

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**NEW MEXICO RECEIVED  
MILLIONS IN UNALLOWABLE  
BONUS PAYMENTS**

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# *Office of Inspector General*

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## EXECUTIVE SUMMARY

*New Mexico received more than \$15.9 million in unallowable performance bonus payments under the Children's Health Insurance Program Reauthorization Act for fiscal years 2009 through 2013.*

### WHY WE DID THIS REVIEW

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

We reviewed the bonus payments that New Mexico received for FYs 2009 through 2013 because preliminary analysis indicated inconsistencies between the enrollment of children in Medicaid that New Mexico reported when requesting bonus payments and the enrollment reflected in the Medicaid Statistical Information System maintained by the Centers for Medicare & Medicaid Services (CMS). New Mexico received more than \$23.8 million in bonus payments for the FYs we reviewed.

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

### BACKGROUND

CMS administers the Medicaid program at the Federal level and is the agency responsible for determining whether a State meets the requirements to receive a bonus payment and, if so, what the amount of a State's bonus payment should be. CMS makes its determinations, in part, on the basis of Medicaid enrollment information that the States provide in their requests for bonus payments. New Mexico's Human Services Department, Division of Medical Assistance (State agency), administers New Mexico's Medicaid program and requested the bonus payments that New Mexico received for FYs 2009 through 2013 (audit period).

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

### WHAT WE FOUND

Most of the bonus payments that New Mexico received for the audit period were not allowable in accordance with Federal requirements. Most of the data used in New Mexico's bonus payment calculations were in accordance with Federal requirements. However, the State agency overstated its FYs 2009 through 2013 current enrollment in its bonus requests to CMS because it

included individuals who did not qualify because of their basis-of-eligibility (BOE) code. As a result, CMS overpaid New Mexico \$15,965,758 in bonus payments.

## **WHAT WE RECOMMEND**

We recommend that the State agency refund \$15,965,758 to the Federal Government.

## **STATE AGENCY COMMENTS**

In written comments on our draft report, the State agency acknowledged that it 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 and recommendation. State agency officials said that they believed their methodology for determining New Mexico's current enrollment was correct and that the bonus payments received for the audit period were allowable in accordance with Federal requirements.

The State agency said that it sought assurance from CMS that it was in compliance with CMS guidance that was available when it requested each of the bonus payments. Furthermore, State agency officials said that they specified to CMS, in each of their bonus applications, how they determined New Mexico's current enrollment, and that they reasonably concluded that CMS had reviewed and approved the State agency's methodology. The State agency also asked that we confirm that we used the same calculation methodology that CMS used in calculating bonus payments.

## **OUR RESPONSE**

We disagree with the State agency's comment that its methodology for determining New Mexico's current enrollment was in compliance with Federal requirements and CMS guidance that was available when it requested each of the bonus payments.

As CMS detailed in its guidance to the State agency, a State should include only individuals with BOE codes 4, 6, and 8 in its current enrollment. In their enrollment submissions to CMS, State agency officials included a statement that the enrollment represented their "best effort to map the [Medicaid Statistical Information System] BOE codes of 4, 6, and 8." These statements show that the State agency was aware that its current enrollment should include only individuals with BOE codes 4, 6, and 8. Furthermore, State agency officials argued that because CMS failed to indicate the State agency's methodology as unacceptable, it presumed that CMS had approved its methodology. However, lack of a notice of disapproval by CMS does not constitute approval of the State agency's process; the State agency has not presented any documentation indicating that CMS approved its inclusion of individuals with BOE categories other than 4, 6, and 8 in its current enrollment. Allowing the State agency to include individuals from other BOE categories in its current enrollment counts, when those same BOE categories were not included in the original baseline calculations, would result in an artificially inflated estimate of growth in children enrolled in the State's Medicaid program. Finally, in response to the State agency's request for clarification of our methodology, we used the same baseline numbers and calculation factors as CMS in computing the State's correct bonus payment.

We maintain that our findings and recommendation are correct.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) directly affects both the Children's Health Insurance Program and Medicaid. Under CHIPRA, Congress appropriated \$3.225 billion for qualifying States to receive performance bonus payments (bonus payments) for Federal fiscal years (FYs) 2009 through 2013 to offset the costs of increased enrollment of children in Medicaid. In previous audits of CHIPRA bonus payments in other States,<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 New Mexico received for FYs 2009 through 2013 because preliminary analysis indicated inconsistencies between the enrollment of children in Medicaid that New Mexico 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). New Mexico received more than \$23.8 million in bonus payments for the FYs we reviewed.

