



COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

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August 12, 2010

**MEMORANDUM**

TO: Members, House of Delegates

FROM: Robert P. Vaughn, Staff Director

A handwritten signature in blue ink, appearing to read "R. Vaughn".

SUBJECT: Passage of H.R. 1586 FMAP Extension and Education Jobs Fund

This week Congress passed and the President signed H.R. 1586 containing a six-month extension of a provision of the American Recovery and Reinvestment Act (ARRA) legislation, providing for an enhanced match rate for the Medicaid (FMAP) and Title IV-E (foster care) programs. The bill also provides \$10 billion for an Education Jobs Fund, subject to maintenance of effort requirements. The legislation is paid for by revising corporate tax provisions affecting companies that do business overseas and the rescission of other funds provided through the ARRA and prior appropriations acts. For example, the legislation rescinds funding for the Broadband Technology Opportunities Program as well as funding for the Supplemental Nutrition Assistance Program (SNAP – formerly the Food Stamp program) by imposing an earlier sunset (March 2014) of the temporary increase in benefits under ARRA.

FMAP Extension

The legislation will provide states \$16.1 billion through a phase-down of the enhanced federal Medicaid match -- providing 3.1 percent beginning the third quarter of state FY 2011, then dropping to 1.2 percent in the fourth quarter. A preliminary estimate by the Virginia Department of Medical Assistance Services (DMAS) indicates that Virginia will receive \$265 million, which is \$28 million less than the preliminary estimate of \$293.2 million by the Federal Funds Information for States (FFIS). You may recall that the original estimate based upon earlier legislation passed by both houses of Congress during the 2010 General Assembly Session was about \$417.1 million. Based on the DMAS preliminary analysis, Virginia would receive about \$152 million less than contemplated during the 2010 General Assembly Session. The difference is based on a lower across-the-board percentage increase in the FMAP. The original ARRA legislation provided for an across-the-board percentage increase of 6.2% for the first two quarters of state FY 2011. The earlier versions of the legislation passed last winter by the U.S. Senate and U.S. House of Representatives would have applied this same percentage increase to the FMAP for the remaining two quarters.

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The 2010 General Assembly took a responsible approach in budgeting the potential additional enhanced FMAP by adopting reductions to balance the budget without assuming receipt of the FMAP. Reductions were applied to Medicaid eligibility, services and provider rates. However, the General Assembly recognized the potential receipt of the \$417 million in additional enhanced FMAP by adding language to restore many of the Medicaid cuts *contingent* upon Congress extending the enhanced FMAP. Furthermore, language in the Appropriation Act provides the Governor with discretion to allocate the additional FMAP among programs identified for restoration by the General Assembly in the event that the funding is less than the amount needed to restore the targeted Medicaid cuts.

With the advent of federal health care reform legislation this past spring (after the 2010 General Assembly adjourned), it became clear that the first priority in allocating the additional FMAP would have to be the restoration of Medicaid eligibility reductions that take effect beginning January 1, 2011. The federal health care reform legislation requires states to maintain Medicaid eligibility levels in effect upon the passage of the law (March 23, 2010). Approximately \$178 million is needed to restore eligibility and other maintenance of effort items to comply with the new federal health care reform legislation. Given that the estimated amount of enhanced FMAP Virginia will receive is less than anticipated in the adopted budget (\$265 million versus \$417.1 million), the Governor will have fewer dollars available to allocate among the Medicaid services and provider rates identified for restoration.

It is important to note that DMAS has implemented most of the Medicaid cuts on July 1, 2010 since final action by Congress extending the FMAP was not complete at that time.

Finally, within 45 days of the enactment of H.R. 1586 (signed into law on August 10, 2010), the Governor must certify that the state will request the additional FMAP.

#### Education Jobs Fund

Unlike the enhanced FMAP, federal funding for the Education Jobs Fund was not contemplated during the 2010 General Assembly Session. Consequently, no contingencies were made in the Appropriations Act (Chapter 874) for the receipt of this week's additional federal education funding. Based on the new legislation, FFIS estimates that Virginia will receive \$249.5 million for the Education Jobs Fund. Only K-12 public education is eligible for these funds, however, the calculation of Maintenance of Effort requirements includes both K-12 and institutions of higher education.

Funds are allocated to local school divisions on the basis of a state funding formula; however, the federal legislation does not specify whether SOQ, basic aid or some other funding formula must be used. Funds are to be used for compensation to retain existing employees, recall former employees or hire new employees. Funds are to be used for FY 2011; however, it is unclear whether funds can be used in FY 2012.

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States may qualify for the funds based on one of three provisions in the legislation. Based on conversations with the Virginia Department of Planning and Budget (DPB) staff, it is believed that Virginia will qualify under the provision which stipulates that State tax collections in calendar year 2009 must be lower than calendar year 2006. Under this test, state tax collections include all funds, not just general funds. The U.S. Department of Education (DOE) has indicated that based on U.S. Census data, CY 2006 state tax collections exceeded CY 2009. The second part of this test is that state support for both K-12 and institutions of higher education in FY 2011 must be greater than FY 2006. As with previous federal assistance, the guidance memo from U.S. DOE will provide clarification and direction on the use and qualification for the funds. That memo has not yet been issued.

States must submit application for funds within 30 days of enactment of this week's federal legislation and awards to states will be made within 45 days of enactment. According to the legislation, the U.S. DOE shall provide the funds "**to another entity or other entities in the State**" in the event that the Governor has not submitted an approvable application within the 30 days of enactment. The language goes on to say that the alternative allocation would be "**under such terms and conditions as the Secretary may establish**" which appears to provide the U.S. DOE broad authority to allocate the funding as it wishes, such as using the Title I distribution formula.

Since it appears that the Governor, under §4-1.04 of the Appropriations Act, has sufficient authority to appropriate the nongeneral funds necessary to participate in the federal Education Jobs Fund program, no action would be required of the General Assembly. DPB is examining the use of the basic aid formula to allocate the funds, which is consistent with the allocation of previous K-12 stimulus funds approved by the General Assembly.

cc: The Honorable Lacey E. Putney, Chairman  
The Honorable William J. Howell, Speaker of the House