

Supporting Statement Part A
Limitations on Provider Related Donations and Health Care Related Taxes, Medicaid and
Supporting Regulations in 42 CFR 433.68 and 433.74
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 the following information collection requirements contained at 42 CFR part 433 as required Public Law 102-234, the “Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991” section 4 “Reporting Requirements”.

This iteration is associated with an NPRM (CMS-2393-P; RIN 0938-AT50) that published in the Federal Register on November 18, 2019 (85 FR 63722). Section 433.72 of the rule proposes to add a period of validity for tax waivers of the broad-based and/or uniformity requirements, which states that waivers will cease to be effective 3 years from CMS’ approval in the case of tax programs commencing on or after the rule’s effective date or 3 years from the rule’s effective date in the case of waivers approved before the rule’s effective date. We propose to allow states with existing health care-related tax waivers up to 3-years from the effective date of the final rule before they must seek re-approval. This will provide states sufficient time to evaluate and, if necessary, modify existing tax programs. In aggregate we estimate an added ongoing annual burden of 40 hours at a cost of \$1,504.

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 433.68 through 433.74 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 one 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 one. 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 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 that would require an information collection to be conducted in a manner that requires respondents to:

- Report information to the agency more often than quarterly;
- Prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Submit more than an original and two copies of any document;
- Retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- Collect data in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study,
- Use a statistical data classification that has not been reviewed and approved by OMB;
- Include a pledge of confidentiality that is not supported by authority established in statute or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- Submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. Federal Register Notice/Outside Consultation

Serving as the 60-day notice, the NPRM (CMS-2393-P; RIN 0938-AT50) published in the Federal Register on November 18, 2019 (85 FR 63722).

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

There are no sensitive questions associated with this collection. Specifically, the collection does not solicit questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. Requirements and Associated Burden Estimates

Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2019 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/current/oes_nat.htm). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Overhead (\$/hr)	Adjusted Hourly Wage (\$/hr)
Healthcare Support Worker	31-9099	19.24	19.24	38.84

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Collection of Information Requirements and Associated Burden Estimates

Waiver Documentation (42 CFR 433.68 and 42 CFR 433.72)

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.

Based on previous responses, we continue to estimate that CMS will receive approximately 8 waiver requests per quarter (32 annually) and that each waiver submission will require approximately 80 hours (per response) as performed by a healthcare support worker. Our annual burden estimate is computed as follows:

Time: 2,560 hours = 80 work hours x 8 waivers x 4 quarters
 Cost: \$99,430 = 2,560 hours x \$38.84/hr

We are proposing through CMS-2392-P to add § 433.72 to add a period of validity for tax waivers of the broad-based and/or uniformity requirements, which states that waivers will cease to be effective 3 years from CMS' approval in the case of tax programs commencing on or after the rule's effective date or 3 years from the rule's effective date in the case of waivers approved before the rule's effective date. This change is necessary because the provider data submitted by states to CMS, for use in the statistical tests described at § 433.68, may change over time. As a result, the tax may be generally redistributive as required by statute and regulation when the state requests the waiver, but may subsequently cease to be so. Currently there are approximately 35 states that have broad based or uniformity waivers.

We propose to allow states with existing health care-related tax waivers up to 3- years from the effective date of the final rule before they must seek re-approval. This will provide states sufficient time to evaluate and, if necessary, modify existing tax programs.

We estimate it would take 2 hours at \$38.84/hr for a healthcare support worker to prepare and submit an updated tax waiver. In aggregate we estimate an ongoing annual burden of 40 hours (20 tax waiver renewals per year x 2 hr/renewal) at a cost of \$1,554 (40 hr x \$38.84/hr) or \$78 per waiver (\$1,554/20). Our annual burden estimate for this proposed provision is computed as follows:

Time: 40 hours = 2 work hours x 20 waivers

Cost: \$1,554 = 40 hours x \$38.84/hr

Hold Harmless Requirements (42 CFR 433.74(a) through (d))

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.

