



APR 14 2016

Administrator
Washington, DC 20201

The Honorable Joseph R. Pitts
Chairman
Subcommittee on Health
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Pitts:

Thank you for your letter regarding the Centers for Medicare & Medicaid Services' (CMS) oversight of health care-related taxes and their use within the Medicaid program as a source of non-federal share financing. As you mention, the Government Accountability Office has previously highlighted its concern about the use of health care-related taxes and the increased role they are playing in financing Medicaid payments. Health care-related taxes are authorized under the Social Security Act, within certain parameters, as a permissible means states can use to finance their share of Medicaid payments. CMS is committed to ensuring that state provider tax arrangements adhere to statutory and regulatory requirements, and we execute this responsibility through a variety of activities.

CMS routinely meets with states to offer guidance and provide technical support with federal taxation requirements. When we become aware that a state is developing health care-related taxes, we frequently provide examples of permissible health care-related taxes, along with examples from other states. Many times, CMS reviews draft legislation states provide to us before they implement a health care-related tax.

In addition, when CMS reviews individual state Medicaid payment methodologies, we routinely request information about the source of the non-federal share. If a state discloses the use of a health care-related tax, CMS reviews it to ensure its permissibility before we approve the payment methodology with which it is associated.

To ensure that existing state taxes comply with federal requirements, CMS conducts quarterly reviews of the Form CMS-64 expenditure report, which includes the total collection amount for each state's provider assessments. To complement the Form CMS-64 quarterly expenditure reviews, CMS performs financial management reviews (FMR). The FMR process consists of a focused review on a specific financial issue, which may include health care-related taxes. The FMR process focuses on high risk areas to the program and includes the use of health care-related taxes as a risk factor. CMS selects the subject of FMRs through a risk assessment process. Most recently, CMS issued an FMR in 2014 related to Tennessee's tax on inpatient and outpatient net patient revenues. Three FMRs on health care-related taxes were issued for 2012: Massachusetts, Idaho, and Oregon. These four FMRs, including Tennessee, did not result in financial findings.

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In addition to the processes described above, CMS has provided and continues to provide ongoing technical assistance to states regarding the July 24, 2014, letter to State Medicaid Directors. As that guidance indicated, CMS provides a compliance timeframe for states that had a tax in existence that is problematic before CMS would initiate the process to make a final determination on the tax. The technical assistance has included meetings to discuss draft proposals to restructure or eliminate existing taxes. To the extent a state has come to CMS with a new proposal to tax health care providers under this rubric, CMS provides immediate feedback on the permissibility.

If CMS makes a final determination that any health care-related tax is impermissible, the statute requires that federal Medicaid funding to the state be reduced by the total amount of revenues collected from the health care-related tax.

In addition, many states have sought waivers of the broad-based and/or uniformity requirements associated with health care-related taxes. These waivers are covered by clear regulatory requirements. In order to obtain such a waiver, a state must submit a request to CMS along with a demonstration that it has met the appropriate statistical test to demonstrate that it is generally redistributive. Being generally redistributive means that Medicaid providers are not bearing the undue burden of the tax structure. CMS also reviews the associated Medicaid payment methodology to ensure that the health care-related tax is not directly correlated to Medicaid payments, which is prohibited by federal statute. For those states that have approved waivers of the broad-based and/or uniformity requirements, states frequently update them on a yearly basis which triggers another review by CMS. For your convenience, enclosed is a list of states with such waivers.

Thank you for inquiry into this important matter. CMS remains committed to ensuring that states use of health care-related taxes comport with federal statutory and regulatory requirements. Should you have additional questions, please contact the CMS Office of Legislation at 202-690-8220. I will also provide this response to Vice Chairman Guthrie.

Sincerely,



Andrew M. Slavitt
Acting Administrator

Enclosure

Waiver of Broad Based and Uniformity Requirements

State	Permissible Class
Arizona	Nursing Facility
	Inpatient
Arkansas	Inpatient / Outpatient
California	Nursing Facility
	Inpatient
Colorado	Inpatient / Outpatient
	Nursing Facility
Connecticut	Inpatient / Outpatient
Delaware	Nursing Facility
District of Columbia	Inpatient
Florida	Nursing Facility
Georgia	Inpatient / Outpatient
	Inpatient
Hawaii	Nursing Facility
	Inpatient / Outpatient
Indiana	Inpatient / Outpatient
	Nursing Facility
Iowa	Nursing Facility
	Inpatient / Outpatient
Maryland	Nursing Facility
Michigan	Nursing Facility
Mississippi	Nursing Facility
Nebraska	Nursing Facility
Nevada	Nursing Facility
New Hampshire	Inpatient / Outpatient
New Jersey	Inpatient / Outpatient
North Carolina	Inpatient / Outpatient
Ohio	Inpatient / Outpatient
Oklahoma	Inpatient / Outpatient
	Nursing Facility
Pennsylvania	Nursing Facility
Tennessee	Inpatient / Outpatient
	Nursing Facility
Vermont	Inpatient / Outpatient
Washington	Inpatient
	Nursing Facility
West Virginia	Inpatient / Outpatient
Wisconsin	Inpatient / Outpatient