SMDL #01-020
July 3, 2001

Dear State Medicaid Directors and State Health Officials:

This letter is to inform you of our policy regarding timely filing of claims at amended Federal matching rates under the Medicaid and State Children's Health Insurance (SCHIP) programs in light of various Departmental Appeals Board (DAB) decisions and questions on this issue. This situation arises when a State timely files a claim for Federal financial participation (FFP) at one matching rate (e.g., Federal medical assistance percentage), and much later decides that all or a portion of that claim could have been claimed appropriately at a higher rate (e.g., the 90 percent family planning matching rate). The State files a claim for the higher match rate beyond the 2-year timely claims filing limits in Section 1132 of the Social Security Act and the implementing regulations at 45 CFR, Part 95, Subpart A. The Departmental Appeals Board (DAB) ruled in Decision 1655 (enclosed) that this second claim "constituted a new and separate request for FFP," and concluded that the second claim would not be considered timely filed and therefore is unallowable.

Since the DAB is the final administrative decision body of the Department and is interpreting for the Secretary Section 1132 of the Social Security Act and the implementing Departmental regulations at 45 CFR, Part 95, Subpart A, the DAB decision is applicable to the Medicaid and SCHIP programs. Therefore, when a State files a claim timely at one Federal matching rate and later determines that it could have claimed a higher Federal matching rate, any new claim at the higher rate must itself be filed timely under the law and regulations (unless it meets one of the timely claims filing exceptions specified in 45 CFR 95.19). If the new claim is not timely filed and is not within a specified exception, it is unallowable. Note that such a claim does not constitute an adjustment to prior year costs as defined in the timely claim filing regulation. This policy is applicable to all claims filed on or after the date of this letter.

If you have any questions please contact your Regional Office.

Sincerely,

/s/
Penny R. Thompson
Acting Director

Enclosure

cc:
CMS Regional Administrators

CMS Associate Regional Administrators
for Medicaid and State Operations

Lee Partridge
Director, Health Policy Unit
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors' Association

Brent Ewig
Association of State and Territorial Health Officials

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: New Jersey Department of Human Services DATE: April 20, 1998
Docket No. A-98-3
Decision No. 1655

DECISION

The New Jersey Department of Human Services (New Jersey) appealed a determination by the Administration for Children and Families (ACF) disallowing $260,450 in federal financial participation (FFP) claimed by New Jersey under title IV-D of the Social Security Act (Act). The funds at issue represent the difference between the federal share of automated child support enforcement systems (ACSES) costs at the 66% rate of FFP and at an enhanced 90% rate. ACF based the disallowance on the ground that New Jersey did not submit the request for the enhanced FFP rate within the two-year time limit in 45 C.F.R. § 95.7, implementing section 1132 of the Act.

Based on the following analysis, we find that New Jersey's request for the enhanced FFP rate was a claim that was not filed within the two-year period required by statute and did not meet any of the prescribed exceptions to the two-year limitation. Therefore, we sustain this disallowance in full.

Statutory and Regulatory Background

Section 1132(a) of the Act and 45 C.F.R. § 95.7 prohibit the payment of FFP for any expenditure for which no claim has been filed within two years of the end of the calendar quarter in which the expenditure was incurred. The language of the statute reads:

> [A]ny claim by a State for payment with respect to an expenditure made during any calendar quarter by the State -- (1) in carrying out a State plan approved under title . . . IV . . . of this Act . . . * * * shall be filed (in such form and manner as the Secretary shall by regulations prescribe) within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this Act on account of any such expenditure if the claim therefor is not made within such two-year period. . . .