### OBJECTIVE

Our objective was to determine whether the bonus payments that New Mexico 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. New Mexico's Human Services Department, Division of Medical Assistance (State agency), administers New Mexico's Medicaid program.

#### **New Mexico's Medicaid Management Information System and CMS's Medicaid Statistical Information System**

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

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



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

Under the Balanced Budget Act of 1997, P.L. No. 105-33, States are required to submit Medicaid eligibility and claim data to CMS through the MSIS. The purpose of the MSIS is to collect, manage, analyze, and disseminate information on eligibility, beneficiaries, utilization, and payment for services covered by State Medicaid programs. CMS uses MSIS data to produce Medicaid program characteristics and utilization information. Some of the information that States report for Medicaid-eligible individuals are date of birth, 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 New Mexico received for FYs 2009 through 2013. Appendix B contains the details of New Mexico's current enrollment calculations for these FYs.

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

We reviewed the bonus payments that New Mexico received for FYs 2009 through 2013 (audit period), totaling \$5,365,601, \$8,967,885, \$5,246,129, \$2,724,565, and \$1,556,015 respectively. Our review focused on verifying the accuracy of enrollment information used in the bonus payment calculations and ensuring that the information complied with Federal requirements. We neither assessed the State agency's internal control structure beyond what was necessary to meet our objective nor reviewed the State agency's determinations of Medicaid eligibility. Also, we did not review whether the State agency successfully implemented at least five of the Medicaid enrollment and retention provisions because we determined that there was a low risk of noncompliance.

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

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

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

## FINDINGS

Most of the bonus payments that New Mexico received for the audit period were not allowable in accordance with Federal requirements. Most of the data used in New Mexico's bonus payment calculations were in accordance with Federal requirements. However, the State agency overstated its FYs 2009 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 New Mexico \$15,965,758 in bonus payments.

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

The State agency reported CHIPRA current enrollments of 305,961, 325,867, 332,918, 332,416, and 332,018 for FYs 2009 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.

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

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<sup>2</sup> CMS, SHO Letter #09-015, CHIPRA #10, and CMS email to State agency on December 12, 2011.

<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.

followed Federal requirements, the State agency would have reported the correct number for current enrollment for FYs 2009 through 2013 as depicted in Table 1.

**Table 1: New Mexico Medicaid Enrollment**

<b>Current Enrollment<sup>4</sup></b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
State-reported number	305,961	325,867	332,918	332,416	332,018
Correct number	289,507	310,377	317,226	317,028	317,003
<b>Overstatement</b>	<b>16,454</b>	<b>15,490</b>	<b>15,692</b>	<b>15,388</b>	<b>15,015</b>

**NEW MEXICO RECEIVED MORE THAN \$15.9 MILLION IN UNALLOWABLE BONUS PAYMENTS**

CMS calculated excessive CHIPRA bonus payments to New Mexico because the State agency overstated its CHIPRA current enrollments for FYs 2009 through 2013. (See Table 1.) As a result, New Mexico received unallowable bonus payments of \$3,431,451, \$5,941,264, \$3,003,088, \$2,033,940, and \$1,556,015 for FYs 2009 through 2013, respectively. We recalculated the bonus payments using the correct CHIPRA current enrollments for these FYs and found that New Mexico should not have received a total of \$15,965,758 in bonus payments for the FYs reviewed (Table 2).

**Table 2: New Mexico Bonus Payments**

	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>	<b>Total</b>
Bonus payment received	\$5,365,601	\$8,967,885	\$5,246,129	\$2,724,565	\$1,556,015	\$23,860,195
Correct bonus payment	1,934,150	3,026,621	2,243,041	690,625	0	\$7,894,437
<b>Bonus Payment Not Allowed</b>	<b>\$3,431,451</b>	<b>\$5,941,264</b>	<b>\$3,003,088</b>	<b>\$2,033,940</b>	<b>\$1,556,015</b>	<b>\$15,965,758</b>

**RECOMMENDATION**

We recommend that the State agency refund \$15,965,758 to the Federal Government.

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

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

### **STATE AGENCY COMMENTS**

In written comments on our draft report, the State agency acknowledged that it 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 and recommendation. State agency officials said that they believed their methodology for determining New Mexico's current enrollment was correct and that the bonus payments received for the audit period were allowable in accordance with Federal requirements.

