

# medicaid and the uninsured

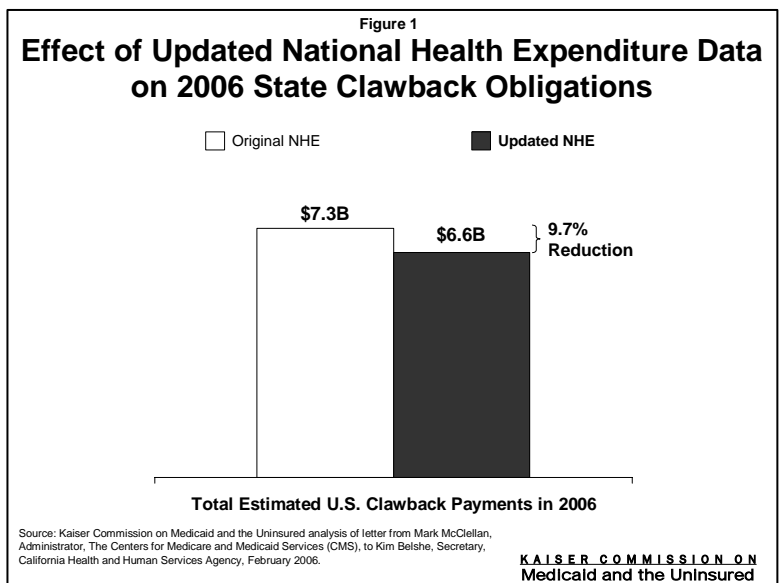
March 2006

## An Update on the Clawback: Revised Health Spending Data Change State Financial Obligations for the New Medicare Drug Benefit

With the launch of the new Medicare outpatient drug benefit on January 1, 2006, state Medicaid programs can no longer receive federal matching funds for the provision of Medicare-covered outpatient prescription drugs to individuals enrolled in both Medicare and Medicaid. These dual eligibles should now receive their drug coverage through the new Part D benefit. To help offset the cost of the new benefit and to recapture a portion of the state Medicaid dollars previously spent on outpatient drugs for this population, the federal government now requires each state to make a monthly payment to the Medicare program intended to reflect a percentage (beginning at 90% and declining to 75% by 2015 and thereafter) of the expenditures a state would have made from its own funds had it continued to pay for outpatient prescription drugs for dual eligibles through Medicaid.<sup>1</sup>

These state contributions are commonly referred to as “clawback” payments. On October 14, 2005, the Centers for Medicare and Medicaid Services (CMS) notified each state of the per capita monthly payment amount it would be assessed for each Medicare beneficiary enrolled with full benefits in the state Medicaid program during calendar year 2006. The first monthly payment for January 2006 was due on February 1, 2006, with a grace period until February 25, 2006.<sup>2</sup>

With the release of the President’s FY 2007 Budget in February 2006, however, CMS revised each state’s per capita clawback obligation based on an update to one of the key factors in the formula used to calculate clawback payments.<sup>3</sup> The result of this change is an estimated net decline in the amount states will send to the federal government in 2006 through the clawback of more than \$700 million, or 9.7% (Figure 1).



<sup>1</sup> For more background and detail on this new financing arrangement, see Schneider, Andy, “The ‘Clawback:’ State Financing of Medicare Drug Coverage,” The Kaiser Commission on Medicaid and the Uninsured, June 2004, available at: [www.kff.org/medicaid/7118a.cfm](http://www.kff.org/medicaid/7118a.cfm).

<sup>2</sup> As of March 5, 2006, states had not received an invoice from CMS for these payments and no state had transmitted a payment; see “Medicare Part D and Dual Eligibles: State Perspectives Following Implementation,” Kaiser Commission on Medicaid and the Uninsured, forthcoming. Additionally, as of early March 2006, five states (Kentucky, Maine, Missouri, New Jersey, and Texas) were moving forward with a lawsuit challenging the constitutionality of the clawback provision.