Tracking the statute's language, 45 C.F.R. § 95.7 reads: "[W]e will pay a State for a State agency expenditure . . . only if the State files a claim with us for that expenditure within 2 years after the calendar quarter in which the State agency made the expenditure." In enacting the two-year filing limitation, Congress addressed the Department of Health and Human Services' need to plan and administer effectively the budgets for Social Security Act programs by controlling states' ability to make delayed claims. See Connecticut v. Schweiker, 684 F.2d 979, 982 (D.C. Cir. 1982), cert. denied, 459 U.S. 1207 (1983); see also New York State Dept. Of Social Services, DAB No. 521 (1984).

Section 1132 of the Act and 45 C.F.R. § 95.19 provide several exceptions to the two-year limit for filing claims. The exceptions include: claims for adjustments to prior year costs; claims resulting from audit exceptions or from court-ordered retroactive payments; and any claim for which the Secretary of the Department of Health and Human Services decides there was "good cause" for the late filing.

Definitions relating to the filing limitation are set forth at 45 C.F.R. § 95.4. The regulation defines the term "claim" as "a request for Federal financial participation in the manner and format required by our program regulations, and instructions or directives issued thereunder." "Federal financial participation" in turn is defined as "the Federal government's share of an expenditure made by a State agency under any of the programs listed in § 95.1."

The costs at issue in this case were claimed under the Child Support and Establishment of Paternity Program established under title IV-D of the Act (42 U.S.C. §§ 651-669; sections 451-469 of the Act). The title IV-D program is a cooperative federal-state program that was enacted for the purposes of: locating absent parents; enforcing their support obligations; establishing paternity; obtaining child and spousal support; and assuring that assistance in obtaining support be available to all children for whom such assistance is requested. See section 451 of the Act. The program is administered by the Office of Child Support Enforcement in ACF.

In order to receive grant funding in the form of FFP, a state must operate its title IV-D program in accordance with a federally approved state plan and applicable federal regulations. During the period in which the expenditures at issue were incurred, sections 452, 454 and 455 of the Act and 45 C.F.R. Part 307 set forth requirements for statewide automated data processing and information retrieval systems to carry out a state's child support enforcement plan. Computerized support enforcement systems were to be designed to "[c]ontrol, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan." 45 C.F.R. § 307.10(b). Further, the regulations provided for the availability of FFP at the 90% rate for hardware and proprietary software costs for states that maintained an approved computerized support enforcement system. 45 C.F.R. § 307.30(b).

The procedures for filing claims under title IV-D are set forth in the grant administration regulations at 45 C.F.R. Part 95 and in program guidelines.

Factual Background

The New Jersey Division of Family Development (DFD) of the Department of Human Services administers and supervises New Jersey's title IV-D Child Support Enforcement Program. The DFD developed and operates New Jersey's ACSES. On March 1, 1995, the DFD filed a quarterly report of expenditures and estimates (QER) (OCSE-131) for the quarter ending September 30, 1994. Notwithstanding prior notification from ACF that its ACSES operational costs could be claimed at an enhanced rate,[1] New Jersey claimed its ACSES hardware and proprietary software operating costs as a current expenditure, included in line 7 of the report, "Other ADP Expenditures (at the regular FFP rate)." Similarly, New Jersey included the ACSES hardware and proprietary software costs for the quarters ending December 31, 1994 and March 31, 1995 on line 7 of the QERs dated April 26, 1995 and August 10, 1995, respectively. Accordingly, in each instance, New Jersey specifically claimed, through its QER filings, FFP at the regular 66% rate and was paid at that rate.

The 1995 federal fiscal year costs had originally been determined through use of billing rates based on budgeted expenses, but were subsequently recalculated using actual expenditures for the year. Based on the recalculations, New Jersey submitted an adjustment of the gross expenditures for the ACSES costs for the three quarters at issue on line 7 of the revised QER for the quarter ended June 30, 1996, which was dated December 16, 1996. While the revised QER was filed more than two years after the end of the September 30, 1994 quarter in which the expenditures were made, the claim was allowed under the adjustment to prior year costs exception to the two-year filing requirement. In the revised filing, New Jersey again specifically claimed FFP for the ACSES costs at the regular, 66% rate.

