



Jennifer Kent
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

March 16, 2016

Mr. Timothy Hill
Director, Financial Management Group
Center for Medicaid, CHIP and Survey & Certification
U.S. Department of Health & Human Services
7500 Security Boulevard
Baltimore, MD 21244

CALIFORNIA REQUEST FOR WAIVER FOR MANAGED CARE ORGANIZATION TAX

Dear Mr. Hill:

California's Senate Bill X2_2 (Hernandez, Chapter 2, Statutes 2016) enacts a new Managed Care Organization (MCO) tax, effective for a taxing period of July 1, 2016 through June 30, 2019. The California Department of Health Care Services (California) submits this letter requesting a waiver of the broad-based and uniformity provisions, pursuant to 42 CFR §433.72. This MCO tax was enacted to comply with the Centers for Medicare and Medicaid Services (CMS) direction to states in the July 2014 State Health Officials letter (SHO #14-001). Unlike the prior versions of California's MCO taxes, this new MCO tax is broadly applied across full service health care plans and their various lines of business and not just Medi-Cal lines of business. California modeled several aspects of the MCO tax on the CMS approved California hospital provider fee.

California's request is for approval of a waiver of the broad-based and uniformity provisions of section 1903(w)(3)(B) and (C) of the Social Security Act, with a requested effective date of July 1, 2016. The terms of the MCO tax for which the waiver is sought are as follows:

- (i) Health plans that are licensed pursuant to California Health & Safety Code Section 1351.2 are excluded from the tax;
- (ii) Health plans that are owned and operated by a 501(c)(3) hospital or health system, or multiple 501(c)(3) hospitals or health systems, that have both a substantial amount of enrollment in and are headquartered in either Sacramento or San Diego county are excluded from the tax;

- (iii) Cumulative Medi-Cal member months from 0 to 2,000,000 are taxed at the following rates: \$40.00 in state fiscal year (SFY) 2016-17; \$42.50 in SFY 2017-18; \$45.00 in SFY 2018-19
- (iv) Cumulative Medi-Cal member months from 2,000,001 to 4,000,000 are taxed at the following rates: \$19.00 in SFY 2016-17; \$20.25 in SFY 2017-18; \$21.00 in SFY 2018-19
- (v) Cumulative Medi-Cal member months in excess of 4,000,000 are taxed at the following rates: \$1.00 in SFY 2016-17; \$1.00 in SFY 2017-18; \$1.00 in SFY 2018-19
- (vi) Cumulative Other member months from 0 to 4,000,000 are taxed at the following rates: \$7.50 in SFY 2016-17; \$8.00 in SFY 2017-18; \$8.50 in SFY 2018-19
- (vii) Cumulative Other member months from 4,000,001 to 8,000,000 are taxed at the following rates: \$2.50 in SFY 2016-17; \$3.00 in SFY 2017-18; \$3.50 in SFY 2018-19
- (viii) Cumulative Other member months in excess of 8,000,000 are taxed at the following rates: \$1.00 in SFY 2016-17; \$1.00 in SFY 2017-18; \$1.00 in SFY 2018-19
- (ix) Cumulative Alternative Health Care Service Plan (AHCSP) member months from 0 to 8,000,000 are taxed at the following rates: \$2.00 in SFY 2016-17; \$2.25 in SFY 2017-18; \$2.50 in SFY 2018-19
- (x) Cumulative AHCSP member months in excess of 8,000,000 are not taxed.

The MCO tax model is based on enrollment in each applicable health plan using October 2014 through September 2015 data.

The value for the B1/B2 is 1.0786 for SFY 2016-17, 1.0813 for SFY 2017-18 and 1.0868 for SFY 2018-19.

Please note that, pursuant to federal law and requirements, the MCO tax is not assessed on Medicare managed care enrollment or on enrollment under Federal Employees Health Benefits Act.

Waiver Justification: We believe the MCO tax proposal satisfies the criteria for waiver under 42 C.F.R. §433.72(b), as summarized below:

- The net impact of the tax is generally redistributive, as demonstrated by the results of the B1/B2 test set forth above and in the enclosed model.

- The amount of the tax is not directly correlated to Medicaid payments, and the tax is applied to both Medicaid and non-Medicaid lines of business and to both plans that do and do not participate as Medicaid managed care plans.
- The MCO tax does not fall within the hold harmless provisions specified in 42 CFR. §433.68(f):
 - The State does not provide for any direct or indirect non-Medicaid payment to health plans paying the tax that is positively correlated with either the tax amount or the difference between the Medicaid payment and the tax amount.
 - Any portion of the Medicaid payment to the MCO taxpayer that varies based on tax amount is attributable to federal requirements for setting actuarially sound capitation rates for Medicaid managed care plans.
 - There is no direct or indirect guarantee by the State to hold MCO taxpayers harmless for all or any portion of the tax amount, and the aggregate revenue from the tax will not exceed 6 percent of MCO revenues projected for the taxing period.

Please note that in order to avoid double taxation, plans that are subject to the MCO Tax will no longer be subject to taxation under the state corporation's tax or the gross premiums tax paid by insurers, including health insurers, as the MCO tax replaces these existing taxes. This is not a credit against these taxes, but instead reflects a determination that MCOs should be subject to only one tax -- after July 1, 2016, this will be the MCO tax.

We have provided the MCO tax model along with this submission that demonstrates the above taxing structure and the B1/B2 test results. We would be pleased to provide any additional information that you require for processing this request. We look forward to your favorable response.

Sincerely,

Original signed by Mari Cantwell

Mari Cantwell
Chief Deputy Director, Health Care Programs
State Medicaid Director

cc: See next page

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cc: Kristin Fan
Deputy Director, Financial Management Group
Centers for Medicaid and CHIP Services

Kristin Dillon
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations
Centers for Medicare & Medicaid Services, Region IX

Lindy Harrington
Deputy Director
Health Care Financing
Department of Health Care Services

Ryan Witz
Assistant Deputy Director
Health Care Financing
Department of Health Care Services