UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, STATE OF ILLINOIS, STATE OF MARYLAND, STATE OF WASHINGTON, Plaintiffs, - against - UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, Defendant.	ECF CASE 07-CV-8621 (PAC) (RLE) **DECLARATION OF SUSAN J. TUCKER**

SUSAN J. TUCKER hereby declares the following to be true and correct under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. The facts contained in this declaration are derived from my own knowledge, the records of the Maryland Department of Health and Mental Hygiene ("DHMH") kept in the ordinary course of its operations, and information provided to me by DHMH personnel.

2. I am the Executive Director of the Office of Health Services, Health Care Financing, DHMH. DHMH is the single state agency designated to administer the state Medicaid plan, Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*, and also administers Maryland's State Children's Health Insurance Program, Title XXI of the Social Security Act, 42 U.S.C. §§ 1397aa-jj ("SCHIP"), which is a portion of the Maryland Children's Health Program ("MCHP"). I have been employed by DHMH in various capacities relating to public health programs for approximately twenty years.

3. Since becoming Executive Director of the Office of Health Services in July, 2001, I have been responsible for proposing policy initiatives and developing new programs, interpreting and implementing Maryland's public health assistance policies in connection with both Medicaid and SCHIP, and promulgating regulations that ensure compliance with state and federal law. I have oversight responsibility for Maryland's submissions to and communications with the Centers for Medicare and Medicaid Services ("CMS"), which is the component of the United States Department of Health & Human Services ("HHS") that approves state Medicaid and SCHIP plans.

MARYLAND'S SCHIP PROGRAM

4. Beginning July 1, 1998, Maryland expanded access to health insurance under the terms specified in SCHIP under Title XXI of the Social Security Act, through creation of MCHP.[1] Maryland's General Assembly authorized DHMH to establish the program by enacting Maryland Laws of 1998, ch. 110. Maryland implemented MCHP as a Medicaid expansion program, providing access to Medicaid services for eligible children under age 19 with family income too high for SOBRA Medicaid coverage but at or below 200 percent of the federal poverty level ("FPL"). Federal financial participation for the SCHIP children in MCHP is at the enhanced SCHIP rate.

[1] In addition to SCHIP children, MCHP includes (at the regular 50 percent match rate) pregnant women with income at or below 200 percent FPL, and children added to the Medicaid program by the Sixth Omnibus Budget Reconciliation of 1986 ("SOBRA") whose family incomes are too high for Temporary Assistance for Needy Families and no greater than 185 percent FPL for children younger than age 1; no greater than 133 percent FPL for children ages 1-5; and 100 percent FPL for children ages 6 through 18. For purposes of this declaration and the above-captioned action, MCHP will be used to refer to the eligibility groups with family incomes too high for SOBRA whose health care assistance is authorized by SCHIP.

5. Effective July 1, 2001, Maryland implemented a separate child health program called "MCHP Premium." This expansion was authorized by Maryland Laws of 2000, ch. 16. For a modest monthly payment, MCHP Premium provides access to health insurance for children with family income above 200 percent but at or below 300 percent FPL. The premiums were set at two flat monthly rates, one for families with income above 200 percent but at or below 250 percent FPL, and another for families with income above 250 percent but at or below 300 percent of FPL. The rates were calculated as 2 percent of family income for a 2-person household at the base standard for each subgroup (*i.e.*, 200 percent and 250 percent FPL, respectively), and continue to be recalculated on this basis annually at the time FPL figures are updated. MCHP Premium coverage was offered through two enrollment options: comprehensive coverage through a qualifying employer-sponsored health benefit plan (for which Maryland contributed premium assistance), or "Medicaid look-alike" coverage through HealthChoice, Maryland's Medicaid managed care waiver program.

6. The Maryland legislature amended MCHP most recently in 2003. Maryland Laws of 2003, ch. 203, § 1, codified at Maryland Code Ann. Health-General Article § 15-301 *et seq.* The legislation adjusted enrollment in the MCHP and MCHP Premium programs on a temporary basis. Effective July 1, 2003, the base income level for MCHP Premium was reduced from 200 percent FPL to 185 percent FPL, and children with family income above 185 percent FPL but at or below 200 percent FPL who applied for health benefits began to be enrolled in MCHP Premium at a cost equal to 2 percent of the income for a family of two at 185 percent of FPL. By September 1, 2003, children in the income range above 185 percent FPL and no greater than 200 percent FPL who were currently enrolled in the free Medicaid expansion program were

moved to Medicaid Premium. In addition, the General Assembly temporarily froze enrollment in MCHP Premium for children with family incomes above 200 percent FPL but not greater than 300 percent FPL effective July 1, 2003. The 2003 legislation also permanently eliminated the employer-sponsored enrollment option for MCHP Premium, with the result that all MCHP coverage was provided through HealthChoice, Maryland's Medicaid managed care program (conducted pursuant to a § 1115 demonstration waiver from CMS).

