



Cynthia Beane
Commissioner
State of West Virginia, Department of Health and Human Resources
350 Capitol Street, Room 251
Charleston, WV 25301-3706

FEB 14 2020

Dear Ms. Beane:

This is in response to your request for waiver of the broad-based and uniformity requirements related to the state's tax on Healthcare Management Organizations (HMOs) (referred to in this letter as the Managed Care Organization (MCO) tax). Upon review and consideration of the information formally provided to the Centers for Medicare & Medicaid Services (CMS) on May 14, 2019, 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 West Virginia requested waiver would be imposed as follows:

- (i) Medicaid health plans with less than 250,000 member months will be taxed at a rate of \$35.00 per member month;
- (ii) Medicaid health plans with between 250,000 and 500,000 member months will be taxed at a rate of \$20.00 per member month;
- (iii) Medicaid health plans with more than 500,000 member months will be taxed at a rate of \$1.00 per member month;
- (iv) Non-Medicaid health plans with less than 150,000 member months will be taxed at a rate of \$0.25 per member month;
- (v) Non-Medicaid health plans with more than 150,000 member months will be taxed at a rate of \$0.10 per member month

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.

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

To determine the generally redistributive nature of the proposed member month MCO tax, West Virginia 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. West Virginia 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 member month 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 tax is **1.0023**.

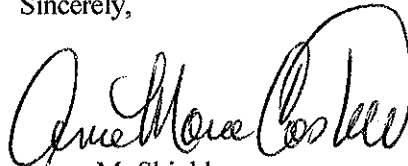
Therefore, we are able to approve your request to modify your waiver of the broad-based and uniformity provisions of sections 1903(w)(3)(B) and (C) of the Act for the proposed member month MCO tax. Please be advised that any future changes to the taxing structure, including a non-uniform change to the approved tax rates, will require the State of West Virginia 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 West Virginia's initial request for waiver of the broad-based and uniformity requirements on June 19, 2019, with a requested effective date of January 1, 2020. Because West Virginia has requested a later effective date than the earliest date available under the regulations, the state's request for a later effective date for waiver of the broad-based and uniformity requirements is approved and the waiver is effective as of 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 implementation of the MCO tax continues to meet the requirements of section 1903(w) of the Act and all other applicable federal requirements.

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,

A handwritten signature in black ink, appearing to read "Karen M. Shields". The signature is fluid and cursive, with a large loop at the end.

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