DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Mr. Toby Douglas, Director
Health Care Programs
California Department of Health Care Services
P.O. Box 997413
MS 0000
Sacramento, California 95899

JAN 14 2015

Dear Mr. Douglas:

This is in response to your request for waiver of the broad-based and uniformity requirements related to a health care-related tax program on inpatient hospital services. California is requesting this waiver as an update to its previously approved waiver of the broad-based and uniformity requirements for its inpatient hospital assessment program. Upon review and consideration of the information formally provided to the Center for Medicare & Medicaid Services (CMS) on March 28, 2014, I am pleased to inform you that your request for waiver of the broad-based and uniformity provisions of sections 1903(w)(3)(B) and (C) of the Social Security Act (the Act) is approved.

The tax structure for which California requested waiver for would be imposed as follows:

SFY 2013-2014

(i) Public hospitals are excluded from the tax;
(ii) Small rural hospitals are excluded from the tax;
(iii) Psychiatric and specialty hospitals are excluded from the tax;
(iv) New hospitals as defined in California Welfare and Institutions Code section 14169.51 , subdivision (ai) are excluded from the tax;
(v) Non-Medi-Cal fee-for-service inpatient days in all other hospitals will be assessed a fee of $494.10 per inpatient day;
(vi) Non-Medi-Cal managed care inpatient days in hospitals owned by managed care organizations will be assessed a fee of $81.20 per inpatient day;
(vii) Non-Medi-Cal managed care inpatient days in all other hospitals will be assessed a fee of $145.00 per inpatient day;
(viii) Medi-Cal managed care inpatient days in hospitals owned by managed care organizations will be assessed a fee of $300.27 per inpatient day; and
(ix) Medi-Cal fee-for-service and managed care inpatient days in all other hospitals and Medical fee-for-service inpatient days in hospitals owned by managed care organizations will be assessed a fee of $536.20 per inpatient day.

SFY 2014-2015

(i) Public hospitals are excluded from the tax;
(ii) Small rural hospitals are excluded from the tax;
(iii) Psychiatric and specialty hospitals are excluded from the tax;
(iv) New hospitals as defined in California Welfare and Institutions Code section 14169.51 , subdivision (ai) are excluded from the tax;
(v) Non-Medi-Cal fee-for-service inpatient days in all other hospitals will be assessed a fee of $449.26 per inpatient day;

(vi) Non-Medi-Cal managed care inpatient days in hospitals owned by managed care organizations will be assessed a fee of $81.20 for per inpatient day;
(vii) Non-Medi-Cal managed care inpatient days in all other hospitals will be assessed a fee of $145.00 per inpatient day;
(viii) Medi-Cal managed care inpatient days in hospitals owned by managed care organizations will be assessed a fee of $283.71per inpatient day; and
(ix) Medi-Cal fee-for-service and managed care inpatient days in all other hospitals and Medical fee-for-service inpatient days in hospitals owned by managed care organizations will be assessed a fee of $506.63 per inpatient day.

SFY 2015-2016

(i) Public hospitals are excluded from the tax;
(ii) Small rural hospitals are excluded from the tax;
(iii) Psychiatric and specialty hospitals are excluded from the tax;
(iv) New hospitals as defined in California Welfare and Institutions Code section 14169.51 , subdivision (ai) are excluded from the tax;
(v) Non-Medi-Cal fee-for-service inpatient days in all other hospitals will be assessed a fee of $503.76 per inpatient day;
(vi) Non-Medi-Cal managed care inpatient days in hospitals owned by managed care organizations will be assessed a fee of $95.20 per inpatient day;
(vii) Non-Medi-Cal managed care inpatient days in all other hospitals will be assessed a fee of $170.00 per inpatient day;
(viii) Medi-Cal managed care inpatient days in hospitals owned by managed care organizations will be assessed a fee of $331.69 per inpatient day; and
(ix) Medi-Cal fee-for-service and managed care inpatient days in all other hospitals and Medical fee-for-service inpatient days in hospitals owned by managed care organizations will be assessed a fee of $592.31 per inpatient day.