7. Effective July 1, 2004, based on an expiration date included in the 2003 legislation, children in families with income above 185 percent FPL but at or below 200 percent FPL were moved back into the free MCHP Medicaid expansion, and the base income standard for Medicaid Premium was changed back from 185 percent FPL to 200 percent FPL. Also effective July 1, 2004, the enrollment freeze for MCHP Premium applicants with incomes greater than 200 percent FPL but no greater than 300 percent FPL was lifted.

8. Effective June 1, 2007, Maryland amended its State Medicaid Plan to change MCHP Premium (for children with family income above 200 percent of FPL but at or below 300 percent of FPL) from a separate SCHIP plan to a Medicaid expansion program, using income disregards under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIV). Approved SPA attached as Exhibit ("Ex.") 1. A corresponding modification to the HealthChoice § 1115 waiver agreement was approved May 30, 2007. Approval letter attached as Ex. 2. CMS strongly recommended this amendment as a measure to protect MCHP Premium enrollees from an expected shortfall in the annual SCHIP allotment. This amendment did not require action by the state legislature. This moderate-income population was moved from a stand-alone SCHIP program to the Medicaid

expansion, with no change to the premium requirements, pursuant to the federal Deficit Reduction Act of 2005, sections 6041 and 6042 (codified at U.S.C. § 1396oA(a)), permitting cost sharing for certain groups under the Medicaid State Plan.

9. As of January, 2008, Maryland serves 82,703 children with family incomes too high for Medicaid but no greater than 185 percent FPL, and 9, 449 children with family incomes above 185 percent FPL but no more than 200 percent FPL, in the free MCHP program. As of March, 2008, 8,322 children with family incomes above 200 percent but no more than 250 percent FPL and 3,266 children with family incomes above 250 percent FPL but no more than 300 percent FPL are enrolled in MCHP Premium.

10. Maryland operated its SCHIP program as a Medicaid expansion program from July 1, 1998 through June 30, 2001, as a combination program from July 1, 2001 through May 31, 2007, and as a Medicaid expansion program from June 1, 2007 forward, pursuant to the authority of Title XXI. *See* 42 CFR 457.10 (definition of "SCHIP Program" to include Medicaid expansion program, separate SCHIP program, and combination program).

MCHP CROWD-OUT STRATEGIES

11. As required by SCHIP regulations promulgated in 2001, Maryland has included features in its MCHP enrollment requirements to prevent MCHP from substituting for available private insurance as a condition for extending MCHP Premium coverage to children with family incomes greater than 250 percent FPL. Most obviously, an applicant, or an enrollee facing annual redetermination, is determined not to be eligible for MCHP or MCHP Premium if he or she has benefits under an employer sponsored health benefit plan with dependent coverage or under health insurance coverage. Children of state employees who have access to dependent coverage

under a state health benefit plan are likewise not eligible, unless the state's contribution toward the cost of dependent coverage for the child is $10 per month or less. Finally, Maryland imposes a six-month waiting period prior to MCHP enrollment for applicants who voluntarily terminated coverage under an employer sponsored health benefit plan. State law sets forth limited circumstances under which termination of coverage is not considered voluntary. Md. Code Ann., Health-General Article, § 15-302(b)(2).

12. Maryland screens MCHP applicants, as well as enrollees at annual or other redeterminations, to ensure that they have not voluntarily dropped private coverage within the past six months, that they are not covered dependents under a family member's employer sponsored health benefit plan, and that they do not have access to subsidized dependent coverage through the state employment of a family member. In addition, Maryland monitors enrollees on a monthly basis, using the services of a third-party liability contractor, to verify that children receiving MCHP services are not subject to employer-sponsored coverage or health insurance coverage.

13. Maryland, through the Maryland Health Care Commission, monitors the actual incidence of crowd-out, assessing the extent to which crowd-out is experienced. In the six years during which the Commission has been monitoring crowd-out and reporting to OHS, Maryland has never detected a problem necessitating additional preventive strategies.

14. As noted in paragraphs 5 and 6 above, Maryland offered an employer sponsored insurance option (*i.e.*, furnishing MCHP services through dependent coverage under a family member's employer health benefit plan) to MCHP Premium enrollees from July 1, 2001 through June 30, 2003. Because this enrollment option contributed payments to private health insurance plans, rather than substituting public coverage, it may be considered a deterrent to

crowd-out. Interestingly, although CMS urged Maryland to amend MCHP in 2007 based on an anticipated shortfall in the federal allotment, CMS did not recommend that Maryland revive the employer sponsored insurance option, or otherwise strengthen crowd-out measures, either in 2007 or at any other time prior to August 17, 2007.

