

Message

**From:** mccrs\_noreply@mathematica-mpr.com [mccrs\_noreply@mathematica-mpr.com]

**Sent:** 5/2/2023 12:29:15 PM

**To:** (b)(6) Roberts, Shantrina (CMS/CMCS)

(b)(6) Ferguson, Dorothy  
; Brooks, Bill  
Farrell, Billy (CMS/CMCS)

(b)(6) Holligan, Ricardo  
; Tillman-Boyd, Sabrina  
Chickering, Maria

(b)(6) Siler-Price, Mara  
Curry, Celestine  
cmillion, Todd

(b)(6) ; Barraza, Leticia

Megan.Buck@cms.hhs.gov; Timothy.Weidler@cms.hhs.gov; Hughes, Ruth (CMS/CMCS)

(b)(6) Lane, Robert

**Subject:** MCCRS: 5884-MO-Lead analyst assigned-MO HealthNet Managed Care Program Amend

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<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fmc-crs.mathematica.org%2FReviewDetails%2FIndex%2F5884&data=05%7C01%7Cbill.brooks%40cms.hhs.gov%7C81a9c841b8ef47135c3f08db4b08e26a%7Cfbdc170a9414bbfa5c3063fc3395e%7C0%7C0%7C638186273766146821%7Cunknown%7CTWfpgZsb3d8eyJWIjoimc4wljAwMDAilCjQIjoiv2luMzIiLCjBTiI6Ik1hawwilCjXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=1ZwXztFz1d34802oefNcmqbyjVMJS%2BX9zfEhRzwp0LI%3D&reserved=0>  
MO HealthNet Managed Care Program Amendment 3  
Lead Analyst has been assigned - Kia Carter-Anderson

Message

From:

(b)(6)

Sent:

5/2/2023 12:28:45 PM

To:

(b)(6)

Roberts, Shantrina (CMS/CMCS)

Ferguson, Dorothy

]; Brooks, Bill

Farrell, Billy (CMS/CMCS)

Holligan, Ricardo

Tillman-Boyd, Sabrina

Hickering, Maria

]; Siler-Price, Mara

Curry, Celestine

McMillion, Todd

]; Barraza, Leticia

]; Lane, Robert

(b)(6)

Subject:

MCCRS: 5884-MO-New review created-MO HealthNet Managed Care Program Amendmen

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<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fmc-crs.mathematica.org%2FReviewDetails%2FIndex%2F5884&data=05%7C01%7Cbill.brooks%40cms.hhs.gov%7Cc4f1f55fc21747c125e408db4b08cfea%7Cfbdc170a9414bbfa5c3063fc3395e%7C0%7C0%7C638186273448237178%7Cunknown%7CTWfpgZsb3d8eyJWIjoimC4wLjAwMDAilCJQIjoiv2lUmzIiLCJBTiI6Ik1hawwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=1g4mDwdGj3JpM8IMN5ZSnUnkwFwdeGFGPH2dnf0nm8s%3D&reserved=0>  
MO HealthNet Managed Care Program Amendment 3  
New review created -

Message

---

**From:** Box Updates [noreply@box.com]

**Sent:** 1/18/2023 5:11:46 PM

**To:** Brooks, Bill (CMS/CMCS); (b)(6)

(b)(6)

**Subject:** New items were added to 'MMCC Shared Files'



New items were added to 'MMCC Shared Files'

added:

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FLDR

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Message

**From:** (b)(6)  
**Sent:** 2/9/2023 8:48:05 PM  
**To:** Manning, Scott (CMS/CMCS); (b)(6); (b)(6); Roberts, Shantrina (CMS/CMCS); Ferguson, Dorothy; ]; Brooks, Bill; Farrell, Billy (CMS/CMCS); Jolligan, Ricardo; Tillman-Boyd, Sabrina; Chickering, Maria; ]; Siler-Price, Mara; Curry, Celestine; Mcmillion, Todd; Barraza, Leticia; Megan.Buck@cms.hhs.gov; Timothy.Weidler@cms.hhs.gov; Hughes, Ruth (CMS/CMCS); Lane, Robert

**Subject:** MCCRS: 5181-MO-Date Lead Analyst Makes Decision Recommendation-MO HealthNet

**(b)(6)**

**(b)(6)**

**(b)(6)**

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<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fmc-crs.mathematica.org%2FReviewDetails%2FIndex%2F5181&data=05%7C01%7Cbill.brooks%40cms.hhs.gov%7Cb1b88ad5701741109c6908db0adefae6%7Cfbcdcdc170a9414bbfa5c3063fc3395e%7C0%7C0%7C638115725040753154%7CUnknown%7CTWFpbGZsb3d8eyJWIjoimC4wLjAwMDAiLCJQIjoiv2luMzIiLCJBTiI6IklhawwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=eke5t2tRSseOB6FUJoF6%2FRmbfhhfI2dypN3R%2F8q6lrw%3D&reserved=0>  
MO HealthNet MCO contract - Amendment 15 effective 7/1/21-6/30/22; Rates Amendment effective 10/1/21-6/30/22  
This review is ready for RO Approval.

Message

**From:** mccrs\_noreply@mathematica-mpr.com [mccrs\_noreply@mathematica-mpr.com]

**Sent:** 2/9/2023 8:52:09 PM

**To:** Manning, Scott; (b)(6)

(b)(6)  
bgelhard@mathematica-mpr.com; bgelhard@mathematica-mpr.com; Roberts, Shantrina (CMS/CMCS)

(b)(6)

Ferguson, Dorothy  
]; Brooks, Bill  
Farrell, Billy (CMS/CMCS)  
olligan, Ricardo  
Tillman-Boyd, Sabrina  
hickering, Maria

(b)(6)

]; Siler-Price, Mara  
; Curry, Celestine  
Mcmillion, Todd  
]; Barraza, Leticia

Megan.Buck@cms.hhs.gov; Timothy.Weidler@cms.hhs.gov; Hughes, Ruth (CMS/CMCS)

(b)(6)

(b)(6)

Lane, Robert

**Subject:** MCCRS: 5181-MO-Date Lead Analyst Makes Decision Recommendation-MO HealthNet

This message has been automatically sent to you by the Managed Care Contract and Rate Review System  
[https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fmc-crs.mathematica.org%2FReviewDetails%2FIndex%2F5181&data=05%7C01%7Cbill\\_brooks%40cms.hhs.gov%7C4838e5cb7d984bfab9d908db0adf9551%7Cfbcdcedc170a9414bbfa5c3063fc3395e%7C0%7C0%7C638115727637841393%7CUnknown%7CTWFpbGZsb3d8eyJWIjoimC4wLjAwMDAiLCJQIjoiv2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=60fPmk5hJhgGg2QiMU7OjARqngDCVXg%2BcXytjmd6GIU%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fmc-crs.mathematica.org%2FReviewDetails%2FIndex%2F5181&data=05%7C01%7Cbill_brooks%40cms.hhs.gov%7C4838e5cb7d984bfab9d908db0adf9551%7Cfbcdcedc170a9414bbfa5c3063fc3395e%7C0%7C0%7C638115727637841393%7CUnknown%7CTWFpbGZsb3d8eyJWIjoimC4wLjAwMDAiLCJQIjoiv2luMzIiLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=60fPmk5hJhgGg2QiMU7OjARqngDCVXg%2BcXytjmd6GIU%3D&reserved=0)  
MO HealthNet MCO contract - Amendment 15 effective 7/1/21-6/30/22; Rates Amendment effective 10/1/21-6/30/22  
This review is ready for RO Approval.

Message

**From:** mccrs\_noreply@mathematica-mpr.com [mccrs\_noreply@mathematica-mpr.com]  
**Sent:** 4/24/2023 9:20:47 PM  
**To:** Sanetrik, Lynn (CMS/CMCS); (b)(6); bgelhard@mathematica-mpr.com; bgelhard@mathematica-mpr.com; Roberts, Shantrina (CMS/CMCS); (b)(6); (b)(6); Brooks, Bill; Farrell, Billy (CMS/CMCS); Holligan, Ricardo; Tillman-Boyd, Sabrina; Chickering, Maria; Siler-Price, Mara; Curry, Celestine; Mcmillion, Todd; Barraza, Leticia; Megan.Buck@cms.hhs.gov; Timothy.Weidler@cms.hhs.gov; Hughes, Ruth (CMS/CMCS); (b)(6); Lane, Robert

**Subject:** MCCRS: 5518-MO-Draft to executed contract-MO HealthNet Managed Care Program

This message has been automatically sent to you by the Managed Care Contract and Rate Review System  
<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fmccrs.mathematica.org%2FReviewDetails%2FIndex%2F5518&data=05%7C01%7Cbill.brooks%40cms.hhs.gov%7C2fa09e7fd0d4d74247008db4509cf11%7Cfbcdcedc170a9414bbfa5c3063fc3395e%7C0%7C0%7C638179680655976163%7Cunknown%7CTWFpbGZsb3d8eyJWIjojMC4wLjAwMDAiLCJQIjojV2luZSiLCJBTiI6IklhYWw%7C%7C%7C&data=61FccDV19z7LBkxqVpfwjwPd51oYFK9fr6pFgaE7Qeo%3D&reserved=0>  
MO HealthNet Managed Care Program - Amendment 1 with new SFY 23 Rates  
Draft to executed contract -

Message

**From:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 2/5/2023 2:37:08 PM  
**To:** Bonelli, Anna (CMS/CMCS); (b)(6)  
(b)(6); Endelman (he/him),  
Jonathan (CMS/CMCS); (b)(6)  
(b)(6)  
**CC:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6); Goldstein, Stuart  
(CMS/CMCS); (b)(6)  
(b)(6)  
**Subject:** FW: FW: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hi Anna, Jonathan and Stuart,

We wanted to consult with you all. Florida has indicated that several pieces of this preprint submission are still incomplete (and will likely to remain so until they complete an analysis in April 2023.)

We are considering options on next steps. At a staff level, we think that (b)(5)  
However, we didn't know if you all would want to engage with the state now on the financing. The final figures on the financing are dependent on the analysis in April, but I believe, though defer to you all, that the LPPF concerns from the last review, were not dependent upon the final \$\$\$. Would you all believe it would be beneficial to engage the state on any of the financing now?

Happy to talk further tomorrow at the scheduled FMG/DMCP TB or outside of that meeting too.

Thanks,  
Laura

**From:** Wallace, Tom <Thomas.Wallace@ahca.myflorida.com>  
**Sent:** Friday, February 3, 2023 10:00 PM  
**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Giering, Cole <cole.giering@ahca.myflorida.com>  
**Cc:** Sokoloski, Kristin <Kristin.Sokoloski@ahca.myflorida.com>; Barry, Joycee <Joycee.Barry@ahca.myflorida.com>; Cai, Jun <Jun.Cai@ahca.myflorida.com>; Lacroix, Rachel <Rachel.Lacroix@ahca.myflorida.com>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello,

The State acknowledges receipt of CMS's response to our preprint submission. The sections of the preprint highlighted below depend on an updated calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. The State is in the process of updating this analysis and anticipates providing an amended preprint that includes the requested information in April 2023.

Thank you,

Tom

Tom Wallace  
Deputy Secretary  
Agency for Health Care Administration  
850-251-0095

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, February 1, 2023 1:36 PM  
**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Good morning,

Thank you for your submission. CMS has determined that we require responses to the below questions to ensure CMS has adequate documentation to begin our review.

- 1) Specifically, please include responses to the following incomplete sections:
  - the provider payment analysis section is incomplete (Preprint Question 23/ Table 2); and
  - the data sources and methodology are incomplete (Preprint Question 27).
- 2) In addition, the state noted several sections of the preprint that are incomplete and/or missing updated information including:
  - Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
  - Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
  - Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Please provide the state's anticipated timeline to submit the updated information to CMS for review.

**We request that the state acknowledge receipt of this communication and respond within 2 working days to respond to the above questions.** CMS awaits the state's response to begin review of the preprint.

The control name for this preprint will be "FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930." This control name must be used for all communication regarding the review of this preprint. CMS also requests that the state utilize this control name for the preprint when referencing this state directed payment within the applicable rate certification(s).

Thanks,  
Laura

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, February 1, 2023 11:48 AM  
**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee\_IPH.OPH4 RY 22/23 Renewal

Good Morning Cole,

Thank you for your email. CMS acknowledges receipt of the preprint and corresponding documents. We would like to request status updates regarding the state's anticipated timeframe to submit the following items:

- (1) Preprint amendment related to Florida's revised HCBS Spending Plan,
- (2) FL Proposal D 2020-2021 revised preprint amendment, and
- (3) The five state directed payment preprints for the October 1, 2022 through September 30, 2023 rating period.

Thank you,  
Lovie

**From:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>

**Sent:** Tuesday, January 31, 2023 4:22 PM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joyce <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>

**Subject:** FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good afternoon,

Please find attached the State of Florida's preprint for program year 3 of the hospital uniform rate increase directed payment program (CMS Provided State Directed Payment Identifier: FL\_Fee.IPH.OPH4).

**Please Note:** we are in the process of updating the calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. When this analysis is complete, we will amend this preprint to include final values for:

- Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
- Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
- Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Best,

**Cole Giering, MPH**

Program Administrator

Rules and State Plan Unit

[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)

+1 850-412-4691 (Office)

BUREAU OF MEDICAID POLICY

AHCA HQ Bidg 3 Rm 2307D



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Message

**From:** Bonelli, Anna (CMS/CMCS) <(b)(6)>  
**Sent:** 2/6/2023 3:37:34 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <(b)(6)>; Snyder, Laura (CMS/CMCS) <(b)(6)>  
**CC:** Giles, John (CMS/CMCS) <(b)(6)>; Goldstein, Stuart (CMS/CMCS) <(b)(6)>; Holligan, Ricardo (CMS/CMCS) <(b)(6)>; Staton, Sidney (CMS/CMCS) <(b)(6)>; Arnold, Charlie (CMS/CMCS) <(b)(6)>; Clark, Jennifer (CMS/CMCS) <(b)(6)>; Cuno, Richard (CMS/CMCS) <(b)(6)>; Fan, Kristin (CMS/CMCS) <(b)(6)>; Heitt, Melissa (CMS/FCHCO) <(b)(6)>; Mosley, Elle (CMS/CMCS) <(b)(6)>; Schoonover, Matthew (CMS/CMCS) <(b)(6)>  
**Subject:** RE: RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura, can we please talk about this at our 11:30?

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Monday, February 6, 2023 8:34 AM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello Laura,

We are in the process of conducting a financial management review for the State of Florida relating to its SDPs and the LPPF with the assistance of our contractor NORC. We had a meeting to discuss this last Thursday. We have a timeline for our review attached that we placed in Dan's book last Friday. We also provided for Dan's book a more in-depth presentation on the possible proposed tax rule designed to close down the loophole in the statistical test for waivers of the uniformity requirement for health care-related taxes that enable states to pass in regulation despite taxing Medicaid business much more heavily than non-Medicaid business contrary to statutory and regulatory intent. We have been

working with OACT to devise a new statistical test to shut down this loophole, which we have called the M1/M2. We are awaiting Dan's feedback on proceeding forward with proposing a rule in this direction. We look forward to talking with you this morning.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Sunday, February 5, 2023 9:37 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Subject:** FW: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

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Thanks,  
Laura

**From:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>  
**Sent:** Friday, February 3, 2023 10:00 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS)

<John.Giles1@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello,

The State acknowledges receipt of CMS's response to our preprint submission. The sections of the preprint highlighted below depend on an updated calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. The State is in the process of updating this analysis and anticipates providing an amended preprint that includes the requested information in April 2023.

Thank you,

Tom

Tom Wallace  
Deputy Secretary  
Agency for Health Care Administration  
850-251-0095

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Sent:** Wednesday, February 1, 2023 1:36 PM

**To:** Giering, Cole <cole.giering@ahca.myflorida.com>

**Cc:** Wallace, Tom <Thomas.Wallace@ahca.myflorida.com>; Sokoloski, Kristin <Kristin.Sokoloski@ahca.myflorida.com>; Barry, Joycee <Joycee.Barry@ahca.myflorida.com>; Cai, Jun <Jun.Cai@ahca.myflorida.com>; Lacroix, Rachel <Rachel.Lacroix@ahca.myflorida.com>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Subject:** FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

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Please provide the state's anticipated timeline to submit the updated information to CMS for review.

**We request that the state acknowledge receipt of this communication and respond within 2 working days to respond to the above questions.** CMS awaits the state's response to begin review of the preprint.

The control name for this preprint will be "FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930." This control name must be used for all communication regarding the review of this preprint. CMS also requests that the state utilize this control name for the preprint when referencing this state directed payment within the applicable rate certification(s).

Thanks,  
Laura

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, February 1, 2023 11:48 AM  
**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good Morning Cole,

Thank you for your email. CMS acknowledges receipt of the preprint and corresponding documents. We would like to request status updates regarding the state's anticipated timeframe to submit the following items:

- (1) Preprint amendment related to Florida's revised HCBS Spending Plan,
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- (3) The five state directed payment preprints for the October 1, 2022 through September 30, 2023 rating period.

Thank you,  
Lovie

**From:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Sent:** Tuesday, January 31, 2023 4:22 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>  
**Subject:** FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good afternoon,

Please find attached the State of Florida's preprint for program year 3 of the hospital uniform rate increase directed payment program (CMS Provided State Directed Payment Identifier: FL\_Fee.IPH.OPH4).

**Please Note:** we are in the process of updating the calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. When this analysis is complete, we will amend this preprint to include final values for:

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- Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Best,

**Cole Giering, MPH**  
Program Administrator  
Rules and State Plan Unit

[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)

+1 850-412-4691 (Office)

BUREAU OF MEDICAID POLICY

AHCA HQ Bidg 3 Rm 2307D



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Message

**From:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 2/6/2023 3:38:25 PM  
**To:** Bonelli, Anna (CMS/CMCS); (b)(6)  
(b)(6) Endelman (he/him),  
Jonathan (CMS/CMCS); (b)(6)  
(b)(6)  
**CC:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6); Goldstein, Stuart  
(CMS/CMCS); (b)(6)  
(b)(6); Holligan, Ricardo  
(CMS/CMCS); (b)(6)  
(b)(6) Staton, Sidney  
(CMS/CMCS); (b)(6)  
(b)(6); Arnold, Charlie  
(CMS/CMCS); (b)(6)  
(b)(6); Clark, Jennifer  
(CMS/CMCS); (b)(6)  
(b)(6) Cuno, Richard  
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(CMS/CMCS); (b)(6)  
(b)(6) Heitt, Melissa  
(CMS/FCHCO); (b)(6)  
(b)(6); Mosley, Elle (CMS/CMCS)  
(b)(6)  
(b)(6); Schoonover, Matthew  
(CMS/CMCS); (b)(6)  
(b)(6)  
**Subject:** RE: RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Definitely.

**From:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Sent:** Monday, February 6, 2023 10:38 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
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**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

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**Sent:** Monday, February 6, 2023 8:34 AM  
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<STUART.GOLDSTEIN@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>

**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello Laura,

We are in the process of conducting a financial management review for the State of Florida relating to its SDPs and the LPPF with the assistance of our contractor NORC. We had a meeting to discuss this last Thursday. We have a timeline for our review attached that we placed in Dan's book last Friday. We also provided for Dan's book a more in-depth presentation on the possible proposed tax rule designed to close down the loophole in the statistical test for waivers of the uniformity requirement for health care-related taxes that enable states to pass in regulation despite taxing Medicaid business much more heavily than non-Medicaid business contrary to statutory and regulatory intent. We have been working with OACT to devise a new statistical test to shut down this loophole, which we have called the M1/M2. We are awaiting Dan's feedback on proceeding forward with proposing a rule in this direction. We look forward to talking with you this morning.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Sunday, February 5, 2023 9:37 AM

**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

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<[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>

**Subject:** FW: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hi Anna, Jonathan and Stuart,

We wanted to consult with you all. Florida has indicated that several pieces of this preprint submission are still incomplete (and will likely to remain so until they complete an analysis in April 2023.)

We are considering options on next steps. At a staff level, we think that (b)(5)  
However, we didn't know if you all would want to engage with the state now on the financing. The final figures on the financing are dependent on the analysis in April, but I believe, though defer to you all, that the LPPF concerns from the

last review, were not dependent upon the final \$\$\$. Would you all believe it would be beneficial to engage the state on any of the financing now?

Happy to talk further tomorrow at the scheduled FMG/DMCP TB or outside of that meeting too.

Thanks,  
Laura

**From:** Wallace, Tom <Thomas.Wallace@ahca.myflorida.com>  
**Sent:** Friday, February 3, 2023 10:00 PM  
**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Giering, Cole <cole.giering@ahca.myflorida.com>  
**Cc:** Sokoloski, Kristin <Kristin.Sokoloski@ahca.myflorida.com>; Barry, Joycee <Joycee.Barry@ahca.myflorida.com>; Cai, Jun <Jun.Cai@ahca.myflorida.com>; Lacroix, Rachel <Rachel.Lacroix@ahca.myflorida.com>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
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**Subject:** RE: FL\_Fee.IPH.OPH4 RY 22/23 Renewal

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**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>  
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**Cole Giering, MPH**

Program Administrator

Rules and State Plan Unit

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+1 850-412-4691 (Office)

BUREAU OF MEDICAID POLICY

AHCA HQ Bldg 3 Rm 2307D



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Message

**From:** Endelman (he/him), Jonathan (CMS/CMCS) (b)(6)  
(b)(6)

**Sent:** 2/6/2023 3:54:47 PM

**To:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6) Bonelli, Anna  
(CMS/CMCS) (b)(6)  
(b)(6)

**CC:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6) Goldstein, Stuart  
(CMS/CMCS) (b)(6)  
(b)(6) Holligan, Ricardo  
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(b)(6); Mosley, Elle (CMS/CMCS)  
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(CMS/CMCS) (b)(6)  
(b)(6)

**Subject:** RE: RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura,

Our first meeting with NORC, our contractor, on the Financial Management Review related to Florida's LPPF tax and SDP is tomorrow. We plan on bringing up today during our touchbase and see if anyone from DMCP would like to be involved, on an ongoing basis, on these meetings. Personally, I think this would be beneficial, but I can't speak for group leadership.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

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**Sent:** Monday, February 6, 2023 8:34 AM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello Laura,

We are in the process of conducting a financial management review for the State of Florida relating to its SDPs and the LPPF with the assistance of our contractor NORC. We had a meeting to discuss this last Thursday. We have a timeline for our review attached that we placed in Dan's book last Friday. We also provided for Dan's book a more in-depth presentation on the possible proposed tax rule designed to close down the loophole in the statistical test for waivers of the uniformity requirement for health care-related taxes that enable states to pass in regulation despite taxing Medicaid business much more heavily than non-Medicaid business contrary to statutory and regulatory intent. We have been working with OACT to devise a new statistical test to shut down this loophole, which we have called the M1/M2. We are

awaiting Dan's feedback on proceeding forward with proposing a rule in this direction. We look forward to talking with you this morning.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Sunday, February 5, 2023 9:37 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
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**Subject:** FW: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hi Anna, Jonathan and Stuart,

We wanted to consult with you all. Florida has indicated that several pieces of this preprint submission are still incomplete (and will likely to remain so until they complete an analysis in April 2023.)

We are considering options on next steps. At a staff level, we think that (b)(5). However, we didn't know if you all would want to engage with the state now on the financing. The final figures on the financing are dependent on the analysis in April, but I believe, though defer to you all, that the LPPF concerns from the last review, were not dependent upon the final \$\$\$. Would you all believe it would be beneficial to engage the state on any of the financing now?

Happy to talk further tomorrow at the scheduled FMG/DMCP TB or outside of that meeting too.

Thanks,  
Laura

**From:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>  
**Sent:** Friday, February 3, 2023 10:00 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joyce <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello,

The State acknowledges receipt of CMS's response to our preprint submission. The sections of the preprint highlighted below depend on an updated calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. The State is in the process of updating this analysis and anticipates providing an amended preprint that includes the requested information in April 2023.

Thank you,

Tom

Tom Wallace  
Deputy Secretary  
Agency for Health Care Administration  
850-251-0095

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, February 1, 2023 1:36 PM

**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>

**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Good morning,

Thank you for your submission. CMS has determined that we require responses to the below questions to ensure CMS has adequate documentation to begin our review.

- 1) Specifically, please include responses to the following incomplete sections:
  - the provider payment analysis section is incomplete (Preprint Question 23/ Table 2); and
  - the data sources and methodology are incomplete (Preprint Question 27).
- 2) In addition, the state noted several sections of the preprint that are incomplete and/or missing updated information including:
  - Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
  - Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
  - Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Please provide the state's anticipated timeline to submit the updated information to CMS for review.

**We request that the state acknowledge receipt of this communication and respond within 2 working days to respond to the above questions.** CMS awaits the state's response to begin review of the preprint.

The control name for this preprint will be "FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930." This control name must be used for all communication regarding the review of this preprint. CMS also requests that the state utilize this control name for the preprint when referencing this state directed payment within the applicable rate certification(s).

Thanks,

Laura

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, February 1, 2023 11:48 AM  
**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good Morning Cole,

Thank you for your email. CMS acknowledges receipt of the preprint and corresponding documents. We would like to request status updates regarding the state's anticipated timeframe to submit the following items:

- (1) Preprint amendment related to Florida's revised HCBS Spending Plan,
- (2) FL Proposal D 2020-2021 revised preprint amendment, and
- (3) The five state directed payment preprints for the October 1, 2022 through September 30, 2023 rating period.

Thank you,  
Lovie

**From:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Sent:** Tuesday, January 31, 2023 4:22 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>  
**Subject:** FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good afternoon,

Please find attached the State of Florida's preprint for program year 3 of the hospital uniform rate increase directed payment program (CMS Provided State Directed Payment Identifier: FL\_Fee.IPH.OPH4).

**Please Note:** we are in the process of updating the calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. When this analysis is complete, we will amend this preprint to include final values for:

- Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
- Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
- Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Best,

**Cole Giering, MPH**

Program Administrator

Rules and State Plan Unit

[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)

+1 850-412-4691 (Office)

BUREAU OF MEDICAID POLICY  
AHCA HQ Bldg 3 Rm 2307D



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Message

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**From:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 2/6/2023 4:16:41 PM  
**To:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6)  
**Subject:** FW: FW: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Sorry – this shows the disfunction of FMG to a T. If you'll remember, we had raised the concerns about 3 FMRs on SDPs in 1 year. Rory indicated that we should not be as needed on this FMR. Do you want me to signal anything at the 11:30 meeting we have with them?

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Monday, February 6, 2023 10:55 AM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura,

Our first meeting with NORC, our contractor, on the Financial Management Review related to Florida's LPPF tax and SDP is tomorrow. We plan on bringing up today during our touchbase and see if anyone from DMCP would like to be involved, on an ongoing basis, on these meetings. Personally, I think this would be beneficial, but I can't speak for group leadership.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Monday, February 6, 2023 10:38 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
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Definitely.

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Laura, can we please talk about this at our 11:30?

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awaiting Dan's feedback on proceeding forward with proposing a rule in this direction. We look forward to talking with you this morning.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

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However, we didn't know if you all would want to engage with the state now on the financing. The final figures on the financing are dependent on the analysis in April, but I believe, though defer to you all, that the LPPF concerns from the last review, were not dependent upon the final \$\$\$. Would you all believe it would be beneficial to engage the state on any of the financing now?

Happy to talk further tomorrow at the scheduled FMG/DMCP TB or outside of that meeting too.

Thanks,  
Laura

**From:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>  
**Sent:** Friday, February 3, 2023 10:00 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joyce <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello,

The State acknowledges receipt of CMS's response to our preprint submission. The sections of the preprint highlighted below depend on an updated calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. The State is in the process of updating this analysis and anticipates providing an amended preprint that includes the requested information in April 2023.

Thank you,

Tom

Tom Wallace  
Deputy Secretary  
Agency for Health Care Administration  
850-251-0095

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, February 1, 2023 1:36 PM

**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>

**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Good morning,

Thank you for your submission. CMS has determined that we require responses to the below questions to ensure CMS has adequate documentation to begin our review.

- 1) Specifically, please include responses to the following incomplete sections:
  - the provider payment analysis section is incomplete (Preprint Question 23/ Table 2); and
  - the data sources and methodology are incomplete (Preprint Question 27).
- 2) In addition, the state noted several sections of the preprint that are incomplete and/or missing updated information including:
  - Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
  - Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
  - Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Please provide the state's anticipated timeline to submit the updated information to CMS for review.

**We request that the state acknowledge receipt of this communication and respond within 2 working days to respond to the above questions.** CMS awaits the state's response to begin review of the preprint.

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Thanks,

Laura

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, February 1, 2023 11:48 AM  
**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good Morning Cole,

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- (1) Preprint amendment related to Florida's revised HCBS Spending Plan,
- (2) FL Proposal D 2020-2021 revised preprint amendment, and
- (3) The five state directed payment preprints for the October 1, 2022 through September 30, 2023 rating period.

Thank you,  
Lovie

**From:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Sent:** Tuesday, January 31, 2023 4:22 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>  
**Subject:** FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good afternoon,

Please find attached the State of Florida's preprint for program year 3 of the hospital uniform rate increase directed payment program (CMS Provided State Directed Payment Identifier: FL\_Fee.IPH.OPH4).