Thereafter, New Jersey determined what portions of the gross costs reflected in the earlier QERs represented expenditures for ACSES hardware and proprietary software that were eligible for the enhanced, 90% FFP rate. In its QER for the quarter ending December 31, 1996, dated May 28, 1997, New Jersey submitted adjustments to the prior quarters to reflect the enhanced FFP rate for the ACSES

[1] As discussed more fully in the analysis section of this decision, ACF informed New Jersey by letter dated October 4, 1994, that the ACSES had achieved conditional certification and that the systems operational costs could be claimed at the enhanced FFP rate effective July 1, 1994 until October 1, 1995.

costs. These adjustments resulted in a net increase in FFP sought of $260,450 for the three quarters at issue. The specific amounts of the claims are shown below:

Quarter Ended	FFP at 66%	FFP at 90%	Difference in FFP Sought
9/30/94	$267,166	$364,317	$97,151
12/31/94	$219,576	$299,422	$79,846
3/31/95	$229,497	$312,950	$83,453
TOTAL	$716,239	$976,689	$260,450

Issues

As discussed above, under section 1132 of the Act and 45 C.F.R. § 95.7, claims for FFP for expenditures must be filed within two years of the end of the calendar quarter in which the expenditures were incurred. The expenditures for which New Jersey claimed the enhanced FFP rate were incurred during the quarters ending September 30, 1994, December 31, 1994, and March 31, 1995. Therefore, the latest dates for claiming FFP for those expenditures would have been September 30, 1996, December 31, 1996, and March 31, 1997, respectively.

New Jersey did not rely on any of the exceptions to the two-year filing limitation in section 1132 of the Act and 45 C.F.R. § 95.19 to support its appeal. [2] Rather, New Jersey submitted that the May 28, 1997 request for the enhanced FFP rate merely corrected the FFP rate in its previous, timely filed claims and did not add discrete cost items not found in the original claims. Accordingly, New Jersey posited, the May 28, 1997 claim was not a "separate claim" barred by the two-year filing

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[2] New Jersey stated in its October 3, 1997 notice of appeal that it was entitled to receive the enhanced FFP based on the "adjustment to prior year costs" exception to the two-year filing limitation. New Jersey did not pursue this contention in its initial brief, and explicitly stated in its reply brief that it did not argue that its claim should be allowed based on the exception. Under 45 C.F.R. § 95.4, an "adjustment to prior year costs" is defined as an "adjustment in the amount of a particular cost item that was previously claimed under an interim rate concept and for which it is later determined that the cost is greater or less than that originally claimed." In light of the regulatory definition of "adjustment to prior year costs," the exception would not apply in this case because the enhanced FFP claims were not based on adjustments to the amount of the cost. See, e.g., New Jersey Dept. Of Human Services, DAB No. 1562 (1996).

limitation, but a "corrective claim". In support of its argument, New Jersey principally relied on language found in California Dept. Of Health Services, DAB No. 1472 (1994). New Jersey submitted that that decision held that when a state files a timely claim for an expenditure and, after two years, requests additional funds based on a corrected rate of FFP for the same expenditure in the previous claim, the second submission is not time-barred.

New Jersey also argued that in Maryland Dept. of Human Resources, DAB No. 483 (1983), and Massachusetts Dept. Of Public Welfare, DAB No. 796 (1986), the Board distinguished claims involving adjustments of "previously understated cost items," which a state may pursue beyond the two-year filing limitation (as in Maryland), from claims involving "separate cost items," which are subject to the filing limitation (as in Massachusetts). New Jersey asserted that the distinction flows from the wording of 45 C.F.R. § 95.7, which provides that the agency "will pay a State for a State agency expenditure ... only if the State files a claim with us for that expenditure within 2 years after the calendar quarter in which the State agency made the expenditure." (Emphasis added.) New Jersey contended that because there was no increase in total expenditures submitted, but merely an increase in the amount of FFP sought, the filing limitation should not apply. Moreover, New Jersey submitted, ACF's position that the claims for enhanced FFP were untimely because the departmental forms on which the FFP correction request were stated was filed more than two years after the expenditures in question "almost literally elevates form over substance." See New Jersey Reply Br. at 2.

