

Information Collection Requirements  
for Medicaid State Agencies  
and Supporting Regulations in  
42 CFR 433.68, 433.74, and 447.272  
CMS-R-148

A. BACKGROUND

CMS is requesting Office of Management and Budget approval under the Paperwork Reduction Act of 1995 of information collection requirements contained at parts 42 CFR 433 and 447 as required by Section 4 of Public Law 102-234, The Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991.

B. JUSTIFICATION

1. Need and Legal Basis

Pub. L. 102-234 amended section 1903 of the Social Security Act (the Act) to specify limitations on the amount of Federal financial participation (FFP) available for medical assistance expenditures in a fiscal year when States receive funds donated from providers and revenues generated by certain health care related taxes and, to establish limits on the amount of payment adjustments to disproportionate share hospitals (DSHs) for which FFP is available, respectively.

Section 2(a) of Pub.L. 102-234 added a subsection (w) to section 1903 of the Act. In general, under section 1903(w), a reduction in FFP will occur in most circumstances if States receive donations made by, or on behalf of, health care providers. The law also establishes a definition of the types of health care related tax revenues States are permitted to receive, without a reduction in FFP. Such taxes are broad based taxes which apply to all health care items and services in a given class in a uniform manner, and which do not hold taxpayers harmless for their tax costs. Moreover, the law permits States which have received, by specified dates prior to the passage of this law, provider donations and taxes which are not permitted by this law, to continue to receive them for a limited time without a reduction in FFP.

The law also provides in section 1903(w)(3)(E)(i) of the Act that a State may submit to CMS a request for a waiver of either or both the broad based and uniformity requirements as defined in the statute. In order for CMS to approve such a request, a State must demonstrate that its tax program is generally redistributive in nature and, the amount of the tax is not directly correlated to medical assistance payments and, the tax program meets the hold harmless provisions contained in the law.

Section 1903(w)(4) of the Act, as added by Pub. L.102-234, specifies three conditions under which a State or local government is determined to hold taxpayers harmless for their tax costs. It is the responsibility of each State to demonstrate that every tax program enacted after November 22, 1991, does not meet any of the three statutory conditions for hold harmless.

Section 3 of Pub. L. 102-234, deleted the prohibition on an upper payment limit for DSHs from section 1902(h) of the Act, and added subsection (f) to section 1923 of the Act, which imposed new limits on DSH payments. The DSH limit, effective October 1, 1992, established both national and State limits on DSH payments. The national limit is established at 12 percent of the total amount of expenditures (excluding administrative costs) paid under Medicaid State plans for medical assistance during the Federal fiscal year. The limit is based on the State's DSH expenditures in Federal fiscal year 1992 and increased in subsequent years based on a growth factor which ties to the increase in overall state Medical Assistance expenditures.

States are required to provide a satisfactory assurance that its payment methodologies used to determine payments to DSHs can reasonably be expected not to increase aggregate DSH payments in excess of the statutory limits set by section 1923(f) of the Act.

The provisions of the law affecting taxes, donations and DSH payments apply to all 50 States and the District of Columbia, but do not apply to Arizona.

Section 4 of Pub. L. 102-234 amended section 1903(d) of the Act to require each State to provide information relating to provider related donations made to the State or units of local government and health care related taxes collected by the State or such units.

42 CFR 433 and 447 implement these provisions.

## 2. Information Users

Section 42 CFR 433.68 contains the provisions which explain States may request a waiver of either or both the broad based and uniformity tax program requirements, the specific quantitative standards that must be met for the waiver(s) to be approved and the conditions and quantitative tests applicable to determining when taxpayers are considered to be held harmless for their tax costs (held harmless amounts are any portion of the cost of the tax being returned to the taxpayer through a State payment, offset or waiver of other taxes or mandatory payments that would have been paid by the taxpayer). A State, may elect to submit a waiver to CMS for either or both the broad based and uniformity requirements for any health care related tax program which do not conform to the broad based or uniformity requirements. It is also the responsibility of each State to be able to demonstrate that its tax program(s) do not violate the hold harmless provision. For a waiver to be approved and a determination that the hold harmless provision is not

violated, States must submit written documentation to CMS which satisfies the regulatory requirements. Without this information, the amount of FFP payable to a State cannot be correctly determined.