**Please Note:** we are in the process of updating the calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. When this analysis is complete, we will amend this preprint to include final values for:

- Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
- Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
- Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Best,

**Cole Giering, MPH**  
Program Administrator  
Rules and State Plan Unit  
[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)  
+1 850-412-4691 (Office)

BUREAU OF MEDICAID POLICY  
AHCA HQ Bldg 3 Rm 2307D



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Message

**From:** Endelman (he/him), Jonathan (CMS/CMCS); (b)(6)  
(b)(6)

**Sent:** 2/6/2023 7:40:04 PM

**To:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6); Bonelli, Anna  
(CMS/CMCS); (b)(6)

**CC:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6); Goldstein, Stuart  
(CMS/CMCS); (b)(6)  
(b)(6); Holligan, Ricardo  
(CMS/CMCS); (b)(6)  
(b)(6); Staton, Sidney  
(CMS/CMCS); (b)(6)  
(b)(6); Arnold, Charlie  
(CMS/CMCS); (b)(6)  
(b)(6); Clark, Jennifer  
(CMS/CMCS); (b)(6)  
(b)(6); Cuno, Richard  
(CMS/CMCS); (b)(6)  
(b)(6); Fan, Kristin  
(CMS/CMCS); (b)(6)  
(b)(6); Heitt, Melissa  
(CMS/FCHCO); (b)(6)  
(b)(6); Mosley, Elle (CMS/CMCS)  
(b)(6)  
(b)(6); Schoonover, Matthew  
(CMS/CMCS); (b)(6)  
(b)(6)

**Subject:** RE: RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura,

Stuart checked with Rory regarding the SDP. He stated that, if necessary, FMG would be amenable to treating the Florida SDP the same way that we treated their prior SDP. That is, once we have resolved all other outstanding issues that may stand in the way of an approval, we would approve the SDP, make clear that approval of the SDP does not constitute approval of the financing underlying the SDP, and issue a companion letter with the SDP approval letter. The companion letter would probably mention the FMR we are doing on the LPPF and the Florida SDP. Obviously, if and when the managed care rule is finalized with the provision that makes clear that we can disapprove SDPs because of impermissible financing, the situation would be different. Please let us know if we can be of any further assistance at this time.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)

7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Monday, February 6, 2023 10:55 AM

**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>

**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS)

<STUART.GOLDSTEIN@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>

**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura,

Our first meeting with NORC, our contractor, on the Financial Management Review related to Florida's LPPF tax and SDP is tomorrow. We plan on bringing up today during our touchbase and see if anyone from DMCP would like to be involved, on an ongoing basis, on these meetings. Personally, I think this would be beneficial, but I can't speak for group leadership.

Best,

Jonathan

Jonathan Endelman, PhD

Social Science Research Analyst

Centers for Medicare & Medicaid Services (CMS)

Center for Medicaid and CHIP Services (CMCS)

Financial Management Group (FMG)

Division of Financial Policy (DFP)

410.786.4738

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7500 Security Blvd.

Mail Stop, S3-14-28

Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Sent:** Monday, February 6, 2023 10:38 AM

**To:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS)

<Jonathan.Endelman@cms.hhs.gov>

**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS)

<STUART.GOLDSTEIN@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>

**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Definitely.



**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>

**Sent:** Monday, February 6, 2023 10:38 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

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**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura, can we please talk about this at our 11:30?

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Monday, February 6, 2023 8:34 AM

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**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello Laura,

We are in the process of conducting a financial management review for the State of Florida relating to its SDPs and the LPPF with the assistance of our contractor NORC. We had a meeting to discuss this last Thursday. We have a timeline for our review attached that we placed in Dan's book last Friday. We also provided for Dan's book a more in-depth presentation on the possible proposed tax rule designed to close down the loophole in the statistical test for waivers of the uniformity requirement for health care-related taxes that enable states to pass in regulation despite taxing Medicaid business much more heavily than non-Medicaid business contrary to statutory and regulatory intent. We have been working with OACT to devise a new statistical test to shut down this loophole, which we have called the M1/M2. We are awaiting Dan's feedback on proceeding forward with proposing a rule in this direction. We look forward to talking with you this morning.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
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**Sent:** Sunday, February 5, 2023 9:37 AM  
**To:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>  
**Subject:** FW: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hi Anna, Jonathan and Stuart,

We wanted to consult with you all. Florida has indicated that several pieces of this preprint submission are still incomplete (and will likely to remain so until they complete an analysis in April 2023.)

We are considering options on next steps. At a staff level, we think that (b)(5)  
However, we didn't know if you all would want to engage with the state now on the financing. The final figures on the financing are dependent on the analysis in April, but I believe, though defer to you all, that the LPPF concerns from the last review, were not dependent upon the final \$\$\$. Would you all believe it would be beneficial to engage the state on any of the financing now?

Happy to talk further tomorrow at the scheduled FMG/DMCP TB or outside of that meeting too.

Thanks,  
Laura

**From:** Wallace, Tom <Thomas.Wallace@ahca.myflorida.com>  
**Sent:** Friday, February 3, 2023 10:00 PM  
**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Giering, Cole <cole.giering@ahca.myflorida.com>  
**Cc:** Sokoloski, Kristin <Kristin.Sokoloski@ahca.myflorida.com>; Barry, Joycee <Joycee.Barry@ahca.myflorida.com>; Cai, Jun <Jun.Cai@ahca.myflorida.com>; Lacroix, Rachel <Rachel.Lacroix@ahca.myflorida.com>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello,

The State acknowledges receipt of CMS's response to our preprint submission. The sections of the preprint highlighted below depend on an updated calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. The State is in the process of updating this analysis and anticipates providing an amended preprint that includes the requested information in April 2023.

Thank you,

Tom

Tom Wallace  
Deputy Secretary  
Agency for Health Care Administration

850-251-0095

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Please provide the state's anticipated timeline to submit the updated information to CMS for review.

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**Subject:** RE: FL\_Fee\_IPH.OPH4 RY 22/23 Renewal

Good Morning Cole,

CMS001970cv1579

Thank you for your email. CMS acknowledges receipt of the preprint and corresponding documents. We would like to request status updates regarding the state's anticipated timeframe to submit the following items:

- (1) Preprint amendment related to Florida's revised HCBS Spending Plan,
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Thank you,  
Lovie

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**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>  
**Subject:** FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good afternoon,

Please find attached the State of Florida's preprint for program year 3 of the hospital uniform rate increase directed payment program (CMS Provided State Directed Payment Identifier: FL\_Fee.IPH.OPH4).

**Please Note:** we are in the process of updating the calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. When this analysis is complete, we will amend this preprint to include final values for:

- Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
- Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
- Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Best,

**Cole Giering, MPH**

Program Administrator  
Rules and State Plan Unit  
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+1 850-412-4691 (Office)  
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AHCA HQ Bidg 3 Rm 2307D



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Message

**From:** Snyder, Laura (CMS/CMCS) <(b)(6)>  
(b)(6)  
**Sent:** 2/6/2023 9:28:59 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <(b)(6)>  
(b)(6); Bonelli, Anna  
**CC:** (b)(6); Goldstein, Stuart  
(b)(6); Holligan, Ricardo  
(b)(6); Staton, Sidney  
(b)(6); Arnold, Charlie  
(b)(6); Clark, Jennifer  
(b)(6); Cuno, Richard  
(b)(6); Fan, Kristin  
(b)(6); Heitt, Melissa  
(b)(6); Mosley, Elle (CMS/CMCS)  
(b)(6); Schoonover, Matthew  
**Subject:** RE: RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Thanks for sharing, Jonathan!

We are pushing back on the state to not accept the preprint for formal review until they come in with the revised data points. As a reminder, the state indicated the revisions to the preprint would likely come in April. We'll keep you posted as things continue to evolve.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Monday, February 6, 2023 2:40 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura,

Stuart checked with Rory regarding the SDP. He stated that, if necessary, FMG would be amenable to treating the Florida SDP the same way that we treated their prior SDP. That is, once we have resolved all other outstanding issues that may stand in the way of an approval, we would approve the SDP, make clear that approval of the SDP does not constitute approval of the financing underlying the SDP, and issue a companion letter with the SDP approval letter. The companion letter would probably mention the FMR we are doing on the LPPF and the Florida SDP. Obviously, if and when the managed care rule is finalized with the provision that makes clear that we can disapprove SDPs because of impermissible financing, the situation would be different. Please let us know if we can be of any further assistance at this time.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
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410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Monday, February 6, 2023 10:55 AM

**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>

**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura,

Our first meeting with NORC, our contractor, on the Financial Management Review related to Florida's LPPF tax and SDP is tomorrow. We plan on bringing up today during our touchbase and see if anyone from DMCP would like to be involved, on an ongoing basis, on these meetings. Personally, I think this would be beneficial, but I can't speak for group leadership.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)

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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Monday, February 6, 2023 10:38 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Definitely.

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Monday, February 6, 2023 10:38 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Laura, can we please talk about this at our 11:30?

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Monday, February 6, 2023 8:34 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello Laura,



We are in the process of conducting a financial management review for the State of Florida relating to its SDPs and the LPPF with the assistance of our contractor NORC. We had a meeting to discuss this last Thursday. We have a timeline for our review attached that we placed in Dan's book last Friday. We also provided for Dan's book a more in-depth presentation on the possible proposed tax rule designed to close down the loophole in the statistical test for waivers of the uniformity requirement for health care-related taxes that enable states to pass in regulation despite taxing Medicaid business much more heavily than non-Medicaid business contrary to statutory and regulatory intent. We have been working with OACT to devise a new statistical test to shut down this loophole, which we have called the M1/M2. We are awaiting Dan's feedback on proceeding forward with proposing a rule in this direction. We look forward to talking with you this morning.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Sunday, February 5, 2023 9:37 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Subject:** FW: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hi Anna, Jonathan and Stuart,

We wanted to consult with you all. Florida has indicated that several pieces of this preprint submission are still incomplete (and will likely to remain so until they complete an analysis in April 2023.)

We are considering options on next steps. At a staff level, we think that [REDACTED] (b)(5)  
However, we didn't know if you all would want to engage with the state now on the financing. The final figures on the financing are dependent on the analysis in April, but I believe, though defer to you all, that the LPPF concerns from the last review, were not dependent upon the final \$\$\$. Would you all believe it would be beneficial to engage the state on any of the financing now?

Happy to talk further tomorrow at the scheduled FMG/DMCP TB or outside of that meeting too.

Thanks,  
Laura

**From:** Wallace, Tom <Thomas.Wallace@ahca.myflorida.com>

**Sent:** Friday, February 3, 2023 10:00 PM

**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Giering, Cole <cole.giering@ahca.myflorida.com>

**Cc:** Sokoloski, Kristin <Kristin.Sokoloski@ahca.myflorida.com>; Barry, Joycee <Joycee.Barry@ahca.myflorida.com>; Cai, Jun <Jun.Cai@ahca.myflorida.com>; Lacroix, Rachel <Rachel.Lacroix@ahca.myflorida.com>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Subject:** RE: FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hello,

The State acknowledges receipt of CMS's response to our preprint submission. The sections of the preprint highlighted below depend on an updated calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. The State is in the process of updating this analysis and anticipates providing an amended preprint that includes the requested information in April 2023.

Thank you,

Tom

Tom Wallace  
Deputy Secretary  
Agency for Health Care Administration  
850-251-0095

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Sent:** Wednesday, February 1, 2023 1:36 PM

**To:** Giering, Cole <cole.giering@ahca.myflorida.com>

**Cc:** Wallace, Tom <Thomas.Wallace@ahca.myflorida.com>; Sokoloski, Kristin <Kristin.Sokoloski@ahca.myflorida.com>; Barry, Joycee <Joycee.Barry@ahca.myflorida.com>; Cai, Jun <Jun.Cai@ahca.myflorida.com>; Lacroix, Rachel <Rachel.Lacroix@ahca.myflorida.com>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Subject:** FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Good morning,

Thank you for your submission. CMS has determined that we require responses to the below questions to ensure CMS has adequate documentation to begin our review.

- 1) Specifically, please include responses to the following incomplete sections:
  - the provider payment analysis section is incomplete (Preprint Question 23/ Table 2); and
  - the data sources and methodology are incomplete (Preprint Question 27).
- 2) In addition, the state noted several sections of the preprint that are incomplete and/or missing updated information including:
  - Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
  - Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
  - Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Please provide the state's anticipated timeline to submit the updated information to CMS for review.

**We request that the state acknowledge receipt of this communication and respond within 2 working days to respond to the above questions.** CMS awaits the state's response to begin review of the preprint.

The control name for this preprint will be "FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930." This control name must be used for all communication regarding the review of this preprint. CMS also requests that the state utilize this control name for the preprint when referencing this state directed payment within the applicable rate certification(s).

Thanks,  
Laura

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, February 1, 2023 11:48 AM  
**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FL\_Fee\_IPH.OPH4 RY 22/23 Renewal

Good Morning Cole,

Thank you for your email. CMS acknowledges receipt of the preprint and corresponding documents. We would like to request status updates regarding the state's anticipated timeframe to submit the following items:

- (1) Preprint amendment related to Florida's revised HCBS Spending Plan,
- (2) FL Proposal D 2020-2021 revised preprint amendment, and
- (3) The five state directed payment preprints for the October 1, 2022 through September 30, 2023 rating period.

Thank you,  
Lovie

**From:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Sent:** Tuesday, January 31, 2023 4:22 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>  
**Subject:** FL\_Fee\_IPH.OPH4 RY 22/23 Renewal

Good afternoon,

Please find attached the State of Florida's preprint for program year 3 of the hospital uniform rate increase directed payment program (CMS Provided State Directed Payment Identifier: FL\_Fee\_IPH.OPH4).

**Please Note:** we are in the process of updating the calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. When this analysis is complete, we will amend this preprint to include final values for:

- Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
- Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
- Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Best,

**Cole Giering, MPH**

Program Administrator

Rules and State Plan Unit

[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)

+1 850-412-4691 (Office)

BUREAU OF MEDICAID POLICY

AHCA HQ Bidg 3 Rm 2307D



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Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 2/17/2023 6:52:57 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) (b)(6)  
(b)(6) Staton, Sidney  
(b)(6)  
(b)(6) Campbell-OConnor,  
(b)(6) Sarah Whitehouse  
(b)(6)  
(b)(6) Loizias, Alex (CMS/CMCS)  
(b)(6) Arnold, Charlie  
(b)(6) Clark, Jennifer  
(b)(6) Cuno, Richard  
(b)(6) Fan, Kristin  
(b)(6) Goldstein, Stuart  
(b)(6) Heitt, Melissa  
(b)(6) Mosley, Elle (CMS/CMCS)  
(b)(6) Schoonover, Matthew  
(b)(6) Holligan, Ricardo  
(b)(6) Giles, John (CMS/CMCS)

**Subject:** RE: RE: FL Proposal D Amendment 2020-2021-just FYI

Hi Jonathan,

Yes, the LPPF are a financing source for the preprint you are referencing (FL\_Fee\_IPH.OPH4\_10012022-09302023). That review – FL\_Fee\_IPH.OPH4\_10012022-09302023 – has not been officially started because the preprint was deemed incomplete.

However, the review that was shared with FMG in this email thread (FL\_Proposal D) is a technical amendment to a payment arrangement for the 2020-2021 rating period, not the one you are referencing that does include the LPPF.

Again, this is why I wanted to clarify that the reviews are separate. Apologies for the confusion that was caused.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Friday, February 17, 2023 1:44 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Campbell-OConnor, Aimee (CMS/CMCS) <Aimee.Campbell-OConnor1@cms.hhs.gov>;

Sarah Whitehouse <Whitehouse-Sarah@norc.org>; Davis, Lovie (CMS/CMCS) <Lovie.Davis@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hello Laura,

When you say that the current SDP that you have under review does not contain LPPFs, I am somewhat confused. It appears that LPPFs are the funding source for FL\_Fee.IPH.OPH4 RY 22/23. According to Table 5, all the LPPFs are listed. What is the name of the proposal that you are reviewing now?

Best,

Jonathan

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Baltimore, MD 21244-1850

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**Sent:** Friday, February 17, 2023 1:19 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hi all,

I know we were looped into this conversation later, but did want to help clarify a few things:

- The proposal that has just begun review is an amendment to an SDP that is not currently under FMR review.
- The proposal that has just begun review does not include LPPF; it is for an older time period that I believe predates the creation of LPPFs in Florida.
- The proposal is a technical amendment that is coming in to address an inconsistency between the rate certification and the preprint that was approved.

- Review of this preprint amendment just began on February 10, 2023; standard SOP will be followed, including asking standard questions about the impact of the amendment on the total payment rate, any changes in payment methodology, changes in financing, etc.

Apologies for any confusion this may have caused; there is a lot of activity with SDPs and Florida in particular so I thought I'd just clarify what has happened and where we are in the process.

Happy to answer any questions that folks have about this, but wanted to avoid conflating the review with the FMR work unnecessarily.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Friday, February 17, 2023 7:10 AM

**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Also, just in case people don't have this document already, here is a document detailing the financial management review or FMR that we are doing in Florida relating to LPPFs. It's third on the list. An FMR is a kind of audit that FMG does when we have questions about something that is more in depth than the standard review as part of our regular oversight activities and reviewing the CMS-64. We did a similar FMR on Florida's SDP for the previous year as well that Laura Snyder, Lovie, Alex, and DMCP were heavily involved in throughout the process. I imagine that state directed payments will be an increasingly common topic for FMRs in the future given the large and increasing dollar amount that seems to be shifting into state directed payments. As you can see, conditionality of IGTs is one of the items we are reviewing. We write, "This is to ensure the state is not making payment into the LPPFs / IGT a contingency for receiving SDPs back from the state."

Best,

Jonathan

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Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Friday, February 17, 2023 7:00 AM

**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Thank you Aimee for the article and for your concerns. I believe that the new managed care rule that is currently in development will help to address some of the oversight deficiencies that you have identified regarding the lack of a UPL-type mechanism on the managed care side to serve as an upper ceiling on payment amounts. I believe that ACR or average commercial rate is one of the tools that we have used in the past to serve in this capacity. Regarding your point about actuarial soundness, I agree. It's something that Anna and I have discussed in the past and others have also brought up. Regarding the article from AHCA the "Florida Medicaid Health Care Alert" from July 22, 2021, I think that is helpful. The entity mentioned in the article "Adelanto Healthcare Ventures" is a health care consultant based out of Austin that was also involved in setting up the Texas LPPF. In most instances of what we would think of as "taxes" in everyday life, no one wants to be taxed. In the world of healthcare-related taxes, everyone wants to be taxed because they anticipate receiving more than their tax cost back in increased Medicaid payments. Regarding the conditional nature of the IGT, "If your hospital is not sure whether you are included and would like to be included in the Agency's projections for the hospital directed payment program" I seem to remember something that this may be problematic, but I would defer to Andrew for that as being the SME on IGTs. These are important issues. The oversight system was built on Medicaid FFS payments. Now that 80% or more of payments have shifted to be on managed care and especially with the growing importance of state directed payments, oversight becomes more difficult because state directed payments are relatively new and don't have all of the oversight mechanisms in place as exist on the FFS side of the house. We are working on building them now and we hope that they will be operational moving forward. I definitely think the larger issues you point out are worth discussing either on the next NORC FMR call or else on a separate call. I look forward to talking with you.

Best,

Jonathan

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Baltimore, MD 21244-1850

**From:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>

**Sent:** Thursday, February 16, 2023 3:44 PM

**To:** Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>

**Cc:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI



Hi Aimee – Thank you for sharing. I do not participate in the SDP pre-prints review. I'm also cc Jonathan in case he has not seen this.

Sid

**From:** Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>

**Sent:** Thursday, February 16, 2023 2:58 PM

**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>

**Subject:** FW: FL Proposal D Amendment 2020-2021-just FYI

Hey Sid!

Just sharing as FYI. Not sure whether you participate in review of SDP pre-prints.



Aimee

**From:** Campbell-OConnor, Aimee (CMS/CMCS)

**Sent:** Thursday, February 16, 2023 2:55 PM

**To:** Delvecchio, Lynn (CMS/CMCS) <[Lynn.DelVecchio@cms.hhs.gov](mailto:Lynn.DelVecchio@cms.hhs.gov)>

**Subject:** FW: FL Proposal D Amendment 2020-2021

Just FYI. 😊

**From:** Campbell-OConnor, Aimee (CMS/CMCS)

**Sent:** Thursday, February 16, 2023 2:52 PM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FL Proposal D Amendment 2020-2021

Hi Alex!

I reviewed the SDP pre-print. I guess I don't understand how submission of a pre-print amendment for 2020-2021, 2 years after the fact is actually tied to helping with access or utilization at this point? The support provided for this SDP in the pre-print is minimal at best. I don't have any actual comments because there doesn't seem to be much justification in terms of an improvement in care for beneficiaries for these payments.

What is the purpose of this amendment? The purpose seems to be to provide extra funds to the hospitals using the SDP as a vehicle. If the rates were determined to be actuarially sound, then access should have been considered as part of that. If the rates are not sufficient at this point, where is the data to show that and why wouldn't they just address any concerns with the plans? And/or, raise rates with a rate amendment?

See- <http://www.icontact-archive.com/archive?c=227375&f=11179&s=13873&m=852437&t=850d8a08f66cb5c2e1e49656573dbe0caeb447b39b9d192096e732cbe37425f5>

This arrangement where the State indicates to the hospitals that we are offering you an opportunity to get higher payments if you help contribute the State match, sounds potentially problematic. There is an article from FL Taxwatch on the SDP program that provides some insight. (attached)

I know that on the FFS side of the house we have UPLs, scrutiny of taxation and CPE arrangements to make sure that funds are not "recycled." Here is an article from George Mason university on State financing strategies in Medicaid that

mentions IGTs as a problematic strategy. <https://www.mercatus.org/research/research-papers/medicaid-provider-taxes-gimmick-exposes-flaws-medicaids-financing>

Florida may be allowed to use IGTs as State match under current regulations but I do wonder about how well their strategy aligns with the safeguards CMS has put in place on the FFS side.

I hope this is helpful. I know that Sid and FMG are looking at the Provider Participation Fund for this coming year and that CMS sent a Companion letter with one of the approvals last year. This may be an area where further guidance would be beneficial.



Aimee

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(207) 441-2788  
West Branch  
Division of Managed Care Operations (DMCO)  
Centers for Medicare & Medicaid Services (CMS)

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, February 10, 2023 1:11 PM  
**To:** CMS OACT Medicaid Managed Care <[OACTMedicaidManagedCare@cms.hhs.gov](mailto:OACTMedicaidManagedCare@cms.hhs.gov)>; CMS SDP\_QUALITY <[SDP\\_QUALITY@cms.hhs.gov](mailto:SDP_QUALITY@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Cc:** CMS DMCP Medicaid Managed Care Rates <[DMCPrates@cms.hhs.gov](mailto:DMCPrates@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FL Proposal D Amendment 2020-2021

Good Afternoon FRT,

Florida submitted a preprint amendment for formal CMS approval pursuant to 42 CFR 438.6(c). The files are available at the following link: [Box File](#)

Please note the following:

- This is an amendment submission for this payment arrangement.
- The previously approved preprint is available here: [SharePoint](#)
- This proposal is eligible for an annual approval.
- The 90<sup>th</sup> day for this review is May 11, 2023

FRT feedback for the state is due by **COB, March 3, 2023**. If DMCP does not receive a response by this deadline, we will assume that the FRT member has no questions for the state for addition to the question set and concurs on approval of the preprint. Please reach out with any questions and thanks for your review.

Thank you,  
Lovie

Message

**From:** Endelman (he/him), Jonathan (CMS/CMCS) (b)(6)  
**Sent:** 2/17/2023 7:00:35 PM (b)(6)  
**To:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6) Staton, Sidney  
(b)(6) Campbell-OConnor,  
(b)(6) Sarah Whitehouse  
(b)(6)  
(b)(6) Coizias, Alex (CMS/CMCS)  
(b)(6) Arnold, Charlie  
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(b)(6) Cuno, Richard  
(b)(6) Fan, Kristin  
(b)(6) Goldstein, Stuart  
(b)(6) Heitt, Melissa  
(b)(6) Mosley, Elle (CMS/CMCS)  
(b)(6) Schoonover, Matthew  
(b)(6) Holligan, Ricardo  
(b)(6) Giles, John (CMS/CMCS)

**Subject:** RE: RE: FL Proposal D Amendment 2020-2021-just FYI

Thanks for the update on – FL\_Fee\_IPH.OPH4\_10012022-09302023 being deemed incomplete. I noticed that the Proposal D pre-print doesn't have any information on it about the financing of the non-federal share. I assume that is because it is an older version of the pre-print. Please let us know if we can be of any further assistance with the Attachment D pre-print.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
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**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hi Jonathan,

Yes, the LPPF are a financing source for the preprint you are referencing (FL\_Fee\_IPH.OPH4\_10012022-09302023). That review – FL\_Fee\_IPH.OPH4\_10012022-09302023 – has not been officially started because the preprint was deemed incomplete.

However, the review that was shared with FMG in this email thread (FL\_Proposal D) is a technical amendment to a payment arrangement for the 2020-2021 rating period, not the one you are referencing that does include the LPPF.

Again, this is why I wanted to clarify that the reviews are separate. Apologies for the confusion that was caused.

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**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hello Laura,

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Best,

Jonathan

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**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, February 17, 2023 1:19 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>  
**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hi all,

I know we were looped into this conversation later, but did want to help clarify a few things:

- The proposal that has just begun review is an amendment to an SDP that is not currently under FMR review.
- The proposal that has just begun review does not include LPPF; it is for an older time period that I believe predates the creation of LPPFs in Florida.
- The proposal is a technical amendment that is coming in to address an inconsistency between the rate certification and the preprint that was approved.
- Review of this preprint amendment just began on February 10, 2023; standard SOP will be followed, including asking standard questions about the impact of the amendment on the total payment rate, any changes in payment methodology, changes in financing, etc.

Apologies for any confusion this may have caused; there is a lot of activity with SDPs and Florida in particular so I thought I'd just clarify what has happened and where we are in the process.

Happy to answer any questions that folks have about this, but wanted to avoid conflating the review with the FMR work unnecessarily.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Friday, February 17, 2023 7:10 AM  
**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan,

Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Also, just in case people don't have this document already, here is a document detailing the financial management review or FMR that we are doing in Florida relating to LPPFs. It's third on the list. An FMR is a kind of audit that FMG does when we have questions about something that is more in depth than the standard review as part of our regular oversight activities and reviewing the CMS-64. We did a similar FMR on Florida's SDP for the previous year as well that Laura Snyder, Lovie, Alex, and DMCP were heavily involved in throughout the process. I imagine that state directed payments will be an increasingly common topic for FMRs in the future given the large and increasing dollar amount that seems to be shifting into state directed payments. As you can see, conditionality of IGTs is one of the items we are reviewing. We write, "This is to ensure the state is not making payment into the LPPFs / IGT a contingency for receiving SDPs back from the state."

Best,

Jonathan

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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Friday, February 17, 2023 7:00 AM

**To:** Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Campbell-OConnor, Aimee (CMS/CMCS) <Aimee.Campbell-OConnor1@cms.hhs.gov>; Sarah Whitehouse <Whitehouse-Sarah@norc.org>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Davis, Lovie (CMS/CMCS) <Lovie.Davis@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Thank you Aimee for the article and for your concerns. I believe that the new managed care rule that is currently in development will help to address some of the oversight deficiencies that you have identified regarding the lack of a UPL-type mechanism on the managed care side to serve as an upper ceiling on payment amounts. I believe that ACR or average commercial rate is one of the tools that we have used in the past to serve in this capacity. Regarding your point about actuarial soundness, I agree. It's something that Anna and I have discussed in the past and others have also brought up. Regarding the article from AHCA the "Florida Medicaid Health Care Alert" from July 22, 2021, I think that is helpful. The entity mentioned in the article "Adelanto Healthcare Ventures" is a health care consultant based out of Austin that was also involved in setting up the Texas LPPF. In most instances of what we would think of as "taxes" in everyday life, no one wants to be taxed. In the world of healthcare-related taxes, everyone wants to be taxed because

they anticipate receiving more than their tax cost back in increased Medicaid payments. Regarding the conditional nature of the IGT, "If your hospital is not sure whether you are included and would like to be included in the Agency's projections for the hospital directed payment program" I seem to remember something that this may be problematic, but I would defer to Andrew for that as being the SME on IGTs. These are important issues. The oversight system was built on Medicaid FFS payments. Now that 80% or more of payments have shifted to be on managed care and especially with the growing importance of state directed payments, oversight becomes more difficult because state directed payments are relatively new and don't have all of the oversight mechanisms in place as exist on the FFS side of the house. We are working on building them now and we hope that they will be operational moving forward. I definitely think the larger issues you point out are worth discussing either on the next NORC FMR call or else on a separate call. I look forward to talking with you.

Best,

Jonathan

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Baltimore, MD 21244-1850

**From:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>  
**Sent:** Thursday, February 16, 2023 3:44 PM  
**To:** Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Cc:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hi Aimee – Thank you for sharing. I do not participate in the SDP pre-prints review. I'm also cc Jonathan in case he has not seen this.  
Sid

**From:** Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Sent:** Thursday, February 16, 2023 2:58 PM  
**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>  
**Subject:** FW: FL Proposal D Amendment 2020-2021-just FYI

Hey Sid!

Just sharing as FYI. Not sure whether you participate in review of SDP pre-prints.



Aimee

**From:** Campbell-OConnor, Aimee (CMS/CMCS)  
**Sent:** Thursday, February 16, 2023 2:55 PM

**To:** Delvecchio, Lynn (CMS/CMCS) <Lynn.DelVecchio@cms.hhs.gov>

**Subject:** FW: FL Proposal D Amendment 2020-2021

Just FYI. 😊

**From:** Campbell-OConnor, Aimee (CMS/CMCS)

**Sent:** Thursday, February 16, 2023 2:52 PM

**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Subject:** RE: FL Proposal D Amendment 2020-2021

Hi Alex!

I reviewed the SDP pre-print. I guess I don't understand how submission of a pre-print amendment for 2020-2021, 2 years after the fact is actually tied to helping with access or utilization at this point? The support provided for this SDP in the pre-print is minimal at best. I don't have any actual comments because there doesn't seem to be much justification in terms of an improvement in care for beneficiaries for these payments.