The State agency said that it sought assurance from CMS that it was in compliance with CMS guidance that was available when it requested each of the bonus payments. The State agency further asserted that CMS did not provide definitive guidance on the bonus payments until December 12, 2011, and that this guidance differed from CMS guidance issued during December 2009. State agency officials believed that they complied with CMS's 2009 guidance and that CMS's subsequent guidance should not be applied retroactively.

Furthermore, State agency officials said that they specified to CMS, in each of their bonus payment applications, how they determined New Mexico's current enrollment and that they reasonably concluded that CMS had reviewed and approved the State agency's methodology. The State agency also asked that we confirm that we used the same calculation methodology that CMS used in calculating bonus payments.

The State agency's comments, with the exception of redacted personal information, are included as Appendix E.

### **OFFICE OF INSPECTOR GENERAL RESPONSE**

We disagree with the State agency's comment that its methodology for determining New Mexico's current enrollment was in compliance with Federal requirements and CMS guidance that was available when it requested each of the bonus payments. The State agency's current enrollment calculations did not follow the same logic and basis that CMS used to develop the baseline enrollment. As a result, the State agency's approach overstated New Mexico's current enrollment because it included enrollment categories not reflected in CMS's baseline enrollment.

CMS's 2009 guidance to the State agency clearly stated that, in reporting the current FY 2009 enrollment, States should include a description of the data sources and the methodologies they used to appropriately identify individuals with a BOE of "child," and this same guidance accurately identified the BOE codes associated with "child" as codes 4, 6, or 8. The 2009 guidance also stated, "The calculation of the Bonus Payment requires establishing for each State a monthly average unduplicated number of qualifying children enrolled in title XIX for *FY 2007*" (original emphasis).

To establish the FY 2007 baseline of the unduplicated number of qualifying children, the 2009 guidance stated:

[W]e developed the baseline enrollment for each State using *all* of the “MSIS Coding Categories” for which States report individuals with the “Basis-Of-Eligibility” (BOE) of Child in their Medicaid programs. Again, the purpose was to capture every individual considered to be eligible as a “Child” by States under their Medicaid (title XIX) programs [(original emphasis)].

Furthermore, the 2009 guidance specifically listed the eligibility categories associated with “child.” The guidance stated:

The MSIS BOE codes associated with “Child” that we used for developing the FY 2007 baseline enrollment are as follows:

- “4 Child (not Child of Unemployed Adult, not Foster Care Child)”
- “6 Child of Unemployed Adult (optional)”
- “8 Foster Care Child”

The guidance clearly stated that the listed eligibility categories were “intended to reflect the eligibility categories for which children *might* be covered” (emphasis added). This same section further states:

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

Thus, the 2009 guidance makes it clear that BOE codes 4, 6, and 8 were used to establish the baseline enrollment numbers and that the same BOE codes were to be used to calculate the current enrollment numbers.

In their enrollment submissions to CMS, State agency officials included a statement that the enrollment represented their “best effort to map the [Medicaid Statistical Information System] BOE codes of 4, 6, and 8.” These statements show that the State agency was aware that its current enrollment should include only individuals with BOE codes 4, 6, and 8. Furthermore, State agency officials argued that because CMS failed to indicate the State agency’s methodology as unacceptable, it presumed that CMS had approved its methodology. However, lack of a notice of disapproval by CMS does not constitute approval of the State agency’s process; the State agency has not presented any documentation indicating that CMS approved its inclusion of individuals with BOE codes other than 4, 6, and 8 in its current enrollment.

In regard to the State agency’s comment that CMS’s 2011 guidance should not be applied retroactively, neither we nor CMS applied the 2011 guidance retroactively. CMS did not change its guidance in its email dated December 12, 2011, but stated, “We will be issuing the FY 2011

Bonus Payments to States by the end of this month, but we wanted to *reiterate* the aspects of the instructions as it relates to the average monthly enrollment for children metric for FY 2011, as provided by your State, *in order to ensure that the metric was developed appropriately*” (emphasis added). This same email further stated, “*The same logic and basis that was used for developing the FY 2007 baseline should be used by each State for submitting the average monthly enrollment for children for the current fiscal year for which the bonus payment is being determined*” (original emphasis). 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 original baseline calculations, would result in an artificially inflated estimate of growth in children enrolled in the State’s Medicaid program. Finally, in response to the State agency’s request for clarification of our methodology, we used the same baseline numbers and calculation factors as CMS in computing the State’s correct bonus payment.

