
Ms. Jacey Cooper, Chief Deputy Director
Health Care Programs
California Department of Health Care Services
P.O. Box 997413
MS 0000
Sacramento, California 95899

Dear Ms. Cooper:

This is in response to your request for waiver of the broad-based and uniformity requirements related to a tax on certain nursing facility days. California is requesting this waiver as an update to its previously approved waiver of the broad-based and uniformity requirements for its nursing facility assessment program. Upon review and consideration of the information formally provided to the Centers for Medicare & Medicaid Services (CMS) on September 23, 2020, I am writing 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 would be imposed as follows:

- (i) Continuing care retirement communities are excluded from the tax;
- (ii) Distinct part nursing facilities are excluded from the tax;
- (iii) Institutions for Mental Diseases that provide skilled nursing facility care are excluded from the tax;
- (iv) State or publicly owned and operated nursing facilities are excluded from the tax;
- (v) Intermediate care facilities are excluded from the tax;
- (vi) Freestanding pediatric subacute facilities are excluded from the tax;
- (vii) Nursing facilities with 100,000 or more total annual resident days will be assessed \$14.54 per patient day; and
- (viii) Multi-level care facilities and nursing facilities with less than 100,000 total annual resident days will be assessed \$15.19 per patient 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.

Federal regulations 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, federal regulations 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 nursing facility tax and the review of California's proposed methodology for increasing Medicaid reimbursement to nursing facilities, it appears that no direct correlation exists between the associated increases in Medicaid reimbursement.

To determine the generally redistributive nature of the proposed nursing facility 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 nursing facility's percentage share of the total tax paid, if the tax was uniformly imposed on all nursing facility patient days in the state and the independent variable was each nursing facility's number of Medicaid patient 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 nursing facility's percentage share of the total tax paid and the independent variable was the number of Medicaid patient days for each nursing facility.

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 nursing facility patient day tax is **1.3717**.

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 nursing facility 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.

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 September 23, 2020, with a requested effective date of January 1, 2021. Therefore, the effective date of California's request for waiver of the broad-based and uniformity requirements is January 1, 2021. Please be advised that any changes to the federal requirements concerning healthcare-related taxes may require the state to come into compliance by modifying its tax structure.

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 Tim Davidson at (410) 786-1167.

Sincerely,

Rory Howe
Acting Director
Financial Management Group