What is the purpose of this amendment? The purpose seems to be to provide extra funds to the hospitals using the SDP as a vehicle. If the rates were determined to be actuarially sound, then access should have been considered as part of that. If the rates are not sufficient at this point, where is the data to show that and why wouldn't they just address any concerns with the plans? And/or, raise rates with a rate amendment?

See- <http://www.icontact-archive.com/archive?c=227375&f=11179&s=13873&m=852437&t=850d8a08f66cb5c2e1e49656573dbe0caeb447b39b9d192096e732cbe37425f5>

This arrangement where the State indicates to the hospitals that we are offering you an opportunity to get higher payments if you help contribute the State match, sounds potentially problematic. There is an article from FL Taxwatch on the SDP program that provides some insight. (attached)

I know that on the FFS side of the house we have UPLs, scrutiny of taxation and CPE arrangements to make sure that funds are not "recycled." Here is an article from George Mason university on State financing strategies in Medicaid that mentions IGTs as a problematic strategy. <https://www.mercatus.org/research/research-papers/medicaid-provider-taxes-gimmick-exposes-flaws-medicaids-financing>

Florida may be allowed to use IGTs as State match under current regulations but I do wonder about how well their strategy aligns with the safeguards CMS has put in place on the FFS side.

I hope this is helpful. I know that Sid and FMG are looking at the Provider Participation Fund for this coming year and that CMS sent a Companion letter with one of the approvals last year. This may be an area where further guidance would be beneficial.

😊

Aimee

[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)

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West Branch

Division of Managed Care Operations (DMCO)

Centers for Medicare & Medicaid Services (CMS)



**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, February 10, 2023 1:11 PM  
**To:** CMS OACT Medicaid Managed Care <[OACTMedicaidManagedCare@cms.hhs.gov](mailto:OACTMedicaidManagedCare@cms.hhs.gov)>; CMS SDP\_QUALITY <[SDP\\_QUALITY@cms.hhs.gov](mailto:SDP_QUALITY@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Cc:** CMS DMCP Medicaid Managed Care Rates <[DMCPrates@cms.hhs.gov](mailto:DMCPrates@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FL Proposal D Amendment 2020-2021

Good Afternoon FRT,

Florida submitted a preprint amendment for formal CMS approval pursuant to 42 CFR 438.6(c). The files are available at the following link: [Box File](#)

Please note the following:

- This is an amendment submission for this payment arrangement.
- The previously approved preprint is available here: [SharePoint](#)
- This proposal is eligible for an annual approval.
- The 90<sup>th</sup> day for this review is May 11, 2023

FRT feedback for the state is due by **COB, March 3, 2023**. If DMCP does not receive a response by this deadline, we will assume that the FRT member has no questions for the state for addition to the question set and concurs on approval of the preprint. Please reach out with any questions and thanks for your review.

Thank you,  
Lovie

Message

**From:** Snyder, Laura (CMS/CMCS) <(b)(6)>  
(b)(6)  
**Sent:** 2/17/2023 7:05:47 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <(b)(6)>  
(b)(6); Staton, Sidney  
Campbell-OConnor, Aimee (CMS/CMCS) <(b)(6)>  
(b)(6); Sarah Whitehouse  
(b)(6); Loizias, Alex (CMS/CMCS)  
(b)(6); Arnold, Charlie  
Clark, Jennifer  
Cuno, Richard  
; Fan, Kristin  
Goldstein, Stuart  
Heitt, Melissa  
Mosley, Elle (CMS/CMCS)  
Schoonover, Matthew  
]; Holligan, Ricardo  
Giles, John (CMS/CMCS)

**Subject:** RE: RE: FL Proposal D Amendment 2020-2021-just FYI

Hi Jonathan,

Happy to share the info about FL\_Fee\_IPH.OPH4\_10012022-09302023; at this point we don't expect to see it come back in until April based on the state's responses, but we will keep you posted if that changes.

And yes, you are correct about Proposal D being on the old form. Per our SOP for that time period, we did ask about the source of the non-federal share when we did the initial review; the state indicated it was IGT funded. The technical amendment does not appear to change any of the financing, but we will be confirmed with the state per our SOP once initial FRT concludes. Again, if that changes or we have any concerns, we will be sure to reach out to you all.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Friday, February 17, 2023 2:01 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Campbell-OConnor, Aimee (CMS/CMCS) <Aimee.Campbell-OConnor1@cms.hhs.gov>; Sarah Whitehouse <Whitehouse-Sarah@norc.org>; Davis, Lovie (CMS/CMCS) <Lovie.Davis@cms.hhs.gov>; Loizias, Alex

(CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Holligan, Ricardo (CMS/CMCS) <Ricardo.Holligan@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Thanks for the update on – FL\_Fee\_IPH.OPH4\_10012022-09302023 being deemed incomplete. I noticed that the Proposal D pre-print doesn't have any information on it about the financing of the non-federal share. I assume that is because it is an older version of the pre-print. Please let us know if we can be of any further assistance with the Attachment D pre-print.

Best,

Jonathan

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**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Friday, February 17, 2023 1:53 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hi Jonathan,

Yes, the LPPF are a financing source for the preprint you are referencing (FL\_Fee\_IPH.OPH4\_10012022-09302023). That review – FL\_Fee\_IPH.OPH4\_10012022-09302023 – has not been officially started because the preprint was deemed incomplete.

However, the review that was shared with FMG in this email thread (FL\_Proposal D) is a technical amendment to a payment arrangement for the 2020-2021 rating period, not the one you are referencing that does include the LPPF.

Again, this is why I wanted to clarify that the reviews are separate. Apologies for the confusion that was caused.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Friday, February 17, 2023 1:44 PM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>  
**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hello Laura,

When you say that the current SDP that you have under review does not contain LPPFs, I am somewhat confused. It appears that LPPFs are the funding source for FL\_Fee.IPH.OPH4 RY 22/23. According to Table 5, all the LPPFs are listed. What is the name of the proposal that you are reviewing now?

Best,

Jonathan

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Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, February 17, 2023 1:19 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>  
**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hi all,

I know we were looped into this conversation later, but did want to help clarify a few things:

- The proposal that has just begun review is an amendment to an SDP that is not currently under FMR review.
- The proposal that has just begun review does not include LPPF; it is for an older time period that I believe predates the creation of LPPFs in Florida.
- The proposal is a technical amendment that is coming in to address an inconsistency between the rate certification and the preprint that was approved.
- Review of this preprint amendment just began on February 10, 2023; standard SOP will be followed, including asking standard questions about the impact of the amendment on the total payment rate, any changes in payment methodology, changes in financing, etc.

Apologies for any confusion this may have caused; there is a lot of activity with SDPs and Florida in particular so I thought I'd just clarify what has happened and where we are in the process.

Happy to answer any questions that folks have about this, but wanted to avoid conflating the review with the FMR work unnecessarily.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Friday, February 17, 2023 7:10 AM

**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Holligan, Ricardo (CMS/CMCS) <[Ricardo.Holligan@cms.hhs.gov](mailto:Ricardo.Holligan@cms.hhs.gov)>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Also, just in case people don't have this document already, here is a document detailing the financial management review or FMR that we are doing in Florida relating to LPPFs. It's third on the list. An FMR is a kind of audit that FMG does when we have questions about something that is more in depth than the standard review as part of our regular oversight activities and reviewing the CMS-64. We did a similar FMR on Florida's SDP for the previous year as well that Laura Snyder, Lovie, Alex, and DMCP were heavily involved in throughout the process. I imagine that state directed payments will be an increasingly common topic for FMRs in the future given the large and increasing dollar amount that seems to be shifting into state directed payments. As you can see, conditionality of IGTs is one of the items we are reviewing. We write, "This is to ensure the state is not making payment into the LPPFs / IGT a contingency for receiving SDPs back from the state."

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)

7500 Security Blvd.

Mail Stop, S3-14-28

Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Friday, February 17, 2023 7:00 AM

**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>; Sarah Whitehouse <[Whitehouse-Sarah@norc.org](mailto:Whitehouse-Sarah@norc.org)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Davis, Lovie (CMS/CMCS) <[Lovie.Davis@cms.hhs.gov](mailto:Lovie.Davis@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Thank you Aimee for the article and for your concerns. I believe that the new managed care rule that is currently in development will help to address some of the oversight deficiencies that you have identified regarding the lack of a UPL-type mechanism on the managed care side to serve as an upper ceiling on payment amounts. I believe that ACR or average commercial rate is one of the tools that we have used in the past to serve in this capacity. Regarding your point about actuarial soundness, I agree. It's something that Anna and I have discussed in the past and others have also brought up. Regarding the article from AHCA the "Florida Medicaid Health Care Alert" from July 22, 2021, I think that is helpful. The entity mentioned in the article "Adelanto Healthcare Ventures" is a health care consultant based out of Austin that was also involved in setting up the Texas LPPF. In most instances of what we would think of as "taxes" in everyday life, no one wants to be taxed. In the world of healthcare-related taxes, everyone wants to be taxed because they anticipate receiving more than their tax cost back in increased Medicaid payments. Regarding the conditional nature of the IGT, "If your hospital is not sure whether you are included and would like to be included in the Agency's projections for the hospital directed payment program" I seem to remember something that this may be problematic, but I would defer to Andrew for that as being the SME on IGTs. These are important issues. The oversight system was built on Medicaid FFS payments. Now that 80% or more of payments have shifted to be on managed care and especially with the growing importance of state directed payments, oversight becomes more difficult because state directed payments are relatively new and don't have all of the oversight mechanisms in place as exist on the FFS side of the house. We are working on building them now and we hope that they will be operational moving forward. I definitely think the larger issues you point out are worth discussing either on the next NORC FMR call or else on a separate call. I look forward to talking with you.

Best,

Jonathan

Jonathan Endelman, PhD

Social Science Research Analyst

Centers for Medicare & Medicaid Services (CMS)

Center for Medicaid and CHIP Services (CMCS)

Financial Management Group (FMG)

Division of Financial Policy (DFP)

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Baltimore, MD 21244-1850

**From:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>  
**Sent:** Thursday, February 16, 2023 3:44 PM  
**To:** Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Cc:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hi Aimee – Thank you for sharing. I do not participate in the SDP pre-prints review. I'm also cc Jonathan in case he has not seen this.  
Sid

**From:** Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Sent:** Thursday, February 16, 2023 2:58 PM  
**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>  
**Subject:** FW: FL Proposal D Amendment 2020-2021-just FYI

Hey Sid!

Just sharing as FYI. Not sure whether you participate in review of SDP pre-prints.



Aimee

**From:** Campbell-OConnor, Aimee (CMS/CMCS)  
**Sent:** Thursday, February 16, 2023 2:55 PM  
**To:** Delvecchio, Lynn (CMS/CMCS) <[Lynn.DelVecchio@cms.hhs.gov](mailto:Lynn.DelVecchio@cms.hhs.gov)>  
**Subject:** FW: FL Proposal D Amendment 2020-2021

Just FYI. 😊

**From:** Campbell-OConnor, Aimee (CMS/CMCS)  
**Sent:** Thursday, February 16, 2023 2:52 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FL Proposal D Amendment 2020-2021

Hi Alex!

I reviewed the SDP pre-print. I guess I don't understand how submission of a pre-print amendment for 2020-2021, 2 years after the fact is actually tied to helping with access or utilization at this point? The support provided for this SDP in the pre-print is minimal at best. I don't have any actual comments because there doesn't seem to be much justification in terms of an improvement in care for beneficiaries for these payments.

What is the purpose of this amendment? The purpose seems to be to provide extra funds to the hospitals using the SDP as a vehicle. If the rates were determined to be actuarially sound, then access should have been considered as part of that. If the rates are not sufficient at this point, where is the data to show that and why wouldn't they just address any concerns with the plans? And/or, raise rates with a rate amendment?

See- <http://www.icontact-archive.com/archive?c=227375&f=11179&s=13873&m=852437&t=850d8a08f66cb5c2e1e49656573dbe0caeb447b39b9d192096e732cbe37425f5>

This arrangement where the State indicates to the hospitals that we are offering you an opportunity to get higher payments if you help contribute the State match, sounds potentially problematic. There is an article from FL Taxwatch on the SDP program that provides some insight. (attached)

I know that on the FFS side of the house we have UPLs, scrutiny of taxation and CPE arrangements to make sure that funds are not "recycled." Here is an article from George Mason university on State financing strategies in Medicaid that mentions IGTs as a problematic strategy. <https://www.mercatus.org/research/research-papers/medicaid-provider-taxes-gimmick-exposes-flaws-medicaids-financing>

Florida may be allowed to use IGTs as State match under current regulations but I do wonder about how well their strategy aligns with the safeguards CMS has put in place on the FFS side.

I hope this is helpful. I know that Sid and FMG are looking at the Provider Participation Fund for this coming year and that CMS sent a Companion letter with one of the approvals last year. This may be an area where further guidance would be beneficial.



Aimee

[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)  
(207) 441-2788  
West Branch  
Division of Managed Care Operations (DMCO)  
Centers for Medicare & Medicaid Services (CMS)

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, February 10, 2023 1:11 PM  
**To:** CMS OACT Medicaid Managed Care <[OACTMedicaidManagedCare@cms.hhs.gov](mailto:OACTMedicaidManagedCare@cms.hhs.gov)>; CMS SDP\_QUALITY <[SDP\\_QUALITY@cms.hhs.gov](mailto:SDP_QUALITY@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Cc:** CMS DMCP Medicaid Managed Care Rates <[DMCPrates@cms.hhs.gov](mailto:DMCPrates@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FL Proposal D Amendment 2020-2021

Good Afternoon FRT,

Florida submitted a preprint amendment for formal CMS approval pursuant to 42 CFR 438.6(c). The files are available at the following link: [Box File](#)

Please note the following:

- This is an amendment submission for this payment arrangement.
- The previously approved preprint is available here: [SharePoint](#)
- This proposal is eligible for an annual approval.
- The 90<sup>th</sup> day for this review is May 11, 2023

FRT feedback for the state is due by **COB, March 3, 2023**. If DMCP does not receive a response by this deadline, we will assume that the FRT member has no questions for the state for addition to the question set and concurs on approval of the preprint. Please reach out with any questions and thanks for your review.

Thank you,  
Lovie



Message

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**From:** Stegmaier, Jason (CMS/CMC) (b)(6)  
(b)(6)  
**Sent:** 1/18/2023 3:41:33 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** Hot Issue Questions

John,

I updated the write up you submitted to streamline it for OCD and OA. Do you have any issues with the revisions?

For the current status, can we simply say that the review is ongoing? For Mary's meeting request do we know the status?

**Issue:** Florida's use of revenues derived from its Local Provider Participation Fund Tax Program

**Background:** CMCS has ongoing concerns that Florida's use of revenues derived from its Local Provider Participation Fund (LPPF) tax program as a source of Florida's non-federal share for payments under Medicaid managed care state directed payments may not comply with certain health care-related tax requirements of the Social Security Act and federal regulations.

In September 2022, CMS provided a companion letter to the approval of a state directed payment preprint for inpatient and outpatient hospital services that addressed our ongoing concerns that the state's use of revenues derived from its LPPF program as a source of Florida's non-federal share may not comply with certain health care-related tax requirements. Specifically, CMS raised concerns in our letter that there may be pre-arranged agreements between hospitals to redirect Medicaid payments away from Medicaid providers serving a high percentage of Medicaid beneficiaries to hospitals that do not participate in Medicaid or that serve a low percentage of Medicaid beneficiaries (thus, violating federal requirements that the payments are not subject to any hold harmless arrangements). In the letter, CMS informed Florida that we intended to conduct a focused review of the state's LPPF program during Federal Fiscal Year 2023.

Additionally, Mary Mayhew, CEO of the Florida Hospital Association, requested a meeting with CMCS leadership to discuss concerns on Florida's Medicaid Waiver and the State Directed Payment Programs.

**Current Status:** In the letter, CMS committed to continue discussions with Florida to ensure its sources of non-federal share meet all applicable federal requirements.

Jason Stegmaier  
Medicaid & CHIP Operations Group  
Center for Medicaid and CHIP Services  
Email: [jason.stegmaier@cms.hhs.gov](mailto:jason.stegmaier@cms.hhs.gov)  
Cell: (b)(6)

Confidential and deliberative, pre-decisional communication.



Message

---

**From:** Stegmaier, Jason (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 1/18/2023 3:47:59 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** RE: RE: Hot Issue Questions

Perfect. Thank you!

Jason Stegmaier  
Medicaid & CHIP Operations Group  
Center for Medicaid and CHIP Services  
Email: [jason.stegmaier@cms.hhs.gov](mailto:jason.stegmaier@cms.hhs.gov)  
Cell: (b)(6)

Confidential and deliberative, pre-decisional communication.

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Wednesday, January 18, 2023 9:45 AM  
**To:** Stegmaier, Jason (CMS/CMCS) <[Jason.Stegmaier@cms.hhs.gov](mailto:Jason.Stegmaier@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: Hot Issue Questions

Thanks Jason – the revisions look good to me. Also, yes, the current status can just be that the review is ongoing.

For Mary's meeting, I am attaching an email with the latest information. From the email, it looks like Lela will book the meeting and include staff with Anne Marie. I haven't seen the meeting land just yet.

Thank you!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Stegmaier, Jason (CMS/CMCS) <[Jason.Stegmaier@cms.hhs.gov](mailto:Jason.Stegmaier@cms.hhs.gov)>  
**Sent:** Wednesday, January 18, 2023 10:42 AM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** Hot Issue Questions

John,

I updated the write up you submitted to streamline it for OCD and OA. Do you have any issues with the revisions?

For the current status, can we simply say that the review is ongoing? For Mary's meeting request do we know the status?

**Issue:** Florida's use of revenues derived from its Local Provider Participation Fund Tax Program

**Background:** CMCS has ongoing concerns that Florida's use of revenues derived from its Local Provider Participation Fund (LPPF) tax program as a source of Florida's non-federal share for payments under Medicaid managed care state directed payments may not comply with certain health care-related tax requirements of the Social Security Act and federal regulations.

In September 2022, CMS provided a companion letter to the approval of a state directed payment preprint for inpatient and outpatient hospital services that addressed our ongoing concerns that the state's use of revenues derived from its LPPF program as a source of Florida's non-federal share may not comply with certain health care-related tax requirements. Specifically, CMS raised concerns in our letter that there may be pre-arranged agreements between hospitals to redirect Medicaid payments away from Medicaid providers serving a high percentage of Medicaid beneficiaries to hospitals that do not participate in Medicaid or that serve a low percentage of Medicaid beneficiaries (thus, violating federal requirements that the payments are not subject to any hold harmless arrangements). In the letter, CMS informed Florida that we intended to conduct a focused review of the state's LPPF program during Federal Fiscal Year 2023.

Additionally, Mary Mayhew, CEO of the Florida Hospital Association, requested a meeting with CMCS leadership to discuss concerns on Florida's Medicaid Waiver and the State Directed Payment Programs.

**Current Status:** In the letter, CMS committed to continue discussions with Florida to ensure its sources of non-federal share meet all applicable federal requirements.

Jason Stegmaier  
Medicaid & CHIP Operations Group  
Center for Medicaid and CHIP Services  
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Cell: (b)(6)

Confidential and deliberative, pre-decisional communication.

Message

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**From:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 2/1/2023 2:59:18 PM  
**To:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6); CMS State Directed  
Payment; (b)(6)  
(b)(6)  
**Subject:** RE: RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Hi John,

I reviewed the inbox traffic, we have only received from FL the renewal of the big hospital preprint that had the LPPF issue last night at 4:22pm. It has not yet been processed and still needs to be reviewed for completeness. We will prioritize this review, but once completeness is confirmed, it will need to go to FRT review. SOP is to give the FRT 3 weeks for review after we determine that the preprint is complete.

FL is still outstanding on several other preprints and no traffic has come in on the HCBS 9817 preprint amendment either.

John, do you want a list of what preprints are outstanding still?

Thanks,  
Laura

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Sent:** Tuesday, January 31, 2023 5:36 PM  
**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Hi Lovie – Tom told us that he submitted preprints today. Is that accurate? If so, can you let me know what he submitted. Thank you!!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Monday, January 30, 2023 2:39 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Thank you Lovie! This is very helpful, and Tom actually just reached out to me on an unrelated topic. So, I will ask him for a status update on the preprints. I will keep you posted.

Thanks again!!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Monday, January 30, 2023 2:36 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FW: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Good Afternoon John and Laura,

I'm following up regarding Florida's submission of state directed payment preprints for the 2022-2023 rating period and the preprint amendment related to the revised HCBS spending plan. Please note the state has not responded to any of our requests for status updates to date. I sent email inquiries to FL on the following dates:

- January 13, 2023
- January 3, 2023
- November 29, 2022

In addition, the state has not submitted a revised preprint amendment for FL Proposal D 2020-2021 to account for the changes to the increased total dollar amount of the state directed payment. I sent email inquiries to FL on the following dates:

- December 7, 2022
- October 26, 2022
- October 11, 2022
- October 3, 2022

The state responded on December 7, 2022 to indicate they were working on a revised preprint and would have it finalized by December 12, 2022 (see attached email). To date it has not been submitted to CMS for review.

I discussed FL's delays with Laura and we thought it would be good to elevate this to your attention, especially given that Tom had reached out to you regarding the state's revised HCBS spending plan (see attached email). Hoping you're able to reach out to Tom for a status update on the FY 2023 SDPs, HCBS Spending Plan related preprint amendment, and the FL Proposal D 2020-2021 revised amendment. I prepared the attached draft email if it would be helpful. If additional information is needed please let me know.

Thanks,  
Lovie

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, January 13, 2023 11:06 AM

**To:** Dalton, Ann <[Ann.Dalton@ahca.myflorida.com](mailto:Ann.Dalton@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>

**Cc:** Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Good Morning Ann, Kristin, and Cole,

We're following up regarding the email below. Please let us know if it would be helpful to schedule a brief call to touch base on the HCBS preprint amendment and the state directed payments for the 10/1/2022- 9/30/2023 rating period. If you have any questions please let us know.

Thank you,  
Lovie

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Tuesday, January 3, 2023 12:28 PM

**To:** Dalton, Ann <[Ann.Dalton@ahca.myflorida.com](mailto:Ann.Dalton@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>

**Cc:** Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Good Afternoon Florida Team,

Happy New Year! As a follow up to the email below we are aware that AHCA recently submitted an updated HCBS Spending Plan and Narrative to CMS for review. Please provide a status update on the submission of the corresponding HCBS preprint amendment.

Additionally, I'm checking in regarding Florida's state directed payments for the 10/1/2022- 9/30/2023 rating period. Will the state be renewing the state directed payments for the 2022-2023 rating period? If so, please provide an update on the state's expected timeframe to submit the preprints to CMS for review. We look forward to working with the state on the review. If you have any questions please let us know.

Thank you,  
Lovie

Lovie Davis, MPH  
Division of Managed Care Policy  
Center for Medicaid and CHIP Services  
Centers for Medicare & Medicaid Services  
Phone: 410-786-1533

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Tuesday, November 29, 2022 12:29 PM

**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>

**Cc:** Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Dalton, Ann <[Ann.Dalton@ahca.myflorida.com](mailto:Ann.Dalton@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>;

[Maureen.Castano@ahca.myflorida.com](mailto:Maureen.Castano@ahca.myflorida.com); Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** Status Request- Florida 438.6(c) State Directed Payments

Good Afternoon Cole,

I hope you had a great holiday! During the recent NAMD meeting, we were informed that AHCA is working on proposed changes to the HCBS spending plan and will be submitting a corresponding preprint amendment. I'm following up to request a status update on the upcoming preprint submission.

Additionally, I'm checking in regarding Florida's state directed payments for the 10/1/2022- 9/30/2023 rating period. Will the state be renewing the state directed payments for the 2022-2023 rating period? If so, please provide an update on the state's expected timeframe to submit the preprints to CMS for review. We look forward to working with the state on the review. If you have any questions please let us know.

Thank you,  
Lovie

Lovie Davis, MPH  
Division of Managed Care Policy  
Center for Medicaid and CHIP Services  
Centers for Medicare & Medicaid Services  
Phone: 410-786-1533



Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 2/1/2023 3:37:15 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** RE: RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Lovie looked at the email – the state included this in the message:

**Please Note:** we are in the process of updating the calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. When this analysis is complete, we will amend this preprint to include final values for:

- Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
- Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
- Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Lovie is going to continue reviewing the preprint for completeness. As you know, we did accept TX last year with old data that they were going to update later. OACT never liked that decision and has raised that again for this year. (b)(5)  
(b)(5) I don't disagree with OACT; it is a waste of staff time and resources when we know the data is old. But given past decisions – we have some room I think to accept it.

Happy to talk later.

Thanks,  
Laura

**From:** Snyder, Laura (CMS/CMCS)  
**Sent:** Wednesday, February 1, 2023 9:59 AM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Hi John,

I reviewed the inbox traffic, we have only received from FL the renewal of the big hospital preprint that had the LPPF issue last night at 4:22pm. It has not yet been processed and still needs to be reviewed for completeness. We will prioritize this review, but once completeness is confirmed, it will need to go to FRT review. SOP is to give the FRT 3 weeks for review after we determine that the preprint is complete.

FL is still outstanding on several other preprints and no traffic has come in on the HCBS 9817 preprint amendment either.

John, do you want a list of what preprints are outstanding still?

Thanks,  
Laura

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Sent:** Tuesday, January 31, 2023 5:36 PM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Hi Lovie – Tom told us that he submitted preprints today. Is that accurate? If so, can you let me know what he submitted. Thank you!!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Monday, January 30, 2023 2:39 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Thank you Lovie! This is very helpful, and Tom actually just reached out to me on an unrelated topic. So, I will ask him for a status update on the preprints. I will keep you posted.

Thanks again!!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Monday, January 30, 2023 2:36 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FW: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Good Afternoon John and Laura,

I'm following up regarding Florida's submission of state directed payment preprints for the 2022-2023 rating period and the preprint amendment related to the revised HCBS spending plan. Please note the state has not responded to any of our requests for status updates to date. I sent email inquiries to FL on the following dates:

- January 13, 2023
- January 3, 2023
- November 29, 2022

In addition, the state has not submitted a revised preprint amendment for FL Proposal D 2020-2021 to account for the changes to the increased total dollar amount of the state directed payment. I sent email inquiries to FL on the following dates:

- December 7, 2022
- October 26, 2022
- October 11, 2022
- October 3, 2022

The state responded on December 7, 2022 to indicate they were working on a revised preprint and would have it finalized by December 12, 2022 (see attached email). To date it has not been submitted to CMS for review.

I discussed FL's delays with Laura and we thought it would be good to elevate this to your attention, especially given that Tom had reached out to you regarding the state's revised HCBS spending plan (see attached email). Hoping you're able to reach out to Tom for a status update on the FY 2023 SDPs, HCBS Spending Plan related preprint amendment, and the FL Proposal D 2020-2021 revised amendment. I prepared the attached draft email if it would be helpful. If additional information is needed please let me know.

Thanks,  
Lovie

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Friday, January 13, 2023 11:06 AM

**To:** Dalton, Ann <[Ann.Dalton@ahca.myflorida.com](mailto:Ann.Dalton@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>

**Cc:** Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Barry, Joyce <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Good Morning Ann, Kristin, and Cole,

We're following up regarding the email below. Please let us know if it would be helpful to schedule a brief call to touch base on the HCBS preprint amendment and the state directed payments for the 10/1/2022- 9/30/2023 rating period. If you have any questions please let us know.

Thank you,  
Lovie

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Tuesday, January 3, 2023 12:28 PM

**To:** Dalton, Ann <[Ann.Dalton@ahca.myflorida.com](mailto:Ann.Dalton@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>

**Cc:** Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Barry, Joyce <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: Status Request- Florida HCBS Spending Plan and 438.6(c) State Directed Payments

Good Afternoon Florida Team,

Happy New Year! As a follow up to the email below we are aware that AHCA recently submitted an updated HCBS Spending Plan and Narrative to CMS for review. Please provide a status update on the submission of the corresponding HCBS preprint amendment.

Additionally, I'm checking in regarding Florida's state directed payments for the 10/1/2022- 9/30/2023 rating period. Will the state be renewing the state directed payments for the 2022-2023 rating period? If so, please provide an update on the state's expected timeframe to submit the preprints to CMS for review. We look forward to working with the state on the review. If you have any questions please let us know.

Thank you,  
Lovie

Lovie Davis, MPH  
Division of Managed Care Policy  
Center for Medicaid and CHIP Services  
Centers for Medicare & Medicaid Services  
Phone: 410-786-1533

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Tuesday, November 29, 2022 12:29 PM  
**To:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Cc:** Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Dalton, Ann <[Ann.Dalton@ahca.myflorida.com](mailto:Ann.Dalton@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; [Maureen.Castano@ahca.myflorida.com](mailto:Maureen.Castano@ahca.myflorida.com); Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** Status Request- Florida 438.6(c) State Directed Payments

Good Afternoon Cole,

I hope you had a great holiday! During the recent NAMD meeting, we were informed that AHCA is working on proposed changes to the HCBS spending plan and will be submitting a corresponding preprint amendment. I'm following up to request a status update on the upcoming preprint submission.

Additionally, I'm checking in regarding Florida's state directed payments for the 10/1/2022- 9/30/2023 rating period. Will the state be renewing the state directed payments for the 2022-2023 rating period? If so, please provide an update on the state's expected timeframe to submit the preprints to CMS for review. We look forward to working with the state on the review. If you have any questions please let us know.

Thank you,  
Lovie

Lovie Davis, MPH  
Division of Managed Care Policy  
Center for Medicaid and CHIP Services  
Centers for Medicare & Medicaid Services  
Phone: 410-786-1533

Message

---

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 2/17/2023 5:21:27 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Davis, Lovie (CMS/CMCS) (b)(6) (b)(6)  
(b)(6) CMS State Directed  
Payment (b)(6)  
(b)(6)  
**Subject:** FL status

Hi John,

Here is the current status.

