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



GAVIN NEWSOM
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September 30, 2019

Ms. Kristin Fan, Director
Financial Management Group
Center for Medicaid & CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, MD 21244-1850

**CALIFORNIA REQUEST FOR WAIVER FOR MANAGED CARE ORGANIZATION
TAX**

Dear Ms. Fan:

California's Assembly Bill 115 enacts a new Managed Care Organization (MCO) tax, effective for a taxing period of July 1, 2019, through December 31, 2022. 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. Similar to the prior version of California's MCO tax, approved for the period of July 1, 2016, through June 30, 2019, 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, consistent with federal law and controlling CMS guidance. However, the new MCO tax does not include the same level of exemptions nor the other tax changes encompassed in the prior model and legislation.

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, 2019. For the final six months of the proposed model (July 1, 2022, through December 31, 2022), each health plan's MCO tax amount is calculated for the full fiscal year and then divided by two.

The terms of the MCO tax for which the waiver is sought are as follows:

- (i) Cumulative Medi-Cal member months from 0 to 4,000,000, inclusive, are taxed at the following rates: \$40.00 in state fiscal year (SFY) 2019-20; \$45.00 in SFY 2020-21; \$50.00 in SFY 2021-22; \$55.00 in SFY 2022-23

- (ii) Cumulative Medi-Cal member months in excess of 4,000,000 are taxed at the following rates: \$0.00 in SFY 2019-20; \$0.00 in SFY 2020-21; \$0.00 in SFY 2021-22; \$0.00 in SFY 2022-23
- (iii) Cumulative Other member months from 0 to 4,000,000, inclusive, are taxed at the following rates: \$0.00 in SFY 2019-20; \$0.00 in SFY 2020-21; \$0.00 in SFY 2021-22; \$0.00 in SFY 2022-23
- (iv) Cumulative Other member months from 4,000,001 to 8,000,000, inclusive, are taxed at the following rates: \$1.00 in SFY 2019-20; \$1.00 in SFY 2020-21; \$1.50 in SFY 2021-22; \$1.50 in SFY 2022-23
- (v) Cumulative Other member months in excess of 8,000,000 are taxed at the following rates: \$0.00 in SFY 2019-20; \$0.00 in SFY 2020-21; \$0.00 in SFY 2021-22; \$0.00 in SFY 2022-23

The MCO tax model is based on enrollment in each applicable health plan using data for the January 1, 2018, through December 31, 2018, year.

The value for the B1/B2 is 1.0907 for SFY 2019-20, 1.0904 for SFY 2020-21, 1.0911 for SFY 2021-22, and 1.0908 for SFY 2022-23.

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. Aside from these federal coverage programs, the immediate model does not exempt any other full-service health care plan within the applicable MCO provider class from the tax.

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.


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- The MCO tax does not fall within the hold harmless provisions specified in 42 C.F.R. §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 six percent of MCO revenues projected for the taxing period.

In addition, please note that this current version of the MCO tax legislation did not extend the other tax changes (i.e., to the state's corporate franchise tax as applied to health plans, and gross premiums tax on insurers) that accompanied the MCO tax approved for the July 1, 2016, to June 30, 2019, period.

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,



Mari Cantwell
Chief Deputy Director
Health Care Programs
State Medicaid Director

cc: See Next Page.

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cc: Richard Allen, Director
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