CMS' AUGUST 17, 2007 LETTER

15. On August 17, 2007, CMS issued a letter to administrators of state SCHIP programs requiring states to implement five crowd-out procedures and make three assurances as a condition for enrolling children with family incomes above 250 percent FPL. Am. Compl. Ex. B ("August 17 letter"). Specifically, to ensure that SCHIP expansion did not replace existing private health insurance coverage, CMS required a state to (1) impose a one-year waiting period for SCHIP enrollment after voluntary termination of private coverage; (2) ensure that the cost sharing imposed on SCHIP enrollees was not lower than the cost of comparable private coverage by more than one percent of family income, unless SCHIP cost sharing was already set at the five-percent statutory maximum; (3) monitor health insurance status, including coverage furnished by a non-custodial parent, at the time of SCHIP application; (4) verify insurance status for enrollees, including coverage furnished by a non-custodial parent, through insurance databases; and prevent employers from changing health benefits available for employees' dependents in ways that would encourage a shift to SCHIP coverage. August 17 letter at 1-2. In addition, each state that seeks to cover moderate-income children must assure CMS that (1) at least 95 percent of children in the State with family income less than 200 percent FPL who are eligible for Medicaid or SCHIP are enrolled; (2) the number of targeted low-income children covered by employer-sponsored health benefit plans has not decreased by more than two percent over the preceding five years; and (3) the

state is current with all SCHIP and Medicaid reporting requirements and also reports data relating to the crowd-out requirements on a monthly basis. August 17 letter at 2. The letter required states (like Maryland) with approved SCHIP expansions for children with family incomes exceeding 250 percent FPL to adopt the crowd-out processes and assurances within 12 months, by means of amendments to the SCHIP state plan or to the § 1115 demonstration waiver agreement depending on the state's method for delivering SCHIP services. August 17 letter at 2.

16. A letter issued to SCHIP Directors on January 28, 2008 reiterated that the requirements in the August 17 letter were intended to be effective August 16, 2008 for states that currently provide coverage to children with family incomes greater than 250 percent FPL, and further stated that the restriction on enrollment of moderate-income children "was specifically designed to apply to new applicants, rather than to individuals currently served by the program." CMS Letter of January 28, 2008, attached as Ex. 3. Although this language implies that existing moderate-income enrollees would remain unaffected by the August 17, 2007 restrictions, DHMH's telephone contacts with CMS prior to the January 28 letter specified that, in addition to new applicants, the restrictions would be applicable to current enrollees at the time of annual redetermination following the August 16, 2008 effective date.

17. Through informal telephone communications between August 17, 2007 and the present, CMS has consistently indicated that the provisions of the August 17 letter will affect eligibility of MCHP Premium children with family incomes above 250 percent FPL beginning August 17, 2008. CMS has expressed interest in discussing how Maryland plans to comply, but has left no doubt that compliance is required for continued eligibility of this income group.

THE AUGUST 17, 2007 LETTER HARMS MARYLAND

Crowd-out strategies

18. In order to continue to enroll in MCHP Premium children with family incomes between 250 percent FPL and 300 percent FPL after August 16, 2008, and in order to avoid disenrolling current MCHP Premium participants in that income range who are subject to annual redetermination after August 16, 2008, Maryland must make three crowd-out reforms. First, Maryland must require children who have lost private health insurance coverage due to voluntary termination—including, for example, children whose parents can no longer afford dependent coverage through their employer sponsored health benefit plan because of a rate increase—to wait twelve months to enroll in MCHP. This is double Maryland's current waiting period, and is likely to increase subsequent health costs for affected children due to lack of access to required health care, including preventive care, for a full year.

19. As a second new crowd-out strategy, Maryland must ascertain the cost to families of private health insurance comparable to MCHP, and raise the cost to families of MCHP Premium so that the public premium is not cheaper than private rates by more than 1 percent of family income, or must raise the public premiums (currently set at 2 percent of the base income standard) to the statutory maximum of 5 percent of the family's actual income. Maryland currently has no mechanism for acquiring necessary data on private coverage for this comparison. Further, there is no reason to believe that the maximum difference of one percent can be maintained even at the five percent level, so the ultimate effect of the comparable-cost requirement will presumably be to fix premiums at the statutory maximum. And because children cannot

participate in MCHP Premium if the family is unwilling to pay the premium, the effect of more than doubling the premium will probably be to deprive eligible children from access to both public and private sources of health care coverage.