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

**APPENDIX A: RELATED OIG REPORTS**

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

## APPENDIX B: CURRENT ENROLLMENT CALCULATIONS

### EXPLANATION OF CURRENT ENROLLMENT CALCULATION

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

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

### STATE AGENCY’S CALCULATION OF FISCAL YEARS 2009 THROUGH 2013 CURRENT ENROLLMENT

The State agency calculated its CHIPRA current enrollments for each of the five FYs (2009 through 2013) using the same enrollment data source that it used for MSIS reporting. However, the State agency used a different methodology from that established in CMS guidance to compile its current enrollment. On the basis of this guidance, a State’s CHIPRA current enrollment should include only individuals whom the State identifies and reports as a BOE of “child” when reporting MSIS enrollment data. However, the State agency also included in its CHIPRA current enrollment individuals who were classified as a BOE other than “child,” thus overstating its current enrollment numbers. Table 3 on the next page outlines the State agency’s reported current enrollments.

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

Month	Qualifying Children			
	FY 2010 <sup>5</sup>	FY 2011	FY 2012	FY 2013
Oct	319,140	332,093	332,455	334,198
Nov	320,716	331,889	332,147	334,033
Dec	322,054	331,953	331,176	333,003
Jan	324,090	333,527	332,075	334,075
Feb	324,949	333,389	332,159	332,937
Mar	326,142	334,224	332,436	332,250
Apr	326,487	333,649	332,000	332,132
May	326,898	332,717	332,181	331,253
Jun	328,470	332,602	331,946	330,376
Jul	328,843	332,439	332,707	330,525

<sup>5</sup> State agency officials did not maintain the historical monthly enrollment data that supported the 305,961 current enrollment figure they reported for FY 2009. Therefore, we were not able to include the FY 2009 current enrollment calculation in Table 3.



Month	Qualifying Children			
	FY 2010 <sup>5</sup>	FY 2011	FY 2012	FY 2013
Aug	330,814	333,522	334,107	330,721
Sep	331,803	333,008	333,603	328,711
<b>Total</b>	<b>3,910,406</b>	<b>3,995,012</b>	<b>3,988,992</b>	<b>3,984,214</b>
<b>Monthly Average (Total/12)</b>	<b>325,867</b>	<b>332,918</b>	<b>332,416</b>	<b>332,018</b>

**OFFICE OF INSPECTOR GENERAL’S CALCULATION OF FISCAL YEARS 2009 THROUGH 2013 CURRENT ENROLLMENT**

In accordance with Federal requirements, we calculated New Mexico’s CHIPRA current enrollments for FYs 2009 through 2013 by having the State agency run a query on its MMIS data and extracting 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. Table 4 on the next page outlines our calculated current enrollments.

**Table 4: OIG Calculated Current Enrollments**

Month	Qualifying Children				
	FY 20009	FY 2010	FY 2011	FY 2012	FY 2013
Oct	283,140	304,350	316,689	317,383	319,364
Nov	281,551	305,891	316,538	317,098	319,271
Dec	281,040	307,138	316,563	316,175	318,240
Jan	284,414	309,178	318,137	317,067	319,257
Feb	286,697	309,984	318,048	317,238	318,256
Mar	289,633	311,122	318,882	317,559	317,608
Apr	292,621	311,362	318,361	317,149	317,445
May	292,880	311,735	317,432	317,338	316,606
Jun	295,099	313,144	317,282	317,096	315,762
Jul	295,031	313,259	317,058	317,605	315,787
Aug	296,304	314,592	317,573	318,246	315,461
Sep	295,675	312,770	314,149	314,377	310,974
<b>Total</b>	<b>3,474,085</b>	<b>3,724,525</b>	<b>3,806,712</b>	<b>3,804,331</b>	<b>3,804,031</b>
<b>Monthly Average (Total/12)</b>	<b>289,507</b>	<b>310,377</b>	<b>317,226</b>	<b>317,028</b>	<b>317,003</b>

## APPENDIX C: AUDIT SCOPE AND METHODOLOGY

### SCOPE

We reviewed the bonus payments that the State agency received for FYs 2009 through 2013, totaling \$5,365,601, \$8,967,885, \$5,246,129, \$2,724,565, and \$1,556,015, 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 Santa Fe, New Mexico, from November 2014 through April 2015.

