

**Supplement to Section IV The Government Services Fund
in the April 2009 Guidance on the
State Fiscal Stabilization Fund Program**

**U.S. Department of Education
October 2, 2009**

Introductory Note

On April 1, 2009, the U.S. Department of Education (Department) released detailed guidance on the State Fiscal Stabilization Fund program. As a preface to the guidance, the Department indicated that it would provide additional or updated guidance as necessary and invited interested parties to provide comments on the document.

In response to comments received, we are supplementing, “Section IV. The Government Services Fund” to provide guidance on the use of Government Services funds to pay for Medicaid services.

IV-11. May a State use Government Services funds made available under the State Fiscal Stabilization Fund (SFSF) program (Title XIV of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA)) for purposes of paying the non-Federal (State) share of Medicaid expenditures incurred by the State, as required under Title XIX of the Social Security Act?

No. Although Government Services funds made available under the SFSF may be used for a wide range of government services, other laws and regulations specifically govern the payment of the non-Federal share of Medicaid expenditures, and those laws and regulations preclude the use of Government Services funds as the non-Federal share. Under the Federal Medicaid regulations in 42 C.F.R. 433.51(c), only Federal funds explicitly "authorized by Federal law to be used to match other Federal funds" may be used by a State for meeting its non-Federal (State) share required under the Medicaid program. Title XIV of ARRA does not provide this explicit authorization with respect to the use of Government Services funds. Therefore, Government Services funds may not be used to meet the non-Federal share required under Medicaid.

IV-12. Although a State may not use Government Services funds for the non-Federal share of claimed Medicaid expenditures, may the State otherwise use Government Services funds to pay for Medicaid services?

Yes, but only if associated expenditures are not submitted as claims to the Centers for Medicare & Medicaid Services (CMS). If a State uses its Government Services funds to pay for health care services for Medicaid recipients or for administrative costs of Medicaid operations, it may not claim the expenditure of Government Services funds under the Medicaid program. If such claims are made by the State under the Medicaid program, they would be unallowable.

For additional information on the uses of Government Services funds, States should refer to the SFSF guidance available on the U.S. Department of Education's web site at <http://www.ed.gov/programs/statestabilization/applicant.html>.

IV-13. What should a State do if it has already used Government Services funds as the non-Federal share of Medicaid expenditures in claims submitted to the Federal government under the Medicaid program?

Any State that has (or may have) used its Government Services funds for expenditures that were claimed under the Medicaid program should contact Jim Butler of the Office of Elementary and Secondary Education at 202-260-9737 or james.butler@ed.gov. The Department of Education and CMS will work with the State to address the matter, determine any appropriate adjustments to its Medicaid claims or draws, and assist the State in identifying whether another source of funding is available for the non-Federal share of the Medicaid expenditures at issue.