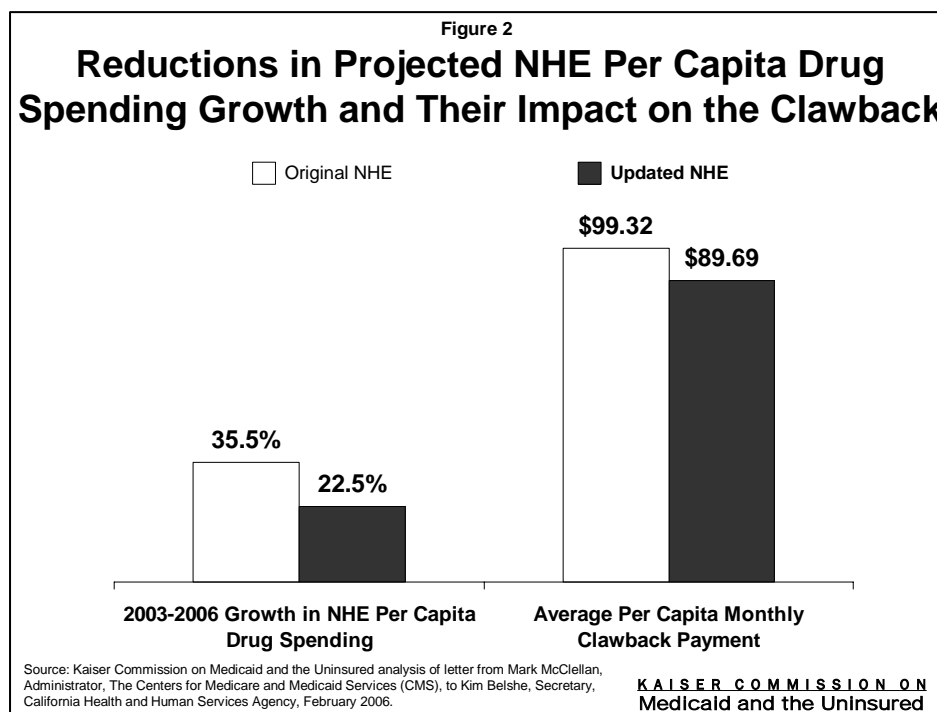
<sup>3</sup> Letter from Mark McClellan, Administrator, The Centers for Medicare and Medicaid Services (CMS), to Kim Belshe, Secretary, California Health and Human Services Agency. The letter was received by California on February 6, 2006 and is available from The National Conference of State Legislatures at <http://www.ncsl.org/print/health/Clawback.pdf>.

## New National Health Expenditure Data Lowers Clawback Amounts

Each state's clawback obligation is determined through a formula established by the Medicare Modernization Act (MMA) and detailed by CMS in regulation.<sup>4</sup> In general, each State's monthly clawback obligation for 2006 is the product of its 2003 per capita drug spending for full benefit dual eligibles; the estimated growth in overall per capita drug spending nationally for all payers and populations between 2003 and 2006 as computed by the CMS Office of the Actuary in the National Health Expenditure Accounts (NHE); the number of full benefit dual eligibles reported by the state in the preceding month; and a phase-down percentage.<sup>5</sup>

As of October 2005, when the initial clawback payment amounts were released, NHE data produced by the CMS Office of the Actuary contained "actual" health spending data through 2003 and projected spending through 2014. In early 2006, "actual" 2004 NHE data were released, followed by revised projections for the 2005-2015 period using this new baseline information and new assumptions about future rates of growth. As a result of this update, the projected growth in NHE per capita drug spending between 2003 and 2006 declined from the original 35.54% calculated last year using the 2005 NHE data to 22.45% using the updated NHE projections for 2006 (Figure 2).

By statute, the clawback formula requires the Secretary of HHS to use the "most recent" 2006 per capita NHE drug spending amount. Therefore, the reduction in projected NHE 2006 per capita drug spending had the effect of lowering each state's per capita 2006 clawback obligation from an average of \$99.32 to \$89.69, thereby reducing the 2006 estimated national



obligation across all states by over \$700 million, from \$7.3 billion to \$6.6 billion. The tables that follow present the state-by-state effect of this change.