20. The August 17 letter also requires as a crowd-out measure that Maryland "[p]revent[] employers from changing dependent coverage policies that would favor a shift to public coverage." August 17 letter at 1. It is not clear precisely what acts on the part of employers CMS expects states to prohibit, but they appear to be beyond Maryland's control. If CMS wishes Maryland and other states to prevent employers from altering their personnel policies for the purpose of reducing or delaying employees' ability to enroll health benefits the employers have decided to offer, most of these issues have been federally preempted by the "portability" requirements of the Health Insurance Portability and Accountability Act of 1996 (administered by the Department of Labor, the IRS, and CMS). To the extent CMS intends to require Maryland to mandate that employers offering health benefit plans with dependent coverage continue doing so, such state regulation is preempted by the Employment Retirement Income Security Act ("ERISA") with respect to employer sponsored plans. If CMS wants states to require non-ERISA employers to maintain health insurance benefits at the same rate of employee participation, or the same percentage of employee contribution, the employers will be able to have these mandates judicially invalidated on due process grounds; small employers that rely on coverage purchased from issuers of health insurance are limited by rate structures over which they have little or no control. Whatever this requirement means, it appears impossible for any combination of state agencies to accomplish.

Assurances

Assurances

21. Based on CPS data, Maryland calculates its participation rate for children whose family income is below 200 percent FPL at 77 percent. In order to continue offering MCHP Premium to moderate-income children after August 16, 2008, this rate must be increased to 95 percent. According to scholarly sources other than CMS officials, no state has achieved a 95 percent participation rate. Consequently, even if Maryland acquires data more accurate and timely than CPS, it seems unlikely that the actual participation rate will meet the 95 percent standard. This requirement will prevent Maryland from furnishing affordable coverage to children with moderate family incomes but will not increase services to targeted low-income children.

22. The August 17 letter also requires Maryland to assure CMS that the number of targeted low-income children with private health insurance has not decreased by more than 2 percent over the preceding five years. August 17 letter at 2. Even if Maryland can accurately assess change in private insurance coverage for this income group using data collected by the Maryland Health Care Commission, the state will not be in a position to control the amount of decrease in private insurance, particularly on a retrospective basis. Moreover, the mere existence of such a decline does not reasonably establish that it has been caused by substitution of SCHIP coverage.

Dated: Baltimore, MD
April 14, 2008

Susan J. Tucker
SUSAN J. TUCKER

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL	1. TRANSMITTAL NUMBER: SPA 07-04	2. STATE Maryland
FOR: HEALTH CARE FINANCING ADMINISTRATION	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE Medicaid	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE January 1, 2007	

5. TYPE OF PLAN MATERIAL *(Check One)*:

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN x AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION:	7. FEDERAL BUDGET IMPACT: a. FFY 2007 ~~$47,550,000~~ 3,872,277 b. FFY 2008 ~~$81,960,000~~ 8,700,744
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 2.2-A, Page 23b Supplement 8a to Attachment 2.6-A, Page 1	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: Attachment 2.2-A, Page 23b (04-02) Supplement 8a to Attachment 2.6A, Page 1 (04-20) (continued on page 2)

10. SUBJECT OF AMENDMENT: This SPA addresses the pending financial shortfall in the Maryland Children's Health Program. Maryland is leveraging the opportunity provided by the federal Deficit Reduction Act of 2005, §§ 6041 and 6042 (Section 1916A(a)), permitting cost sharing for certain groups under the Medicaid State Plan.

11. GOVERNOR'S REVIEW *(Check One)*:

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
X OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:	16. RETURN TO: Susan Tucker, Executive Director Office of Health Services Department of Health & Mental Hygiene 201 W Preston St, 1st fl Baltimore, MD 21201
13. TYPED NAME: John M. Colmers	
14. TITLE: Secretary, Department of Health & Mental Hygiene	
15. DATE SUBMITTED: March 14, 2007	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: Mar 14, 2007	18. DATE APPROVED: MAY 07 2007
PLAN APPROVED - ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL: January 1, 2007	20. SIGNATURE OF REGIONAL OFFICIAL:
21. TYPED NAME:	22. TITLE: Director, Medicaid
23. REMARKS: Pen and ink changes to Pages 7a and 7b per email dated 4/20/07	

