

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid, CHIP and Survey & Certification

SHO # 10-007
CHIPRA # 18

July 1, 2010

**Re: Increased Federal Matching Funds for Translation
and Interpretation Services under Medicaid and CHIP**

Dear State Medicaid Director:
Dear State Health Official:

This letter is part of a series of guidance to States regarding implementation of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Pub. L. No. 111-3, which was enacted on February 4, 2009. CHIPRA contains provisions that affect both the Children's Health Insurance Program (CHIP) and Medicaid. The purpose of this letter is to provide detailed guidance on the implementation of section 201(b) of CHIPRA, which provides increased administrative funding for translation or interpretation services provided under CHIP and Medicaid in connection with the enrollment, retention, and use of services by children of families for whom English is not their primary language.

This provision of CHIPRA will facilitate States' ability to enroll and provide services to eligible individuals and to meet some of their responsibilities to individuals who are protected from discrimination under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. In addition to the guidance provided in this letter, we have enclosed a series of questions and answers to address implementation of the CHIPRA section 201(b) provision in more detail.

Background

Prior to CHIPRA, States could claim Federal matching funds for translation or interpretation costs as either an administration expense or as a medical assistance-related expense. If the translation or interpretation service was provided by a Medicaid agency employee, a contractor of the Medicaid agency, or by the provider of the medical service using a separate unit or separate employees performing solely translation or interpretation functions, then such costs may be claimed at the standard administrative rate of 50 percent. If, however, the State builds the cost of translation or interpretation services into the rate paid for the covered benefit, then the expenditure is matched at the State's applicable Federal medical assistance percentage (regular FMAP) rate. Under CHIP, these expenditures may be claimed as administrative expenditures at the enhanced CHIP Federal medical assistance percentage (enhanced FMAP) but are subject to the statutory 10 percent cap on administrative expenditures under section 2105(a)(1)(D)(iv) of the Social Security Act (the Act). The expenditures may also be claimed in CHIP as child health assistance either through provider rates or under the enabling services benefit, at the enhanced FMAP under CHIP (and then not subject to the 10 percent cap on administrative expenditures).

States may continue to claim for these costs as either administrative or benefit-related, in either Medicaid or CHIP. However, as explained below, section 201(b) of CHIPRA provides for Federal matching at an increased rate (the increased translation/interpretation match) under either Medicaid or CHIP when States claim translation or interpretation services as administrative costs.

Discussion

Section 201(b) of CHIPRA added subparagraph (E) to section 1903(a)(2) of the Act and amended section 2105(a)(1) of the Act to provide increased Federal funding for translation or interpretation services provided to eligible individuals for whom English is not their primary language. Specifically, CHIPRA provides for the increased translation/interpretation match for administrative expenditures for translation or interpretation services in connection with the “enrollment of, retention of, and use of services” under CHIP and Medicaid. The increased match is available for expenditures for translation or interpretation services for any individual whose primary spoken or written language is not English. This includes individuals whose primary spoken or written language is American Sign Language or Braille, since these languages are considered distinct and separate languages from English.

The increased Federal match for translation or interpretation services differs for Medicaid and CHIP. For Medicaid, the increased match is 75 percent of allowable expenditures. For CHIP, the increased match is 75 percent, or the State’s enhanced FMAP plus 5 percent, whichever is higher. However, the increased translation/interpretation match is only available for eligible expenditures claimed as administration of the Medicaid or CHIP plan, not expenditures claimed for benefits. Therefore, under CHIP, the expenditures that qualify for the increased match are subject to the 10 percent cap on administrative expenditures. Historically, the vast majority of States have not reached their CHIP administrative cap; therefore, CMS does not believe this will be an issue for States.

In order to obtain the increased translation/interpretation match, States and providers may:

- Enter into a contract or employ staff that provide solely translation or interpretation functions and claim related costs as administration; and/or
- Pay for translation or interpretation activities to assist the medical provider of record for the service separately as administrative expenditure, in addition to the rate paid for the medical service itself (subject to managed care payment requirements discussed below).

CMS intends to amend existing Medicaid and CHIP regulations to reflect the CHIPRA increased matching rates for administrative expenditures for translation or interpretation services set forth in CHIPRA section 201(b) and explained in this guidance.

Managed Care

Under Medicaid or CHIP, if translation or interpretation services are provided by a contracted managed care entity (MCE) and funded through a capitated payment from the State, related costs in that rate are not eligible for the increased translation/interpretation match rate because the capitated payment is a benefit expenditure, not an administrative expenditure. This is consistent with Medicaid managed care regulations at 42 CFR 438.812(a), which specify that payments made under a managed care contract are considered “medical assistance services” and are matchable only at the FMAP rate. States have the option, however, to carve out translation or interpretation services from the capitated rate and contract separately for such services as an administrative activity.