<sup>4</sup> 42 CFR 423.910, published in 70 Fed. Reg. 4584 (January 28, 2005).

<sup>5</sup> For a more detailed discussion of the clawback formula, see "State Financing of the Medicare Drug Benefit: New Data on the 'Clawback,'" Kaiser Commission on Medicaid and the Uninsured, June 2004, available at: <http://www.kff.org/medicaid/7438.cfm>.

Table 1

## 2006 Per Capita Clawback Amounts based on Revised National Health Expenditure Data

State	Estimated Full Benefit Dual Eligibles as of December 2005	Original Per-capita Monthly 90% "Clawback" Payment		Revised Per-capita Monthly 90% "Clawback" Payment		Difference between Revised and Original Monthly Per-capita 90% "Clawback" Payment	
		FY 2006 Q2-Q4	FY 2007 Q1	FY 2006 Q2-Q4	FY 2007 Q1	FY 2006 Q2-Q4	FY 2007 Q1
United States*	6,517,000	\$99.32	\$99.97	\$89.69	\$90.28	-\$9.63	-\$9.69
Alabama	97,000	\$61.31	\$62.64	\$55.39	\$56.59	-\$5.92	-\$6.05
Alaska	12,000	\$145.32	\$142.67	\$131.29	\$128.89	-\$14.03	-\$13.78
Arizona	106,000	\$49.43	\$50.19	\$44.66	\$45.35	-\$4.77	-\$4.84
Arkansas	63,000	\$48.31	\$49.05	\$43.64	\$44.31	-\$4.67	-\$4.74
California	1,081,000	\$98.54	\$98.54	\$89.02	\$89.02	-\$9.52	-\$9.52
Colorado	52,000	\$126.97	\$126.97	\$114.71	\$114.71	-\$12.26	-\$12.26
Connecticut	72,000	\$156.20	\$156.20	\$141.12	\$141.12	-\$15.08	-\$15.08
Delaware	10,000	\$124.97	\$125.20	\$112.90	\$113.11	-\$12.07	-\$12.09
District of Columbia	18,000	\$56.02	\$56.02	\$50.61	\$50.61	-\$5.41	-\$5.41
Florida	389,000	\$112.05	\$112.40	\$101.23	\$101.55	-\$10.82	-\$10.85
Georgia	135,000	\$89.00	\$85.90	\$80.40	\$77.61	-\$8.60	-\$8.29
Hawaii	27,000	\$74.83	\$77.12	\$67.61	\$69.68	-\$7.22	-\$7.44
Idaho	19,000	\$84.56	\$83.30	\$76.40	\$75.26	-\$8.16	-\$8.04
Illinois	237,000	\$127.63	\$127.63	\$115.31	\$115.31	-\$12.32	-\$12.32
Indiana	92,000	\$97.45	\$98.42	\$88.04	\$88.92	-\$9.41	-\$9.50
Iowa	61,000	\$98.07	\$102.46	\$88.60	\$92.57	-\$9.47	-\$9.89
Kansas	42,000	\$105.40	\$105.83	\$95.22	\$95.61	-\$10.18	-\$10.22
Kentucky	95,000	\$77.71	\$76.90	\$70.20	\$69.47	-\$7.51	-\$7.43
Louisiana	100,000	\$75.52	\$75.77	\$68.22	\$68.45	-\$7.30	-\$7.32
Maine	50,000	\$82.70	\$81.87	\$74.59	\$73.85	-\$8.11	-\$8.02