- We received one preprint for review last night at 4:22pm. This is FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930.
- This is the preprint that was approved last year with conditional language and the companion letter noting our concerns with the LPPF.
- The team is assessing the preprint for completeness today.
  - o If deemed complete, we will then send out to the FRT and to FMG and request their feedback on the review in 3 weeks per SOP (earliest would be 2/22/2023).
  - o If not deemed complete, we will then follow-up with the state, indicating what items are missing and that official review will not begin until CMS receives a revised preprint with the missing items.
- The state's rating period began October 1, 2022. We advise states to submit preprints 90 days in advance of the rating period. We have been following up with the state numerous times on outstanding preprints, including this one. In the email response acknowledging receipt of the preprint today, we again flagged that the state was delinquent on the following items:
  - o Preprint amendment related to Florida's revised HCBS Spending plan;
  - o FL Proposal D 2020-2021 revised preprint amendment;
  - o Five additional SDP preprints for the 2022-2023 rating period.

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)

Message

---

**From:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 2/1/2023 6:27:17 PM  
**To:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**CC:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6) Gibson, Alexis  
**Subject:** FL Preprint Update

What I will send to Dan once we have the email for the state. Let me know if you have any edits.

Hi Dan – here is the latest information on the FL preprint submission:

- We received one hospital preprint from FL for review last night at 4:22pm. This is the preprint that was approved last year with conditional language and the companion letter noting our concerns with the LPPF state financing.
- The team has been assessing the preprint for completeness today, and we can confirm that we have completeness issues that will require follow-up with the state prior to entering the preprint into federal review (see attached email for completeness issues that we flagged for FL today).
- The state’s rating period began October 1, 2022. We advise states to submit preprints 90 days in advance of the rating period. We have followed-up with the state numerous times on outstanding preprints, including this preprint. In the email response acknowledging receipt of the preprint today, we again flagged that the state was delinquent on the following items:
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  - FL Proposal D 2020-2021 revised preprint amendment; and
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John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 2/1/2023 6:37:02 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Gibson, Alexis (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** RE: RE: FL Preprint Update

This looks good to me.

Thanks!  
Laura

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Sent:** Wednesday, February 1, 2023 1:27 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>  
**Subject:** FL Preprint Update

What I will send to Dan once we have the email for the state. Let me know if you have any edits.

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John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
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Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

Message

**From:** Tsai, Daniel (CMS/CMCS); (b)(6)  
**Sent:** 2/1/2023 8:17:28 PM; (b)(6)  
**To:** Giles, John (CMS/CMCS); (b)(6)  
**CC:** Deboy, Alissa (CMS/CMCS); (b)(6); (b)(6); Smith, Carrie; Gibson, Alexis; Costello, Anne Marie  
**Subject:** RE: RE: FL Managed Care Preprint Update

Go ahead – thanks for the heads up

FYI Anne Marie

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Sent:** Wednesday, February 1, 2023 2:35 PM  
**To:** Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Cc:** Deboy, Alissa (CMS/CMCS) <alissa.deboy1@cms.hhs.gov>; Smith, Carrie (CMS/CMCS) <Carrie.Smith@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>  
**Subject:** FL Managed Care Preprint Update

Hi Dan – here is the latest information on the FL preprint submission:

- We received one hospital preprint from FL for review last night at 4:22pm. This is the preprint that was approved last year with conditional language and the companion letter noting our concerns with the LPPF state financing.
- The team has been assessing the preprint for completeness today, and we can confirm that we have completeness issues that will require follow-up with the state prior to entering the preprint into federal review (see attached email for completeness issues that we flagged for FL today).
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  - Five additional SDP preprints for the 2022-2023 rating period.

If you need anything further, please let me know. Thanks!

John Giles, MPA  
Director, Division of Managed Care Policy  
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E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

Message

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**From:** Campbell-OConnor, Aimee (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 2/17/2023 1:49:07 PM  
**To:** Delyvecchio, Lynn (CMS/CMCS); (b)(6)  
(b)(6)  
**Subject:** FW: FW: FL Proposal D Amendment 2020-2021-just FYI  
**Attachments:** MedicaidDPP (1).pdf

Sounds like they plan to address the SDPs in an upcoming rule. 😊

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Friday, February 17, 2023 7:00 AM  
**To:** Staton, Sidney (CMS/CMCS) <Sidney.Staton@cms.hhs.gov>; Campbell-OConnor, Aimee (CMS/CMCS) <Aimee.Campbell-OConnor1@cms.hhs.gov>; Sarah Whitehouse <Whitehouse-Sarah@norc.org>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Davis, Lovie (CMS/CMCS) <Lovie.Davis@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Thank you Aimee for the article and for your concerns. I believe that the new managed care rule that is currently in development will help to address some of the oversight deficiencies that you have identified regarding the lack of a UPL-type mechanism on the managed care side to serve as an upper ceiling on payment amounts. I believe that ACR or average commercial rate is one of the tools that we have used in the past to serve in this capacity. Regarding your point about actuarial soundness, I agree. It's something that Anna and I have discussed in the past and others have also brought up. Regarding the article from AHCA the "Florida Medicaid Health Care Alert" from July 22, 2021, I think that is helpful. The entity mentioned in the article "Adelanto Healthcare Ventures" is a health care consultant based out of Austin that was also involved in setting up the Texas LPPF. In most instances of what we would think of as "taxes" in everyday life, no one wants to be taxed. In the world of healthcare-related taxes, everyone wants to be taxed because they anticipate receiving more than their tax cost back in increased Medicaid payments. Regarding the conditional nature of the IGT, "If your hospital is not sure whether you are included and would like to be included in the Agency's projections for the hospital directed payment program" I seem to remember something that this may be problematic, but I would defer to Andrew for that as being the SME on IGTs. These are important issues. The oversight system was built on Medicaid FFS payments. Now that 80% or more of payments have shifted to be on managed care and especially with the growing importance of state directed payments, oversight becomes more difficult because state directed payments are relatively new and don't have all of the oversight mechanisms in place as exist on the FFS side of the house. We are working on building them now and we hope that they will be operational moving forward. I definitely think the larger issues you point out are worth discussing either on the next NORC FMR call or else on a separate call. I look forward to talking with you.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
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**From:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>  
**Sent:** Thursday, February 16, 2023 3:44 PM  
**To:** Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Cc:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Subject:** RE: FL Proposal D Amendment 2020-2021-just FYI

Hi Aimee – Thank you for sharing. I do not participate in the SDP pre-prints review. I'm also cc Jonathan in case he has not seen this.

Sid

**From:** Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Sent:** Thursday, February 16, 2023 2:58 PM  
**To:** Staton, Sidney (CMS/CMCS) <[Sidney.Staton@cms.hhs.gov](mailto:Sidney.Staton@cms.hhs.gov)>  
**Subject:** FW: FL Proposal D Amendment 2020-2021-just FYI

Hey Sid!

Just sharing as FYI. Not sure whether you participate in review of SDP pre-prints.



Aimee

**From:** Campbell-OConnor, Aimee (CMS/CMCS)  
**Sent:** Thursday, February 16, 2023 2:55 PM  
**To:** DelVecchio, Lynn (CMS/CMCS) <[Lynn.DelVecchio@cms.hhs.gov](mailto:Lynn.DelVecchio@cms.hhs.gov)>  
**Subject:** FW: FL Proposal D Amendment 2020-2021

Just FYI. 😊

**From:** Campbell-OConnor, Aimee (CMS/CMCS)  
**Sent:** Thursday, February 16, 2023 2:52 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FL Proposal D Amendment 2020-2021

Hi Alex!

I reviewed the SDP pre-print. I guess I don't understand how submission of a pre-print amendment for 2020-2021, 2 years after the fact is actually tied to helping with access or utilization at this point? The support provided for this SDP in the pre-print is minimal at best. I don't have any actual comments because there doesn't seem to be much justification in terms of an improvement in care for beneficiaries for these payments.

What is the purpose of this amendment? The purpose seems to be to provide extra funds to the hospitals using the SDP as a vehicle. If the rates were determined to be actuarially sound, then access should have been considered as part of

that. If the rates are not sufficient at this point, where is the data to show that and why wouldn't they just address any concerns with the plans? And/or, raise rates with a rate amendment?

See- <http://www.icontact-archive.com/archive?c=227375&f=11179&s=13873&m=852437&t=850d8a08f66cb5c2e1e49656573dbe0caeb447b39b9d192096e732cbe37425f5>

This arrangement where the State indicates to the hospitals that we are offering you an opportunity to get higher payments if you help contribute the State match, sounds potentially problematic. There is an article from FL Taxwatch on the SDP program that provides some insight. (attached)

I know that on the FFS side of the house we have UPLs, scrutiny of taxation and CPE arrangements to make sure that funds are not "recycled." Here is an article from George Mason university on State financing strategies in Medicaid that mentions IGTs as a problematic strategy. <https://www.mercatus.org/research/research-papers/medicaid-provider-taxes-gimmick-exposes-flaws-medicaids-financing>

Florida may be allowed to use IGTs as State match under current regulations but I do wonder about how well their strategy aligns with the safeguards CMS has put in place on the FFS side.

I hope this is helpful. I know that Sid and FMG are looking at the Provider Participation Fund for this coming year and that CMS sent a Companion letter with one of the approvals last year. This may be an area where further guidance would be beneficial.



Aimee

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(207) 441-2788  
West Branch  
Division of Managed Care Operations (DMCO)  
Centers for Medicare & Medicaid Services (CMS)

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, February 10, 2023 1:11 PM  
**To:** CMS OACT Medicaid Managed Care <[OACTMedicaidManagedCare@cms.hhs.gov](mailto:OACTMedicaidManagedCare@cms.hhs.gov)>; CMS SDP\_QUALITY <[SDP\\_QUALITY@cms.hhs.gov](mailto:SDP_QUALITY@cms.hhs.gov)>; Campbell-OConnor, Aimee (CMS/CMCS) <[Aimee.Campbell-OConnor1@cms.hhs.gov](mailto:Aimee.Campbell-OConnor1@cms.hhs.gov)>  
**Cc:** CMS DMCP Medicaid Managed Care Rates <[DMCPRates@cms.hhs.gov](mailto:DMCPRates@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FL Proposal D Amendment 2020-2021

Good Afternoon FRT,

Florida submitted a preprint amendment for formal CMS approval pursuant to 42 CFR 438.6(c). The files are available at the following link: [Box File](#)

Please note the following:

- This is an amendment submission for this payment arrangement.
- The previously approved preprint is available here: [SharePoint](#)
- This proposal is eligible for an annual approval.
- The 90<sup>th</sup> day for this review is May 11, 2023

FRT feedback for the state is due by **COB, March 3, 2023**. If DMCP does not receive a response by this deadline, we will assume that the FRT member has no questions for the state for addition to the question set and concurs on approval of the preprint. Please reach out with any questions and thanks for your review.

Thank you,  
Lovie

Message

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**From:** Giles, John (CMS/CMCS) <(b)(6)>  
(b)(6)  
**Sent:** 3/29/2023 4:03:58 PM  
**To:** Snyder, Laura (CMS/CMCS) <(b)(6)>  
(b)(6)  
**Subject:** RE: RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Thank you for handling! ☺

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Wednesday, March 29, 2023 11:55 AM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Thanks – sorry – the email traffic on this is voluminous and they are driving me a bit crazy.

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Wednesday, March 29, 2023 11:54 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

#1 is not ours (in my read). #2 – agreed, we currently have no requirement, that is why we are modifying our MLR rules to account for this in future MLR reporting. #3 looks to belong to FMG. I don't know if you need to respond, but feel free to let them know on #2. Thanks!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
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Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Wednesday, March 29, 2023 7:49 AM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Subject:** FW: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

I am not entirely sure what to do with this – we don't have a proposal in house.

For the second question posed here – there, I don't believe, is a requirement that 100% of the SDP be passed on to the providers. We know that states do this today with SPTs and are in fact required to account for admin in cap rate development. All of it gets matched at the state's FMAP, not admin match. We would see the difference in the MLR reporting under the NPRM better than we do today.

Do you want me to respond to any of this?

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Tuesday, March 28, 2023 4:11 PM

**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>

**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hello Laura,

Just wanted to let you know that I got off the phone with Rory and Stuart. He said that WA explained to us three weeks ago in a call with the SMD and the Health Secretary that the information that we had received regarding the possible existence of a similar arrangement as in Florida was based on incorrect information. Washington stated that they planned on increasing the amount of the hospital tax. Rory said that the assurances they gave to us on the call were sufficient to make sure that there was no specific indications that these types of pooling and redistribution arrangements existed in Washington. He did say that the issue of re-directing a portion of the SDP to pay for the MCO premium tax that Andrew mentioned was concerning. And that there may or may not be an issue on a couple of fronts:

1. The net expenditure issue raised by Andrew. That the state is in effect claiming on the CMS-64 for expenditures that it never had. What makes this more complex is that the state is claiming a rate, or a PMPM on the CMS-64, since this involves managed care and not FFS. They are not claiming for actual expenditures. So the net expenditure issue becomes trickier.
2. Is there any requirement under managed care statute or regulation that says that the MCO must pass on 100% of the SDP to the hospital and cannot retain any portion of it? In the scenario outlined by the state, 98% of the SDP would be passed on to the hospital and 2% of the SDP would be retained by the MCO to pay the MCO premium assessment. Is this allowed under managed care rules?
3. There is a concern that I mentioned earlier regarding the hold harmless. If the MCOs are allowed to retain some portion of the payments based on their proportion of Medicaid member months, that would probably be allowable from a tax perspective, because we allow states to recognize Medicaid's allowable portion of the tax. If, on the other hand, all MCOs retain a flat 2% of the SDP, that could be viewed as more problematic and could be viewed as a hold harmless.

Rory stated that he has a call at 5:15 p.m. today with Washington.

Best,

Jonathan

Jonathan Endelman, PhD

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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Tuesday, March 28, 2023 1:33 PM  
**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Thanks for this Andrew. This certainly sounds strange. It sounds like the state is using the proceeds from one health care-related tax (a tax on inpatient and outpatient hospital services) in order to serve as the basis for paying another health care-related tax (services of managed care organizations). Inpatient hospital services, outpatient hospital services, and services of managed care organizations are all separate permissible classes under Section 1903 (w)(7) of the Social Security Act and 42 CFR 433.56. If this is the case, that could be a hold harmless under Section 1903 (w)(4) and 42 CFR 433.68 (f) because the statute states that a hold harmless occurs where, "The State or other unit of government imposing the tax provides (directly or indirectly) for any payment, offset, or waiver that guarantees to hold taxpayers harmless for any portion of the costs of the tax." If this situation occurs as it is being described, the state may be giving an offset to the managed care organizations to hold them harmless for a portion of the tax, which would not be permissible. It looks like there are multiple, interlocking, complicated, moving parts in the state of Washington when it comes to the relationships between their managed care organizations and their hospitals that we need to get a better idea of understanding in order to know what is going on and if it would be in accordance with the requirements laid out in federal statute and regulation.

Best,

Jonathan

Jonathan Endelman, PhD  
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**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Sent:** Tuesday, March 28, 2023 12:26 PM



**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Thanks, Laura – We'll be looking out for follow ups on this.

Copying the email thread with Edwin for reference.

In this particular instance, they didn't say anything as of yet about which entities will be providing an IGT, but we'll be sure to advise on the upcoming drafts/SDPs. One thing to keep in mind, in particular in Edwin's email, they're talking about possibly shaving off some of the Medicaid SDPs and paying that money to the MCOs as an "assessment" of some kind. If there's no FFP involved in the state's payment to the MCO, then we're not super concerned about it. If there *is* FFP mixed into the amounts the MCOs are able to keep, then we would likely say that keeping revenue from a provider payment would not be allowable under 42 CFR 447.10. I don't know if you all have any similar regulations in MCOs, but considering as these are state directed payments, I would think that the whole of the Medicaid payment would be directed to the providers.

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Tuesday, March 28, 2023 8:02 AM  
**To:** Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** FW: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*  
**Importance:** High

Hi Jonathan and Stuart,

Sorry to ask for a quick turnaround, but WA is asking for some feedback by COB today. As you'll see in the draft below, we don't have any kind of submission in house at this point. All that's been shared with us is a draft bill in the WA legislature for a new series of payments (SDPs and it looks like some FFS payments as well. We are making clear to the state that CMS doesn't comment on draft legislation, but wanted to give them some level of general TA. In that spirit, are you comfortable with the highlighted bullet that calls out the recent guidance you all put out on hold harmless?

Andrew – I added you as you were on the chain at one point from Edwin in DPO; there is definitely IGT funding involved in the legislation. I suspect this will be one that DMCP and FMG will want to discuss more if the legislation/state moves ahead with the proposal.

Thanks,  
Laura

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Monday, March 27, 2023 4:08 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Draft to share with Edwin; I still need to check with FMG on the link to their guidance:

Hi Edwin –

DMCP has reviewed the email and documents shared by Washington. We recognize the state requested feedback by COB 3/28. We've prepared a written response to share with the state; can you share this with the state?

"Thank you for your request. CMS does not comment on state legislation; however, CMS is happy to provide technical assistance for the state as it drafts submissions for CMS to review and approve, such as state directed payment preprints. While CMS does not currently have a draft SDP proposal before us, we do offer these general pieces of technical assistance as the state considers a future SDP submission:

- CMS is happy to review early drafts of preprint submissions. We have found this useful for both states and CMS as it generally allows CMS to identify any issues early, which may expedite the formal review processes.
- SDPs are reviewed by a federal review team, of which DMCP is one party. While early technical assistance helps to identify issues early, all preprints must go through a formal review process. Issues may be identified during the formal review process that were not identified during technical assistance.
- We strongly encourage states to submit SDPs at least 90 days in advance of the start of the rating period. Barring any notable policy issues, this timing generally allows for the state and CMS to work through the prior approval process, making it easier for states to appropriately incorporate the SDP into their contracts and rates. The later that states submit SDPs, the more likely that the related contracts and rates may be delayed and additional amendments may be needed. We do note that we cannot accept a preprint after the end of the rating period.
- We would also note that there is increased oversight interest in state directed payments, particularly in the financing of the non-federal share. We would recommend that the state consult with the appropriate FMG SMEs for any changing or new financing related to this SDP. We would also flag the following CIB that was published this past February on the use of provider taxes: <https://www.medicaid.gov/federal-policy-guidance/downloads/cib021723.pdf>.
- States must provide CMS with an evaluation plan that would evaluate the effectiveness of the SDP on furthering the goal(s) and objective(s) identified in the state's Medicaid managed care quality strategy. CMS has released guidance on what elements states should include in their evaluation plan – including identifying measure(s) such as those from the Medicaid and CHIP core set, as well as identifying baselines and targets to evaluate the relative success of the SDP. If you have questions about this, we are happy to connect you with our DQHO colleagues for more technical assistance.
- State directed payments must be based on the delivery and utilization of services to Medicaid beneficiaries covered under the contract for the applicable rating period. Therefore, state directed payments must be tied to utilization and delivery of services covered under the contract during the corresponding contract rating period; payment cannot be based solely on historical utilization. We note that the documentation provided to us suggests the use of reconciliation processes, where interim payments would be made based on historical utilization and then reconciled to utilization under the contract. While CMS has approved such models in SDPs historically, we did want to note that CMS and states have found such arrangements to be operationally challenging to implement. There often is increased work for states and plans in administering the interim payments and then the reconciliation process. We have also seen a number of states implement such payment arrangements and have to submit additional rate certification amendments and contract amendments in light of reconciliations, which can be administratively burdensome and time consuming for both CMS and states.

For more information, we do recommend that you review our more recent guidance on SDPs:

<https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21001.pdf>. If you would like further technical assistance on a draft SDP for submission, please reach out to [statedirectedpayment@cms.hhs.gov](mailto:statedirectedpayment@cms.hhs.gov). We would also like to reiterate that the technical assistance provided above should not be considered CMS signing-off on or commenting on the state's draft legislation.

Thank you"

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Sent:** Friday, March 24, 2023 5:34 PM

**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi John,

Thanks very much John for your guidance. Attached is their draft, I will contact Dr. Fotinos to make them aware CMS does not normally comment directly on a state's proposed legislation; their technical questions are noted below:

**Questions/Concerns:**

- **Washington state is requesting to transition their existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.**
- **The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment and an overall general discussion on permissibility of these items.**

Please let me know if I can help out in any other way. I will email Dr. Fotinos in the interim.

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email:[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Sent:** Friday, March 24, 2023 5:19 PM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Edwin – I can discuss with our team on Monday, but many of our folks (including Rebecca) are traveling on Monday. So, reviewing and providing formal feedback by 3/28 will likely not be possible. I can circle with our team on Monday and see if we have any high-level comments, but I can't guarantee what we can provide without additional details from the state. Is the attached document what the state is asking CMS to review? If so, is this draft legislation? CMS does not normally comment directly on a state's proposed legislation, but we can offer the state technical assistance. Again, I can circle with the team on Monday and see what high-level technical assistance we can provide under the timing being offered by the state. It might be helpful for the state to send over technical questions that our team can review.

I hope this helps!

John Giles, MPA

Director, Division of Managed Care Policy

Disabled and Elderly Health Programs Group

Center for Medicaid and CHIP Services

Centers for Medicare and Medicaid Services

Department of Health and Human Services

Phone: 410-786-5545

E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 5:09 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*  
**Importance:** High

Thank you John I appreciate that, I know next week will be difficult because of the meetings in Baltimore, especially since they are requesting a review by 3/28.

I took a look at your schedules for Monday and Rebecca will be OOO.

Do we need to necessarily have a call, or can the review and questions be conducted via email? They want this information Tuesday for their legislature.

Thank you,

**Edwin Walaszek**

Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email:[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 5:01 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi Edwin – thanks! I think we can start with DMCP (please include Rebecca Burch Mack, Laura Snyder, and myself). We will ensure our other team members attend as well. If the state needs to address specific IGT questions, I will note that FMG is best positioned to answer those questions. I will also note that our teams are traveling next week to Baltimore for onsite meetings with MCOG and DEHPG, so I am predicting that scheduling a meeting next week will be difficult, as most of our teams will be in all-day strategic planning meetings on-site.

Thanks for helping us coordinate!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:56 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*  
**Importance:** High

Hi John,

Thank you I will certainly do that, they emailed both of us. When I emailed Andrew initially about this he indicated FMG would eventually get pulled into the IGT questions, but as far as transitioning the payments, DMCP is a good starting point.

Questions/Concerns:

**Washington state is requesting to transition their existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.**

**The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment and an overall general discussion on permissibility of these items.**

They are looking for guidance by 3/28/23 the latest.

Should I setup a call with the state and DMCP only, or does FMG need to be on the call for their input. Andrew is out today and if FMG is needed should I contact Rory to see if he can make the call?

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email:[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:45 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi Edwin – it does seem like emails are crossing between multiple teams. ☺

Perhaps it makes the most sense to allow you to coordinate us in the way that makes the most sense. I am happy to help or participate however I can.

Thank you so much!

John Giles, MPA

Director, Division of Managed Care Policy

Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:39 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi John,

My name is Edwin Walaszek and I am the Washington state lead, I just emailed Laura Snyder and for context I am just forwarding over the states initial request and some background, I know Dr. Fotinos emailed you directly.

Please let me know if I can help in anyway.

Thank you,

**Edwin Walaszek**

Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email:[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:28 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi Edwin,

We've received a separate request today from the state SMD on this topic; we'll follow-up after that meeting about any next steps.

Thanks,  
Laura

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:19 PM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*  
**Importance:** High

Good afternoon Laura,

We emailed a few days back, I work in DPO as the Washington state lead, I emailed you regarding a question that was submitted by Washington state and a bill in their legislature. **Washington state is requesting an expedited review of their concerns by Tuesday March 28<sup>th</sup> if possible.**

The bill is expected to be introduced in the next couple of days and their legislative partners are anxious to learn more about the permissibility of the program under CMS rules.

There is a link to a recent news article in Washington that provides some background on this topic?

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwibu8-S2-9AhXcMVkFHZwzDROQFnoECAwQAQ&url=https%3A%2F%2Fwww.king5.com%2Farticle%2Fnews%2Fhealth%2Fwsha-hospitals-calling-for-increased-medicaid-payments%2F281-dd424f3a-d9e0-49e6-bf7a-eb70590e0124&usg=AOvVaw2GfMqm1iV0kCroAtAFWktf>

Please let me know how I can help out. I apologize they never indicated this guidance was needed so quickly.

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email:Edwin.Walaszek1@cms.hhs.gov

**From:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>

**Sent:** Friday, March 24, 2023 3:52 PM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Cc:** Fotinos, Charissa (HCA) <[charissa.fotinos@hca.wa.gov](mailto:charissa.fotinos@hca.wa.gov)>

**Subject:** RE: Technical Assistance Request

Yes, that article is about this bill.

Tuesday, March 28<sup>th</sup> would be ideal.

**Abby Cole**

Section Manager, Hospital Finance & Drug Rebate

[Abby.cole@hca.wa.gov](mailto:Abby.cole@hca.wa.gov)

Office: 360-725-1835

She/Her (*why pronouns matter*)

Washington State

Health Care Authority

[hca.wa.gov](http://hca.wa.gov)

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**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 12:42 PM  
**To:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>  
**Cc:** Fotinos, Charissa (HCA) <[charissa.fotinos@hca.wa.gov](mailto:charissa.fotinos@hca.wa.gov)>  
**Subject:** Technical Assistance Request  
**Importance:** High

External Email

**From:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>  
**Sent:** Friday, March 24, 2023 3:32 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Cc:** Fotinos, Charissa (HCA) <[charissa.fotinos@hca.wa.gov](mailto:charissa.fotinos@hca.wa.gov)>  
**Subject:** RE: Technical Assistance Request

Hello Edwin,

I'm following up on this. Any updates as to when we can expect to be able to have a TA call with CMS? The bill is expected to be introduced in the next couple of days and our legislative partners are anxious to learn more about the permissibility of the program under CMS rules.

Thank you,  
Abby

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 12:29 PM  
**To:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>  
**Subject:** RE: Technical Assistance Request

External Email

Thanks very much Abby

Thank you,

**Edwin Walaszek**  
Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email: [Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>  
**Sent:** Wednesday, March 22, 2023 1:08 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

CMS002031cv1579



**Cc:** Klein, Evan (HCA) <[evan.klein@hca.wa.gov](mailto:evan.klein@hca.wa.gov)>; Atkinson, Megan M. (HCA) <[megan.atkinson@hca.wa.gov](mailto:megan.atkinson@hca.wa.gov)>; Lucero, Catrina (HCA) <[catrina.lucero@hca.wa.gov](mailto:catrina.lucero@hca.wa.gov)>

**Subject:** RE: Technical Assistance Request

Thank you.

We are looking to transition our existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.

The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment. We are hoping for an overall general discussion on permissibility of those items.

Thank you,

**Abby Cole**

Section Manager, Hospital Finance

[Abby.cole@hca.wa.gov](mailto:Abby.cole@hca.wa.gov)

Office: 360-725-1835

Pronouns: she/her

Wash.  
Health

Authoria

[hca.wa.gov](http://hca.wa.gov)

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**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Sent:** Thursday, March 16, 2023 3:19 PM

**To:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>

**Cc:** Klein, Evan (HCA) <[evan.klein@hca.wa.gov](mailto:evan.klein@hca.wa.gov)>; Atkinson, Megan M. (HCA) <[megan.atkinson@hca.wa.gov](mailto:megan.atkinson@hca.wa.gov)>; Lucero, Catrina (HCA) <[catrina.lucero@hca.wa.gov](mailto:catrina.lucero@hca.wa.gov)>

**Subject:** Technical Assistance Request

External Email

Good afternoon Abby and team:

Thank you for submitting this request, I am reaching to out the team to see if they have any preliminary questions and I will follow up with some available time .

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email:Edwin.Walaszek1@cms.hhs.gov

**From:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>

**Sent:** Thursday, March 16, 2023 2:09 PM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Cc:** Klein, Evan (HCA) <[evan.klein@hca.wa.gov](mailto:evan.klein@hca.wa.gov)>; Atkinson, Megan M. (HCA) <[megan.atkinson@hca.wa.gov](mailto:megan.atkinson@hca.wa.gov)>; Lucero, Catrina (HCA) <[catrina.lucero@hca.wa.gov](mailto:catrina.lucero@hca.wa.gov)>

**Subject:** Technical Assistance Request

Hello Edwin,

I'm attaching a draft of a proposed bill for a revised hospital assessment in Washington State. I'm hoping you can help me get something scheduled with the right individuals so we can discuss the permissibility of the proposed changes.

Thank you,

**Abby Cole**

Section Manager, Hospital Finance & Drug Rebate

[Abby.cole@hca.wa.gov](mailto:Abby.cole@hca.wa.gov)

Office: 360-725-1835

She/Her (*why pronouns matter*)

Washington State

Health Care Authority

[hca.wa.gov](http://hca.wa.gov)

**Connect with us**

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Wednesday, March 22, 2023 4:00 PM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>;

CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Kivisaari, John (CMS/CMCS) <[John.Kivisaari@cms.hhs.gov](mailto:John.Kivisaari@cms.hhs.gov)>

**Subject:** RE: Technical Assistance-WA-WSHA Safety Net Draft

Hi Edwin,

Thanks for sharing and you've hit the right place. I've included our state directed payment mailbox on the email thread. For SDPs, Tara Caulder is our WA lead. I've also cc'ed John Kivisaari, the DMCO lead for WA, for awareness.

Let us take a look at this and follow-up with you on next steps.

