

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



Center for Medicaid, CHIP and Survey & Certification

Mr. Toby Douglas
Director
Department of Health Care Services
1501 Capitol Avenue, Suite 4000
P.O. Box 997413
Sacramento, California 95814

JUN 22 2012

Dear Mr. Douglas:

This is in response to your request for waiver of the broad-based and uniformity requirements related to a tax program on inpatient hospital patient days. Upon review and consideration of the information formally provided to the Centers for Medicare & Medicaid Services (CMS) on October 28, 2011 and numerous subsequent dates including most recently on May 31, 2012, I am pleased to inform you that your requests for waiver of the broad-based and uniformity provisions of section 1903(w)(3)(B) and (C) of the Social Security Act (the Act) is approved.

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

- (i) Public hospitals are excluded from the tax;
- (ii) Small and rural hospitals are excluded from the tax;
- (iii) Psychiatric and specialty hospitals are excluded from the tax;
- (iv) Fee-for-service inpatient days in all other hospitals are taxed at a rate of \$308.36 per inpatient day;
- (v) Non-Medi-Cal inpatient days in hospitals owned by a managed care organization are taxed at a rate of \$48.38 per inpatient day;
- (vi) Medi-Cal inpatient days in hospitals owned by a managed care organization are taxed at a rate of \$214.59 per inpatient day;
- (vii) Non-Medi-Cal managed care inpatient days in all other hospitals are taxed at a rate of \$86.40 per inpatient day; and
- (viii) Medi-Cal fee-for-service and managed care days in all other hospitals are taxed at a rate of \$383.20 per inpatient day

Section 1903(w)(3)(E) of the Act specifies that the Secretary shall approve broad-based (and uniformity) 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 tax structure is generally redistributive. California's statistical test 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 inpatient hospital tax and the review of California's proposed fee-for-service payment methodologies in the State plan for increasing Medicaid reimbursements to hospitals, it appears that no direct correlation exists between the increase in Medicaid fee-for-service reimbursement.

Analysis

To determine the generally redistributive nature of the proposed inpatient hospital 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 inpatient hospital's percentage share of the total tax paid, if the tax was uniformly imposed on all inpatient hospital patient 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 inpatient days for each hospital.

Using the patient day and the 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 California's inpatient hospital patient day tax is 1.005.

The Federal regulations at 42 CFR 433.72(c)(1) 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 October 28, 2011. Therefore, the effective date of California's request for waiver of the broad-based and uniformity requirements is October 1, 2011.

CMS reserves the right to perform a financial management review at any time to ensure that the State operation of the tax on inpatient hospital days continues to meet the requirements of section 1903(w) of the Act. Also note, this waiver approval does not have any bearing on the permissibility of managed care contracts associated with capitation increases that relate to this tax. Those contracts are still to be submitted and reviewed by CMS.

I hope this information addresses all of your concerns. If you have further questions or need additional information please contact Kristin Fan at (410) 786-4581.

Sincerely,



Cindy Mann
Director

cc: Gloria Nagle
Associate Regional Administrator, San Francisco