Maryland	63,000	\$133.43	\$133.43	\$120.55	\$120.55	-\$12.88	-\$12.88
Massachusetts	209,000	\$104.59	\$104.59	\$94.49	\$94.49	-\$10.10	-\$10.10
Michigan	208,000	\$82.13	\$82.53	\$74.20	\$74.56	-\$7.93	-\$7.97
Minnesota	77,000	\$128.79	\$128.79	\$116.35	\$116.35	-\$12.44	-\$12.44
Mississippi	148,000	\$47.08	\$47.29	\$42.53	\$42.73	-\$4.55	-\$4.56
Missouri	145,000	\$119.96	\$121.00	\$108.38	\$109.32	-\$11.58	-\$11.68
Montana	15,000	\$75.35	\$79.00	\$68.07	\$71.38	-\$7.28	-\$7.62
Nebraska	35,000	\$107.61	\$112.28	\$97.22	\$101.44	-\$10.39	-\$10.84
Nevada	19,000	\$109.35	\$111.35	\$98.79	\$100.60	-\$10.56	-\$10.75
New Hampshire	19,000	\$148.33	\$148.33	\$134.01	\$134.01	-\$14.32	-\$14.32
New Jersey	155,000	\$159.61	\$159.61	\$144.18	\$144.18	-\$15.43	-\$15.43
New Mexico	35,000	\$51.37	\$49.98	\$45.12	\$43.90	-\$6.25	-\$6.08
New York	602,000	\$117.67	\$117.67	\$106.31	\$106.31	-\$11.36	-\$11.36
North Carolina	238,000	\$95.61	\$92.92	\$86.38	\$83.94	-\$9.23	-\$8.98
North Dakota	6,000	\$76.43	\$78.96	\$69.05	\$71.34	-\$7.38	-\$7.62
Ohio	164,000	\$127.34	\$128.04	\$115.05	\$115.68	-\$12.29	-\$12.36
Oklahoma	81,000	\$62.17	\$61.72	\$56.17	\$55.76	-\$6.00	-\$5.96
Oregon	57,000	\$100.16	\$101.46	\$90.49	\$91.66	-\$9.67	-\$9.80
Pennsylvania	292,000	\$123.75	\$125.56	\$111.80	\$113.44	-\$11.95	-\$12.12
Rhode Island	32,000	\$115.62	\$120.95	\$104.44	\$109.25	-\$11.18	-\$11.70
South Carolina	128,000	\$55.26	\$54.86	\$49.92	\$49.57	-\$5.34	-\$5.29
South Dakota	13,000	\$90.90	\$96.49	\$82.12	\$87.17	-\$8.78	-\$9.32
Tennessee	245,000	\$105.05	\$106.04	\$94.90	\$95.80	-\$10.15	-\$10.24
Texas	352,000	\$78.44	\$78.20	\$70.80	\$70.59	-\$7.64	-\$7.61
Utah	22,000	\$86.95	\$88.79	\$78.55	\$80.21	-\$8.40	-\$8.58
Vermont	17,000	\$101.17	\$100.09	\$91.40	\$90.43	-\$9.77	-\$9.66
Virginia	111,000	\$137.20	\$137.20	\$123.95	\$123.95	-\$13.25	-\$13.25
Washington	104,000	\$127.21	\$126.91	\$114.93	\$114.65	-\$12.28	-\$12.26
West Virginia	44,000	\$63.89	\$64.30	\$57.72	\$58.09	-\$6.17	-\$6.21
Wisconsin	118,000	\$112.52	\$113.00	\$101.03	\$101.45	-\$11.49	-\$11.55
Wyoming	6,000	\$128.57	\$132.28	\$116.15	\$119.50	-\$12.42	-\$12.78