Thanks,

Laura

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 3:43 PM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** Technical Assistance-WA-WSHA Safety Net Draft

Good afternoon Laura,

My name is Edwin Walaszek and I am the CMS Medicaid Washington state lead. I am reaching out to you as I was referred by Andrew Badaracco, Washington state has submitted a draft bill (attached) that will revise the rating of Washington State Hospitals.

The state is looking to transition their existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.

**The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment.**

They are hoping for an overall general discussion on permissibility of those items.

Thank you for any help you can provide, alternatively do you think it would be easier to setup a call with the state to discuss.

Please let me know if there are any other questions or concerns.

Thank you,

**Edwin Walaszek**  
Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email: [Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Badaracco, Andrew (CMS/CMCS)  
<[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 3:38 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>; Caughey, Tom (CMS/CMCS) <[Tom.Caughey@cms.hhs.gov](mailto:Tom.Caughey@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>  
**Subject:** RE: Technical Assistance-WA-WSHA Safety Net Draft

Hey Edwin –

Pass-through payments and state-directed payments are DMCP's policy area. Suggest you reach out to Laura Snyder.

Thanks!

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 3:29 PM  
**To:** Caughey, Tom (CMS/CMCS) <[Tom.Caughey@cms.hhs.gov](mailto:Tom.Caughey@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** Technical Assistance-WA-WSHA Safety Net Draft

Hi Tom and team:

Thanks Tom, so I reached out to the state for some more specifics on their TA request regarding the draft by the legislature regarding the WSHA Safety Net draft.

The state is looking to transition their existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.

**The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment.**

They are hoping for an overall general discussion on permissibility of those items.

Please let me know if there are any other questions or concerns.

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email:[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 17, 2023 11:38 AM  
**To:** Caughey, Tom (CMS/CMCS) <[Tom.Caughey@cms.hhs.gov](mailto:Tom.Caughey@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** RE: Technical Assistance-WA-WSHA Safety Net Draft

Good morning Tom,

Thank you, I will reach out to the state for more specifics.

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations  
Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid  
Services

Email:Edwin.Walaszek1@cms.hhs.gov

**From:** Caughey, Tom (CMS/CMCS) <[Tom.Caughey@cms.hhs.gov](mailto:Tom.Caughey@cms.hhs.gov)>

**Sent:** Friday, March 17, 2023 11:23 AM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>;  
Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Knight,  
Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Badaracco, Andrew  
(CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Subject:** RE: Technical Assistance-WA-WSHA Safety Net Draft

Hi Edwin,

Could the state please send questions they have before the call? Also, if they provide a little background on why they are making the changes could help. Thanks.

Tom Caughey, Funding Specialist  
Centers for Medicare & Medicaid Services  
Financial Management Group  
Division of Reimbursement Review

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**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Sent:** Thursday, March 16, 2023 6:18 PM

**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>;  
Caughey, Tom (CMS/CMCS) <[Tom.Caughey@cms.hhs.gov](mailto:Tom.Caughey@cms.hhs.gov)>; Knight, Gary  
(CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Badaracco, Andrew  
(CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Subject:** Technical Assistance-WA-WSHA Safety Net Draft

Hello DRR team:

I am reaching out to the team because Washington state has submitted a draft bill (attached) that will revise the rating of Washington State Hospitals. The state is requesting to speak with CMS to discuss the acceptability of the proposed changes.

Are any questions or concerns I can help clarify with the state before scheduling some time with them?

Thank you,

Edwin Walaszek  
Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP  
Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare &  
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Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 2/28/2023 6:12:18 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Gibson, Alexis (CMS/CMCS) (b)(6)  
(b)(6) CMS State Directed  
Caulder, Tara  
**Subject:** RE: RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and  
OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi John,

We just got off a call with OR and FMG. FMG was not solution focused. These two OR review are ready to go absent an issue that we had previously discussed as a documentation only issue on their provider tax. Basically, the tax waiver approved in 2017 did not list 2 facilities as excluded; from the call today, the state indicated they've never been a part of the tax. It also sounded like there was an open question about if the 2 facilities should even be listed as they do not provide general acute care hospital services. FMG ended the call with asking from communications the state had from 2017 that noted any discussion of this.

This is the only issue holding up approval of these two renewal preprints.

What I'd like to propose is that we advise FMG that we will move ahead to approval of the SDPs next week; we are happy to include any conditional language in the approval letter they'd like about continuing to work with the FMG tax team to clarify this issue that is exclusively a concern on the tax side. If they have concerns with this approach, they need to let us know by Friday COB and we will consider them.

Do you agree?

The state is quite anxious to get approval and I am concerned that we are heading into a no man's land again with FMG on this.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, February 15, 2023 12:50 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and  
OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

We can certainly discuss at the next call. However, February 20 is President's Day and is a federal holiday. So I doubt we will be having the call that day. I don't think that there is anything in the state's response that changes the question that we sent to you previously.

Unfortunately, it looks like this could turn into a contentious issue. We may want to discuss with Stuart, Charlie, and eventually Rory to inform them. Ultimately, if the state is imposing a tax that is different in structure than the tax for which they have a waiver they need to come in and request a new waiver. The reason why we did not bring this up previously is because we had no indication that the state was excluding these two private providers from their tax. Nothing in any of their prior communications with us or in their tax waiver would lead us to believe that. If they were not excluding those two providers, the tax would be broad-based and uniform and would not require a waiver because they would be taxing all private providers at the same rate. However, from their responses, it appears that is not the case. They appear to be excluding those two private providers.

Thank you and we look forward to working with you and with the state to resolve this issue.

Best,

Jonathan

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**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, February 15, 2023 12:40 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

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**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

I was preparing a R3 question set for OR based on FMG's response below when I realized that, while I shared the state's R2 written response with FMG, I didn't share the state's informal note from their email.

When the state passed back its R2 response (which I shared in my Feb 1 email below), the email had the following note:



*In our response to Question 10, we note that the adjustments we have made were done in alignment with program requirements, and we do not believe this constitutes a change in program structure. Oregon has been transparent in our communication with CMS about these changes, including in our responses to questions on our 2022 Preprint prior to approval of the 2022 program. We would welcome a conversation with CMS if there are any concerns, or if we could offer to submit additional data with future requests for approval. Please let us know how we could support CMS's review process.*

In thinking more about the state's note, I wanted to reopen this with FMG to confirm the approach and next steps with the state because I suspect that the above formal note will likely be the state's response to FMG's highlighted question below.

To the state's point, I attached the question set from the 2022 review of this preprint (file name: OR\_Fee\_IPH.OPH1\_Renewal\_20220101-20221231\_R2 State Response), which contains the tax discussion.

**Can we discuss this on our Monday, Feb 20<sup>th</sup> call?** Or alternately, we can continue to discuss over email. Please let me know!

Thanks,  
Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Tuesday, February 7, 2023 4:20 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

It appears to us that something is off here.

Here is our question: In prior responses, Oregon has written that it excludes, "a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax." However, these exclusions are not listed in the 2017 approval letter from CMS. There the only exclusions listed are, "Public hospitals, other than hospitals created by health districts under Oregon law, are exempt from both inpatient and outpatient revenue assessments." Oregon has also written that, "Oregon has not changed its tax structure and continues to operate in the manner approved in 2017." Can Oregon please explain how it can be true that Oregon has not changed its tax since 2017 if Oregon has stated that it excludes certain hospitals from the tax that are not listed in the 2017 approval letter as being excluded?

Please let us know if we can be of any further assistance.

Best,

Jonathan

Jonathan Endelman, PhD

Social Science Research Analyst  
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**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, February 1, 2023 10:00 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

Oregon responded to the follow up question that FMG proposed (below) regarding these preprints. I attached the full response set for your reference and will paste here the state's response for ease (both preprints contain the same answer from the state):

**CMS Response 01/23/2023:** In its responses Oregon writes, "Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform." On January 19, 2022, Oregon informed CMS that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. Since Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017 and the structure is not currently broad-based and uniform, it appears as though Oregon would need to submit a new tax waiver of the broad-based requirements for its tax. As we wrote in our State Medicaid Director Letter from 1997 (attached), states may perform uniform changes on their tax waivers without the need to apply for a new tax waiver. A uniform change is a change that is the same proportionally for all providers. For example, if a state has a nursing facility tax where CCRCs are taxed \$100 per bed day and all other providers are taxed \$10 per bed day a state could decrease the tax rates by 10% by making the new rates \$100 and \$9 without the need for a new waiver. However, a \$1 decrease to \$99 and \$9 would require a new waiver because the proportion change is different even though the dollar amount change is the same.

**Does Oregon concur that it needs a new waiver of the broad-based requirements for its tax on inpatient hospital services and outpatient hospital services?**

**Oregon response 1/27/2023:** The statement above, "Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017" is incorrect, and we apologize for any confusion. Oregon has not changed its tax structure and continues to operate in the manner approved in 2017. Any excluded facilities noted were the same facilities excluded as a component of the 2017 waiver. Therefore, Oregon does not concur that a new waiver is needed.

Can FMG please let us know how you would like to proceed here? We request response by **COB February 8**. Please let us know if it would be helpful to discuss further!

Thanks so much,  
Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, December 28, 2022 2:51 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Thanks Tara.

In its responses Oregon writes, "Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform." On January 19, 2022, Oregon informed CMS that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020.

Since Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017 and the structure is not currently broad-based and uniform, it appears as though Oregon would need to submit a new tax waiver of the broad-based requirements for its tax. As we wrote in our State Medicaid Director Letter from 1997 (attached), states may perform uniform changes on their tax waivers without the need to apply for a new tax waiver. A uniform change is a change that is the same proportionally for all providers. For example, if a state has a nursing facility tax where CCRCs are taxed \$100 per bed day and all other providers are taxed \$10 per bed day a state could decrease the tax rates by 10% by making the new rates \$90 and \$9 without the need for a new waiver. However, a \$1 decrease to \$99 and \$9 would require a new waiver because the proportion change is different even though the dollar amount change is the same.

Does Oregon concur that it needs a new waiver of the broad-based requirements for its tax on inpatient hospital services and outpatient hospital services?

Best,

Jonathan

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**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, December 28, 2022 1:19 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

I wanted to check in on these OR preprints – we originally requested FMG feedback by COB 12/27. Does FMG have an update on when you may be able to provide feedback or further questions for the state?

Thanks,  
Tara

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Tuesday, December 13, 2022 5:58 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
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**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

We received OR's response to FMG's questions regarding the tax waiver associated with these preprints. The response sets are attached for reference, but I've pasted the state's response here. It's the same for both preprints. I highlighted the state's answers in yellow below.

Can FMG please let us know if you have further questions for the state by COB 12/27/2022? Understand there is a holiday in between now and the response due date, so if you need more time, please let us know.

Thanks, as always, for your review,  
Tara

#### **SECTION VI: FUNDING FOR THE NON-FEDERAL SHARE**

On January 19, 2022, Oregon informed CMS that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. As a result, CMS has the following questions:

1. Oregon notes that the permissible class is "Oregon hospitals." However, "Oregon hospitals" are not one of the permissible classes listed in statute or regulation. We believe that the permissible classes included in this tax, as listed at Section 1903 (w)(7) of the Social Security Act and 42 CFR 433.56 are inpatient hospital services (42 CFR 433.56 (a)(1)) and outpatient hospital services (42 CFR 433.56 (a)(2)) Does the State concur?

Yes, the State concurs. The basis of the assessment has not changed. Oregon continues to assess a percentage of the net patient revenues. Oregon law defines "net revenue" as follows:

"(a) Means the total amount of charges for inpatient or outpatient care provided by the hospital to patients, less charity care, bad debts, and contractual adjustments.

(b) Does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to interest and guest meals; and

(c) Does not include any revenue that is taken into account in computing a long-term care facility assessment under sections 15 to 22, 24 and 29, chapter 736, Oregon Laws 2003."

2. Are these tax rates all still the same from the State's responses on January 19, 2022?

Oregon has not changed the rate at which it assesses Rural A/B hospitals; it continues to assess the tax to be 6% of net patient revenue.

3. It appears that Oregon includes all non-public hospitals in the tax and taxed them all at the same rate. That is all non-public hospitals are taxed at 6% of net patient revenues. Is this the case? Are there any hospitals that are not assessed at 6% of net patient revenues?

Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments.

Currently, Oregon assesses large DRG hospitals (with greater than 50 beds) and Rural Type A hospitals (small and remote hospital that has 50 or fewer beds and is more than 30 miles from another acute inpatient care facility) and Rural Type B hospitals (small and rural hospital that has 50 or fewer beds and is 30 miles or less from another acute inpatient care facility.), as defined by Oregon Revised Statute.

4. Oregon notes in Table Five that it's tax is not broad-based or uniform. If all non-public hospitals are included in the tax and they are all taxed at the same rate, the tax would be broad-based and uniform. Is the tax broad-based and uniform?

Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform.

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Monday, November 21, 2022 9:25 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

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**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Thanks, Jonathan!

We will include these questions in our R1 set and share the responses with FMG.

Thanks again!

Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Friday, November 18, 2022 12:17 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

On January 19, 2022, Oregon informed us that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. As a result, we have four questions:

1. Oregon notes that the permissible class is "Oregon hospitals." However, "Oregon hospitals" are not one of the permissible classes listed in statute or regulation. We believe that the permissible classes included in this tax, as listed at Section 1903 (w)(7) of the Social Security Act and 42 CFR 433.56 are inpatient hospital services (42 CFR 433.56 (a)(1)) and outpatient hospital services (42 CFR 433.56 (a)(2)) Does the State concur?
2. Are these tax rates all still the same from the State's responses on January 19, 2022?
3. It appears that Oregon includes all non-public hospitals in the tax and taxed them all at the same rate. That is all non-public hospitals are taxed at 6% of net patient revenues. Is this the case? Are there any hospitals that are not assessed at 6% of net patient revenues?
4. Oregon notes in Table Five that it's tax is not broad-based or uniform. If all non-public hospitals are included in the tax and they are all taxed at the same rate, the tax would be broad-based and uniform. Is the tax broad-based and uniform?

Apologies for the delay. Please let us know if we can be of any further assistance.

Best,

Jonathan

Jonathan Endelman  
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Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Friday, November 18, 2022 10:54 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hello Tara,

Thank you for the check in. I don't believe that I saw this come in before. I looked in my inbox and see it now. Let me take a look.

Best,

Jonathan

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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, November 18, 2022 8:23 AM  
**To:** Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi FMG:

I am preparing R1 questions for Oregon for these 2 preprints, discussed below, and I don't appear to have a response from FMG regarding the tax/assessment that the state listed in its preprint. Can I assume that FMG has no further questions, or do you need more time to review?

Thanks,  
Tara

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Thursday, October 6, 2022 11:51 AM  
**To:** Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Good morning FMG,

The Division of Managed Care Policy (DMCP) is reviewing two 438.6(c) preprint submissions from Oregon: **OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231** and **OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231** which both appear to be funded by the same assessment. For the both submissions, the state noted in response to preprint question #34 that this directed payment is funded via a Health Care-Related Provider tax(es) / assessment(s). The state provided additional detail in response to preprint question #36, Tables 5 and 6, which are copied below.

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. Hospital inpatient and outpatient net patient revenue assessment	Oregon hospitals	No	No	Yes		No

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**


Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Hospital inpatient and outpatient net patient revenue assessment	07/20/2017	Approved	10/17/2017

Could you please let us know if FMG has any concerns with this funding source and/or has follow up questions that you'd like us to send the state by **October 20, 2022**? If DMCP does not receive a response by this deadline, we will assume that you have no questions for the state on the financing of this payment arrangement at this time.

I've also attached the two preprints for reference. Please feel free to loop in additional FMG staff as needed.

Many thanks,  
Tara

**Tara Caulder**

Division of Managed Care Policy  
 Disabled and Elderly Health Programs Group  
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 ☎ 410-786-8252 | ✉ [tara.caulder@cms.hhs.gov](mailto:tara.caulder@cms.hhs.gov)



Message

**From:** Giles, John (CMS/CMCS) (b)(6)  
**Sent:** 2/28/2023 6:14:07 PM (b)(6)  
**To:** Snyder, Laura (CMS/CMCS) (b)(6)  
**CC:** Gibson, Alexis (CMS/CMCS) (b)(6)  
(b)(6) CMS State Directed  
(b)(6) Caulder, Tara  
(b)(6) Giles, John (CMS/CMCS)  
**Subject:** RE: RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

I concur with your recommended approach. Thank you!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
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**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Tuesday, February 28, 2023 1:12 PM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi John,

We just got off a call with OR and FMG. FMG was not solution focused. These two OR review are ready to go absent an issue that we had previously discussed as a documentation only issue on their provider tax. Basically, the tax waiver approved in 2017 did not list 2 facilities as excluded; from the call today, the state indicated they've never been a part of the tax. It also sounded like there was an open question about if the 2 facilities should even be listed as they do not provide general acute care hospital services. FMG ended the call with asking from communications the state had from 2017 that noted any discussion of this.

This is the only issue holding up approval of these two renewal preprints.

What I'd like to propose is that we advise FMG that we will move ahead to approval of the SDPs next week; we are happy to include any conditional language in the approval letter they'd like about continuing to work with the FMG tax team to clarify this issue that is exclusively a concern on the tax side. If they have concerns with this approach, they need to let us know by Friday COB and we will consider them.

Do you agree?

The state is quite anxious to get approval and I am concerned that we are heading into a no man's land again with FMG on this.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, February 15, 2023 12:50 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

We can certainly discuss at the next call. However, February 20 is President's Day and is a federal holiday. So I doubt we will be having the call that day. I don't think that there is anything in the state's response that changes the question that we sent to you previously.

Unfortunately, it looks like this could turn into a contentious issue. We may want to discuss with Stuart, Charlie, and eventually Rory to inform them. Ultimately, if the state is imposing a tax that is different in structure than the tax for which they have a waiver they need to come in and request a new waiver. The reason why we did not bring this up previously is because we had no indication that the state was excluding these two private providers from their tax. Nothing in any of their prior communications with us or in their tax waiver would lead us to believe that. If they were not excluding those two providers, the tax would be broad-based and uniform and would not require a waiver because they would be taxing all private providers at the same rate. However, from their responses, it appears that is not the case. They appear to be excluding those two private providers.

Thank you and we look forward to working with you and with the state to resolve this issue.

Best,

Jonathan

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Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Sent:** Wednesday, February 15, 2023 12:40 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; McClure, Deb (CMS/CCSQ) <Deborah.McClure@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

I was preparing a R3 question set for OR based on FMG's response below when I realized that, while I shared the state's R2 written response with FMG, I didn't share the state's informal note from their email.

When the state passed back its R2 response (which I shared in my Feb 1 email below), the email had the following note:

*In our response to Question 10, we note that the adjustments we have made were done in alignment with program requirements, and we do not believe this constitutes a change in program structure. Oregon has been transparent in our communication with CMS about these changes, including in our responses to questions on our 2022 Preprint prior to approval of the 2022 program. We would welcome a conversation with CMS if there are any concerns, or if we could offer to submit additional data with future requests for approval. Please let us know how we could support CMS's review process.*

In thinking more about the state's note, I wanted to reopen this with FMG to confirm the approach and next steps with the state because I suspect that the above formal note will likely be the state's response to FMG's highlighted question below.

To the state's point, I attached the question set from the 2022 review of this preprint (file name: OR\_Fee\_IPH.OPH1\_Renewal\_20220101-20221231\_R2 State Response), which contains the tax discussion.

**Can we discuss this on our Monday, Feb 20<sup>th</sup> call?** Or alternately, we can continue to discuss over email. Please let me know!

Thanks,  
Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>

**Sent:** Tuesday, February 7, 2023 4:20 PM

**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; McClure, Deb (CMS/CCSQ) <Deborah.McClure@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

It appears to us that something is off here.

Here is our question: In prior responses, Oregon has written that it excludes, “a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax.” However, these exclusions are not listed in the 2017 approval letter from CMS. There the only exclusions listed are, “Public hospitals, other than hospitals created by health districts under Oregon law, are exempt from both inpatient and outpatient revenue assessments.” Oregon has also written that, “Oregon has not changed its tax structure and continues to operate in the manner approved in 2017.” Can Oregon please explain how it can be true that Oregon has not changed its tax since 2017 if Oregon has stated that it excludes certain hospitals from the tax that are not listed in the 2017 approval letter as being excluded?

Please let us know if we can be of any further assistance.

Best,

Jonathan

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Social Science Research Analyst  
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Center for Medicaid and CHIP Services (CMCS)  
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**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, February 1, 2023 10:00 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Review Requested: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

Oregon responded to the follow up question that FMG proposed (below) regarding these preprints. I attached the full response set for your reference and will paste here the state’s response for ease (both preprints contain the same answer from the state):

**CMS Response 01/23/2023:** In its responses Oregon writes, “Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform.” On January 19, 2022, Oregon informed CMS that while large DRG

hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. Since Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017 and the structure is not currently broad-based and uniform, it appears as though Oregon would need to submit a new tax waiver of the broad-based requirements for its tax. As we wrote in our State Medicaid Director Letter from 1997 (attached), states may perform uniform changes on their tax waivers without the need to apply for a new tax waiver. A uniform change is a change that is the same proportionally for all providers. For example, if a state has a nursing facility tax where CCRCs are taxed \$100 per bed day and all other providers are taxed \$10 per bed day a state could decrease the tax rates by 10% by making the new rates \$100 and \$9 without the need for a new waiver. However, a \$1 decrease to \$99 and \$9 would require a new waiver because the proportion change is different even though the dollar amount change is the same.

**Does Oregon concur that it needs a new waiver of the broad-based requirements for its tax on inpatient hospital services and outpatient hospital services?**

**Oregon response 1/27/2023:** The statement above, “Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017” is incorrect, and we apologize for any confusion. Oregon has not changed its tax structure and continues to operate in the manner approved in 2017. Any excluded facilities noted were the same facilities excluded as a component of the 2017 waiver. Therefore, Oregon does not concur that a new waiver is needed.

Can FMG please let us know how you would like to proceed here? We request response by **COB February 8**. Please let us know if it would be helpful to discuss further!

Thanks so much,  
Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, December 28, 2022 2:51 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Thanks Tara.

In its responses Oregon writes, “Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform.” On January 19, 2022, Oregon informed CMS that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020.

Since Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017 and the structure is not currently broad-based and uniform, it appears as though Oregon would need to submit a new tax waiver of the broad-based requirements for its tax. As we wrote in our State Medicaid Director Letter from 1997 (attached), states may perform uniform changes on their tax waivers without the need to apply for a new tax waiver. A uniform change is a change that is the same proportionally for all providers. For example, if a state has a nursing facility tax where CCRCs are

taxed \$100 per bed day and all other providers are taxed \$10 per bed day a state could decrease the tax rates by 10% by making the new rates \$100 and \$9 without the need for a new waiver. However, a \$1 decrease to \$99 and \$9 would require a new waiver because the proportion change is different even though the dollar amount change is the same.

Does Oregon concur that it needs a new waiver of the broad-based requirements for its tax on inpatient hospital services and outpatient hospital services?

Best,

Jonathan

Jonathan Endelman  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, December 28, 2022 1:19 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

I wanted to check in on these OR preprints – we originally requested FMG feedback by COB 12/27. Does FMG have an update on when you may be able to provide feedback or further questions for the state?

Thanks,  
Tara

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Tuesday, December 13, 2022 5:58 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

We received OR's response to FMG's questions regarding the tax waiver associated with these preprints. The response sets are attached for reference, but I've pasted the state's response here. It's the same for both preprints. I highlighted the state's answers in yellow below.

Can FMG please let us know if you have further questions for the state by COB 12/27/2022? Understand there is a holiday in between now and the response due date, so if you need more time, please let us know.

Thanks, as always, for your review,  
Tara

#### **SECTION VI: FUNDING FOR THE NON-FEDERAL SHARE**

On January 19, 2022, Oregon informed CMS that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. As a result, CMS has the following questions:

1. Oregon notes that the permissible class is "Oregon hospitals." However, "Oregon hospitals" are not one of the permissible classes listed in statute or regulation. We believe that the permissible classes included in this tax, as listed at Section 1903 (w)(7) of the Social Security Act and 42 CFR 433.56 are inpatient hospital services (42 CFR 433.56 (a)(1)) and outpatient hospital services (42 CFR 433.56 (a)(2)) Does the State concur?

Yes, the State concurs. The basis of the assessment has not changed. Oregon continues to assess a percentage of the net patient revenues. Oregon law defines "net revenue" as follows:

"(a) Means the total amount of charges for inpatient or outpatient care provided by the hospital to patients, less charity care, bad debts, and contractual adjustments.

(b) Does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to interest and guest meals; and

(c) Does not include any revenue that is taken into account in computing a long-term care facility assessment under sections 15 to 22, 24 and 29, chapter 736, Oregon Laws 2003."

2. Are these tax rates all still the same from the State's responses on January 19, 2022?

Oregon has not changed the rate at which it assesses Rural A/B hospitals; it continues to assess the tax to be 6% of net patient revenue.

3. It appears that Oregon includes all non-public hospitals in the tax and taxed them all at the same rate. That is all non-public hospitals are taxed at 6% of net patient revenues. Is this the case? Are there any hospitals that are not assessed at 6% of net patient revenues?

Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments.

Currently, Oregon assesses large DRG hospitals (with greater than 50 beds) and Rural Type A hospitals (small and remote hospital that has 50 or fewer beds and is more than 30 miles from another acute inpatient care facility) and Rural Type B hospitals (small and rural hospital that has 50 or fewer beds and is 30 miles or less from another acute inpatient care facility.), as defined by Oregon Revised Statute.

4. Oregon notes in Table Five that it's tax is not broad-based or uniform. If all non-public hospitals are included in the tax and they are all taxed at the same rate, the tax would be broad-based and uniform. Is the tax broad-based and uniform?

Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform.

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Monday, November 21, 2022 9:25 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Thanks, Jonathan!

We will include these questions in our R1 set and share the responses with FMG.

Thanks again!  
Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Friday, November 18, 2022 12:17 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

On January 19, 2022, Oregon informed us that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. As a result, we have four questions:

1. Oregon notes that the permissible class is "Oregon hospitals." However, "Oregon hospitals" are not one of the permissible classes listed in statute or regulation. We believe that the permissible classes included in this tax, as listed at Section 1903 (w)(7) of the Social Security Act and 42 CFR 433.56 are inpatient hospital services (42 CFR 433.56 (a)(1)) and outpatient hospital services (42 CFR 433.56 (a)(2)) Does the State concur?
2. Are these tax rates all still the same from the State's responses on January 19, 2022?
3. It appears that Oregon includes all non-public hospitals in the tax and taxed them all at the same rate. That is all non-public hospitals are taxed at 6% of net patient revenues. Is this the case? Are there any hospitals that are not assessed at 6% of net patient revenues?
4. Oregon notes in Table Five that it's tax is not broad-based or uniform. If all non-public hospitals are included in the tax and they are all taxed at the same rate, the tax would be broad-based and uniform. Is the tax broad-based and uniform?

Apologies for the delay. Please let us know if we can be of any further assistance.

Best,

Jonathan

Jonathan Endelman



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**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Friday, November 18, 2022 10:54 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hello Tara,

Thank you for the check in. I don't believe that I saw this come in before. I looked in my inbox and see it now. Let me take a look.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, November 18, 2022 8:23 AM  
**To:** Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi FMG:

I am preparing R1 questions for Oregon for these 2 preprints, discussed below, and I don't appear to have a response from FMG regarding the tax/assessment that the state listed in its preprint. Can I assume that FMG has no further questions, or do you need more time to review?

Thanks,  
Tara

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Sent:** Thursday, October 6, 2022 11:51 AM

**To:** Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Subject:** FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Good morning FMG,

The Division of Managed Care Policy (DMCP) is reviewing two 438.6(c) preprint submissions from Oregon: **OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231** and **OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231** which both appear to be funded by the same assessment. For the both submissions, the state noted in response to preprint question #34 that this directed payment is funded via a Health Care-Related Provider tax(es) / assessment(s). The state provided additional detail in response to preprint question #36, Tables 5 and 6, which are copied below.

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
<sup>i</sup> Hospital inpatient and outpatient net patient revenue assessment	Oregon hospitals	No	No	Yes		No

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
<sup>i</sup> Hospital inpatient and outpatient net patient revenue assessment	07/20/2017	Approved	10/17/2017

Could you please let us know if FMG has any concerns with this funding source and/or has follow up questions that you'd like us to send the state by **October 20, 2022**? If DMCP does not receive a response by this deadline, we will assume that you have no questions for the state on the financing of this payment arrangement at this time.

I've also attached the two preprints for reference. Please feel free to loop in additional FMG staff as needed.

Many thanks,  
Tara

**Tara Caulder**

Division of Managed Care Policy

Disabled and Elderly Health Programs Group

 | Center for Medicaid & CHIP Services

 410-786-8252 |  [tara.caulder@cms.hhs.gov](mailto:tara.caulder@cms.hhs.gov)

Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 2/28/2023 6:15:57 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Gibson, Alexis (CMS/CMCS) (b)(6)  
(b)(6) CMS State Directed  
(b)(6) Caulder, Tara  
(b)(6)  
**Subject:** RE: RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and  
OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Thanks!

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Sent:** Tuesday, February 28, 2023 1:14 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

I concur with your recommended approach. Thank you!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
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**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Tuesday, February 28, 2023 1:12 PM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi John,

We just got off a call with OR and FMG. FMG was not solution focused. These two OR review are ready to go absent an issue that we had previously discussed as a documentation only issue on their provider tax. Basically, the tax waiver approved in 2017 did not list 2 facilities as excluded; from the call today, the state indicated they've never been a part of the tax. It also sounded like there was an open question about if the 2 facilities should even be listed as they do not

provide general acute care hospital services. FMG ended the call with asking from communications the state had from 2017 that noted any discussion of this.

This is the only issue holding up approval of these two renewal preprints.