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements;
- held discussions with CMS financial management officials to obtain an understanding of the process that States should follow when requesting bonus payments;
- reviewed CMS's detailed calculations<sup>6</sup> of New Mexico's bonus payments for FYs 2009 through 2013;
- verified supporting documentation for all data elements used in New Mexico'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>6</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 New Mexico's enrollment and expenditure data from the CMS MSIS State Summary Datamart;
- calculated New Mexico's FYs 2009 through 2013 current enrollment;
- recalculated New Mexico's bonus payments using correct, verified data; and
- discussed the results with State agency officials.

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

## **APPENDIX D: FEDERAL REQUIREMENTS RELATED TO BONUS PAYMENTS**

### **PURPOSE OF THE BONUS PAYMENTS AND BASELINE CALCULATION METHODOLOGY**

Section 2105(a)(3) of the Act states that performance bonus payments are intended to offset additional Medicaid and Children’s Health Insurance Program child enrollment costs resulting from enrollment and retention efforts. The payments are made to a State for a FY as a single payment not later than the last day of the first calendar quarter of the following FY.<sup>7</sup> Additional guidance provided by CMS<sup>8</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>9</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>10</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>11</sup>

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.

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<sup>7</sup> Section 2105(a)(3)(A) of the Act.

<sup>8</sup> CMS, SHO Letter #09-015, CHIPRA #10.

<sup>9</sup> Enrollment data for FY 2007 were obtained from the MSIS.

<sup>10</sup> Sections 2105(a)(3)(C)(iii)(II) and (III) of the Act.

<sup>11</sup> CMS, SHO Letter #09-015, CHIPRA #10.

However ... the baseline enrollment data represents all individuals identified and reported by each State with a BOE of “child;” we believe this approach appropriately addresses the intent of the statute in a way that is operationally feasible.<sup>12</sup>

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

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

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

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<sup>12</sup> CMS BP-Clarification3.docx, October 2009.

## APPENDIX E: STATE AGENCY COMMENTS



Susana Martinez, Governor  
Brent Earnest, Secretary  
Nancy Smith-Leslie, Director

September 4, 2015

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

RE: Report Number: A-04-15-08040

Dear Ms. Pilcher:

The New Mexico Human Services Department has reviewed the above referenced report and is pleased to submit these comments on the draft report. We appreciate your willingness to give these comments full consideration. Please know that we also would be happy to discuss the comments with you or with Mr. Mayfield, Audit Manager, at a time of your convenience.

You asked that we submit comments on the draft report, and they are contained herein. You also asked that we include a statement of concurrence or nonconcurrence with your recommendation that the state refund to the federal government \$15,965,758. The state does not concur with this recommendation and respectfully disagrees with the both the findings outlined in the draft report and the recommendation. We believe that the CHIPRA bonus payments received for the audit period were allowable in accordance with federal requirements and CMS guidance.

Our position on the report, and on the CHIPRA bonus effort in total, is that the State of New Mexico sought assurance from CMS that it was in compliance with the CMS guidance that was available at the time, as evidenced by the two separate emails attached to this letter.

As noted in your draft report, CMS did not provide definitive guidance on the CHIPRA bonus until December 12, 2011, by which point three years of bonus had been paid to the state. New Mexico was compliant with the December 2009 CMS guidance, which noted that “[t]he children that count towards the Bonus Payment are children enrolled in Medicaid who meet eligibility criteria in effect on July 1, 2008.” Eligibility criteria include income, categorical eligibility, age, and immigration status criteria. 2105(a)(3)(F). Under that definition, children who meet all of the criteria, but are enrolled in a non-child BOE, should still be counted. The CMS guidance was consistent with that definition, in saying that the intent was to count all children. It noted that “[t]he enrollment number from MSIS includes all (CMS emphasis) individuals identified and reported eligible as a child under title XIX....” Considering the statutory language, it is uncertain under which authority CMS would have been able to exclude some children based on eligibility code.

Furthermore, on page 10 of the 2009 CMS guidance, CMS directs the states to “use the same State institutional data sources that are used for reporting under MSIS and for child enrollment reporting by States...” which is precisely what New Mexico did. As the draft report notes, New Mexico utilized its MSIS report numbers in a consistent manner, including all children that are so reported in its MSIS reports to CMS. There has been no contention by either the OIG or CMS that the MSIS reports were incorrect. Your draft report also fails to note that on page 10 of the 2009 guidance, CMS acknowledges that “[t]he 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.” It is New Mexico’s assertion that the children included in its MSIS reports submitted to CMS complied with the statutory provisions for the CHIPRA bonus.