\* Per capita U.S. values are unweighted means.

Source: Kaiser Commission on Medicaid and the Uninsured analysis of letter from Mark McClellan, Administrator, The Centers for Medicare and Medicaid Services (CMS), to Kim Belshe, Secretary, California Health and Human Services Agency, 2006. The letter was received by California on February 6, 2006 and is available from The National Conference of State Legislatures at <http://www.ncsl.org/print/health/Clawback.pdf>.

Note: Updated NHE data changed the drug spending growth factor between 2003 to 2006 from 35.54% to 22.45%. Due to changes in the state FMAP, 39 states will pay a different per capita amount under the clawback during the last 3 months of calendar year 2006 during the first quarter (Q1) of FY 2007.

Table 2

**Annual 2006 Total Clawback Payments as Estimated by CMS,  
Original and Revised NHE**

<b>State</b>	<b>Original Annual Payment Totals Calendar Year 2006 (11 payments)</b>	<b>Revised Annual Payment Totals Calendar Year 2006 (11 payments)</b>	<b>Difference between Revised and Original Payment Totals</b>
United States	\$ 7,311,736,748	\$ 6,605,675,559	\$ (706,061,189)
Alabama	65,599,530	59,264,881	(6,334,648)
Alaska	19,040,841	17,202,153	(1,838,687)
Arizona	57,615,285	52,051,639	(5,563,646)
Arkansas	33,815,887	30,550,440	(3,265,447)
California	1,172,151,995	1,058,962,604	(113,189,391)
Colorado	72,876,673	65,839,304	(7,037,369)
Connecticut	124,059,021	112,079,205	(11,979,816)
Delaware	14,025,128	12,670,785	(1,354,343)
District of Columbia	10,975,558	9,915,699	(1,059,860)
Florida	479,984,275	433,634,375	(46,349,900)
Georgia	130,993,456	118,344,013	(12,649,443)
Hawaii	22,175,070	20,033,724	(2,141,346)
Idaho	18,066,946	16,316,883	(1,750,063)
Illinois	333,221,963	301,044,232	(32,177,731)
Indiana	99,283,770	89,696,387	(9,587,382)
Iowa	66,174,915	59,784,704	(6,390,211)
Kansas	48,756,251	44,048,082	(4,708,170)
Kentucky	81,122,635	73,288,990	(7,833,644)
Louisiana	82,793,438	74,798,452	(7,994,986)
Maine	45,260,376	40,889,787	(4,370,589)
Maryland	92,240,710	83,333,444	(8,907,266)
Massachusetts	239,970,806	216,797,916	(23,172,890)
Michigan	188,540,434	170,333,941	(18,206,493)
Minnesota	109,733,219	99,136,780	(10,596,438)
Mississippi	76,553,279	69,160,877	(7,392,402)
Missouri	191,708,376	173,195,969	(18,512,407)
Montana	12,238,192	11,056,405	(1,181,787)
Nebraska	41,619,392	37,600,396	(4,018,996)
Nevada	22,496,284	20,323,920	(2,172,364)
New Hampshire	30,585,921	27,632,378	(2,953,543)
New Jersey	271,291,722	245,094,314	(26,197,409)
New Mexico	18,845,259	17,025,458	(1,819,801)
New York	779,819,148	704,515,597	(75,303,591)
North Carolina	247,898,287	223,959,876	(23,938,411)
North Dakota	5,458,968	4,931,821	(527,148)
Ohio	230,584,176	208,317,710	(22,266,466)
Oklahoma	55,382,475	50,034,441	(5,348,034)
Oregon	63,234,635	57,128,354	(6,106,281)
Pennsylvania	399,667,987	361,073,866	(38,594,121)
Rhode Island	41,678,993	37,654,242	(4,024,751)
South Carolina	77,385,665	69,912,883	(7,472,782)
South Dakota	12,956,089	11,704,978	(1,251,111)
Tennessee	283,931,372	256,513,410	(27,417,962)
Texas	303,361,506	274,067,264	(29,294,242)
Utah	21,471,442	19,398,042	(2,073,400)
Vermont	18,454,617	16,672,538	(1,782,078)
Virginia	166,965,498	150,842,399	(16,123,099)
Washington	145,340,530	131,305,656	(14,034,874)
West Virginia	30,780,689	27,808,337	(2,972,351)
Wisconsin	145,195,338	131,174,484	(14,020,854)
Wyoming	8,358,727	7,551,563	(807,164)

Source: Letter from Mark McClellan, Administrator, The Centers for Medicare and Medicaid Services (CMS), to Kim Belshe, Secretary, California Health and Human Services Agency, 2006. The letter was received by California of February 6, 2006 and is available from The National Conference of State Legislatures at <http://www.ncsl.org/print/health/Clawback.pdf>.

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