What I'd like to propose is that we advise FMG that we will move ahead to approval of the SDPs next week; we are happy to include any conditional language in the approval letter they'd like about continuing to work with the FMG tax team to clarify this issue that is exclusively a concern on the tax side. If they have concerns with this approach, they need to let us know by Friday COB and we will consider them.

Do you agree?

The state is quite anxious to get approval and I am concerned that we are heading into a no man's land again with FMG on this.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, February 15, 2023 12:50 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

We can certainly discuss at the next call. However, February 20 is President's Day and is a federal holiday. So I doubt we will be having the call that day. I don't think that there is anything in the state's response that changes the question that we sent to you previously.

Unfortunately, it looks like this could turn into a contentious issue. We may want to discuss with Stuart, Charlie, and eventually Rory to inform them. Ultimately, if the state is imposing a tax that is different in structure than the tax for which they have a waiver they need to come in and request a new waiver. The reason why we did not bring this up previously is because we had no indication that the state was excluding these two private providers from their tax. Nothing in any of their prior communications with us or in their tax waiver would lead us to believe that. If they were not excluding those two providers, the tax would be broad-based and uniform and would not require a waiver because they would be taxing all private providers at the same rate. However, from their responses, it appears that is not the case. They appear to be excluding those two private providers.

Thank you and we look forward to working with you and with the state to resolve this issue.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst

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Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, February 15, 2023 12:40 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

I was preparing a R3 question set for OR based on FMG's response below when I realized that, while I shared the state's R2 written response with FMG, I didn't share the state's informal note from their email.

When the state passed back its R2 response (which I shared in my Feb 1 email below), the email had the following note:

*In our response to Question 10, we note that the adjustments we have made were done in alignment with program requirements, and we do not believe this constitutes a change in program structure. Oregon has been transparent in our communication with CMS about these changes, including in our responses to questions on our 2022 Preprint prior to approval of the 2022 program. We would welcome a conversation with CMS if there are any concerns, or if we could offer to submit additional data with future requests for approval. Please let us know how we could support CMS's review process.*

In thinking more about the state's note, I wanted to reopen this with FMG to confirm the approach and next steps with the state because I suspect that the above formal note will likely be the state's response to FMG's highlighted question below.

To the state's point, I attached the question set from the 2022 review of this preprint (file name: OR\_Fee\_IPH.OPH1\_Renewal\_20220101-20221231\_R2 State Response), which contains the tax discussion.

**Can we discuss this on our Monday, Feb 20<sup>th</sup> call?** Or alternately, we can continue to discuss over email. Please let me know!

Thanks,  
Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Tuesday, February 7, 2023 4:20 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

It appears to us that something is off here.

Here is our question: In prior responses, Oregon has written that it excludes, “a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax.” However, these exclusions are not listed in the 2017 approval letter from CMS. There the only exclusions listed are, “Public hospitals, other than hospitals created by health districts under Oregon law, are exempt from both inpatient and outpatient revenue assessments.” Oregon has also written that, “Oregon has not changed its tax structure and continues to operate in the manner approved in 2017.” Can Oregon please explain how it can be true that Oregon has not changed its tax since 2017 if Oregon has stated that it excludes certain hospitals from the tax that are not listed in the 2017 approval letter as being excluded?

Please let us know if we can be of any further assistance.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
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Financial Management Group (FMG)  
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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, February 1, 2023 10:00 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

Oregon responded to the follow up question that FMG proposed (below) regarding these preprints. I attached the full response set for your reference and will paste here the state's response for ease (both preprints contain the same answer from the state):

**CMS Response 01/23/2023:** In its responses Oregon writes, "Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform." On January 19, 2022, Oregon informed CMS that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. Since Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017 and the structure is not currently broad-based and uniform, it appears as though Oregon would need to submit a new tax waiver of the broad-based requirements for its tax. As we wrote in our State Medicaid Director Letter from 1997 (attached), states may perform uniform changes on their tax waivers without the need to apply for a new tax waiver. A uniform change is a change that is the same proportionally for all providers. For example, if a state has a nursing facility tax where CCRCs are taxed \$100 per bed day and all other providers are taxed \$10 per bed day a state could decrease the tax rates by 10% by making the new rates \$100 and \$9 without the need for a new waiver. However, a \$1 decrease to \$99 and \$9 would require a new waiver because the proportion change is different even though the dollar amount change is the same.

**Does Oregon concur that it needs a new waiver of the broad-based requirements for its tax on inpatient hospital services and outpatient hospital services?**

**Oregon response 1/27/2023:** The statement above, "Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017" is incorrect, and we apologize for any confusion. Oregon has not changed its tax structure and continues to operate in the manner approved in 2017. Any excluded facilities noted were the same facilities excluded as a component of the 2017 waiver. Therefore, Oregon does not concur that a new waiver is needed.

Can FMG please let us know how you would like to proceed here? We request response by **COB February 8**. Please let us know if it would be helpful to discuss further!

Thanks so much,  
Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, December 28, 2022 2:51 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Thanks Tara.



In its responses Oregon writes, "Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform." On January 19, 2022, Oregon informed CMS that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020.

Since Oregon changed its tax waiver from the structure that CMS approved on October 17, 2017 and the structure is not currently broad-based and uniform, it appears as though Oregon would need to submit a new tax waiver of the broad-based requirements for its tax. As we wrote in our State Medicaid Director Letter from 1997 (attached), states may perform uniform changes on their tax waivers without the need to apply for a new tax waiver. A uniform change is a change that is the same proportionally for all providers. For example, if a state has a nursing facility tax where CCRCs are taxed \$100 per bed day and all other providers are taxed \$10 per bed day a state could decrease the tax rates by 10% by making the new rates \$100 and \$9 without the need for a new waiver. However, a \$1 decrease to \$99 and \$9 would require a new waiver because the proportion change is different even though the dollar amount change is the same.

Does Oregon concur that it needs a new waiver of the broad-based requirements for its tax on inpatient hospital services and outpatient hospital services?

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
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410.786.4738  
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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, December 28, 2022 1:19 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

I wanted to check in on these OR preprints – we originally requested FMG feedback by COB 12/27. Does FMG have an update on when you may be able to provide feedback or further questions for the state?

Thanks,  
Tara

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Sent:** Tuesday, December 13, 2022 5:58 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; McClure, Deb (CMS/CCSQ) <Deborah.McClure@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi Jonathan and All:

We received OR's response to FMG's questions regarding the tax waiver associated with these preprints. The response sets are attached for reference, but I've pasted the state's response here. It's the same for both preprints. I highlighted the state's answers in yellow below.

Can FMG please let us know if you have further questions for the state by COB 12/27/2022? Understand there is a holiday in between now and the response due date, so if you need more time, please let us know.

Thanks, as always, for your review,  
Tara

#### **SECTION VI: FUNDING FOR THE NON-FEDERAL SHARE**

On January 19, 2022, Oregon informed CMS that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. As a result, CMS has the following questions:

1. Oregon notes that the permissible class is "Oregon hospitals." However, "Oregon hospitals" are not one of the permissible classes listed in statute or regulation. We believe that the permissible classes included in this tax, as listed at Section 1903 (w)(7) of the Social Security Act and 42 CFR 433.56 are inpatient hospital services (42 CFR 433.56 (a)(1)) and outpatient hospital services (42 CFR 433.56 (a)(2)) Does the State concur?

Yes, the State concurs. The basis of the assessment has not changed. Oregon continues to assess a percentage of the net patient revenues. Oregon law defines "net revenue" as follows:

"(a) Means the total amount of charges for inpatient or outpatient care provided by the hospital to patients, less charity care, bad debts, and contractual adjustments.

(b) Does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to interest and guest meals; and

(c) Does not include any revenue that is taken into account in computing a long-term care facility assessment under sections 15 to 22, 24 and 29, chapter 736, Oregon Laws 2003."

2. Are these tax rates all still the same from the State's responses on January 19, 2022?

Oregon has not changed the rate at which it assesses Rural A/B hospitals; it continues to assess the tax to be 6% of net patient revenue.

3. It appears that Oregon includes all non-public hospitals in the tax and taxed them all at the same rate. That is all non-public hospitals are taxed at 6% of net patient revenues. Is this the case? Are there any hospitals that are not assessed at 6% of net patient revenues?

Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments.

Currently, Oregon assesses large DRG hospitals (with greater than 50 beds) and Rural Type A hospitals (small and remote hospital that has 50 or fewer beds and is more than 30 miles from another acute inpatient care facility) and Rural Type B hospitals (small and rural hospital that has 50 or fewer beds and is 30 miles or less from another acute inpatient care facility.), as defined by Oregon Revised Statute.

4. Oregon notes in Table Five that it's tax is not broad-based or uniform. If all non-public hospitals are included in the tax and they are all taxed at the same rate, the tax would be broad-based and uniform. Is the tax broad-based and uniform?

Oregon continues to exempt public hospitals, other than hospitals created by health districts under Oregon law, from net patient revenue assessments. Oregon also excludes a Long-Term Acute Care (LTAC) facility and a private mental health hospital from the tax. Therefore, it is deemed not broad-based and uniform.

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Monday, November 21, 2022 9:25 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS)

<[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Thanks, Jonathan!

We will include these questions in our R1 set and share the responses with FMG.

Thanks again!

Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Friday, November 18, 2022 12:17 PM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Tara,

On January 19, 2022, Oregon informed us that while large DRG hospitals continue to be taxed at 6% of net patient revenues as listed in the tax waiver approved by CMS on October 17, 2017, it taxes Rural Type A and B hospitals at 6% of net patient revenues effective October 1, 2020. As a result, we have four questions:

1. Oregon notes that the permissible class is "Oregon hospitals." However, "Oregon hospitals" are not one of the permissible classes listed in statute or regulation. We believe that the permissible classes included in this tax, as listed at Section 1903 (w)(7) of the Social Security Act and 42 CFR 433.56 are inpatient hospital services (42 CFR 433.56 (a)(1)) and outpatient hospital services (42 CFR 433.56 (a)(2)) Does the State concur?
2. Are these tax rates all still the same from the State's responses on January 19, 2022?

3. It appears that Oregon includes all non-public hospitals in the tax and taxed them all at the same rate. That is all non-public hospitals are taxed at 6% of net patient revenues. Is this the case? Are there any hospitals that are not assessed at 6% of net patient revenues?
4. Oregon notes in Table Five that it's tax is not broad-based or uniform. If all non-public hospitals are included in the tax and they are all taxed at the same rate, the tax would be broad-based and uniform. Is the tax broad-based and uniform?

Apologies for the delay. Please let us know if we can be of any further assistance.

Best,

Jonathan

Jonathan Endelman  
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**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Friday, November 18, 2022 10:54 AM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hello Tara,

Thank you for the check in. I don't believe that I saw this come in before. I looked in my inbox and see it now. Let me take a look.

Best,

Jonathan

Jonathan Endelman  
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Center for Medicaid and CHIP Services (CMCS)  
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7500 Security Blvd.  
Mail Stop, S3-14-28

Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, November 18, 2022 8:23 AM  
**To:** Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Hi FMG:

I am preparing R1 questions for Oregon for these 2 preprints, discussed below, and I don't appear to have a response from FMG regarding the tax/assessment that the state listed in its preprint. Can I assume that FMG has no further questions, or do you need more time to review?

Thanks,  
Tara

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Thursday, October 6, 2022 11:51 AM  
**To:** Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** FMG Review Requested:: OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231 and OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231

Good morning FMG,

The Division of Managed Care Policy (DMCP) is reviewing two 438.6(c) preprint submissions from Oregon: **OR\_Fee\_IPH.OPH1\_Renewal\_20230101-20231231** and **OR\_Fee\_IPH.OPH2\_Renewal\_20230101-20231231** which both appear to be funded by the same assessment. For the both submissions, the state noted in response to preprint question #34 that this directed payment is funded via a Health Care-Related Provider tax(es) / assessment(s). The state provided additional detail in response to preprint question #36, Tables 5 and 6, which are copied below.

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. Hospital inpatient and outpatient net patient revenue assessment	Oregon hospitals	No	No	Yes		No

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Hospital inpatient and outpatient net patient revenue assessment	07/20/2017	Approved	10/17/2017

Could you please let us know if FMG has any concerns with this funding source and/or has follow up questions that you'd like us to send the state by **October 20, 2022**? If DMCP does not receive a response by this deadline, we will assume that you have no questions for the state on the financing of this payment arrangement at this time.

I've also attached the two preprints for reference. Please feel free to loop in additional FMG staff as needed.

Many thanks,  
Tara

**Tara Caulder**

Division of Managed Care Policy

Disabled and Elderly Health Programs Group

 CMS | Center for Medicaid & CHIP Services

 410-786-8252 |  [tara.caulder@cms.hhs.gov](mailto:tara.caulder@cms.hhs.gov)

Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 3/23/2023 12:27:15 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Gibson, Alexis (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** FW: FW: Oregon Hospital Tax

Hi John,

The latest and greatest on the question FMG floated to OGC on the OR tax. I cannot tell where OGC is landing – I think they are leaning toward a new waiver is needed and holding the SDP and SPA, but the latest email thread seems to question that.

My thought, since Jonathan included us on this, is that we could interject with a question:

“Hi Jeremy,

Trying to keep up with the email (b)(5)  
(b)(5)

I ask because in the past (b)(5)  
(b)(5)

I would also note that (b)(5)  
(b)(5)

As Jonathan noted (b)(5)  
(b)(5)

Thanks,  
Laura

**From:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>  
**Sent:** Wednesday, March 22, 2023 2:38 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS)

<James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>

**Subject:** RE: Oregon Hospital Tax

(b)(5)

(b)(5)

This mismatch was pointed out by commenters on the 1992 IFC, as discussed in the final rule at 58 FR 43162 (Aug. 13, 1993):

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in, the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at §440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred to under Medicaid as institutions for the mental diseases (IMDs)). Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

(b)(5)

Jeremy Vogel (he/him)  
Attorney, DHHS/OGC/CMDS  
(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Wednesday, March 22, 2023 11:39 AM

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**Subject:** RE: Oregon Hospital Tax



Thanks Jeremy.

(b)(5)

(b)(5)

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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Baltimore, MD 21244-1850

**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>

**Sent:** Wednesday, March 22, 2023 11:04 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

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**Subject:** RE: Oregon Hospital Tax

Adding Don Kosin.

Let's find time to discuss. In the meantime, can you explain a bit more what SPA(s) is (are) necessary in connection with this tax

(b)(5)

Preliminarily, my thinking

(b)(5)

(b)(5)

It certainly looks like

(b)(5)

Jeremy Vogel (he/him)  
Attorney, DHHS/OGC/CMCSD  
(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 10:35 AM  
**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

Jeremy,

We had a legal question

(b)(5)

(b)(5)

To date, we have asked three rounds of questions since that time.

(b)(5)

(b)(5)

- Public hospitals are excluded from both assessments
- Hospitals with more than fifty beds are taxed 6% of net inpatient revenues and 6% of net outpatient revenues
- All other hospitals are taxed at a rate of 4% of net inpatient revenues and 4% of net outpatient revenues

As you can see, the only hospitals that are listed in the approval letter as being excluded are public, i.e. governmental, local and/or state owned and operated hospitals.

On January 19, 2022, in the course of reviewing the funding sources of the non-federal share listed in the pre-print for a state-directed payment

(b)(5)

(b)(5)

On October 6, 2022 SDP, DMCP provided us the following year's version of the same pre-print so that we could review the financing. In the pre-print submission: (b)(5)

(b)(5)

On February 28, 2023, we had a call with the State of Oregon in (b)(5)

(b)(5)

(b)(5) On the call, Oregon: (b)(5)

(b)(5)

(b)(5)

Generally, we are

(b)(5)

(b)(5)

(b)(5)

However,

(b)(5)

(b)(5)

On March 10, 2023, we provided Oregon with the regulatory definitions found at 42 CFR 440.10 (a)(3)(i) and 42 CFR 440.20 (a)(4) for inpatient hospital services and outpatient hospital services respectively. We also asked them to please provide:

1. The lines of the CMS 64 in which they claim expenditures for the facilities in question
2. The state plan pages that govern the reimbursement for the facilities in question
3. The names of any other psych or rehab hospitals that are similarly situated i.e. are private hospitals that are excluded from the taxes.

On March 16, 2023, the State of Oregon responded to our questions. They stated (b)(5)

(b)(5)

(b)(5)

They also stated that:

(b)(5)

(b)(5)

We believe that

(b)(5)

(b)(5)

**(b)(5)**

In addition, we found a state law from 2017 law that removes an exclusion from taxation under these taxes for, “a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4, chapter 736, Oregon Laws 2003.” We believe that the statement in

**(b)(5)**

We believe that the

**(b)(5)**

**(b)(5)**

Thank you. We look forward to hearing from you. If you would like to schedule a meeting to discuss please let us know.

As we mentioned

**(b)(5)**

**(b)(5)**

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

Message

**From:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 3/23/2023 12:28:42 PM  
**To:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Gibson, Alexis (CMS/CMCS) (b)(6)  
(b)(6) Giles, John (CMS/CMCS)  
(b)(6)  
**Subject:** RE: RE: Oregon Hospital Tax

Yes please. Proceed with sending this email. Thank you!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Thursday, March 23, 2023 8:27 AM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>  
**Subject:** FW: Oregon Hospital Tax

Hi John,

(b)(5)

"Hi Jeremy,

(b)(5)

I ask because in the past:

(b)(5)

(b)(5)

I would also note that

(b)(5)

(b)(5)

As Jonathan noted,

(b)(5)

(b)(5)

Thanks,  
Laura

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<[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

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(b)(5)

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Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

(b)(5)

Jeremy Vogel (he/him)  
Attorney, DHHS/OGC/CMCSD  
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**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>  
**Subject:** RE: Oregon Hospital Tax

Thanks Jeremy

(b)(5)

(b)(5)

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

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**Sent:** Wednesday, March 22, 2023 11:04 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover,

Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>

**Subject:** RE: Oregon Hospital Tax

Adding Don Kosin.

Let's find time to discuss. In the meantime, can you explain a bit more what SPA(s) is (are) necessary in connection with this tax (b)(5)

Preliminarily, my thinking (b)(5)

(b)(5)

(b)(5)

I suppose there is

(b)(5)

(b)(5)

It certainly looks like (b)(5)

Jeremy Vogel (he/him)

Attorney, DHHS/OGC/CMCS

(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Wednesday, March 22, 2023 10:35 AM

**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>

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**Subject:** RE: Oregon Hospital Tax

Jeremy,

We had a legal question (b)(5)

(b)(5)

To date, we have asked three rounds of questions since that time (b)(5)

(b)(5)

is from October 17, 2017, which has an effective date of January 1, 2018. In the tax waiver approval letter, the structure of the tax is described as follows:



- Public hospitals are excluded from both assessments
- Hospitals with more than fifty beds are taxed 6% of net inpatient revenues and 6% of net outpatient revenues
- All other hospitals are taxed at a rate of 4% of net inpatient revenues and 4% of net outpatient revenues

As you can see, the only hospitals that are listed in the approval letter as being excluded are public, i.e. governmental, local and/or state owned and operated hospitals.

On January 19, 2022, in the course of reviewing the funding sources of the non-federal share listed in the pre-print for a state-directed payment (b)(5)

**(b)(5)**

On October 6, 2022 SDP, DMCP provided us the following year's version of the same pre-print so that we could review the financing. In the pre-print submission (b)(5)

(b)(5) On November 21, 2022 CMS asked Oregon to please why (b)(5)

(b)(5) On December 13, 2022, Oregon stated (b)(5)

(b)(5)

(b)(5) Neither Oregon's tax waiver request letter from July 19, 2017, nor the CMS approval letter from October 17, 2017 mentions either LTAC or psychiatric, mental health hospitals, or IMDs (institutions for mental disease) as being excluded from the assessment.

On February 28, 2023, we had a call with the State of Oregon (b)(5)

(b)(5)

(b)(5) On the call, Oregon responded (b)(5)

(b)(5)

(b)(5) Generally, we are (b)(5)

(b)(5)

(b)(5) However (b)(5)

**(b)(5)**

On March 10, 2023, we provided Oregon with the regulatory definitions found at 42 CFR 440.10 (a)(3)(i) and 42 CFR 440.20 (a)(4) for inpatient hospital services and outpatient hospital services respectively. We also asked them to please provide:

1. The lines of the CMS 64 in which they claim expenditures for the facilities in question
2. The state plan pages that govern the reimbursement for the facilities in question
3. The names of any other psych or rehab hospitals that are similarly situated i.e. are private hospitals that are excluded from the taxes.

On March 16, 2023, the State of Oregon responded to our questions: (b)(5)  
(b)(5)  
(b)(5) They also stated that (b)(5)  
(b)(5)

We believe that (b)(5)  
(b)(5)

(b)(5)

In addition, we found a state law from 2017 law that removes an exclusion from taxation under these taxes for, “a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4, chapter 736, Oregon Laws 2003.” We believe that the statement in (b)(5)

We believe that the (b)(5)  
(b)(5)

Thank you. We look forward to hearing from you. If you would like to schedule a meeting to discuss please let us know. As we mentioned: (b)(5)  
(b)(5)

(b)(5) We appreciate any assistance that you may be able to provide.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 3/23/2023 12:30:51 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Gibson, Alexis J.(CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** RE: RE: Oregon Hospital Tax

Done – thanks!

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Sent:** Thursday, March 23, 2023 8:29 AM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Subject:** RE: Oregon Hospital Tax

Yes please. Proceed with sending this email. Thank you!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Thursday, March 23, 2023 8:27 AM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>  
**Subject:** FW: Oregon Hospital Tax

Hi John,

(b)(5)

“Hi Jeremy,

Trying to keep up with the email (b)(5)  
(b)(5)

I ask because in the past, (b)(5)  
(b)(5)

(b)(5)

I would also note that

(b)(5)

(b)(5)

As Jonathan noted, the

(b)(5)

(b)(5)

Thanks,  
Laura

**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>

**Sent:** Wednesday, March 22, 2023 2:38 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS)

<[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

**Subject:** RE: Oregon Hospital Tax

(b)(5)

(b)(5)

This mismatch was pointed out by commenters on the 1992 IFC, as discussed in the final rule at 58 FR 43162 (Aug. 13, 1993):

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in, the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at §440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred to under Medicaid as institutions for the mental diseases (IMDs)). Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

(b)(5)

Jeremy Vogel (he/him)  
Attorney, DHHS/OGC/CMSSD  
(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 11:39 AM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
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**Subject:** RE: Oregon Hospital Tax

Thanks Jeremy!

(b)(5)

(b)(5)

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
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**Subject:** RE: Oregon Hospital Tax

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Let's find time to discuss. In the meantime, can you explain a bit more what SPA(s) is (are) necessary in connection with this tax: (b)(5)

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(b)(5)

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**Subject:** RE: Oregon Hospital Tax

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(b)(5)

To date, we have asked three rounds of questions since that time.

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(b)(5)

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(b)(5)

(b)(5)

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(b)(5)

(b)(5)

(b)(5)

Generally, we are

(b)(5)

(b)(5)

(b)(5)

. However:

(b)(5)

(b)(5)



On March 10, 2023, we provided Oregon with the regulatory definitions found at 42 CFR 440.10 (a)(3)(i) and 42 CFR 440.20 (a)(4) for inpatient hospital services and outpatient hospital services respectively. We also asked them to please provide:

1. The lines of the CMS 64 in which they claim expenditures for the facilities in question
2. The state plan pages that govern the reimbursement for the facilities in question
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(b)(5)

We believe that the:

(b)(5)

(b)(5)

Thank you. We look forward to hearing from you. If you would like to schedule a meeting to discuss please let us know. As we mentioned,

(b)(5)

(b)(5)

**(b)(5)**

**(b)(5)**

We appreciate any assistance that you may be able to provide.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

Message

**From:** Snyder, Laura (CMS/CMCS) <[redacted]> (b)(6)  
**Sent:** 3/23/2023 5:13:32 PM  
**To:** Giles, John (CMS/CMCS) <[redacted]> (b)(6)  
**Subject:** FW: FW: Oregon Hospital Tax

Victory in my opinion 😊

**From:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>  
**Sent:** Thursday, March 23, 2023 1:12 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>  
**Subject:** RE: Oregon Hospital Tax

Hi Laura,

I have been working toward understanding whether a tax waiver is needed because the tax, as actually implemented, is not broad based and uniform; it seems that's where FMG is and where I have landed, too. My last email expresses

(b)(5)

(b)(5) In the meantime, (b)(5)

(b)(5)

Jeremy Vogel (he/him)  
Attorney, DHHS/OGC/CMDS  
(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Thursday, March 23, 2023 8:30 AM  
**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover,

Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,

Trying to keep up with the email,

(b)(5)

(b)(5)

I ask because in the past,

(b)(5)

(b)(5)

I would also note that:

(b)(5)

(b)(5)

As Jonathan noted, the:

(b)(5)

(b)(5)

Thanks,  
Laura

**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>

**Sent:** Wednesday, March 22, 2023 2:38 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

**Subject:** RE: Oregon Hospital Tax

(b)(5)

IFC, as discussed in the final rule at 58 FR 43162 (Aug. 13, 1993):

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in, the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at §440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred to under Medicaid as institutions for the mental diseases (IMDs)). Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

(b)(5)

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**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 11:39 AM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>  
**Subject:** RE: Oregon Hospital Tax

Thanks Jeremy!

(b)(5)

(b)(5)

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
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Division of Financial Policy (DFP)

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Baltimore, MD 21244-1850

**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 11:04 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>  
**Subject:** RE: Oregon Hospital Tax

Adding Don Kosin.

Let's find time to discuss. In the meantime, can you explain a bit more what SPA(s) is (are) necessary in connection with this tax (b)(5)

Preliminarily, my thinking: (b)(5)  
(b)(5)  
(b)(5) I suppose there is (b)(5)  
(b)(5)

It certainly looks like: (b)(5)

Jeremy Vogel (he/him)  
Attorney, DHHS/OGC/CMSSD  
(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 10:35 AM  
**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

Jeremy,

We had a legal question

(b)(5)

(b)(5)

To date, we have asked three rounds of questions since that time

(b)(5)

(b)(5)

- Public hospitals are excluded from both assessments
- Hospitals with more than fifty beds are taxed 6% of net inpatient revenues and 6% of net outpatient revenues
- All other hospitals are taxed at a rate of 4% of net inpatient revenues and 4% of net outpatient revenues

As you can see, the only hospitals that are listed in the approval letter as being excluded are public, i.e. governmental, local and/or state owned and operated hospitals.

On January 19, 2022, in the course of reviewing the funding sources of the non-federal share listed in the pre-print for a state-directed payment

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(b)(5)

On October 6, 2022 SDP, DMCP provided us the following year's version of the same pre-print so that we could review the financing. In the pre-print submission

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(b)(5)

On November 21, 2022 CMS asked Oregon to please why

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(b)(5)

On December 13, 2022, Oregon stated

(b)(5)

(b)(5)

(b)(5)

Neither Oregon's tax waiver request letter from July 19, 2017, nor the CMS approval letter from October 17, 2017 mentions either LTAC or psychiatric, mental health hospitals, or IMDs (institutions for mental disease) as being excluded from the assessment.

On February 28, 2023, we had a call with the State of Oregon in

(b)(5)

(b)(5)

(b)(5) On the call, Oregon responded

(b)(5)

(b)(5)

(b)(5)

s. Generally, we are

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(b)(5)

(b)(5)

However,

(b)(5)

**(b)(5)**

On March 10, 2023, we provided Oregon with the regulatory definitions found at 42 CFR 440.10 (a)(3)(i) and 42 CFR 440.20 (a)(4) for inpatient hospital services and outpatient hospital services respectively. We also asked them to please provide:

1. The lines of the CMS 64 in which they claim expenditures for the facilities in question
2. The state plan pages that govern the reimbursement for the facilities in question
3. The names of any other psych or rehab hospitals that are similarly situated i.e. are private hospitals that are excluded from the taxes.

On March 16, 2023, the State of Oregon responded to our questions. They stated **(b)(5)**

**(b)(5)**

**(b)(5)**

They also stated that

**(b)(5)**

**(b)(5)**

We believe that **(b)(5)**

**(b)(5)**

**(b)(5)**

In addition, we found a state law from 2017 law that removes an exclusion from taxation under these taxes for, “a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4, chapter 736, Oregon Laws 2003.” We believe that the statement in

**(b)(5)**

**(b)(5)**

We believe that the **(b)(5)**

**(b)(5)**



**(b)(5)**

Thank you. We look forward to hearing from you. If you would like to schedule a meeting to discuss please let us know. As we mentioned,

**(b)(5)**

**(b)(5)**

**(b)(5)**

We appreciate any assistance that you may be able to provide.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
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Baltimore, MD 21244-1850

Message

**From:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 3/24/2023 2:41:26 PM  
**To:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6)  
**CC:** Caulder, Tara (CMS/CMCS); (b)(6)  
(b)(6)  
**Subject:** FW: FW: Oregon Hospital Tax

For TB later...

Jonathan is trying....he believes we agreed to take OR to OCD; we agreed to take the posting of companion letters to OCD.

Options:

(b)(5)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Thursday, March 23, 2023 4:25 PM  
**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Boston, Beverly (CMS/CMCS) <Beverly.Boston@cms.hhs.gov>; Teal, Lela (CMS/CMCS) <Lela.Teal@cms.hhs.gov>  
**Cc:** Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Dinh, Diana (CMS/CMCS) <diana.dinh@cms.hhs.gov>; Sampson, Tamara (CMS/CMCS) <Tamara.Sampson@cms.hhs.gov>  
**Subject:** RE: Oregon Hospital Tax

Laura,

I agree that theoretically, we could take the same approach as we have in the past with other SDPs with questionable financing and approve the SDP while issuing a companion letter. However, that approach would need to be cleared by OCD and I believe OA. I appreciate your putting this issue on cross-cutting clearance because I believe OCD and OA would need to weigh in on it before we could do that.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst

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**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Thursday, March 23, 2023 4:09 PM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>  
**Cc:** Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

Also, Gary and James, FYI regarding the SPA I raised the issue with Charlie Arnold of the “qualifying language option” of approving the SPA while including something along the lines that you suggested in the letter. She stated, in line with what I thought, that she would only be comfortable with taking that approach if we get an explicit authorization from Rory. She stated that she will try to connect with him as soon as possible in order to gauge his thoughts on the issue.