The same December 2009 letter from Director Mann directed states with questions to “contact Mr. Richard Strauss of the CMS Financial Management Group for additional information or assistance.” New Mexico Medicaid staff did contact Mr. Strauss, as the two attached emails indicate; one dated December 9 of 2009, and a second dated December 14, 2011. In particular, I call your attention to the 2011 email in which, after discussions with Mr. Strauss, the state indicated that it had made its “best effort to map our Medicaid Eligibility Report (MER) to the MSIS Basis of Eligibility (BOE) codes”, and further noting that the state intended to “continue to make every effort to include only individuals who are considered to be eligible as ‘children’ under the provided citations...” The state NEVER received any communication from CMS to indicate that there was a problem with the methodology it was using. Indeed, your draft report notes that “The State agency correctly used the same State institutional data source to calculate its current enrollment that it used for MSIS reporting”. The report fails to note that this methodology was discussed with and made known to CMS, nor does the report acknowledge or recognize that the state never received written or verbal communication to suggest it was in violation of the guidance.

The October 1, 2010, guidance from Director Mann observed that CMS had “conducted several calls regarding bonus payment applications with States and other interested stakeholders in response to requests for additional policy guidance.” New Mexico participated in those calls and neither heard nor was told that there were any issues with the state’s submissions or methodology. This 2010 letter directed the states to submit a “Bonus Payment Enrollment Template, providing the monthly average unduplicated number of qualifying children for FY 2010...” The state did submit its template in a timely and complete manner and as previously noted, did not receive any indication that there was a problem with its submission or methodology.

In support of its conclusions, the OIG draft report cites a CMS email that was dated December 12, 2011 and stated that “[t]he same logic and basis that was used for developing the FY 2007 baseline should be used by each State for submitting the average monthly enrollment for children for the current fiscal year for which the bonus payment is being determined.” New Mexico remained consistent in its methodology and CMS accepted all of New Mexico’s submissions. It should also be noted that the state’s requests for CHIPRA bonus payments for fiscal years 2009, 2010 and 2011 had all been submitted by the time CMS sent the December 2011 email. New Mexico firmly believes that its submissions for all years were both correct and compliant. While the state firmly believes that its submissions for all years were both correct and compliant, should the OIG disagree and contend that the December 2011 guidance should be a basis for negative findings, that guidance should not be applied in a retroactive manner.

The methodology that was utilized by New Mexico was clearly laid out in the supporting documentation that was submitted with each CHIPRA bonus application. The state reasonably assumed that CMS reviewed the methodology, found it to be acceptable and continued to find it acceptable. The draft OIG report notes on page 12 that CMS requested that states include a description of their data sources and methodologies to identify individuals with a BOE of child. The report does NOT note that New Mexico did so, and since the submissions were accepted by CMS, the state had good reason to believe that it met both the statutory and regulatory requirements for receiving a CHIPRA bonus.

Page 3 of the OIG's draft report contains a statement that "...the State agency incorrectly included individuals from other BOEs, such as BOE code 2, 'Blind and Disabled', in its reports of CHIPRA current enrollment to CMS, which inflated its current enrollment numbers". As noted above, the state outlined its methodology and discussed it with CMS and received no indication that it was not following the guidance which had been issued. The emphasis from CMS was on including all children eligible under the Title XIX program as of 2008, and the state did so. The state felt and disclosed that disabled children would fit under BOE 4, particularly since CMS had noted that mapping would not be on a one-to-one basis and New Mexico's MSIS data clearly delineates children by age in BOE 2. When New Mexico submitted its methodology information to CMS, it clearly indicated the specific population groups (categories of eligibility) that were being excluded. The state did not list children under BOE 2 as an excluded group. If CMS found this inappropriate, one can reasonably assume that CMS would have deemed the state's methodology to be unacceptable and not in compliance with its guidance. It issued no such determination, and for good reason. In its intent to reward states for outreach and enrollment efforts, Congress could not have meant to reward states only for increasing enrollment of non-disabled children.

On page 4 of the OIG report, OIG lists in Table 2 the amount of the CHIPRA bonus payment received by the State and the OIG calculated CHIPRA correct bonus payment. The OIG calculation is based on the enrollment level of Medicaid children it deemed to be correct. The state has compared the calculation of the bonus payment for FY 2009 based on state enrollment data submitted to CMS and the OIG enrollment numbers. This calculation is based on Section 2105(a)(3) of the Social Security Act which details the formula for calculating the amount of the CHIPRA bonus payment. This formula has fixed variables for each year of the CHIPRA bonus calculation which are clear in Section 2105(a)(3). It also has inputs that vary by year. These include the enrollment of Medicaid children, percentage growth in per capita national expenditures year over year, and child population percentage growth increase year over year by state.