SFY 2016-2017

(i) Public hospitals are excluded from the tax;
(ii) Small rural hospitals are excluded from the tax;
(iii) Psychiatric and specialty hospitals are excluded from the tax;
(iv) New hospitals as defined in California Welfare and Institutions Code section 14169.51 , subdivision (ai) are excluded from the tax;
(v) Non-Medi-Cal fee-for-service inpatient days in all other hospitals will be assessed a fee of $585.29 per inpatient day;
(vi) Non-Medi-Cal managed care inpatient days in hospitals owned by managed care organizations will be assessed a fee of $95.20 per inpatient day;
(vii) Non-Medi-Cal managed care inpatient days in all other hospitals will be assessed a fee of $170.00 per inpatient day;
(viii) Medi-Cal managed care inpatient days in hospitals owned by managed care organizations will be assessed a fee of $368.01 per inpatient day; and
(ix) Medi-Cal fee-for-service and managed care inpatient days in all other hospitals and Medical fee-for-service inpatient days in hospitals owned by managed care organizations will be assessed a fee of $657.17 per inpatient day.

Section 1903(w)(3)(E) of the Act specifies that the Secretary shall approve uniformity (and broad-based) waiver applications if the net impact of the tax is generally redistributive and that the amount of the tax is not directly correlated to Medicaid payments.

The federal regulation at 42 CFR 433.68(e)(2) describes the statistical test necessary for a state to demonstrate that the proposed structure is generally redistributive. California's statistical demonstration is addressed below. Moreover, the federal regulation at 42 CFR 433.68(f) describes the circumstances in which a direct correlation would exist. Upon review of the California statute implementing the proposed hospital tax and the review of California's proposed methodology for increasing Medicaid reimbursement to hospitals, it appears that no direct correlation exists between the associated increases in Medicaid reimbursement.

To determine the generally redistributive nature of the proposed inpatient hospital patient day tax, California calculated the slope (expressed as B1) of a linear regression for a broad-based and uniform tax in which the dependent variable was each hospital's percentage share of the total tax paid, if the tax was uniformly imposed on all hospital inpatient days in the state and the independent variable was each hospital's number of Medicaid inpatient days. California then calculated the slope (expressed as B2) of a linear regression for the state's actual proposed tax program in which the dependent variable was each hospital's percentage share of the total tax paid and the independent variable was the number of Medicaid patient days for each hospital.

Using the patient day and tax rate data you provided, CMS also performed the regression analysis calculations required in the regulations for the proposed tax. CMS finds that the result of the generally redistributive calculation for the California inpatient hospital patient day tax is 1.004 for SFY 2013-2014, 1.005 for SFY 2014-2015, 1.004 for 2015-2016, and 1.004 for SFY 2016-2017.

Therefore, we are able to approve your request to modify your waiver of the broad-based and uniformity provisions of sections 1903(w)(3)(B) and (C) of the Act for the proposed inpatient hospital patient day tax. Please be advised that any future changes to the taxing structure, including a non-uniform change to the approved tax rates, will require the State of California to submit a new broad-based and/or uniformity waiver request.

The federal regulations at 42 CFR 433.72(c)(2) specify that a waiver will be effective for tax programs commencing on or after August 13, 1993, on the first day of the calendar quarter in which the waiver is received by CMS. CMS received the State of California's initial request for waiver of the broad-based and uniformity requirements on March 28, 2014, with a requested effective date of January 1, 2014. Therefore, the effective date of California's request for waiver of the broad-based and uniformity requirements is January 1, 2014.

CMS reserves the right to perform a financial management review at any time to ensure that the state operation of the tax on nursing facilities continues to meet the requirements of section 1903(w) of the Act.

I hope this information addresses all of your concerns. If you have further questions or need additional information please contact Richard Cuno at (410) 786-1111.

ORIGINAL SIGNED

Timothy Hill
Acting Deputy Director