Maryland DHMH Ex. 1

SPA 07-04
Maryland
Medicaid

8. Page number of the plan section or attachment:	9. Page number of the superseded plan section or attachment:
Attachment 4.18-F, Page 1	Attachment 4.18-F, Page 1 (new)
Attachment 4.18-F, Page 2	Attachment 4.18-F, Page 2 (new)
Attachment 4.18-F, Page 3	Attachment 4.18-F, Page 3 (new)
Attachment 4.18-F, Page 4	Attachment 4.18-F, Page 4 (new)
Attachment 4.18-F, Page 5	Attachment 4.18-F, Page 5 (new)
Attachment 4.18-F, Page 6	Attachment 4.18-F, Page 6 (new)
Attachment 4.18-F, Page 7	Attachment 4.18-F, Page 7 (new)

FEDERAL REGULATION CITATIONS: **SPA 07-04**

_x_ Attachment 2.2A 42 CFR 435.10

_x_ Attachment 2.6A 42 CFR Part 435, Section 435.10 and Subparts G&H AT-78-90, AT-80-6, AT-80-34, 1902(l) and (n) of the Act, P.L. 99-509 (Secs. 9401 and 9402), 1902 (l) and (n) and 1920 of the Act, P.L. 99-509 (Secs. 9401, 9402, and 9407)

___ Attachment 3.1A Part 400, Subpart B and 1902(e)(5), 1905(a)(18) through (20), and 1920 of the Act, P.L. 99-272 (Sections 9501, 9505 and 9526) and 1902(a), 1902(a)(47), 1902 (e)(7) through (9), and 1920 of the Act, P.L. 99-509 (Sections 9401(d), 9403, 9406 through 9408) and P.L. 99-514 (Section 1985(c)(3))

___ Attachment 3.1B 42 CFR Part 440, Subpart B, 42 CFR 441.15, AT-78-90, AT-80-34

___ Attachment 3.1C 42 CFR 431.53, AT-78-90

___ Attachment 3.1F 1905(a)(24) and 1930 of the Act, P.L. 101-508 (Section 4712 OBRA 90)-

___ Attachment 4.18A 447.51 through 447.58

___ Attachment 4.18C 447.51 through 447.58

_x_ Attachment 4.18-F 447.50-447.59

___ Attachment 4.19 A&B (a) 42 CFR 447.252, 46 FR 44964, 48 FR 56046, 50 FR 23009, 1902(e)(7) of the Act, P.L. 99-509 (Section 9401(d))

(b) 42 CFR 447.201, 42 CFR 447.302, AT-78-90, AT-80-34, 1903(a)(1) and (n) and 1920 of the Act, P.L. 99-509 (Section 9403, 9406 and 9407), 52 FR 28648

___ Attachment 4.16 42 CFR 431.615(c) AT-78-90

___ Attachment 4.19D (d) 42 CFR 447.252, 47 FR 47964, 48 FR 56046, 42 CFR 447.280, 47 FR 31518, 52 FR 28141

___ Attachment 4.22A (a) 433.137(a), 50 FR 46652, 55 FR 1423

___ Attachment 4.22B (b) 433.138(f), 52 FR 5967, 433.138(g)(1)(ii) and (2)(ii), 52 FR 5967, 433.133(g)(3)(i) and (iii), 52 FR 5967, 433.138(h)(4)(i) through (iii), 52 FR 5967

___ Attachment 4.22C Section 1906 of the Act

___ Attachment 4.26 1927(g) 42 CFR 456.700, 1927(g)(1)(A), 1927(g)(1)(a) 42 CFR 456.705(b) and 456.709(b), 1927(g)(1)(B) 42 CFR 456.703(d) and (f), 1927(g)(1)(D) 42 CFR 456.703(b), 1927(g)(2)(A) 42 CFR 456.705(b), 1927(g)(2)(A)(i) 42 CFR 456.705(b), 1927(g)(2)(A)(i) 42 CFR 456.705(b), (1)-(7), 1927(g)(2)(A)(ii) 42 CFR 456.705(c) and (d), 1927(g)(2)(B) 42 CFR 456.709(a), 1927(g)(2)(C) 42 CFR 456.709(b), 1927(g)(2)(D) 42 CFR 456.711, 1927 (g)(3)(A) 42 CFR 456.716(a), 1927 (g)(3)(B) 42 CFR 456.716 (A) and (B), 1927(g)(3)(C) 42 CFR456.716 (d) 1927(g)(3)(C) 42 CFR 456.711 (a)-(d), 1927 (g)(3)(D) 42 CFR 456.712 (A) and (B), 1927(b)(1) 42 CFR 456.722, 1927(g)(2)(A)(i) 42 CFR 456.705(b), 1927(j)(2) 42 CFR 456.703(c)

___ Attachment 4.32A (a) 435.940 through 435.960, 52 FR 5967

___ Attachment 4.33A (a) 1902(a)(48) of the Act, P.L. 99-570 (Section 11005), P.L. 100-93 (Section 6(a)(3))

___ Attachment 4.35A (a) 1919(b)(1) and (2) of the Act, P.L. 100-103 (Section 4212(a))

___ Attachment 4.35B (b) Same as above

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

It should be noted that States can select one or more options in imposing cost sharing (including co-payments, co-insurance, and deductibles) and premiums.

