

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

MAY 17 2016

Dear Ms. Cantwell:

This is in response to your request for waiver of the broad-based and uniformity requirements related to your managed care organization (MCO) tax. California is requesting this waiver as an update to its previous MCO tax to satisfy CMS' updated policy requirements. Upon review and consideration of the information formally provided to the Center for Medicare & Medicaid Services (CMS) on March 16, 2016 and additional information on May 10, 2016, I am pleased 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) Health plans that are licensed pursuant to California Health and Safety Code Section 1351.2 are excluded from the tax;
- (ii) Non-profit health plans 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; and
- (x) Cumulative AHCSP member months in excess of 8,000,000 are not taxed.

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.

The federal regulation 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, the federal regulation at 42 CFR 433.68(f) describes the circumstances in which a hold harmless arrangement would exist. Upon review of the California statute implementing the proposed MCO tax and the review of California's proposed methodology for increasing Medicaid reimbursement to managed care organizations, it appears that no hold harmless arrangement exists between the associated increases in Medicaid reimbursement.

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 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 1.03752 (2016-17), 1.04021 (2017-18), and 1.04552 (2018-19).

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 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.

The 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 March 16, 2015, with a requested effective date of July 1, 2016. Therefore, the effective date of California's request for waiver of the broad-based and uniformity requirements is July 1, 2016.

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 Stuart Goldstein at (410) 786-0694.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Hill', is written over a horizontal line. The signature is stylized and cursive.

Timothy Hill
Deputy Director