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DIRECTOR

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



GAVIN NEWSOM
GOVERNOR

April 14, 2020

CERTIFICATION OF FEDERAL APPROVAL FOR MODIFIED AB 115 MANAGED CARE ORGANIZATION TAX – EFFECTIVE JANUARY 1, 2020

The California Department of Health Care Services (DHCS) issues this certification of federal approval pursuant to Welfare and Institutions Code sections 14199.64(d)(1) and 14199.66(a).

On April 3, 2020, the federal Centers for Medicare and Medicaid Services (CMS) approved the modified Managed Care Organization (MCO) tax under Assembly Bill 115 (Chapter 348, Statutes 2019) submitted by DHCS on February 10, 2020 (available [here](#)). The modified MCO tax was approved with a later effective date of January 1, 2020, contrary to the July 1, 2019, effective date start provided in AB 115 and as was requested by DHCS in the February 10, 2020, submission. A copy of the April 3, 2020, approval letter from CMS is attached to this certification.

Pursuant to Welfare and Institutions Code section 14199.64(d)(2), DHCS will soon issue notice to each health plan subject to the modified AB 115 MCO tax approved by CMS, including the amounts owed for the operative six-month period of the 2019-20 State Fiscal Year (SFY) and the dates on which installment tax payments are due to DHCS. Due to the delayed effective date of the federal approval, the Department has determined the MCO tax liability for the January 1, 2020, to June 30, 2020, period by calculating the amount for the full 2019-20 SFY and then dividing by 2.

Accordingly, as Director of DHCS, and pursuant to Welfare and Institutions Code sections 14199.64(d)(1) and 14199.66(a), I hereby certify the receipt of federal approval necessary to claim federal financial participation in conjunction with the modified MCO tax pursuant to AB 115. This approval is effective beginning January 1, 2020, and is applicable through December 31, 2022.

[Redacted Signature]

Bradley P. Gilbert, MD, MPP
Director

4/14/20
Date

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



April 3, 2020

Ms. Jacey Cooper
Chief Deputy Director, Health Care Programs
State of California, Department of Health Care Services
1501 Capitol Avenue, 6th Floor, MS 0000
Sacramento, CA 95814-5005

Dear Ms. Cooper:

This is in response to your request for a waiver of the broad-based and uniformity requirements related to the State of California's managed care organization (MCO) tax. California is requesting this waiver as an update to its previously approved MCO tax. Upon review and consideration of the information formally provided to the Centers for Medicare & Medicaid Services (CMS) on February 10, 2020, I am writing to inform you that your request for a 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 a waiver would be imposed as follows:

- (i) Cumulative Medi-Cal member months from 0 to 675,000, inclusive, are taxed at the following rates: \$0.00 in state fiscal year (SFY) 2019-20; \$0.00 in SFY 2020-21; \$0.00 in SFY 2021-22; \$0.00 in SFY 2022-23.
- (ii) Cumulative Medi-Cal member months from 675,001 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.
- (iii) 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;
- (iv) Cumulative other member months from 0 to 675,000, 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.
- (v) Cumulative other member months from 675,001 to 4,000,000, 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.
- (vi) Cumulative other 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.

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 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 tax structure is generally redistributive. California's statistical demonstration is addressed below. Moreover, federal regulations at 42 CFR 433.68(f) describe the circumstances in which a direct correlation would exist. Upon review of California's statute implementing proposed MCO tax and review of California's proposed methodology for increasing Medicaid reimbursement to managed care organizations, it appears that no direct correlation exists between the taxes and associated increases in Medicaid reimbursement.

Analysis

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

Using the patient day and tax rate data you provided, CMS also performed the calculations required in the regulations for the proposed tax. CMS finds that the result of the generally redistributive calculation for the California MCO tax to be **1.0008** for SFY 2019-20, **1.0001** for SFY 2020-21, **1.0018** for SFY 2021-22, and **1.0012** for SFY 2022-23.

Therefore, we are able to approve your request for a waiver of the broad-based and uniformity provisions of section 1903(w)(3)(B) and (C) of the Act for the proposed MCO 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 request for waiver of the broad-based and uniformity requirements on February 10, 2020. Therefore, the effective date of California's request for a waiver of the broad-based and uniformity requirements is January 1, 2020. Please be advised that any changes to the federal requirements concerning health care-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's operation of the tax continue to meet the requirements of section 1903(w) of the Act.

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I hope this information addresses all of your concerns, if you have further questions or need additional information please contact Jonathan Endelman at (410) 786-4738.

Sincerely,

Karen M. Shields
Deputy Director
Center for Medicaid & CHIP Services