In addition, New Jersey wrote that the purpose of the two-year filing limitation would not be served by denying the claim in this case. The intent of the limitation was to prevent states from submitting expenditures many years after they were made or transferring claims from one federal program to another. New Jersey submitted that it neither claimed new expenditures many years after they were incurred nor transferred claims from one program to another.

New Jersey also contended that the revised FFP request was not the type of claim that would impede ACF budget planning. Correspondence in the record shows that ACF knew that New Jersey could claim the ACSES costs at the enhanced rate, New Jersey argued. Specifically, in a letter dated October 4, 1994, the Director of the ACF Office of Information Systems Management (OISM) wrote to New Jersey that its ACSES had achieved conditional certification and that the systems operational costs "may be claimed at an enhanced rate effective July 1, 1994 until October 1, 1995." Also, on May 24, 1995, the Acting Director of the OISM wrote to New Jersey that, based on estimated costs submitted by New Jersey, ACF would approve $1,470,128 in ACSES operational costs at the enhanced FFP rate for the period July 1, 1994, through September 30, 1995. Accordingly, New Jersey argued, the request for the enhanced rate could not have made it difficult for ACF to plan its budget because ACF knew the enhanced FFP claim likely would be made.

Analysis

New Jersey's contentions before us are not persuasive, and its reliance on the referenced Board decisions is misplaced. As noted above, the regulations define "claim" to mean "a request for Federal financial participation in the manner and format required by program regulations, and instructions or directives issued thereunder." Further, section 1132 of the Act states that claims must be made "in such form and manner as the Secretary shall by regulation prescribe." By regulation, the Secretary has prescribed that claims be made using the formats required through program instructions or directives. 45 C.F.R. § 95.4. Accordingly, an evaluation of how costs are claimed on departmental forms does not, as New Jersey argued, elevate form over substance, but is integral to determining whether, under applicable legal standards, a claim has been made.

To receive FFP under the title IV-D program, New Jersey submitted claim information using a specific format, Form OCSE-131, Child Support Enforcement Program Financial Report Part 1: Quarterly Report of Expenditures and Estimates. Of particular importance in this case is the fact that the form requires a state to list separately costs for which it seeks FFP at the regular rate, and costs for which it seeks FFP at the enhanced rate. In addition, the form specifies the types of costs that are eligible for the enhanced FFP rate.

Applying the definition of the term "claim" and the QER format requirements to the facts presented in this case, we cannot accept New Jersey's contentions that the May 28, 1997 request for enhanced FFP was not a new claim barred by the two-year filing limitation, but was merely "corrective" of timely submitted claims. Although the information furnished with the May 28, 1997 claim may not have added discrete costs to the gross underlying expenses that were the bases of New Jersey's earlier, timely claims, the May 1997 request for additional FFP nevertheless constituted a new and separate request for FFP in the manner and format required by program directives. New Jersey had not previously requested FFP at the enhanced rate by so indicating on the form. Entitlement to an enhanced rate is not automatic. Regulatory and other conditions apply, so it is reasonable for ACF to require that a claim indicate the rate of FFP which a state is seeking.

In sum, the May 28, 1997 request for the ACSES costs at issue represented the first filing in which New Jersey sought enhanced FFP for the ACSES costs in the manner prescribed by the Secretary's instructions, resulting in a new claim for $260,450 in FFP in addition to the amounts previously sought and paid. As New Jersey itself acknowledged, the earlier claims explicitly requested FFP amounts calculated by applying the regular percentage rate, under the format guidelines. Thus, there is no basis in the governing definition of the term "claim" and the QER instructions to justify considering the May 1997 request as anything other than a new, separate claim, itself subject to the two-year filing limitation.