A. For groups of individuals with family income above 100 percent but below 150 percent of the FPL:

1. Cost sharing

a. _X_/ No cost sharing is imposed.
b. __/ Cost sharing is imposed under section 1916A of the Act as follows (specify the amounts by group and services (see below)):

Group of Individuals	Item/Service	Type of Charge: Deductible	Co-insurance	Co-payment	*Method of Determining Family Income (including monthly or quarterly period)

*Describe the methodology used to determine family income if it differs from your methodology for determining eligibility.

Attach a schedule of the cost sharing amounts for specific items and services and the various eligibility groups.

b. Limitations:

The total aggregate amount of cost sharing and premiums imposed under section 1916A for all individuals in the family may not exceed 5 percent of the family income of the

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

family involved, as applied on a monthly and quarterly basis as specified by the State above.

- Cost sharing with respect to any item or service may not exceed 10 percent of the cost of such item or service.

c. No cost sharing will be imposed for the following services:

- Services furnished to individuals under 18 years of age that are required to be provided Medicaid under section 1902(a)(10)(A)(i), and including services furnished to individuals with respect to whom aid and assistance is made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such title, without regard to age;
- Preventive services (such as well baby and well child care and immunizations) provided to children under 18 years of age, regardless of family income;
- Services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy;
- Services furnished to a terminally ill individual who is receiving hospice care, (as defined in section 1905(o) of the Act);
- Services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;
- Emergency services as defined by the Secretary for the purposes of section 1916(a)(2)(D) of the Act;
- Family planning services and supplies described in section 1905(a)(4)(C) of the Act; and
- Services furnished to women who are receiving Medicaid by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa) of the Act.

d. Enforcement

1. __/ Providers are permitted to require, as a condition for the provision of care, items, or services, the payment of any cost sharing.

2. __/ (If above box selected) Providers permitted to reduce or waive cost sharing on a

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

case-by-case basis.

3. State payments to providers must be reduced by the amount of the beneficiary cost sharing obligations, regardless of whether the provider successfully collects the cost sharing.

4. States have the ability to increase total State plan rates to providers to maintain the same level of State payments when cost sharing is introduced.

2. Premiums

No premiums may be imposed for individuals with family income above 100 percent but below 150 percent of the FPL.

B. For groups of individuals with family income above 150 percent of the FPL:

1. Cost sharing amounts

a. _X_/ No cost sharing is imposed.
b. __/ Cost sharing is imposed under section 1916A of the Act as follows (specify amounts by groups and services (see below)):

Group of Individuals	Item/Service	Type of Charge			*Method of Determining Family Income (including monthly or quarterly period)
		Deductible	Co-insurance	Co-payment	

*Describe the methodology used to determine family income if it differs from your methodology for determining eligibility.

Attach a copy of the schedule of the cost sharing amounts for specific items and the various

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

eligibility groups.

b. Limitations:
- The total aggregate amount of all cost sharing and premiums imposed under section 1916A for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a monthly or quarterly basis as specified by the State above.
- Cost sharing with respect to any item or service may not exceed 20 percent of the cost of such item or service.

c. No cost sharing shall be imposed for the following services:
- Services furnished to individuals under 18 years of age that are required to be provided Medicaid under section 1902(a)(10)(A)(i) of the Act, and including services furnished to individuals with respect to whom aid and assistance is made available under part B of title IV to children in foster care, and individuals with respect to whom adoption or foster care assistance is made available under part E of such title, without regard to age;
- Preventive services (such as well baby and well child care and immunizations) provided to children under 18 years of age regardless of family income;
- Services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy;
- Services furnished to a terminally ill individual who is receiving hospice care (as defined in section 1905(o) of the Act);
- Services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;
- Emergency services as defined by the Secretary for the purposes of section 1916(a)(2)(D) of the Act;
- Family planning services and supplies described in section 1905(a)(4)(C) of the Act; and
- Services furnished to women who are receiving Medicaid by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa) of the Act.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

d. Enforcement

1. __/ Providers are permitted to require, as a condition for the provision of care, items, or services, the payment of any cost sharing.

2. __/ (If above box selected) Providers permitted to reduce or waive cost sharing on a case-by-case basis.

3. State payments to providers must be reduced by the amount of the beneficiary cost sharing obligations, regardless of whether the provider successfully collects the cost sharing.

