

Supporting Statement Part A
Limitations on Provider Related Donations and Health Care Related Taxes, Medicaid and
Supporting Regulations in 42 CFR 433.68 through 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 by Public Law 102-234 (hereinafter, “Pub. L.”), the “Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991” under section 4 “Reporting Requirements.”

This 2024 iteration is an Extension; it does not propose any program/burden changes. However, we are adjusting our cost estimates (an increase of \$9,536) based on current BLS wage data.

This collection of information request does not provide any reporting instruments nor does it provide any instruction outside of the CFR.

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 defines 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.

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 433.68 through 433.74 implements these provisions.

2. Information Users

Employees at the state Medicaid agency collect tax information from various sources including the Medicare cost reports from each hospital, in addition to other state budgetary and financial reports. This information is collected and compiled in a format that may be readily furnished to CMS, including but not limited to Excel format, in order to provide support that its tax program complies with federal statute and regulations.

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 submissions per year among all respondents).

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 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

The 60-day notice published in the Federal Register on February 9, 2024 (89 FR 9155). Although comments were due April 9, 2024, none were received.

The 30-day notice published in the Federal Register on April 25, 2024 (89 FR 31754). Comments must be received by May 28, 2024.

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. Under the Privacy Act of 1974, any personally identifying information obtained will be kept private to the extent of the law.

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 2023 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/2023/may/oes_nat.htm). In this regard, the following table presents BLS' mean hourly wage, our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Other Indirect Costs (\$/hr)	Adjusted Hourly Wage (\$/hr)
Healthcare Support Worker	31-9099	22.60	22.60	45.20

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 other indirect 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 (§ 433.68)

Section 433.68 specifies that States may request a waiver of either or both the broad based and uniformity tax program requirements. 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. Specific quantitative standards must be met for the waiver(s) to be approved.

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 (see below). 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.

Broad Based Requirements Waiver: 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 ratio is at least 1.0, CMS will approve the tax.

Uniformity Requirements Waiver: 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 1.0.

Although there is no requirement for the intervals related to when states must submit waiver requests to CMS, based on previous responses we continue to estimate that CMS will receive approximately 8 waiver requests per quarter (32 annually). We estimate that this will require approximately 80 hours (per response) as performed by a healthcare support worker. We note that once states have an approved tax structure in place under an approved waiver, states are only required to submit an updated waiver request when making non-uniform changes to the approved tax structure.

Our annual burden estimates follow:

Time: 2,560 hours = 80 hours x 8 waivers x 4 quarters

Cost: \$115,712 = 2,560 hours x \$45.20/hr

Hold Harmless Requirements (§ 433.74(a) through (d))

Section 433.74 requires that State Medicaid agencies 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 takes approximately 80 hours for a healthcare support worker to prepare and submit each report.

Our annual burden estimates follow:

Time: 640 hours = 80 hours x 2 responses/quarter x 4 quarters

Cost: \$28,928 = 640 hours x \$45.20/hr

Burden Summary

Summary of Annual Requirements and Burden

Section under Title 42 of the CFR	# of Respondents	Total Responses	Time per Response (hours)	Total Time (hours)	Labor Rate (\$/hr)	Total Cost (\$)
Waiver Documentation (§ 433.68)	8 States	32	80	2,560	45.20	115,712
Hold Harmless Requirements (§ 433.74(a) through (d))	8 States	8	80	640	45.20	28,928
TOTAL	8 States	40	80	3,200	45.20	144,640

Collection of Information Instruments and Instruction/Guidance Documents

Waiver Documentation: The State waiver submission does not have a waiver form or template. Instruction for preparing and submitting the waiver is provided in §§ 433.68 and 433.72. CMS does not provide any instruction outside of the CFR.

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. Hold harmless instruction is provided in § 433.68(f).

13. Capital Costs

There are no capital costs associated with this information collection.

14. Cost to Federal Government

The burden associated with the expectations for states to revise their policy and procedure documents is strictly borne by those states.

None of the costs associated with the states’ revisions would be incurred by the Federal Government. Regardless, the following is an assessment of the costs incurred in the normal course of business operations.

CMS Staff: 2 FTEs (GS-13 Step 1) working at 5% of assigned duties.
 Annual Time: 208 hours (4,160 hr x 0.05)
 Annual Cost: = \$23,512 (\$113.04/hr x 208 hr)

\$56.52/hr is derived from OPM’s 2024 Salary Table at (https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB_h.pdf)

\$113.04/hr is calculated from 100% of the hourly wage (\$56.52/hr x 2) to account for fringe benefits and other indirect costs.

15. Program or Burden Changes

This 2024 iteration is an Extension that does not propose any program/burden changes.

However, we have adjusted our cost estimate based on using the most recent BLS wage data. Our estimate increased by \$10,816 (from \$133,824 to \$144,640). Without accounting for any adjustments, our active estimate used BLS' May 2019 mean wage of \$19.24/hr while this iteration uses BLS' May 2023 mean wage of \$22.60/hr (an increase of \$3.35/hr).

Consistent with our active collection of information request, this iteration does not provide any reporting instruments nor does it provide any instruction outside of the CFR.

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.