Further, we find that New Jersey's reliance on the California decision is misplaced. In California, the Board upheld a Health Care Financing Administration (HCFA) title XIX disallowance on the ground that the claim was untimely under section 1132 of the Act. The claimed amount represented the federal share of fringe costs (vacation, sick leave, etc.) for state licensing and certification employees that had been inadvertently omitted by California's QER processing system, resulting in federal costs being under-reported for three quarters. Following the discovery of the error, California submitted revisions to the QERs, and HCFA denied the claim for one of the quarters under section 1132 of the Act because it was filed after the two-year deadline. The Board held in California that the "adjustments to prior year costs" exception of section 1132 of the Act and 45 C.F.R. § 95.4, on which the State relied, was not applicable.

In California, the Board also addressed a contention by California that "because HCFA had permitted it to claim additional FFP beyond the two-year limit in an instance when a lower percentage of FFP had been erroneously claimed, the fringe claims should be similarly exempted from the limit." After stating that it was not clear from California's description exactly what action HCFA took in the earlier case, the Board rejected the contention that the case then before it was analogous to the HCFA action described in California's brief. Thus, the question presented here was not before the Board in California.[3]

Moreover, in California we rejected an argument analogous to that presented by New Jersey, that the fringe claims were not "new" but were "part and parcel" of California's timely claims for the employee base salaries, which had inadvertently excluded fringes. Specifically, the Board concluded that section 1132(a) of the Act "does not distinguish 'new' from 'old' claims, but merely imposes a deadline for filing claims." Indeed, in Colorado Dept. Of Social Services, DAB No. 1239 (1991), the Board upheld the disallowance of untimely claims even where the claims involved the same types of expenditures previously claimed for the same time period (claim for increased administrative costs based on data from revised time reporting system was not an adjustment to a prior year cost). Accordingly, we find New Jersey's reliance on the California decision to be misplaced.

Additionally, the Maryland decision does not support New Jersey's appeal. In Maryland, an audit found that timely claims for co-operative agreement costs under title IV-D of the Act contained clerical errors, and a net credit was due the State. Maryland thereafter made an increasing adjustment for the credit on a QER filed

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[3] Following the submission of New Jersey's Reply Brief, Counsel for ACF contacted a Board staff attorney to inquire whether ACF could file a response to New Jersey's characterization of the California case in the Reply Brief. ACF Counsel stated that ACF would not seek to file a written response if the Board were to review the briefs submitted in California. Since we reject New Jersey's argument concerning California based on the language in the decision, we see no need to analyze the briefs or to permit arguments based on those briefs.

more than two years after the expenditures had been incurred. The Director of the Office of Child Support Enforcement (OCSE) found that Maryland's claim was not barred by the two-year filing restriction at issue in this case because it involved the audit exception of 45 C.F.R. § 95.19(b). Nevertheless, OCSE determined that the claim was barred by a separate, appropriations statute that prohibited the use of funds to reimburse expenditures unless claims were filed within one year of the fiscal year in which the expenditure occurred.

Thus, Maryland was not decided on the basis of the filing limitation in this case, but a separate filing limitation imposed by congressional appropriations legislation. The Board did not evaluate whether the request for the credit in Maryland constituted a new and separate claim within the meaning of the Secretary's regulations involving section 1132(a) of the Act.[4] Moreover, the appeal did not involve a state submitting a timely claim for costs at the regular FFP rate, even though they were plainly eligible for an enhanced payment rate, and only later seeking to correct its own oversight by making a specific claim for the same costs at the enhanced FFP rate. Accordingly, we find New Jersey's reliance on the Maryland action misplaced.