4. States have the ability to increase total State plan rates to providers to maintain the same level of State payments when cost sharing is introduced.

2. Premiums

a. __/ No premiums are imposed.
b. _X_/ Premiums are imposed under section 1916A of the Act as follows (specify the premium amount by group and income level.

Group of Individuals	Premium	Method for Determining Family Income (including monthly or quarterly period)
Children eligible under 1902(a)(10)(A)(ii)(XIV) whose family income is above 200 percent but at or below 250 percent of the FPL	$44	Monthly, using countable net income as determined for eligibility purposes
Children eligible under 1902(a)(10)(A)(ii)(XIV) whose family income is above 250 percent but at or below 300 percent of the FPL	$55	Monthly, using countable net income as determined for eligibility purposes

Attach a schedule of the premium amounts for the various eligibility groups.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

b. Limitation:

- The total aggregate amount of premiums and cost sharing imposed for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a monthly or quarterly basis as specified by the State above.

c. No premiums shall be imposed for the following individuals:

- Individuals under 18 years of age that are required to be provided medical assistance under section 1902(a)(10)(A)(i), and including individuals with respect to whom aid or assistance is made available under part B of title IV to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such title, without regard to age;
- Pregnant women;
- Any terminally ill individual receiving hospice care, as defined in section 1905(o);
- Any individual who is an inpatient in a hospital, nursing facility, intermediate care facility, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of
- medical care all but a minimal amount of the individual's income required for personal needs; and
- Women who are receiving Medicaid by virtue of the application of sections 1902(a)(10)(A)(ii)(XVIII) and 1902(aa) of the Act.

d. Enforcement

1. _X_/ Prepayment required for the following groups of individuals who are applying for Medicaid: The State determines the child meets eligibility criteria and notifies the family that the child will be eligible if the family pays the premium. The family sends the initial premium within 30 days. For children who do not have MCO history within 120 days, the State sends the family an MCO enrollment packet. The family has 21 days to choose an MCO or the child will be assigned to an MCO in their area.

2. _X_/ Eligibility terminated after failure to pay for 60 days for the following groups of individuals who are receiving Medicaid:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory:

3. _X_/ Payment will be waived on a case-by-case basis for undue hardship.

C. Period of determining aggregate 5 percent cap

Specify the period for which the 5 percent maximum would be applied.

__/ Quarterly

_X_/ Monthly

D. Method for tracking cost sharing amounts

Describe the State process used for tracking cost sharing and informing beneficiaries and providers of their beneficiary's liability and informing providers when an individual has reached his/her maximum so further costs are no longer charged.

Also describe the State process for informing beneficiaries and providers of the allowable cost sharing amounts.

The State notifies the family of the premium amount with the notification that the child will be eligible if the family pays the premium. Federal regulations require that premiums do not exceed 5% of income. To meet this requirement, Maryland has historically set the premium amount at between two and three percent of the lower income threshold of the FPL range. This calculation will not change with the amendment. Premiums are billed on a monthly basis. There is no cost sharing beyond the premium.

Citation	Groups Covered

B. Optional Coverage Other Than the Medically Needy (continued)

1902(a)(10)(A)(ii)(XIV) of the Act

__X__ 20. Optional Targeted Low Income Children who:

a. are not eligible for Medicaid under any other optional or mandatory eligibility group or eligible as medically needy (without spend-down liability);

b. would not be eligible for Medicaid under the policies in the State's Medicaid plan as in effect on April 15, 1997 (other than because of the age expansion provided for in §1902(l)(2)(D)),

c. are not covered under a group health plan or other group health insurance (as such terms are defined in §2791 of the Public Health Service Act coverage) other than under a health insurance program in operation before July 1, 1997 offered by a State which receives no Federal funds for the program;

d. have family income at or below:

200 percent of the Federal poverty level for the size family involved, as revised annually in the Federal Register; or

A percentage of the Federal poverty level, which is in excess of the "Medicaid applicable income level" (as defined in §2110(b)(4) of the Act) but by no more than 50 percentage points.

The State covers:

__X__ All children described above who are under age __19__ (18, 19) with family income at or below __200__ percent of the Federal poverty level.

Revision: **HCFA-PM-91 (BDP)**
AUGUST 1991

SUPPLEMENT 8a TO ATTACHMENT 2.6-A
Page 1
OMB NO.: 0938-

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Maryland

MORE LIBERAL METHODS OF TREATING INCOME

UNDER SECTION 1902(r)(2) OF THE ACT

[ ] Section 1902(f) State [X] Non-Section 1902 (f) State

The more liberal income methodology is as follows:

1. Countable net income which exceeds 133% of the Federal Poverty Level (FPL) but is less than 185% of the FPL will be disregarded for children whose eligibility is related to the FPL under Section 1902(l)(1)(C) and 1902(l)(2)(B).

