

CMS RELEASES GUIDANCE TO STATES ON IMPLEMENTATION OF OBBBA'S PROVIDER TAX PROVISIONS

EXECUTIVE SUMMARY

On Nov. 14, the Centers for Medicare & Medicaid Services (CMS) issued [guidance](#) ([press release](#)) to states to provide clarity around implementation of the Medicaid provider tax provisions included in the One Big Beautiful Bill Act (OBBBA).

- **Context.** Signed into law on July 4, OBBBA enacts sweeping reforms to the Medicaid program. The law establishes the first-ever nationwide community engagement (work) requirements for able-bodied adults, imposes new federal limits on state directed payments (SDPs), and introduces cost-sharing requirements for expansion enrollees with incomes above 100 percent of the federal poverty level (FPL), among other things. Notably, the legislation also makes several changes to Medicaid provider taxes, including: (1) setting a zero percent threshold for provider taxes that were not previously enacted or imposed by a state prior to July 4, effectively prohibiting the use of new provider taxes; (2) phasing down the hold harmless cap down to 3.5 percent for expansion states; and (3) tightening the definition of “generally redistributive,” making it more difficult for states to impose non-uniform or non-broad-based provider taxes.

States are generally permitted to impose provider taxes on health care providers to help finance the non-federal share of Medicaid spending. Federal law and regulations set strict requirements on these taxes to prevent states from using them to inappropriately leverage federal matching funds. Specifically, provider taxes must be broad-based, meaning they apply to all providers within a specified class (such as all hospitals or all nursing facilities), and uniform, meaning the tax rate must be the same for all providers within that class. Additionally, “hold harmless” requirements prohibit states from directly or indirectly guaranteeing that providers will get back the tax amounts they pay, such as through increased Medicaid payments or other mechanisms that offset the tax. States may seek waivers from CMS of the broad-based or uniform requirements and CMS applies specific statistical tests to ensure that the health care-related tax is “generally redistributive.”

In its new guidance, CMS offers states additional detail on implementing the OBBBA's new limits on provider taxes, including the establishment of a hold harmless threshold and the transition period for the tightened definition of “generally redistributive.” CMS emphasizes that the timing of this guidance is intended to give states sufficient time to comply with these requirements as the agency continues to develop additional policies, guidance, and implementing regulations.

- **Next Steps.** CMS indicates that it will formalize the policies included in the guidance through formal notice and comment rulemaking. However, the agency is advising states to proactively prepare for or mitigate any possible budgetary and program challenges during the transition period outlined in the guidance.

Key policies outlined in the guidance include:

Implementation of the Hold Harmless Threshold

Section 71115 of OBBBA made several changes to the hold harmless requirements. Beginning October 1, 2026, section 71115 of the bill establishes a hold harmless threshold of zero percent for any state that has not enacted and imposed a provider tax on a class of providers, effectively “freezing” the provider tax structure a state has upon enactment of the legislation on July 4, 2025.

The recent guidance released by CMS outlines how the agency is considering the terms “enacted” and “imposed” for the purposes of implementing section 71115 of OBBBA:

- **Enacted:** CMS is considering a provider tax to be enacted if the full legislative process was complete to authorize the exact tax structure in place by July 4, 2025. Notably, any administrative or legislative changes made after July 4, 2025, even if retroactive, do not qualify as being “enacted.” The agency also clarifies that any broad-based or uniformity waiver for the provider tax requested by the state must have been approved by CMS as of July 4, 2025.
- **Imposed:** CMS is considering a provider tax to be imposed only if the state or local government was actively collecting revenue from it on July 4, 2025, under the exact tax structure in place on that date. Notably, CMS clarifies that, so long as the collection aligns with normal practices and reflects the tax structure effective on July 4, 2025, the state may collect its provider taxes on a delayed or periodic schedule.

CMS further clarifies in the guidance that, because the provider tax structure for the indirect hold harmless threshold must be enacted and imposed as of July 4, 2025, the agency will exclude any provider tax revenue tied to waiver requests that were pending or submitted after this date. Instead, the agency will base each state’s hold harmless threshold on the most recent CMS-approved waiver for a provider tax and the tax structure for which the state was actually collecting revenue as of July 4, 2025.

Implementation of the Transition Period for “Generally Redistributive” Changes

Section 71117 of OBBBA limits a state’s ability to obtain waivers from the uniform tax requirement for Medicaid provider taxes. Specifically, this section prohibits waivers for tax structures that impose lower rates on providers within a permissible class with less Medicaid volume, or higher rates on those with more. It also prohibits states from imposing tax rates tied to Medicaid units that exceed those rates tied to non-Medicaid taxable units. The section includes definitions for “Medicaid taxable unit,” “non-Medicaid taxable unit,” and “tax rate group” to help identify impermissible structures and

makes clear that attempts to achieve the same effect through indirect language is also prohibited, effectively closing any loopholes to the restriction. This provision only applies to the 50 States and the District of Columbia.

These changes took effect immediately upon the bill's enactment, with a transition period of up to three fiscal years at the Secretary's discretion. In the recently released guidance, CMS identifies certain transition periods for states with provider tax structures that are not currently compliant with the generally redistributive requirements under OBBBA. Under the guidance, states with non-compliant provider taxes on services of managed care organizations (MCOs) for which CMS approved a waiver before July 4, 2025, must come into compliance by the end of the state's fiscal year ending in calendar year 2026. CMS outlines in the guidance that all other provider taxes on permissible classes that are not compliant with the generally redistributive changes under OBBBA must come into compliance by the end of the applicable state's fiscal year ending in calendar year 2028, but no later than October 1, 2028.

While CMS provides several examples of how states may be out of compliance with the generally redistributive requirements under OBBBA, it does not indicate which states are imposing these tax structures. However, previous [guidance](#) released by CMS suggests that California, Massachusetts, Michigan, and New York must make changes to their generally redistributive requirements to come into compliance with section 71117 of OBBBA.