While we disagree with the OIG assertion that New Mexico was overpaid by CMS, we note further that neither CMS nor the OIG have disclosed what child population growth rates and percentage growth in per capita rates were used for New Mexico in their calculations. In conducting its own recent calculation comparison, New Mexico kept all factors consistent *except* for the differences in Medicaid children enrollment. Thus we have assumed population growth factors as projected by the US census and per capita national expenditure rates increases per the National Health Expenditures index. New Mexico arrived at \$5.3 million in FY09 CHIPRA bonus payment using the state enrollment numbers. This number is very close to the CMS approved amount of \$5.4 million. Using the same formula but using the OIG numbers, the CHIPRA bonus payment amount is \$3.6 million which is significantly



higher than the \$1.9 million listed by the OIG in Table 2 on page 4 of its report. It is not clear from the OIG report whether OIG is using the same variables in the CHIPRA bonus payment calculation as CMS. Clarification on this methodology is needed from the OIG audit team.

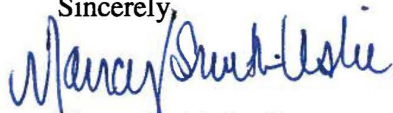
In summary, New Mexico, in consultation with CMS, developed a methodology that it believed met both the statutory and the CMS-defined requirements for the CHIPRA bonus. This methodology centered on matching the logic utilized by CMS to define the baseline child enrollment in New Mexico Medicaid for FY 2007, and utilizing the same methodology and data source (MSIS) to report child enrollments for FY 2009 through FY 2013. This methodology was proposed by New Mexico in its first CHIPRA bonus submission that included supporting documentation, clearly defining the populations that were included and the populations that were excluded. New Mexico discussed these matters with CMS and was given no indication that the methodology was problematic, and we believe that this is because the actions and decisions of New Mexico were consistent with the intent and letter of the law.

In our exit conference with Sean Edwards, Truman Mayfield, and Wayne Southwell, it was noted that they had determined that “most of the elements of New Mexico’s submissions to CMS were in compliance,” however, only a single sentence to this effect is found in the draft report (on page 3). Your staff also noted that the audit team had verified the accuracy of the enrollment data that we had submitted, and also verified the variables that we utilized. There was no meaningful note of the state’s compliance on these key matters in the draft report. Rather than utilize an inflammatory report title, and failing to note New Mexico’s substantial compliance in the cover letter or summary, we ask that you consider revisions to the title, the placement of notes of substantial compliance, and revision of the amount that your office believes CMS paid to the state in error.

In conclusion, New Mexico respectfully requests your reconsideration of findings and that the OIG make appropriate revisions to the draft report. We feel that the draft as written does not tell the full story of the state’s efforts to comply with the CHIPRA law and guidance, and indeed, the title suggests that New Mexico did something inappropriate or illegal in securing the CHIPRA bonus payments. On the contrary, New Mexico acted with full transparency and disclosure in a manner consistent with the federal guidance. We do not believe that the OIG should be making a recommendation for recovery.

We welcome the chance to discuss or meet with you or your management team to discuss this matter further, should that be necessary.

Sincerely,



Nancy Smith-Leslie  
Director, Medical Assistance Division

cc: Brent Earnest, Secretary  
Christopher Collins, General Counsel

Enclosures: copies of two separate email communication

## Smith-Leslie, Nancy, HSD

---

**From:** Her, Paoze Z, HSD  
**Sent:** Friday, August 14, 2015 5:55 PM  
**To:** Sydow, Lucinda, HSD  
**Subject:** FW: NM bonus payment inquiry

FYI.

Thank you.

Paoze

This email and its attachment(s) are confidential. If you receive this message in error, please destroy it and its attachment(s).

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**From:** McGee, Paula, HSD  
**Sent:** Wednesday, December 09, 2009 3:31 PM  
**To:** Sanchez, Jason S., HSD  
**Cc:** Her, Pao Z., HSD; Archuleta, Teena, HSD  
**Subject:** Re: NM bonus payment inquiry

Thanks!!!!

Paula McGee, Healthcare Operations Manager

---

**From:** Sanchez, Jason S., HSD  
**To:** Strauss, Richard (CMS/CMSO)  
**Cc:** Her, Pao Z., HSD; Archuleta, Teena, HSD; McGee, Paula, HSD  
**Sent:** Wed Dec 09 13:29:10 2009  
**Subject:** RE: NM bonus payment inquiry  
Good Afternoon Richard!!!

