

Supporting Statement Part A
Limitations on Provider Related Donations and Health Care Related Taxes; Limitations on
Payments to Disproportionate Share Hospitals; Medicaid and
Supporting Regulations in 42 CFR 433.68, 433.74 and 447.272
CMS-R-148 (OMB 0938-0618)

BACKGROUND

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

A 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 when revenues are generated by certain health care related taxes.

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 inducing a reduction in FFP. Such taxes are broad based taxes which uniformly apply to all health care items and services in a given class, and which do not hold taxpayers harmless for their tax costs. Moreover, the law permits States that have received, by specified dates prior to the passage of this law, provider donations and taxes 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 the amount of the tax is not directly correlated to medical assistance payments, that its tax program is generally redistributive in nature, and that the program also 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. A taxpayer will be considered to be held harmless under a tax program if any of the following conditions applies:

(1) The State (or other unit of government) imposing the tax provides directly or indirectly for a non-Medicaid payment to those providers or others paying the tax and the amount of the payment is positively correlated to either the amount of the tax or to the difference between the Medicaid payment and the total tax cost.

(2) All or any portion of the Medicaid payment to the taxpayer varies based only on the amount of the total tax payment.

(3) The State (or other unit of local government) imposing the tax provides, directly or indirectly, for any payment, offset, or waiver that guarantees to hold taxpayers harmless for all or a portion of the tax.

It is the responsibility of each State to ensure that every tax program enacted after November 22, 1991, does not meet any of the three statutory conditions..

The provisions of the law affecting taxes and donations, apply to all 50 States and the District of Columbia.

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 part 433 implements these provisions.

2. Information Users

Section 42 CFR 433.68 contains provisions that explain States may request a waiver of either or both the broad based and uniformity tax program requirements. Specific quantitative standards that must be met for the waiver(s) to be approved. For waivers of the broad based requirement, the State must calculate the proportion of the tax revenue applicable to Medicaid if the tax were broad based and applied to all providers within the class (called P1), then calculate the proportion of the tax revenue applicable to Medicaid under the tax program that is seeking the waiver (called P2). If the State demonstrates that the value of the P1/P2 is at least 1 CMS will approve the tax. For waivers of the uniformity requirements, the State must demonstrate that its plan is generally redistributive by calculating the slope of two linear regressions resulting in a value of at least 1. 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 does not conform to the broad based and 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 health care related taxes collected, as well as on the source of provider related donations received by the State or unit of local government. 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.

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. (Approximately 32 annual submissions).

4. Duplication of Similar Information

The information collected does not duplicate any other collected information. The subject regulatory requirements are the only place in regulation that addresses waiver and hold harmless requirements.

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 elected 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 mispend 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

The 60-day Federal Register published on June 20, 2014 (79 FR 35354). No comments were received.

CMS conducted several meetings in the past with State representatives and health care organizations through an all State meeting and State Medicaid Director's letter 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)

Waiver Documentation

The estimated cost and burden to the State governments as a result of the elective waiver provisions provided for in the law is \$51,200 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:

Time: $80 \text{ work hours} \times 8 \text{ waivers} \times 4 \text{ quarters} = 2,560 \text{ hours (annual)}$
Cost: $\$20 \text{ per hour} \times 80 \text{ hours} \times 8 \text{ responses} \times 4 \text{ quarters} = \$51,200 \text{ (annual)}$

Hold Harmless Requirements

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 \$11,520 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:

Time: $80 \text{ work hours} \times 2 \text{ responses} \times 4 \text{ quarters} = 640 \text{ hours (annual)}$
Cost: $\$20 \text{ per hour} \times 80 \text{ hours} \times 2 \text{ responses} \times 4 \text{ quarters} = \$12,800 \text{ (annual)}$

The total burden (time) is 3,200 hours (2,560 + 640)
The total burden (cost) is \$64,000 (\$51,200 + \$12,800)

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 as this review is part of regular operations.

15. Program or Burden Changes

There are no program/burden changes or adjustments.

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.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

There are no statistical methods.