Section 42 CFR 433.74 requires State Medicaid agencies to report quarterly on the source of provider related donations received by the State or unit of local government, and health care related taxes collected. Each State must maintain, in readily reviewable form, supporting documentation that provides a detailed description of each donation and tax program being reported, as well as the source and use of all donations received and collected. Without this information, the amount of FFP payable to a State cannot be determined.

The assurance stated at 42 CFR 447.272(c) is submitted by the State Medicaid agency to its CMS regional office to determine whether a DSH plan amendment conforms to the Medicaid statute and regulations. This assurance is reviewed and recommendation is given as to whether the plan amendment can be approved, disapproved or whether additional information may be necessary and the regional office advises the state accordingly. Without the information the plan amendment cannot be reviewed or approved.

### 3. Improved Information Technology

The information can be submitted electronically, via e-mail. Whether it is or not depends on State capabilities. It is not practical to develop software for so few submissions.

### 4. Duplication of Similar Information

The information collected does not duplicate any other collected information.

### 5. Small Business

There is no significant impact on small businesses.

### 6. Less Frequent Collection

Evaluation of the hold harmless requirements for a tax program may either be elective by the State or, initiated by CMS as a result of a spectrum review which identifies a problem. Therefore, States will submit documentation for both waiver requests and hold harmless on an as-needed basis.

Failure to collect the funding data on a quarterly basis may result in Federal funds not being returned promptly and properly to the Federal Government. States could misspend large sums of Federal funds undetected with no immediate mechanism of recovery. Conversely, there are instances where States are due Federal funds and delays in

reimbursing States could cause financial hardships on a State and adversely impact the operation of the Medicaid program.

7. Special Circumstances

There are no special circumstances.

8. Federal Register Notice/Outside Consultation

A 60-day Federal Register was published on \_\_\_\_\_.

CMS conducted several meetings in the past with State representatives and health care organizations regarding the information and collection requirements.

9. Payment/Gift to Respondent

There is no provision for payment or gift to States for their responses.

10. Confidentiality

None of the information submitted by a State will be of a proprietary nature. If any information of a truly proprietary nature were submitted, it would be treated confidentially, if it were so identified by the State.

11. Sensitive Questions

We are not asking any sensitive questions or gathering information of a sensitive nature.

12. Burden Estimate (Hours and Wages)

The estimated cost and burden to the State governments as a result of the elective waiver provisions provided for in the law is \$30,720 annually and 2,560 burden hours. We estimate that CMS will receive approximately 8 waiver requests per quarter (32 annually) and each will require approximately 80 State work hours. The cost/hour estimate is computed as follows:

$\$12 \text{ per hour} \times 80 \text{ hours} \times 8 \text{ responses} \times 4 \text{ quarters} = \$30,720$

$80 \text{ hours} \times 8 \text{ waivers} \times 4 \text{ quarters} = 2,560$

The estimated cost and burden to the State governments as a result of the statutory requirement that State tax programs not hold taxpayers harmless for the cost of the tax is \$7,040 annually and 640 burden hours. Based on previous responses, we believe that CMS will receive information from approximately two States per quarter regarding the hold harmless provision in the law. The quarterly cost estimate is computed as follows:

\$12 per hour x 80 hours x 2 responses x 4 quarters= \$7,680  
80 hours x 2 responses x 4 quarters = 640 hours

The total burden is 3,200 hours (2,560 + 640).

13. Capital Costs

There are no capital costs associated with this information collection.

14. Cost to Federal Government

There will be no additional costs incurred by the Federal government.

15. Program or Burden Changes

There are no program or burden changes..

16. Publication and Tabulation Dates

The information submitted by States is not published or tabulated.

17. Expiration Date

We are not seeking any special requests with respect to the expiration date.

18. Certification Statement

There are no exceptions to the certification statement.

C. Collection of Information Employing Statistical Methods

There are no statistical methods.