Claiming the Increased Translation/Interpretation Match

Activities for which the increased translation/interpretation match is available include translating forms, web sites, and enrollment and outreach materials into languages other than English, and making translation/interpretation services available in order for beneficiaries to enroll in the program, maintain eligibility, and access covered services. However, this list is not intended to be all-inclusive.

Any expenditures claimed by the State as Medicaid/CHIP administration, including translation or interpretation services, must be deemed by the Secretary of the Department of Health and Human Services (HHS) to be “proper and efficient” for the administration of the State plan as specified in section 1903(a)(7) of the Act. CMS Regional and Central Office staff are available to help States determine if proposed translation or interpretation activities would be reimbursable at the increased translation/interpretation administrative match.

In order to assist States in obtaining the additional translation/interpretation matching funds authorized by CHIPRA, CMS has added new line items to the CMS-64.10 and CMS-21 expenditure reporting forms (MBES-CBES) to capture allowable expenditures. States may use these forms to claim the increased translation/interpretation administrative match for allowable expenditures dating back to the February 4, 2009, effective date of the law.

Administrative costs that serve multiple programs or objectives must be allocated based on Office of Management and Budget (OMB) Circular A-87 cost allocation principles. Administrative costs are not codified in the State plan; rather, they are normally charged to Federal grant awards pursuant to the State’s public assistance Cost Allocation Plan (CAP). Federal regulations require that the single State agency have an approved CAP on file with the Division of Cost Allocation in HHS that meets certain regulatory requirements, which are specified at Subpart E of 45 CFR Part 95 and referenced in OMB Circular A-87, Attachment D.

Conclusion

Eliminating language barriers is one key component of a broader strategy for promoting better access to coverage and care. This increased translation/interpretation matching rate is an important new source of Federal support to help States eliminate these barriers. More information is provided in the enclosed set of questions and answers. If you have any additional questions, please contact Ms. Dianne Heffron, Director, Financial Management Group, who may be reached at 410-786-3247.

Sincerely,

/s/

Cindy Mann
Director

Enclosure
cc:

CMS Regional Administrators

CMS Associate Regional Administrators
Division of Medicaid and Children's Health

Ann C. Kohler
NASMD Executive Director
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Debra Miller
Director for Health Policy
Council of State Governments

Christine Evans, M.P.H.
Director, Government Relations
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.
Executive Director
National Academy for State Health Policy

Enclosure

**QUESTIONS & ANSWERS
Increased Administrative Match for
Translation or Interpretation Services**

Question 1. Would all of the following listed below qualify for the increased administrative match on translation or interpretation services?

- Translation and printing costs for applications and all forms associated with the application and renewal process.
- Translation of brochures and other promotional material.
- Translation of commercial, radio, and newspaper advertisements.
- Costs associated with translation services offered by the Medicaid and CHIP hotlines that provide assistance to consumers applying for coverage.
- Salary costs associated with staff that provide application assistance in languages other than English.
- Costs associated with setting up a language line for local Departments of Social Services so they can assist consumers who speak languages other than English.
- Costs of interpretation services to assist providers in delivering care to their non-English speaking patients, and where appropriate, their families.

Answer: Yes. All of the provided examples potentially qualify for reimbursement at the increased translation/interpretation administrative match if they are “proper and efficient” for the administration of the State plan (section 1903(a)(7) of the Social Security Act) and if related costs are allocated based on OMB Circular A-87 cost allocation principles.

For example, costs associated with “setting up a language line for local Departments of Social Services,” as listed above, would be matchable at the increased translation/interpretation match rate if those costs were allocated amongst all programs in accordance with the relative benefits received.

Question 2. Are there other services in addition to those listed above for which the increased translation/interpretation administrative match rate may be claimed?

Answer: Yes. Because this list of activities is not exhaustive, CMS Regional and Central Office staff is available to help States determine, on a case-by-case basis, if proposed translation or interpretation activities are properly allocated in either Medicaid or CHIP and therefore are reimbursable at the increased translation/interpretation administrative match rate.

Question 3. States have a variety of ways they fund translation/interpretation services. Are there any restrictions on the sources of funds States can use for the non-Federal share?

Answer: States may fund the non-Federal share of increased translation or interpretation administrative payments in a variety of ways consistent with existing statutory requirements and Federal regulations at 42 CFR 433.50 through 433.74 regarding funding of the non-Federal share. These regulations apply to both Medicaid and CHIP. Consistent with current practice, CMS will review non-Federal share funding sources on an individual basis using information provided by the State and gathered by CMS Staff. We are available to provide technical assistance as States consider particular arrangements.

Question 4. What documentation do States need to have to support the costs of the translation or interpretation services?

Answer: As always, documentation for administrative activities must clearly demonstrate that the activities directly relate to covered services and support the administration of the Medicaid/CHIP programs. In accordance with statute (Title XIX and XXI of the Act), regulations and the State plan, the State is required to maintain and retain adequate source documentation to support payments.