Based on previous responses, we continue to estimate that CMS will receive information from approximately two States per quarter regarding the hold harmless provision. We also estimate that it will require approximately 80 hours (per response) as performed by a healthcare support worker. Our annual burden estimate is computed as follows:

Time: 640 hours = 80 work hours x 2 responses x 4 quarters

Cost: \$24,858 = 640 hours x \$38.84/hr

Burden Summary

We estimate a total time of 3,240 hours (2,560 hr + 640 hr + 40 hr)

We estimate a total cost of \$125,838 (\$99,430 + \$24,858 + \$1,554)

Collection of Information Instruments and Instruction/Guidance Documents

- Waiver Documentation: The State waiver submission does not have a waiver form or template.
- Hold Harmless Requirements: There is no form or template. The burden is associated with the State submitting their waiver request. Their submission takes time to make sure that there is no hold harmless.

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

This iteration is associated with an NPRM (CMS-2393-P; RIN 0938-AT50) that published in the Federal Register on November 18, 2019 (85 FR 63722). Section 433.72 of the rule proposes to add a period of validity for tax waivers of the broad-based and/or uniformity requirements, which states that waivers will cease to be effective 3 years from CMS' approval in the case of tax programs commencing on or after the rule's effective date or 3 years from the rule's effective date in the case of waivers approved before the rule's effective date. This change is necessary because the provider data submitted by states to CMS, for use in the statistical tests described at § 433.68, may change over time. As a result, the tax may be generally redistributive as required by statute and regulation when the state requests the waiver, but may subsequently cease to be so. Currently there are approximately 35 states that have broad based or uniformity waivers. We propose to allow states with existing health care-related tax waivers up to 3-years from the effective date of the final rule before they must seek re-approval. This will provide states sufficient time to evaluate and, if necessary, modify existing tax programs.

The ongoing burden associated with the proposed requirements consists of the time it would take each state that has an existing tax waiver to submit an updated version within 3-years after the effective date of the final rule and to update the waiver every 3 years. Of the 35 states with tax waivers, we estimate that there are approximately 60 tax waivers that will have to be renewed every 3 years, or about 20 tax waivers renewed per year by various states (0.4 tax waiver renewals per year per state). Please note that the proposed waiver requirements are minimal, as states are already required to monitor and update their tax waivers to ensure compliance with federal requirements.

We estimate it would take 2 hours at \$38.84/hr for a healthcare support worker to prepare and submit an updated tax waiver. In aggregate we estimate an ongoing annual burden of 40 hours (20 tax waiver renewals per year x 2 hr/renewal) at a cost of \$1,554 (40 hr x \$38.84/hr) or \$78 per waiver (\$1,554/20 waivers).

This information collection request is a revision to include the method in which states submit quarterly summary information on the source and use of all provider-related donations and health care-related taxes collected in accordance with section 42 CFR 433.74.

We have also updated our cost estimates by \$9,806 (from \$116,032 to \$125,838) by using more recent BLS wage data (+\$2.58/hr from \$36.26/hr to \$38.84/hr) and by considering the proposed provision.

Burden Reconciliation

Burden Category	Total Annual Respondents	Response Frequency (per year)	Total Annual Responses	Time Per Response (hr)	Total Annual Time (hr)
Currently Approved Burden*	50	On occasion and Quarterly	40	80	3,200
Proposed Change	1	On occasion and Quarterly	+20	+2	+40
Ending Balance	51	No change	60	82	3,240

*Approved by OMB on February 9, 2018.

Burden Type	Total Requested (A)	Change Due to New Statute (B)	Change Due to Program Discretion (C)	Change Due to Program Adjustment (D)	Total Currently Approved (E)
Total Responses	60	0	20	0	40
Total Time (hr)	3,240	0	40	0	3,200

16. Publication and Tabulation Dates

The information submitted by States is not published or tabulated.

17. Expiration Date

We will display 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.