Pilcher  
February 26, 2018  
Page 3

out by Congress, and it should not be penalized for CMS's erroneous interpretation. Idaho worked with representatives from CMS throughout the bonus payment period from 2009-2013, and CMS never raised concerns or cautioned the state that its baseline enrollment numbers were inaccurate. Idaho respectfully requests that the findings be withdrawn or reconsidered by the OIG.

Respectfully,

A handwritten signature in blue ink that reads "Russell S. Barron". The signature is written in a cursive style with a large initial 'R'.

RUSSELL S. BARRON  
Director

RSB/klb