Best,

Jonathan

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**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Thursday, March 23, 2023 3:55 PM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>  
**Cc:** Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS)

<Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Dinh, Diana (CMS/CMCS) <diana.dinh@cms.hhs.gov>; Sampson, Tamara (CMS/CMCS) <Tamara.Sampson@cms.hhs.gov>

**Subject:** RE: Oregon Hospital Tax

Hello Jeremy, Don, and Colleagues,

I scheduled the meeting to discuss the State of Oregon's health care-related tax on IP and OP hospital services as well as the tax waiver best practices document on March 30, 2023. That seemed to work the best for the most people. If that does not work for you, or if you would like to have separate meetings, please do let me know.

Best,

Jonathan

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**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Thursday, March 23, 2023 3:40 PM

**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Boston, Beverly (CMS/CMCS) <Beverly.Boston@cms.hhs.gov>; Teal, Lela (CMS/CMCS) <Lela.Teal@cms.hhs.gov>

**Cc:** Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Dinh, Diana (CMS/CMCS) <diana.dinh@cms.hhs.gov>; Sampson, Tamara (CMS/CMCS) <Tamara.Sampson@cms.hhs.gov>

**Subject:** RE: Oregon Hospital Tax

Jeremy and Don,

I wanted to raise something else to you that I thought it might be good to discuss. On Wednesday of this week, at FMG Internal Clearance, the Division of Financial Policy presented a series of best practice documents that will aid states in submitting health care-related tax waivers. Please see attached. We presented three documents:

1. A short introductory letter explaining what the best practices are and why we are releasing them.

2. A longer list of best practices that we found have worked well when states submit health care-related tax waivers.
3. A hypothetical example of a “Medicaid utilization test” formerly known as a Fan-Goldstein or a Goldstein-Fan test that we like to receive when getting tax waivers.

Included as part of these documents, we are rolling out a new health care-related tax mailbox that will be the preferred method of health care-related tax submissions going forward. We believe that this mailbox will cut down on tax waiver submission bottlenecks, for example when someone goes on vacation or the state sends the submission to the wrong group. In addition, it will serve as a one-stop-shop for healthcare-related tax advice.

Our preferred approach is as follows:

1. OGD is currently reviewing the document and making line edits
2. OGD has, in principle, approved us releasing versions of these three documents after appropriate edits and review have been made.
3. We are also planning to brief our Center leadership on the topic
4. OGD has also approved posting these documents, after appropriate review and 508-compliance checks, on Medicaid.gov. We will be working with OSG, who runs Medicaid.gov to see the mechanics of doing that.
5. We also will be in contact with Mitch Bryman at the Office of Strategic and Regulatory Affairs to see if our current health care-related tax waiver needs to be modified as a result of these documents. We do not believe this should be the case as these are suggestions, not requirements, and we have an already approved PRA package for health care-related tax waiver submission.
6. OGD has asked us to have OGC approve this general approach.
7. After OGD has finished its edits to the document, OGD has asked us to share the final version with OGC so that they can make edits to the final document.

If you would like to have a separate meeting for this, please let us know. Likewise, if you would like to discuss both the Oregon issue and this issue, please let us know. Please find attached the draft documents that we have so far. Many people have worked a very long time to bring this project this far. In particular, we could not have set up the mailbox without assistance from Lela Teal during her detail with FMG. We hope that the reaction from states to this issuance will be non-negative, because we are trying to help states submit their health care-related tax waivers. The goal is to make health care-related tax waiver submission process be more efficient so that we get the right information at the right time and we can evaluate and, if appropriate, approve them faster. The mailbox has been created and is currently operational. Some states are already using it.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
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**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>

**Sent:** Thursday, March 23, 2023 1:34 PM

**To:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

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**Subject:** RE: Oregon Hospital Tax

Thanks, Gary; that's helpful background to have in front of us.

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Attorney, DHHS/OGC/CMDS  
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**From:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>

**Sent:** Thursday, March 23, 2023 1:26 PM

**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

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**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,

Sharing and adding that FMG has used a similar approach recently in New Hampshire and Rhode Island.

<https://www.medicaid.gov/medicaid/spa/downloads/NH-22-0050.pdf>

<https://www.medicaid.gov/medicaid/spa/downloads/RI-22-0018.pdf>

**From:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>

**Sent:** Thursday, March 23, 2023 1:05 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

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Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>

**Subject:** RE: Oregon Hospital Tax

I will watch for an appointment. I am interested whether

(b)(5)

(b)(5)

I have seen disapprovals based on 1902(a)(2), where the state has failed to demonstrate it has an adequate source of non-federal share to support expenditures that would be authorized by the SPA.

Jeremy Vogel (he/him)

Attorney, DHHS/OGC/CMDS

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**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Thursday, March 23, 2023 12:16 PM

**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS)

<[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; CMS State Directed Payment

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Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS)

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**Subject:** RE: Oregon Hospital Tax

Thanks James. I believe we could stop the clock if we asked them to submit a tax waiver, which I believe we should do. The question would be, "Can the State of Oregon please submit a new tax waiver that reflects the tax they are actually collecting?" That would be my recommendation.

I am not sure about qualifying language in the approval letter. We would probably need to take that to DFP and FMG leadership to weigh in. I will send out an appointment shortly to meet with Jeremy Vogel.

Best,

Jonathan

Jonathan Endelman, PhD

Social Science Research Analyst

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Baltimore, MD 21244-1850

**From:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>

**Sent:** Thursday, March 23, 2023 11:45 AM

**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>;

Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; CMS State Directed Payment

<StateDirectedPayment@cms.hhs.gov>

**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Dinh, Diana (CMS/CMCS) <diana.dinh@cms.hhs.gov>; Sampson, Tamara (CMS/CMCS) <Tamara.Sampson@cms.hhs.gov>  
**Subject:** RE: Oregon Hospital Tax

Hello Jeremy and Jonathan,

DRR would like to thank both of you for your comments on this matter. There are several OR SPAs which are rapidly approaching the 90<sup>th</sup> day. In the interest of time management, I would like to propose that we move forward with approval of these pending SPAs with qualifying language in the approval letter requesting OR to submit a new tax waiver.

This approach would be consistent with how similar issues have been addressed with other states and follows the guidance from the CMS tax team “we do not believe that we can stop the clock with a request for additional information, other than to inform the State of Oregon that they need to submit a new tax waiver for this tax to reflect the tax that they are actually collecting and request that they do so. We believe that is probably the next step. If we tell them that, we don’t know if they will submit a new tax waiver or not.”

If OR does not choose to submit a new tax waiver as requested by CMS, this potential issue can be addressed at a later date that is more advantageous to CMS.

Please advise on the feasibility of this approach.

Thanks,  
James

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Sent:** Thursday, March 23, 2023 5:30 AM

**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>  
**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,

Trying to keep up with the email; [redacted] (b)(5)

I ask because in the past; [redacted] (b)(5)



(b)(5)

I would also note that all:

(b)(5)

(b)(5)

As Jonathan noted, the

(b)(5)

(b)(5)

Thanks,  
Laura

**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>

**Sent:** Wednesday, March 22, 2023 2:38 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

**Subject:** RE: Oregon Hospital Tax

(b)(5)

IFC, as discussed in the final rule at 58 FR 43162 (Aug. 13, 1993):

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in, the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at §440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred to under Medicaid as institutions for the mental diseases (IMDs)). Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed

as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

(b)(5)

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**Sent:** Wednesday, March 22, 2023 11:39 AM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
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**Subject:** RE: Oregon Hospital Tax

Thanks Jeremy!

(b)(5)

(b)(5)

Best,

Jonathan

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Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>  
**Subject:** RE: Oregon Hospital Tax

Adding Don Kosin.

Let's find time to discuss. In the meantime, can you explain a bit more what SPA(s) is (are) necessary in connection with this tax (b)(5)

Preliminarily, my thinking:

(b)(5)

(b)(5)

(b)(5)

I suppose there is an argument that this section

(b)(5)

It certainly looks like

(b)(5)

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**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Wednesday, March 22, 2023 10:35 AM  
**To:** Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>  
**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
**Subject:** RE: Oregon Hospital Tax

Jeremy,

We had a legal question:

(b)(5)

(b)(5)

To date, we have asked three rounds of questions since that time:

(b)(5)

(b)(5)

**(b)(5)**

- Public hospitals are excluded from both assessments
- Hospitals with more than fifty beds are taxed 6% of net inpatient revenues and 6% of net outpatient revenues
- All other hospitals are taxed at a rate of 4% of net inpatient revenues and 4% of net outpatient revenues

As you can see, the only hospitals that are listed in the approval letter as being excluded are public, i.e. governmental, local and/or state owned and operated hospitals.

On January 19, 2022, in the course of reviewing the funding sources of the non-federal share listed in the pre-print for a state-directed payment: **(b)(5)**

**(b)(5)**

On October 6, 2022 SDP, DMCP provided us the following year's version of the same pre-print so that we could review the financing. In the pre-print submission: **(b)(5)**

**(b)(5)**

On November 21, 2022 CMS asked Oregon to please why **(b)(5)**

**(b)(5)**

On December 13, 2022, Oregon stated **(b)(5)**

**(b)(5)**

**(b)(5)** Neither Oregon's tax waiver request letter from July 19, 2017, nor the CMS approval letter from October 17, 2017 mentions either LTAC or psychiatric, mental health hospitals, or IMDs (institutions for mental disease) as being excluded from the assessment.

On February 28, 2023, we had a call with the State of Oregon in **(b)(5)**

**(b)(5)**

**(b)(5)** On the call, Oregon responded: **(b)(5)**

**(b)(5)**

**(b)(5)**

**(b)(5)**

Generally, we are **(b)(5)**

**(b)(5)**

**(b)(5)**

**(b)(5)**

However **(b)(5)**

**(b)(5)**

**(b)(5)**

On March 10, 2023, we provided Oregon with the regulatory definitions found at 42 CFR 440.10 (a)(3)(i) and 42 CFR 440.20 (a)(4) for inpatient hospital services and outpatient hospital services respectively. We also asked them to please provide:

1. The lines of the CMS 64 in which they claim expenditures for the facilities in question
2. The state plan pages that govern the reimbursement for the facilities in question
3. The names of any other psych or rehab hospitals that are similarly situated i.e. are private hospitals that are excluded from the taxes.

On March 16, 2023, the State of Oregon responded to our questions. (b)(5)

(b)(5)

(b)(5)

They also stated that

(b)(5)

(b)(5)

We believe that

(b)(5)

(b)(5)

(b)(5)

In addition, we found a state law from 2017 law that removes an exclusion from taxation under these taxes for, “a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4, chapter 736, Oregon Laws 2003.” We believe that the statement in

(b)(5)

We believe that

(b)(5)

(b)(5)

Thank you. We look forward to hearing from you. If you would like to schedule a meeting to discuss please let us know.

As we mentioned:

(b)(5)

(b)(5)

(b)(5)

(b)(5)

We appreciate any assistance that you may be able to provide.

Best,

Jonathan

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Message

**From:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 3/24/2023 2:51:30 PM  
**To:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Caulder, Tara (CMS/CMCS) (b)(6)  
(b)(6) Giles, John (CMS/CMCS)  
(b)(6)  
**Subject:** RE: RE: Oregon Hospital Tax

I vote option #1.

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
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Department of Health and Human Services  
Phone: 410-786-5545  
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**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Friday, March 24, 2023 10:41 AM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** FW: Oregon Hospital Tax

For TB later...

Jonathan is trying....he believes we agreed to take OR to OCD; we agreed to take the posting of companion letters to OCD.

Options:

(b)(5)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Thursday, March 23, 2023 4:25 PM  
**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Boston, Beverly (CMS/CMCS) <Beverly.Boston@cms.hhs.gov>; Teal, Lela (CMS/CMCS) <Lela.Teal@cms.hhs.gov>  
**Cc:** Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa

(CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>

**Subject:** RE: Oregon Hospital Tax

Laura,

I agree that theoretically, we could take the same approach as we have in the past with other SDPs with questionable financing and approve the SDP while issuing a companion letter. However, that approach would need to be cleared by OCD and I believe OA. I appreciate your putting this issue on cross-cutting clearance because I believe OCD and OA would need to weigh in on it before we could do that.

Best,

Jonathan

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**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Thursday, March 23, 2023 4:09 PM

**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>

**Cc:** Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>

**Subject:** RE: Oregon Hospital Tax

Also, Gary and James, FYI regarding the SPA I raised the issue with Charlie Arnold of the “qualifying language option” of approving the SPA while including something along the lines that you suggested in the letter. She stated, in line with what I thought, that she would only be comfortable with taking that approach if we get an explicit authorization from Rory. She stated that she will try to connect with him as soon as possible in order to gauge his thoughts on the issue.

Best,

Jonathan



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**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Thursday, March 23, 2023 3:55 PM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>  
**Cc:** Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

Hello Jeremy, Don, and Colleagues,

I scheduled the meeting to discuss the State of Oregon's health care-related tax on IP and OP hospital services as well as the tax waiver best practices document on March 30, 2023. That seemed to work the best for the most people. If that does not work for you, or if you would like to have separate meetings, please do let me know.

Best,

Jonathan

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**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Thursday, March 23, 2023 3:40 PM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS)

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**Cc:** Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Dinh, Diana (CMS/CMCS) <diana.dinh@cms.hhs.gov>; Sampson, Tamara (CMS/CMCS) <Tamara.Sampson@cms.hhs.gov>

**Subject:** RE: Oregon Hospital Tax

Jeremy and Don,

I wanted to raise something else to you that I thought it might be good to discuss. On Wednesday of this week, at FMG Internal Clearance, the Division of Financial Policy presented a series of best practice documents that will aid states in submitting health care-related tax waivers. Please see attached. We presented three documents:

1. A short introductory letter explaining what the best practices are and why we are releasing them.
2. A longer list of best practices that we found have worked well when states submit health care-related tax waivers.
3. A hypothetical example of a "Medicaid utilization test" formerly known as a Fan-Goldstein or a Goldstein-Fan test that we like to receive when getting tax waivers.

Included as part of these documents, we are rolling out a new health care-related tax mailbox that will be the preferred method of health care-related tax submissions going forward. We believe that this mailbox will cut down on tax waiver submission bottlenecks, for example when someone goes on vacation or the state sends the submission to the wrong group. In addition, it will serve as a one-stop-shop for healthcare-related tax advice.

Our preferred approach is as follows:

1. OGD is currently reviewing the document and making line edits
2. OGD has, in principle, approved us releasing versions of these three documents after appropriate edits and review have been made.
3. We are also planning to brief our Center leadership on the topic
4. OGD has also approved posting these documents, after appropriate review and 508-compliance checks, on Medicaid.gov. We will be working with OSG, who runs Medicaid.gov to see the mechanics of doing that.
5. We also will be in contact with Mitch Bryman at the Office of Strategic and Regulatory Affairs to see if our current health care-related tax waiver needs to be modified as a result of these documents. We do not believe this should be the case as these are suggestions, not requirements, and we have an already approved PRA package for health care-related tax waiver submission.
6. OGD has asked us to have OGC approve this general approach.
7. After OGD has finished its edits to the document, OGD has asked us to share the final version with OGC so that they can make edits to the final document.

If you would like to have a separate meeting for this, please let us know. Likewise, if you would like to discuss both the Oregon issue and this issue, please let us know. Please find attached the draft documents that we have so far. Many people have worked a very long time to bring this project this far. In particular, we could not have set up the mailbox without assistance from Lela Teal during her detail with FMG. We hope that the reaction from states to this issuance will be non-negative, because we are trying to help states submit their health care-related tax waivers. The goal is to make health care-related tax waiver submission process be more efficient so that we get the right information at the right time and we can evaluate and, if appropriate, approve them faster. The mailbox has been created and is currently operational. Some states are already using it.

Best,

Jonathan

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**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>  
**Sent:** Thursday, March 23, 2023 1:34 PM  
**To:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

Thanks, Gary; that's helpful background to have in front of us.

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**From:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>  
**Sent:** Thursday, March 23, 2023 1:26 PM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
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**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,

Sharing and adding that FMG has used a similar approach recently in New Hampshire and Rhode Island.

<https://www.medicaid.gov/medicaid/spa/downloads/NH-22-0050.pdf>

<https://www.medicaid.gov/medicaid/spa/downloads/RI-22-0018.pdf>

**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>  
**Sent:** Thursday, March 23, 2023 1:05 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

I will watch for an appointment. I am interested whether CMS would consider the SPAs approvable if it knows the state lacks a permissible source of non-federal share. I have seen disapprovals based on 1902(a)(2), where the state has failed to demonstrate it has an adequate source of non-federal share to support expenditures that would be authorized by the SPA.

Jeremy Vogel (he/him)  
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**Sent:** Thursday, March 23, 2023 12:16 PM  
**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

Thanks James. I believe we could stop the clock if we asked them to submit a tax waiver, which I believe we should do. The question would be, "Can the State of Oregon please submit a new tax waiver that reflects the tax they are actually collecting?" That would be my recommendation.

I am not sure about qualifying language in the approval letter. We would probably need to take that to DFP and FMG leadership to weigh in. I will send out an appointment shortly to meet with Jeremy Vogel.

Best,

Jonathan

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**Sent:** Thursday, March 23, 2023 11:45 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

Hello Jeremy and Jonathan,

DRR would like to thank both of you for your comments on this matter.

(b)(5)

(b)(5)

This approach

(b)(5)

(b)(5)

Please advise on the feasibility of this approach.

Thanks,  
James

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Thursday, March 23, 2023 5:30 AM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; CMS State Directed

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**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>

**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,

(b)(5)

I ask because in the past,

(b)(5)

(b)(5)

I would also note that

(b)(5)

(b)(5)

As Jonathan noted,

(b)(5)

(b)(5)

Thanks,

Laura

**From:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>

**Sent:** Wednesday, March 22, 2023 2:38 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>

**Subject:** RE: Oregon Hospital Tax

(b)(5)

(b)(5)

]” This mismatch was pointed out by commenters on the 1992 IFC, as discussed in the final rule at 58 FR 43162 (Aug. 13, 1993):

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in, the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at §440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred to under Medicaid as institutions for the mental diseases (IMDs)). Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

(b)(5)

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**Sent:** Wednesday, March 22, 2023 11:39 AM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>  
**Subject:** RE: Oregon Hospital Tax

Thanks Jeremy.

(b)(5)

(b)(5)

Best,

Jonathan

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**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 11:04 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>  
**Subject:** RE: Oregon Hospital Tax

Adding Don Kosin.

Let's find time to discuss. In the meantime, can you explain a bit more what SPA(s) is (are) necessary in connection with this tax, (b)(5)

Preliminarily, my thinking is (b)(5)

(b)(5)

(b)(5)

I suppose there is

(b)(5)

(b)(5)

It certainly looks like the (b)(5)

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**Sent:** Wednesday, March 22, 2023 10:35 AM  
**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>;



Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>

**Subject:** RE: Oregon Hospital Tax

Jeremy,

We had a legal question (b)(5)

**(b)(5)**

To date, we have asked three rounds of questions since that time (b)(5)

**(b)(5)**

is from October 17, 2017, which has an effective date of January 1, 2018. In the tax waiver approval letter, the structure of the tax is described as follows:

- Public hospitals are excluded from both assessments
- Hospitals with more than fifty beds are taxed 6% of net inpatient revenues and 6% of net outpatient revenues
- All other hospitals are taxed at a rate of 4% of net inpatient revenues and 4% of net outpatient revenues

As you can see, the only hospitals that are listed in the approval letter as being excluded are public, i.e. governmental, local and/or state owned and operated hospitals.

On January 19, 2022, in the course of reviewing the funding sources of the non-federal share listed in the pre-print for a state-directed payment (b)(5)

**(b)(5)**

On October 6, 2022 SDP, DMCP provided us the following year's version of the same pre-print so that we could review the financing. In the pre-print submission (b)(5)

(b)(5)

On November 21, 2022 CMS asked Oregon to please why

(b)(5)

**(b)(5)**

(b)(5) " Neither Oregon's tax waiver request letter from July 19, 2017, nor the CMS approval letter from October 17, 2017 mentions either LTAC or psychiatric, mental health hospitals, or IMDs (institutions for mental disease) as being excluded from the assessment.

On February 28, 2023, we had a call with the State of Oregon in (b)(5)

(b)(5)

(b)(5) On the call, Oregon responded (b)(5)

(b)(5)

(b)(5)

Generally, we are

(b)(5)

(b)(5)

(b)(5)

However,

(b)(5)

**(b)(5)**

On March 10, 2023, we provided Oregon with the regulatory definitions found at 42 CFR 440.10 (a)(3)(i) and 42 CFR 440.20 (a)(4) for inpatient hospital services and outpatient hospital services respectively. We also asked them to please provide:

1. The lines of the CMS 64 in which they claim expenditures for the facilities in question
2. The state plan pages that govern the reimbursement for the facilities in question
3. The names of any other psych or rehab hospitals that are similarly situated i.e. are private hospitals that are excluded from the taxes.

On March 16, 2023, the State of Oregon responded to our questions. They stated (b)(5)

(b)(5)

(b)(5)

They also stated that

(b)(5)

(b)(5)

We believe that (b)(5)

**(b)(5)**

**(b)(5)**

In addition, we found a state law from 2017 law that removes an exclusion from taxation under these taxes for, "a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4, chapter 736, Oregon Laws 2003." We believe that the statement in

**(b)(5)**

We believe that the

(b)(5)

**(b)(5)**

Thank you. We look forward to hearing from you. If you would like to schedule a meeting to discuss please let us know.

As we mentioned:

(b)(5)

**(b)(5)**

(b)(5)

We appreciate any assistance that you may be able to provide.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
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Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 3/24/2023 7:40:25 PM  
**To:** Endelman (he/him), Jonathan (b)(6)  
Knight, Gary  
Moreth, James  
Boston, Beverly  
Deal, Lela (CMS/CMCS)  
**CC:** (b)(6)  
Clark, Jennifer  
Cuno, Richard  
Fan, Kristin  
Goldstein, Stuart  
Heitt, Melissa  
McClure, Deb  
(b)(6)  
Mosley, Elle  
Shoonover, Matthew  
Dinh, Diana  
Sampson, Tamara  
Giles, John  
(b)(6)  
**Subject:** RE: RE: Oregon Hospital Tax

Hi Jonathan,

I think there may be some confusion; we are taking the question about posting companion letters on Medicaid.gov up to OCD at cross cutting clearance on April 6<sup>th</sup>.

(b)(5)

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Thursday, March 23, 2023 4:25 PM

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**Subject:** RE: Oregon Hospital Tax

Laura,

I agree that theoretically, we could take the same approach as we have in the past with other SDPs with questionable financing and approve the SDP while issuing a companion letter. However, that approach would need to be cleared by OCD and I believe OA. I appreciate your putting this issue on cross-cutting clearance because I believe OCD and OA would need to weigh in on it before we could do that.

Best,

Jonathan

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**Subject:** RE: Oregon Hospital Tax

Also, Gary and James, FYI regarding the SPA I raised the issue with Charlie Arnold of the “qualifying language option” of approving the SPA while including something along the lines that you suggested in the letter. She stated, in line with

what I thought, that she would only be comfortable with taking that approach if we get an explicit authorization from Rory. She stated that she will try to connect with him as soon as possible in order to gauge his thoughts on the issue.

Best,

Jonathan

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**Sent:** Thursday, March 23, 2023 3:55 PM

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**Subject:** RE: Oregon Hospital Tax

Hello Jeremy, Don, and Colleagues,

I scheduled the meeting to discuss the State of Oregon's health care-related tax on IP and OP hospital services as well as the tax waiver best practices document on March 30, 2023. That seemed to work the best for the most people. If that does not work for you, or if you would like to have separate meetings, please do let me know.

Best,

Jonathan

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**Subject:** RE: Oregon Hospital Tax

Jeremy and Don,

I wanted to raise something else to you that I thought it might be good to discuss. On Wednesday of this week, at FMG Internal Clearance, the Division of Financial Policy presented a series of best practice documents that will aid states in submitting health care-related tax waivers. Please see attached. We presented three documents:

1. A short introductory letter explaining what the best practices are and why we are releasing them.
2. A longer list of best practices that we found have worked well when states submit health care-related tax waivers.
3. A hypothetical example of a "Medicaid utilization test" formerly known as a Fan-Goldstein or a Goldstein-Fan test that we like to receive when getting tax waivers.

Included as part of these documents, we are rolling out a new health care-related tax mailbox that will be the preferred method of health care-related tax submissions going forward. We believe that this mailbox will cut down on tax waiver submission bottlenecks, for example when someone goes on vacation or the state sends the submission to the wrong group. In addition, it will serve as a one-stop-shop for healthcare-related tax advice.

Our preferred approach is as follows:

1. OGD is currently reviewing the document and making line edits
2. OGD has, in principle, approved us releasing versions of these three documents after appropriate edits and review have been made.
3. We are also planning to brief our Center leadership on the topic
4. OGD has also approved posting these documents, after appropriate review and 508-compliance checks, on [Medicaid.gov](https://www.Medicaid.gov). We will be working with OSG, who runs [Medicaid.gov](https://www.Medicaid.gov) to see the mechanics of doing that.
5. We also will be in contact with Mitch Bryman at the Office of Strategic and Regulatory Affairs to see if our current health care-related tax waiver needs to be modified as a result of these documents. We do not believe this should be the case as these are suggestions, not requirements, and we have an already approved PRA package for health care-related tax waiver submission.
6. OGD has asked us to have OGC approve this general approach.
7. After OGD has finished its edits to the document, OGD has asked us to share the final version with OGC so that they can make edits to the final document.

If you would like to have a separate meeting for this, please let us know. Likewise, if you would like to discuss both the Oregon issue and this issue, please let us know. Please find attached the draft documents that we have so far. Many

people have worked a very long time to bring this project this far. In particular, we could not have set up the mailbox without assistance from Lela Teal during her detail with FMG. We hope that the reaction from states to this issuance will be non-negative, because we are trying to help states submit their health care-related tax waivers. The goal is to make health care-related tax waiver submission process be more efficient so that we get the right information at the right time and we can evaluate and, if appropriate, approve them faster. The mailbox has been created and is currently operational. Some states are already using it.

Best,

Jonathan

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**Subject:** RE: Oregon Hospital Tax

Thanks, Gary; that's helpful background to have in front of us.

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**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,

Sharing and adding that FMG has used a similar approach recently in New Hampshire and Rhode Island.

<https://www.medicaid.gov/medicaid/spa/downloads/NH-22-0050.pdf>

<https://www.medicaid.gov/medicaid/spa/downloads/RI-22-0018.pdf>

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**Subject:** RE: Oregon Hospital Tax

I will watch for an appointment. I am interested whether CMS would consider the SPAs approvable if it knows the state lacks a permissible source of non-federal share. I have seen disapprovals based on 1902(a)(2), where the state has failed to demonstrate it has an adequate source of non-federal share to support expenditures that would be authorized by the SPA.

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**Subject:** RE: Oregon Hospital Tax

Thanks James. I believe we could stop the clock if we asked them to submit a tax waiver, which I believe we should do. The question would be, "Can the State of Oregon please submit a new tax waiver that reflects the tax they are actually collecting?" That would be my recommendation.

I am not sure about qualifying language in the approval letter. We would probably need to take that to DFP and FMG leadership to weigh in. I will send out an appointment shortly to meet with Jeremy Vogel.

Best,

Jonathan

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**From:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>

**Sent:** Thursday, March 23, 2023 11:45 AM

**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>

**Subject:** RE: Oregon Hospital Tax

Hello Jeremy and Jonathan,

DRR would like to thank both of you for your comments on this matter.

(b)(5)

(b)(5)

This approach v

(b)(5)

(b)(5)

(b)(5)

Please advise on the feasibility of this approach.

Thanks,  
James

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Sent:** Thursday, March 23, 2023 5:30 AM

**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS)

<STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>

**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,

(b)(5)

I ask because in the past,

(b)(5)

(b)(5)

I would also note that

(b)(5)

(b)(5)

As Jonathan noted, the

(b)(5)

(b)(5)

Thanks,  
Laura

**From:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>

**Sent:** Wednesday, March 22, 2023 2:38 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

**Subject:** RE: Oregon Hospital Tax

(b)(5)

IFC, as discussed in the final rule at 58 FR 43162 (Aug. 13, 1993):

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in, the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at §440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred to under Medicaid as institutions for the mental diseases (IMDs)). Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

(b)(5)

Jeremy Vogel (he/him)  
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(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Wednesday, March 22, 2023 11:39 AM

**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

**Subject:** RE: Oregon Hospital Tax

Thanks Jeremy.

(b)(5)

(b)(5)

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
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Baltimore, MD 21244-1850

**From:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>

**Sent:** Wednesday, March 22, 2023 11:04 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

**Subject:** RE: Oregon Hospital Tax

Adding Don Kosin.