We also disagree with New Jersey that the intent of the filing limitation would not be served by denying New Jersey's claim. The rationale for the two-year filing limitation of section 1132 of the Act has been examined in numerous previous cases. See, e.g., Connecticut v. Schweiker, 684 F.2d at 982; New York State Dept. Of Social Services, DAB No. 521. The legislative history of section 1132 indicates that the purpose of the legislation was to prevent states from claiming FFP, or transferring claims for FFP from one program to another, many years after expenditures were made and without any time limit. Such delayed claims make it difficult for the Department of Health and Human Services to plan its budget; claims for millions of dollars for expenditures in years long gone could turn up at any time. Further, the exceptions to the filing limitations were not intended to cover a routine situation where a state simply did not get around to getting its data together in time to file a claim within the deadline. Rather, the exceptions are to address cases where it would be patently unfair to disallow a claim merely because of the passage of time.

We conclude that the underlying purposes of the filing requirement described in earlier cases apply with equal force here. The letters dated October 1994, and May 1995, show that New Jersey was informed that it could claim the ACSES costs at the 90% rate in sufficient time for New Jersey to submit its enhanced FFP claims on a current basis. The correspondence also shows that ACF was aware that New Jersey was authorized to submit requests for enhanced FFP before and during the periods when New Jersey filed its timely claims for the quarters at issue. The letters do not, however, show that ACF knew (after New Jersey failed to request the enhanced FFP in its timely claims), that New Jersey would meet the conditions of approval and at

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[4] We note, however, that in finding that the audit exception applied, the OCSE Director treated the claim as untimely under 45 C.F.R. § 95.10.

some indeterminate point in the future claim the additional FFP amounts.[5] Further, even if ACF suspected that New Jersey might subsequently seek to revise the FFP rate on its timely claims, the delay and lack of certainty associated with such a potential, revised claim would indeed make it difficult for ACF to plan its budgets in the future because, under New Jersey's theory supporting this appeal, the revised claim could turn up at any time.

Finally, we note that 45 C.F.R. §§ 95.19 and 95.22 provide for an exception to the two-year filing limitation for good cause, defined as "lateness due to circumstances beyond the State's control."[6] Section 95.22 states, however, that "[c]ircumstances beyond the State's control do not include neglect or administrative inadequacy on the part of the State, State agencies, the State legislature or any of their offices, officers, or employees." The record in this case shows that the systems necessary to ascertain the enhanced FFP amounts for the ACSES costs and to file timely requests for enhanced FFP were within the sole control of New Jersey. No justification was furnished to explain the delay in the request for the enhanced FFP rate. It is this type of casual approach to the submission of claims for FFP that the limitation in the statute and its implementing regulations was designed to prevent.

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[5] The October 4, 1994 letter, stating that New Jersey had "achieved conditional certification of ACSES" and that the ACSES costs could be claimed at the enhanced rate, qualified the approval as follows:

> To remain certified, the State must also maintain compliance with the regulations implementing Public Law 96-265 and claim costs in accordance with an approved cost allocation plan as required by 45 Code of Federal Regulations, Part 95, Subpart E.

Indeed, the record does not show whether New Jersey in fact complied with 45 C.F.R. § 95.507(b)(4) by revising its cost allocation plan to include the methodology used to allocate the ACSES costs to the 90% rate. While the record indicates that New Jersey allocated the costs based on data furnished by New Jersey's Office of Telecommunications and Information Systems, New Jersey did not specifically allege that it had obtained approval for the allocation methodology used.

[6] In the September 9, 1997 disallowance notification, ACF stated that it saw no reason to allow the May 28, 1997 claim under the good cause exception.

Conclusion

Based on the above analysis, we conclude that New Jersey's request for the enhanced FFP rate was a claim that was not filed within the two-year period required by section 1132 of the Act and 45 C.F.R. § 95.7. Accordingly, we sustain the disallowance.

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Cecilia Sparks Ford

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Donald F. Garrett

_____
Judith A. Ballard
Presiding Board Member