This e-mail is the follow-up to our conversation this morning that the data and calculation used for FY2009 CHIP Performance Bonus Payment is the same basis of eligibility used for MSIS.

Please let us know if you have any further questions.

Thanks.

---

**From:** Strauss, Richard (CMS/CMSO) [REDACTED]  
**Sent:** Wednesday, December 09, 2009 9:51 AM  
**To:** McGee, Paula, HSD  
**Cc:** Sanchez, Jason S., HSD  
**Subject:** RE: NM bonus payment inquiry

**Office of Inspector General Note** - The deleted text has been redacted because it contained personal information of State agency and program officials.

Paula:

Thanks. I'll look for his email shortly.

[REDACTED]

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**From:** McGee, Paula, HSD [REDACTED]  
**Sent:** Wednesday, December 09, 2009 10:48 AM  
**To:** Strauss, Richard (CMS/CMSO)  
**Cc:** Sanchez, Jason S., HSD  
**Subject:** NM bonus payment inquiry

Richard-- I spoke with Jason Sanchez [REDACTED] yesterday about your bonus payment inquiry. I've asked Jason to provide the response to you today since I'm away from the office. Thanks.

Sincerely,

Paula McGee  
Healthcare Operations Manager

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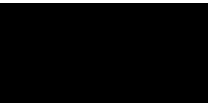
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**Toal, Russell, HSD**

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**From:** Sydow, Lucinda, HSD  
**Sent:** Wednesday, August 12, 2015 6:02 PM  
**To:** Toal, Russell, HSD  
**Subject:** FW: NM - Request for Review of Data Related to Calculation of FY 2011 Performance Bonus Payment-RESPONSE REQUESTED

Documentation e-mail for CHIPRA Bonus.



New Mexico Human Services Department  
Medical Assistance Division  
Bureau Chief, Budget Planning & Reporting Bureau

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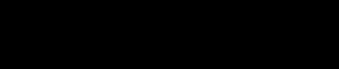
**From:** Archuleta, Teena, HSD  
**Sent:** Wednesday, December 14, 2011 3:01 PM  
**To:** Strauss, Richard (CMS/CMCS); Ryan, Jennifer (CMS/CMCS); Brooks, Bill D. (CMS/CMCHO); Heffron, Dianne E. (CMS/CMCS); Fan, Kristin A. (CMS/CMCS)  
**Cc:** Her, Paoze Z, HSD; McGee, Paula, HSD; Sydow, Lucinda, HSD; Archuleta, Teena, HSD  
**Subject:** RE: NM - Request for Review of Data Related to Calculation of FY 2011 Performance Bonus Payment-RESPONSE REQUESTED

Mr. Strauss,

I have reviewed the methodology that was used to derive our estimate of the Medicaid average monthly enrollment for children for FY 2011 to ensure that the metric was developed appropriately. I am confident that the estimate provided represents our best effort to map our Medicaid Eligibility Report (MER) to the MSIS Basis of Eligibility (BOE) codes. We continue to make every effort to include only individuals who are considered to be eligible as "children" under the provided citations (SHO #09-015, Appendix II).



Economist  
NM HSD/Medical Assistance Division



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**From:** Strauss, Richard (CMS/CMCS) [Redacted]  
**Sent:** Monday, December 12, 2011 9:45 AM  
**To:** Archuleta, Teena, HSD  
**Cc:** Ryan, Jennifer (CMS/CMCS); Brooks, Bill D. (CMS/CMCHO); Strauss, Richard (CMS/CMCS); Heffron, Dianne E. (CMS/CMCS); Fan, Kristin A. (CMS/CMCS)  
**Subject:** NM - Request for Review of Data Related to Calculation of FY 2011 Performance Bonus Payment-RESPONSE REQUESTED

## RESPONSE REQUESTED BY MIDDAY WEDNESDAY, DECEMBER 14, 2011

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

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

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

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

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

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

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

As discussed above, this email is being provided to highlight the logic and basis for provision of the monthly average unduplicated enrollment for children for FY 2011 which is provided by States and is used in the

calculation of the FY 2011 bonus payment. In that regard, we would appreciate your review of the metric for FY 2011 as submitted by your State, in order to ensure that the correct logic and basis was used.

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

Thank you for your assistance on this issue.

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

Richard Strauss  
Senior Financial Advisor  
CMS, CMCS