For example, if a State conducts time studies to capture and allocate the cost of allowable translation activities, the time study forms would need to be retained to document the claimed amounts.

Question 5. Is there a supplemental form that States should complete and submit with the Statement of Expenditures?

Answer: No. CMS has added a new line item to the CMS-64.10 and CMS-21.10 expenditure reporting forms (MBES-CBES) to capture allowable Medicaid and CHIP expenditures claimed at the increased translation/interpretation administrative matching rate.

Question 6. Are the costs for translation or interpretation services included in the CHIP 10 percent administrative cap?

Answer: Yes. The increased translation/interpretation administrative match is only available for CHIP expenditures claimed as administration, which are subject to the statutory 10 percent administrative cap (section 2105(a)(1)(D)(iv) of the Act). However, most States remain well below this cap throughout the year. Furthermore, to the extent there are joint Medicaid/CHIP expenditures (e.g., costs that are shared amongst both programs), the expenditures attributable to Medicaid would not fall under the cap and would therefore not count against the 10 percent limit. We do not anticipate this will be an issue for most States.

Question 7. If the single State agency has an employee on staff devoted to translation or interpretation, can that person's salary now be matched at 75 percent instead of 50 percent Federal financial participation?

Answer: Yes, as long as the personnel costs are properly allocated between: (1) staff time spent on translation activities matchable at the increased translation/interpretation administrative match rate; and (2) staff time spent on all other administrative activities that are only matchable at the regular, 50 percent Medicaid administrative matching rate.

Question 8. Can the costs of a media buy associated with a translation or interpretation effort be claimed at the increased administrative match rate?

Answer: No. Only costs directly related to translation or interpretation services provided in connection with the "enrollment of, retention of, and use of services" under CHIP and Medicaid are eligible for the increased translation/interpretation matching rate. Therefore, the translation of outreach materials, including Public Service Announcements, can be claimed at the increased match rate. However, associated costs, such as media placements or media buys, would only be eligible for reimbursement at the regular 50 percent administrative matching rate under Medicaid, and at the enhanced CHIP FMAP, but subject to the 10 percent cap.

Question 9. Is the increased administrative match available for the portion of a managed care organization's (MCO) monthly capitated payment that represents costs incurred by the MCO for:

- **Printing notices and materials, such as subscriber contracts in multiple languages?**
- **Salary expenses for a full-time translator?**
- **Making oral interpreters available to provider offices?**
- **Making a translation service (e.g., language line) available for customer service or provider office staff?**

Answer: MCO capitation payments are considered expenditures for benefits that are matched in their entirety at the rate for medical or child health assistance (in Medicaid or CHIP, respectively), and therefore cannot be reallocated to be an expenditure for administration of the State plan for purposes of claiming the increased translation/interpretation matching rate. This would not preclude States from carving out the responsibility for translation or interpretation from the scope of a managed care contract and instead contracting for such services separately as an administrative activity.

Question 10. Does Section 201(b) of CHIPRA impact any of the policies outlined in CMS' August 31, 2000, State Medicaid Director letter on Limited English Proficiency?

Answer: Not directly, but the new matching rate will help States and other entities meet some of their obligations, which were a focus of that letter. CMS issued a State Medicaid Director letter on August 31, 2000, that informed States of the policy guidance that the Office for Civil Rights (OCR) had issued on the prohibition against national origin discrimination as it affects persons with Limited English Proficiency (LEP) pursuant to Title VI of the Civil Rights Act of 1964 (Title VI). That guidance and subsequently updated guidance from OCR reminded health and human services agencies and providers who receive Federal financial assistance from the U.S.

Department of Health and Human Services (HHS) of their responsibilities under Title VI and its implementing regulation to provide meaningful access to their programs by LEP persons. All entities that receive Federal Medicaid and or CHIP funds are covered by Title VI, and the guidance is still relevant under CHIPRA.

Recipients of Federal funds also have an obligation to communicate effectively with individuals with impaired hearing, vision, or speech under Section 504 of the Rehabilitation Act of 1973. The new increased matching rate for translation or interpretation services will provide additional Federal support to States and other entities in meeting these responsibilities.

Question 11: Is the increased match available for translation or interpretation services for individuals with LEP and for sign language and Braille services?

Answer: Yes. Section 201(b) of CHIPRA provides for increased Federal funding for translation or interpretation services for persons for whom English is not their primary language. CMS has determined that this increased funding level includes, but is not limited to, translation or interpretation services for LEP individuals and also for individuals whose primary spoken or written language is American Sign Language or Braille, since these languages are considered distinct and separate languages from English. States will not be required to differentiate translation and interpretation services provided to individuals with LEP from those provided to individuals for whom English is not their primary language.