2. Countable net income which exceeds 100% of the FPL but is less than 185% of the FPL will be disregarded for children whose eligibility is related to the FPL under Section 1902(l)(1)(D) and 1902(l)(2)(C).

3. Countable net income which exceeds 200% of the FPL but is less than 300% of the FPL will be disregarded for children eligible under Section 1902(a)(10)(A)(ii)(XIV).

*More liberal methods may not result in exceeding gross income limitations under section 1903(f).

TN No. 07-04
Supersedes
TN No. 04-20

Approval Date MAY 0 7 2007

Effective Date June 1, 2007

DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

MAY 21 2007

Mr. Charles E. Lehman
Executive Director
Office of Operations, Eligibility and Pharmacy
Maryland Department of Health and Mental Hygiene
201 W. Preston Street
Baltimore, MD 21201

Dear Mr. Lehman:

We are pleased to inform you that your State Children's Health Insurance Program (SCHIP) State plan amendment submitted February 13, 2007, with additional information provided on April 12, 2007, and April 20, 2007, has been approved.

The State currently has a combination program that covers children above Medicaid income levels up to 200 percent of the Federal poverty level (FPL) through a title XXI Medicaid expansion, and children over 200 percent of the FPL up to and including 300 percent through a separate program. This amendment changes the State's current combination program to a Medicaid expansion only program. The State will eliminate its separate program and extend the current Medicaid expansion upper income to 300 percent of the FPL.

Your title XXI project officer is Ms. June Milby. She is available to answer questions concerning this amendment and other SCHIP-related issues. Ms. Milby's contact information is as follows:

Centers for Medicare & Medicaid Services
Center for Medicaid and State Operations
Mail Stop S2-01-16
7500 Security Boulevard
Baltimore, MD 21244-1850
Telephone: (410) 786-8686
Facsimile: (410) 786-5882
E-mail: June.Milby@cms.hhs.gov

Official communications regarding program matters should be sent simultaneously to Ms. Milby and to Mr. Ted Gallagher, Acting Associate Regional Administrator in our Philadelphia Regional Office.

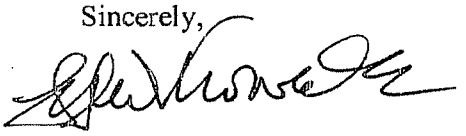
Mr. Gallagher's address is:

Centers for Medicare & Medicaid Services
Division of Medicaid and State Operations
The Public Ledger Building, Suite 230
150 S. Independence Mall West
Philadelphia, PA 19106-3499

If you have additional questions, please contact Ms. Jean Sheil, Director, Family and Children's Health Programs Group, Center for Medicaid and State Operations, at (410) 786-5647.

We look forward to continuing to work with you and your staff.

Sincerely,



Leslie V. Norwalk, Esq.
Acting Administrator

cc: CMS Region III Office

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-15
Baltimore, Maryland 21244-1850

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Center for Medicaid & State Operations, Family & Children's Health Program Group

JAN 2 8 2008

Dear SCHIP Director:

This letter is a follow-up to the State Health Official Letter (SHO) of August 17, 2007, that clarifies how the Centers for Medicare & Medicaid Services (CMS) applies existing statutory and regulatory requirements in reviewing eligibility expansions under the State Children's Health Insurance Program (SCHIP) to families with effective family income levels above 250 percent of the Federal poverty level (FPL).

I want to reaffirm that this guidance was specifically designed to apply to new applicants, rather than to individuals currently served by the program. States, such as yours, that currently provide coverage to children with effective family incomes over 250 percent of the FPL have 12 months or until August 16, 2008, to come into compliance with the required crowd-out strategies and assurances laid out in the August 17th SHO for new enrollees.

It is our intention to work cooperatively with you so that your state will be able to permit the enrollment of additional children in higher income families if the reasonable standards of the August 17th guidance are met. And as such, we would like to begin discussions on how your State will implement appropriate procedures, if they are not already in place. Specifically, we look forward to upcoming discussions on your State's crowd-out strategy implementation plan and assurance that the State has enrolled at least 95 percent of the children in the State below 200 percent of the FPL who are eligible for either SCHIP or Medicaid. I would ask that you work with Ms. Kathleen Farrell, Director of the Division of State Children's Health Insurance, and her staff, to set up a conference call in the next few weeks. Ms. Farrell may be reached at 410-786-1236.

Sincerely,

Susan Cuerdon
Acting Director