Let's find time to discuss. In the meantime, can you explain a bit more what SPA(s) is (are) necessary in connection with this tax,

(b)(5)

Preliminary, my thinking

(b)(5)

(b)(5)

(b)(5)

I suppose there is

(b)(5)

(b)(5)

It certainly looks like

(b)(5)

Jeremy Vogel (he/him)

Attorney, DHHS/OGC/CMUSD  
(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 10:35 AM  
**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>  
**Subject:** RE: Oregon Hospital Tax

Jeremy,

We had a legal question (b)(5)

(b)(5)

To date, we have asked three rounds of questions since that time (b)(5)

(b)(5)

is from October 17, 2017, which has an effective date of January 1, 2018. In the tax waiver approval letter, the structure of the tax is described as follows:

- Public hospitals are excluded from both assessments
- Hospitals with more than fifty beds are taxed 6% of net inpatient revenues and 6% of net outpatient revenues
- All other hospitals are taxed at a rate of 4% of net inpatient revenues and 4% of net outpatient revenues

As you can see, the only hospitals that are listed in the approval letter as being excluded are public, i.e. governmental, local and/or state owned and operated hospitals.

On January 19, 2022, in the course of reviewing the funding sources of the non-federal share listed in the pre-print for a state-directed payment (b)(5)

(b)(5)

On October 6, 2022 SDP, DMCP provided us the following year's version of the same pre-print so that we could review the financing. In the pre-print submission: (b)(5)

(b)(5) On November 21, 2022 CMS asked Oregon to please why (b)(5)

(b)(5) On December 13, 2022, Oregon stated: (b)(5)

(b)(5)

(b)(5) Neither Oregon's tax waiver request letter from July 19, 2017, nor the CMS approval letter from October 17, 2017 mentions either LTAC or psychiatric, mental health hospitals, or IMDs (institutions for mental disease) as being excluded from the assessment.

On February 28, 2023, we had a call with the State of Oregon in (b)(5)

(b)(5)

(b)(5) On the call, Oregon responded: (b)(5)

(b)(5)

(b)(5) s. Generally, we are (b)(5)

(b)(5)

(b)(5) However: (b)(5)

**(b)(5)**

On March 10, 2023, we provided Oregon with the regulatory definitions found at 42 CFR 440.10 (a)(3)(i) and 42 CFR 440.20 (a)(4) for inpatient hospital services and outpatient hospital services respectively. We also asked them to please provide:

1. The lines of the CMS 64 in which they claim expenditures for the facilities in question
2. The state plan pages that govern the reimbursement for the facilities in question
3. The names of any other psych or rehab hospitals that are similarly situated i.e. are private hospitals that are excluded from the taxes.

On March 16, 2023, the State of Oregon responded to our questions. They stated: (b)(5)

(b)(5)

(b)(5) s. They also stated that: (b)(5)

(b)(5)

We believe that: (b)(5)

**(b)(5)**

**(b)(5)**

In addition, we found a state law from 2017 law that removes an exclusion from taxation under these taxes for, “a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4, chapter 736, Oregon Laws 2003.” We believe that the statement in

**(b)(5)**

We believe that the S: **(b)(5)**

**(b)(5)**

Thank you. We look forward to hearing from you. If you would like to schedule a meeting to discuss please let us know. As we mentioned: **(b)(5)**

**(b)(5)**

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
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Baltimore, MD 21244-1850



Message

**From:** Endelman (he/him), (b)(6)  
(b)(6)  
**Sent:** 3/24/2023 7:44:17 PM  
**To:** Snyder, Laura (CMS/CMCS); (b)(6)

**CC:** (b)(6) Knight, Gary  
(b)(6) Moreth, James  
(b)(6) Boston, Beverly  
(b)(6) Teal, Lela (CMS/CMCS)  
(b)(6) Clark, Jennifer  
(b)(6) Cuno, Richard  
(b)(6) ]; Fan, Kristin  
(b)(6) Goldstein, Stuart  
(b)(6) ]; Heitt, Melissa  
(b)(6) McClure, Deb  
(b)(6) ]; Mosley, Elle  
(b)(6) Schoonover, Matthew  
(b)(6) ]; Dinh, Diana  
(b)(6) ]; Sampson, Tamara  
(b)(6) Giles, John

**Subject:** RE: RE: Oregon Hospital Tax

Thanks for the clarification. Yes. I understood you incorrectly. I thought you were talking about bringing Oregon to OCD on April 6. When I spoke with him, Rory mentioned that all companion letters needed OA clearance prior to issuing. I am relaying the information that I heard from him.

Best,

Jonathan

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**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Sent:** Friday, March 24, 2023 3:40 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Boston, Beverly (CMS/CMCS) <Beverly.Boston@cms.hhs.gov>; Teal, Lela (CMS/CMCS) <Lela.Teal@cms.hhs.gov>

**Cc:** Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Dinh, Diana (CMS/CMCS) <diana.dinh@cms.hhs.gov>; Sampson, Tamara (CMS/CMCS) <Tamara.Sampson@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>

**Subject:** RE: Oregon Hospital Tax

Hi Jonathan,

I think there may be some confusion; we are taking the question about posting companion letters on Medicaid.gov up to OCD at cross cutting clearance on April 6<sup>th</sup>.

(b)(5)

Thanks,

Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>

**Sent:** Thursday, March 23, 2023 4:25 PM

**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Boston, Beverly (CMS/CMCS) <Beverly.Boston@cms.hhs.gov>; Teal, Lela (CMS/CMCS) <Lela.Teal@cms.hhs.gov>

**Cc:** Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Dinh, Diana (CMS/CMCS) <diana.dinh@cms.hhs.gov>; Sampson, Tamara (CMS/CMCS) <Tamara.Sampson@cms.hhs.gov>

**Subject:** RE: Oregon Hospital Tax

Laura,

I agree that theoretically, we could take the same approach as we have in the past with other SDPs with questionable financing and approve the SDP while issuing a companion letter. However, that approach would need to be cleared by OCD and I believe OA. I appreciate your putting this issue on cross-cutting clearance because I believe OCD and OA would need to weigh in on it before we could do that.

Best,

Jonathan

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Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Thursday, March 23, 2023 4:09 PM

**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>

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**Subject:** RE: Oregon Hospital Tax

Also, Gary and James, FYI regarding the SPA I raised the issue with Charlie Arnold of the “qualifying language option” of approving the SPA while including something along the lines that you suggested in the letter. She stated, in line with what I thought, that she would only be comfortable with taking that approach if we get an explicit authorization from Rory. She stated that she will try to connect with him as soon as possible in order to gauge his thoughts on the issue.

Best,

Jonathan

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**Subject:** RE: Oregon Hospital Tax

Hello Jeremy, Don, and Colleagues,

I scheduled the meeting to discuss the State of Oregon's health care-related tax on IP and OP hospital services as well as the tax waiver best practices document on March 30, 2023. That seemed to work the best for the most people. If that does not work for you, or if you would like to have separate meetings, please do let me know.

Best,

Jonathan

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**Subject:** RE: Oregon Hospital Tax

Jeremy and Don,

I wanted to raise something else to you that I thought it might be good to discuss. On Wednesday of this week, at FMG Internal Clearance, the Division of Financial Policy presented a series of best practice documents that will aid states in submitting health care-related tax waivers. Please see attached. We presented three documents:

1. A short introductory letter explaining what the best practices are and why we are releasing them.
2. A longer list of best practices that we found have worked well when states submit health care-related tax waivers.
3. A hypothetical example of a "Medicaid utilization test" formerly known as a Fan-Goldstein or a Goldstein-Fan test that we like to receive when getting tax waivers.

Included as part of these documents, we are rolling out a new health care-related tax mailbox that will be the preferred method of health care-related tax submissions going forward. We believe that this mailbox will cut down on tax waiver submission bottlenecks, for example when someone goes on vacation or the state sends the submission to the wrong group. In addition, it will serve as a one-stop-shop for healthcare-related tax advice.

Our preferred approach is as follows:

1. OGD is currently reviewing the document and making line edits
2. OGD has, in principle, approved us releasing versions of these three documents after appropriate edits and review have been made.
3. We are also planning to brief our Center leadership on the topic
4. OGD has also approved posting these documents, after appropriate review and 508-compliance checks, on Medicaid.gov. We will be working with OSG, who runs Medicaid.gov to see the mechanics of doing that.
5. We also will be in contact with Mitch Bryman at the Office of Strategic and Regulatory Affairs to see if our current health care-related tax waiver needs to be modified as a result of these documents. We do not believe this should be the case as these are suggestions, not requirements, and we have an already approved PRA package for health care-related tax waiver submission.
6. OGD has asked us to have OGC approve this general approach.
7. After OGD has finished its edits to the document, OGD has asked us to share the final version with OGC so that they can make edits to the final document.

If you would like to have a separate meeting for this, please let us know. Likewise, if you would like to discuss both the Oregon issue and this issue, please let us know. Please find attached the draft documents that we have so far. Many people have worked a very long time to bring this project this far. In particular, we could not have set up the mailbox without assistance from Lela Teal during her detail with FMG. We hope that the reaction from states to this issuance will be non-negative, because we are trying to help states submit their health care-related tax waivers. The goal is to make health care-related tax waiver submission process be more efficient so that we get the right information at the right time and we can evaluate and, if appropriate, approve them faster. The mailbox has been created and is currently operational. Some states are already using it.

Best,

Jonathan

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**Subject:** RE: Oregon Hospital Tax

Thanks, Gary; that's helpful background to have in front of us.

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**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,

Sharing and adding that FMG has used a similar approach recently in New Hampshire and Rhode Island.

<https://www.medicaid.gov/medicaid/spa/downloads/NH-22-0050.pdf>

<https://www.medicaid.gov/medicaid/spa/downloads/RI-22-0018.pdf>

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**Subject:** RE: Oregon Hospital Tax

I will watch for an appointment. I am interested whether CMS would consider the SPAs approvable if it knows the state lacks a permissible source of non-federal share. I have seen disapprovals based on 1902(a)(2), where the state has failed to demonstrate it has an adequate source of non-federal share to support expenditures that would be authorized by the SPA.

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**Subject:** RE: Oregon Hospital Tax

Thanks James. I believe we could stop the clock if we asked them to submit a tax waiver, which I believe we should do. The question would be, "Can the State of Oregon please submit a new tax waiver that reflects the tax they are actually collecting?" That would be my recommendation.

I am not sure about qualifying language in the approval letter. We would probably need to take that to DFP and FMG leadership to weigh in. I will send out an appointment shortly to meet with Jeremy Vogel.

Best,

Jonathan

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**Subject:** RE: Oregon Hospital Tax

Hello Jeremy and Jonathan,

DRR would like to thank both of you for your comments on this matter.

(b)(5)

(b)(5)

In the interest of time management, I would like

(b)(5)

(b)(5)

This approach

(b)(5)

(b)(5)

altern that we don't know if they will submit a new tax waiver or not.

(b)(5)

Please advise on the feasibility of this approach.

Thanks,  
James

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Thursday, March 23, 2023 5:30 AM  
**To:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>  
**Subject:** RE: Oregon Hospital Tax

Hi Jeremy,



Trying to keep up with the email;

(b)(5)

(b)(5)

I ask because in the past;

(b)(5)

(b)(5)

I would also note that;

(b)(5)

(b)(5)

As Jonathan noted, the;

(b)(5)

(b)(5)

Thanks,  
Laura

**From:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>

**Sent:** Wednesday, March 22, 2023 2:38 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS)

<STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>

**Subject:** RE: Oregon Hospital Tax

(b)(5)

(b)(5)

This mismatch was pointed out by commenters on the 1992 IFC, as discussed in the final rule at 58 FR 43162 (Aug. 13, 1993):

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in, the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at §440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred

to under Medicaid as institutions for the mental diseases (IMDs)). Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

(b)(5)

Jeremy Vogel (he/him)  
Attorney, DHHS/OGC/CMUSD  
(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 11:39 AM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>  
**Subject:** RE: Oregon Hospital Tax

Thanks Jeremy;

(b)(5)

(b)(5)

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>  
**Sent:** Wednesday, March 22, 2023 11:04 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>; Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>  
**Subject:** RE: Oregon Hospital Tax

Adding Don Kosin.

Let's find time to discuss. In the meantime, can you explain a bit more what SPA(s) is (are) necessary in connection with this tax: (b)(5)

Preliminarily, my thinking: (b)(5)

(b)(5)

It certainly looks like (b)(5)

Jeremy Vogel (he/him)  
Attorney, DHHS/OGC/CMCSD  
(202) 205-8778 | [Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Wednesday, March 22, 2023 10:35 AM  
**To:** Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>  
**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
**Subject:** RE: Oregon Hospital Tax

Jeremy,

We had a legal question: (b)(5)

(b)(5)

(b)(5)

To date, we have asked three rounds of questions since that time.

(b)(5)

(b)(5)

is from October 17, 2017, which has an effective date of January 1, 2018. In the tax waiver approval letter, the structure of the tax is described as follows:

- Public hospitals are excluded from both assessments
- Hospitals with more than fifty beds are taxed 6% of net inpatient revenues and 6% of net outpatient revenues
- All other hospitals are taxed at a rate of 4% of net inpatient revenues and 4% of net outpatient revenues

As you can see, the only hospitals that are listed in the approval letter as being excluded are public, i.e. governmental, local and/or state owned and operated hospitals.

On January 19, 2022, in the course of reviewing the funding sources of the non-federal share listed in the pre-print for a state-directed payment.

(b)(5)

(b)(5)

On October 6, 2022 SDP, DMCP provided us the following year's version of the same pre-print so that we could review the financing. In the pre-print submission,

(b)(5)

(b)(5)

On November 21, 2022 CMS asked Oregon to please why

(b)(5)

(b)(5)

On December 13, 2022, Oregon stated,

(b)(5)

(b)(5)

(b)(5) Neither Oregon's tax waiver request letter from July 19, 2017, nor the CMS approval letter from October 17, 2017 mentions either LTAC or psychiatric, mental health hospitals, or IMDs (institutions for mental disease) as being excluded from the assessment.

On February 28, 2023, we had a call with the State of Oregon.

(b)(5)

(b)(5)

2017. On the call, Oregon responded

(b)(5)

(b)(5)

**(b)(5)**

On March 10, 2023, we provided Oregon with the regulatory definitions found at 42 CFR 440.10 (a)(3)(i) and 42 CFR 440.20 (a)(4) for inpatient hospital services and outpatient hospital services respectively. We also asked them to please provide:

1. The lines of the CMS 64 in which they claim expenditures for the facilities in question
2. The state plan pages that govern the reimbursement for the facilities in question
3. The names of any other psych or rehab hospitals that are similarly situated i.e. are private hospitals that are excluded from the taxes.

On March 16, 2023, the State of Oregon responded to our questions. They stated **(b)(5)**

**(b)(5)**

We believe that **(b)(5)**

**(b)(5)**

In addition, we found a state law from 2017 law that removes an exclusion from taxation under these taxes for, “a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4, chapter 736, Oregon Laws 2003.” We believe that the statement in

**(b)(5)**

We believe that the **(b)(5)**

**(b)(5)**

Thank you. We look forward to hearing from you. If you would like to schedule a meeting to discuss please let us know.  
As we mentioned,

(b)(5)

(b)(5)

(b)(5)

We appreciate any assistance that you may be able to provide.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
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Baltimore, MD 21244-1850

Message

---

**From:** Snyder, Laura (CMS/CMCS) <(b)(6)>  
(b)(6)  
**Sent:** 4/5/2023 1:15:50 PM  
**To:** Giles, John (CMS/CMCS) <(b)(6)>  
(b)(6)  
**Subject:** FW: FW: Meeting to Discuss Oregon and Tax Waiver Best Practices Document

Just FYI – nothing changing.

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Wednesday, April 5, 2023 9:14 AM  
**To:** Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
**Subject:** RE: Meeting to Discuss Oregon and Tax Waiver Best Practices Document

Hello all. I wanted to provide an update. We spoke to Rory regarding Oregon yesterday. He reiterated that it was his strong preference that we resolve the financing issues related to Oregon's hospital tax before proceeding with approval of their SDP. We let him know that we sent them an RAI in which we requested that they submit a tax waiver on 4/3/2023. DMCP told us on 4/3/2023 that they wanted to raise it to their OGD this week and that they had a meeting today to discuss it. There will be more details following that meeting. We hope to have Oregon submit their tax waiver and for CMS to approve it as soon as possible. We will see how the State responds to the RAI.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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**From:** Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>  
**Sent:** Tuesday, April 4, 2023 11:24 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Cc:** Knight, Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>;

Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Subject:** RE: Meeting to Discuss Oregon and Tax Waiver Best Practices Document

Good morning Jonathan,

Please find attached the formal RAI that was sent to the state.

Thanks,  
James

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Tuesday, April 4, 2023 5:12 AM

**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Subject:** RE: Meeting to Discuss Oregon and Tax Waiver Best Practices Document

Just checking back on this James and Gary. Did this go out to the State?

Thanks.

Best,

Jonathan

Jonathan Endelman, PhD  
Social Science Research Analyst  
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Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>

**Sent:** Friday, March 31, 2023 3:45 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover,



Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Subject:** RE: Meeting to Discuss Oregon and Tax Waiver Best Practices Document

Thanks Jonathan, Gary and I will finalize the RAI on Monday.

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Friday, March 31, 2023 11:55 AM

**To:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>;

Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>;

Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS)

<[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb

(CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Subject:** RE: Meeting to Discuss Oregon and Tax Waiver Best Practices Document

Gary and James,

I beefed it up a little bit. Please feel free to use as little or as much of this as you need.

Best,

Jonathan

Jonathan Endelman, PhD

Social Science Research Analyst

Centers for Medicare & Medicaid Services (CMS)

Center for Medicaid and CHIP Services (CMCS)

Financial Management Group (FMG)

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Baltimore, MD 21244-1850

**From:** Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>

**Sent:** Friday, March 31, 2023 12:10 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Cc:** Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>

**Subject:** RE: Meeting to Discuss Oregon and Tax Waiver Best Practices Document

Hi Jonathan,

Attached is a "draft" RAI. Would you mind giving it a quick read to insure that I am capturing the essences of the issues properly.

Thanks,

James

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Friday, March 31, 2023 7:25 AM  
**To:** Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>; Dinh, Diana (CMS/CMCS) <[diana.dinh@cms.hhs.gov](mailto:diana.dinh@cms.hhs.gov)>; Sampson, Tamara (CMS/CMCS) <[Tamara.Sampson@cms.hhs.gov](mailto:Tamara.Sampson@cms.hhs.gov)>  
**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Howe, Rory (CMS/CMCS) <[Rory.Howe@cms.hhs.gov](mailto:Rory.Howe@cms.hhs.gov)>  
**Subject:** Meeting to Discuss Oregon and Tax Waiver Best Practices Document

Thank you everyone for attending and participating in the call yesterday. I think we have next steps.

1. DRR will issue an RAI related to the SPA acknowledging the state's arguments about why they feel the two facilities that are not taxed and not listed as excluded in the tax waiver approval letter do not provide inpatient (IP) or outpatient (OP) hospital services. However, we will inform the state that we disagree with the State's interpretation and explain why. This could include reference to where expenditures from the facilities are claimed on the CMS-64, in the section reserved for inpatient hospital services, what pages of the state plan payments to them are governed by, 4.19 A, the section reserved for inpatient hospital services, the fact that other states routinely exclude rehab/LTAC and psychiatric hospitals from their taxes on IP and OP hospital taxes, the fact that the state itself pointed to the exclusion of these two facilities as the reason why it did not consider its tax to be broad-based and uniform, the fact that as Jeremy Vogel noted, we discussed the IP/IMD issue and made clear there that there was a distinction between how Section 1905 (a)(1) of the Social Security Act defined IP hospital services and how it is defined for the purposes of health care-related taxes at Section 1903 (w)(7) (A)(i) of the Social Security Act and stated there that IMDs needed to be addressed in IP hospital taxes (please see attached for reference email). We will ask the state if they would be willing to submit a tax waiver that addresses the two excluded facilities.
2. Laura Snyder will brief DMCP leadership on the legal options and Rory's preferred policy approach and we will reconvene on April 3, 2023 at the FMG/DMCP touchbase.
3. DFP will brief Rory on what happened on the call and discuss it at the meeting we have scheduled with Rory on April 4.
4. DFP will send to OGC the "Best Practices" document as soon as we have received OGD edits, possibly before we have OCD edits. The exact timing of this is to be determined.

Thank you. Have a good weekend.

Best,

Jonathan

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Baltimore, MD 21244-1850

Message

**From:** Tsai, Daniel (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 4/20/2023 10:29:58 PM  
**To:** Dervan, Elizabeth (CMS/OL) (b)(6)  
(b)(6) (she/her),  
(b)(6) Hannah Katch (CMS/OA)  
(b)(6) Ellis (she/her), Kyla (CMS/OA)  
(b)(6)  
**Subject:** FW: FW: Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"  
**Attachments:** Texas Delegation CMS Letter on the Bulletin on Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments.pdf

**From:** Coney, Lillie <Lillie.Coney@mail.house.gov>  
**Sent:** Thursday, April 20, 2023 5:48 PM  
**To:** 'secretary@hhs.gov' <secretary@hhs.gov>; Mccluskie, Sean (HHS/IOS) <Sean.Mccluskie@hhs.gov>; Ramirez, Angela (HHS/IOS) <Angela.Ramirez@hhs.gov>; Brooks-LaSure, Chiquita (CMS/OA) <Chiquita.Brooks-LaSure@cms.hhs.gov>; Woronoff, Arielle (CMS/OL) <Arielle.Woronoff@cms.hhs.gov>; Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Cc:** Coney, Lillie <Lillie.Coney@mail.house.gov>; Arceo, Amy <Amy.Arceo@mail.house.gov>  
**Subject:** Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"  
**Importance:** High

April 19, 2023

The Honorable Xavier Becerra  
Secretary, U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 2021

The Honorable Daniel Tsai  
The Deputy Administrator and Director  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator and Director Tsai:

As members of the Texas Congressional Delegation, we have worked with President Biden and with you to improve access to care for all Americans, regardless of income or need. We applaud the Department

of Health and Human Services (“HHS”) for its dedication to sustaining and strengthening the health care safety net. The Administration’s investment in the Medicaid program is invaluable, particularly as we transition out of a global public health emergency. We share the Administration’s commitment to supporting our most vulnerable communities and stand ready to assist with your agency’s laudable efforts.

However, while we closely align with your mission, we are deeply concerned by the Informational Bulletin (the “Bulletin”) entitled “Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments”, which was released by the Centers for Medicare & Medicaid Services (“CMS”) on February 17, 2023. The Bulletin echoes many of the themes of the Medicaid Fiscal Accountability Regulation (“MFAR”) proposed in 2019. The Bulletin specifically revives the agency’s attempts to assert its jurisdiction over wholly private arrangements between hospitals, lacking any state involvement.

As you may recall, the MFAR proposed rule received such strong bipartisan opposition that President Trump’s Administration initiated its withdrawal. President Biden also noted his opposition to MFAR as part of his campaign platform, followed by HHS taking quick action to withdraw the proposed rule in January 2021. Like President Biden, we recognized the existential threat the proposed policies posed to our communities’ hospitals and the Medicaid beneficiaries they serve, prompting us to introduce bipartisan legislation that would have halted any implementation of the MFAR proposed rule.

It is clear, however, that some within CMS continue to push the MFAR agenda despite its withdrawal and the agency lacking the authority to set forth such provider tax policies. In fact, the Office of Inspector General (“OIG”) previously opined that there are no regulations to preclude this type of arrangement. Moreover, when CMS raised this issue last year in federal court, a federal judge in Texas reasoned that CMS’s legal position was not at all in line with the Medicaid statute. In short, the Bulletin is a significant and inappropriate shift in policy by CMS that is inconsistent with current law and the agency’s own history of enforcement action.

A policy shift of this significance threatens not only the most vulnerable citizens of our home state, but Medicaid beneficiaries across the country. We question what good this policy shift will have for the health care safety net and how it will ensure equitable access to care for patients. In the nearly four years since CMS first announced its MFAR proposal, not a single time has CMS staff been able to quantify the impact or assure us that this policy will not disrupt equitable access to care.

Moreover, we wish to emphasize that the local provider taxes under attack serve a critical purpose: they provide an avenue for hospitals that have historically struggled to gain access to much-needed supplemental Medicaid payments. This path is a lifeline for hospitals along the southern border and in the 89 Texas counties where non-governmental hospitals are the primary providers for Medicaid patients—areas where Medicaid beneficiaries already have limited access to care. Absent the local financing mechanism, these hospitals, and the patients they serve once again face disenfranchisement.

For these reasons, we ask CMS to withdraw the Bulletin and refrain from seeking to enforce it until the agency can determine the impact it will have on the providers serving our Medicaid beneficiaries. Unless we understand how this policy enhances, rather than reduces equitable access to care, we will continue in our efforts to oppose the agency’s policies.

Thank you for your attention to this very important matter.

Very Truly Yours

Sheila Jackson Lee  
Member of Congress

Colin Allred  
Member of Congress

Joaquin Castro  
Member of Congress

Jasmine Crockett  
Member of Congress

Henry Cuellar  
Member of Congress

Marc A. Veasey  
Member of Congress

Vincent Gonzalez  
Member of Congress

Regards,  
Lillie Coney  
Chief of Staff  
Congresswoman Sheila Jackson Lee (TX-18)  
2426 Rayburn HOB  
Washington, DC 20515  
(202) 225-3816  
(202) 870-6429  
[Lillie.Coney@mail.house.gov](mailto:Lillie.Coney@mail.house.gov)

Message

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**From:** CMS State Directed Payment (b)(6)  
(b)(6)  
**Sent:** 1/9/2023 3:04:09 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Caulder, Tara (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** FW: FW: FMG Consultation Request: WV preprints

Hi John,

Wanted to flag this for you; we have a meeting with FMG later today. We can ask for more info, but it is feeling like FMG is treating SDPs differently than SPAs, like in NY.

Do you want us to push back on FMG?

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Friday, January 6, 2023 8:27 AM  
**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; McClure, Deb (CMS/CCSQ) <Deborah.McClure@cms.hhs.gov>  
**Cc:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Mosley, Larrica (CMS/CMCS) <larrica.mosley@cms.hhs.gov>  
**Subject:** RE: FMG Consultation Request: WV preprints

Tara,

After discussing the issue with Rory, it appears that West Virginia performed only two statistical calculations for its taxes back in 2012, one for IP and one for OP, when it should have done four because it has two sets of IP and OP taxes as opposed to one. One set of taxes, "Tax on Acute Care Hospitals" is on inpatient hospital services and outpatient hospital services. Another, SB 546 Health Care Provider Tax, is likewise on inpatient hospital services and outpatient hospital services. For the purposes of the tax waiver that it submitted back in 2012, it appears that West Virginia combined these two taxes into one tax waiver submission. However, the statute and the regulation governing health care-related taxes makes it clear that the tax waivers are granted on a per tax basis not on a per permissible class basis.

Section 1903 (w)(3)(E)(i) states that, "A State may submit an application to the Secretary requesting that the Secretary treat a tax as a broad-based health care related tax, notwithstanding that the tax does not apply to all health care items or services in class (or all providers of such items and services), provides for a credit, deduction, or exclusion, is not applied uniformly, or otherwise does not meet the requirements of subparagraph (B) or (C)." (emphasis added) Likewise 42 CFR 433.72 states, "A State may submit to CMS a request for a waiver if a health care-related tax does not meet any or all of the following." Therefore, states need separate statistical calculations, B1/B2 or P1/P2 as applicable, for each health care-related tax that is not broad-based or uniform. They cannot submit one tax waiver for all taxes that are imposed on a permissible class, for example inpatient hospital services and outpatient hospital services. Because West

Virginia has four taxes, two on inpatient hospital services and two on outpatient hospital services, they should submit four statistical calculations.

The 6% indirect hold harmless test, described at 42 CFR 433.68(f)(3)(i)(A), however, remains a per-permissible class calculation. The regulation reads,

*“An indirect guarantee will be determined to exist under a two prong “guarantee” test. If the health care-related tax or taxes on each health care class are applied at a rate that produces revenues less than or equal to 6 percent of the revenues received by the taxpayer, the tax or taxes are permissible under this test. The phrase “revenues received by the taxpayer” refers to the net patient revenue attributable to the assessed permissible class of health care items or services.”*

The regulation makes clear that the 6% test is a per class test, not a per tax test. To arrive at this number, states should add up all of the health care-related taxes that they have on a permissible class and then divide that by the net patient revenue for that permissible class. For that reason, separate calculations should be performed for inpatient hospital services and outpatient hospital services.

Would it be possible for West Virginia to separate out its hospital tax in this manner and resubmit it to CMS with the four statistical calculations as indicated above? Please let us know if this would be a burden and we can discuss possible options. Thank you.

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
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**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, December 21, 2022 10:57 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hi Jonathan,

After many months, WV finally submitted responses to our R1 questions for preprints WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630 and WV\_Fee\_OTH1\_Renewal\_20220701-20230630. **Can FMG please review the state's financing response and let DMCP know if you have further questions by COB January 4<sup>th</sup>?** We understand that schedules may be tight due to the holidays, so please let us know if you need more time for your review.



All the documentation for each of these preprints can be found in the WV folder on BOX here: [WV](#). I have also attached the response documents here for ease of access. The responses to FMG's financing questions are under the heading "SECTION VI: FUNDING FOR THE NON-FEDERAL SHARE," in each preprint. The answers are similar in each document, with differences only in the last 2 questions. Pasted below for convenience:

**WV Fee IPH.OPH.AMC.PC Renewal 20220701-20230630:**

8. Is the "Tax on Acute Care Hospitals" and the "33 546 Health Care Provider Tax" listed in the two pre-prints the same tax?

Response: The taxes are identical except for the uses. The taxes are assessed on the same group of acute care hospitals and have the same non-acute care hospital exclusions. The combined tax rate of the two taxes is 0.88% of inpatient and outpatient hospital net patient revenues. The "Tax on Acute Care Hospitals" has a tax rate of 0.75% and the "33 546 Health Care Provider Tax" has a tax rate of 0.13%. (0.75% + 0.13% = 0.88%)

9. Is the tax waiver approval letter attached to the cover email for the tax in question? (Please see the waiver attached to the cover email.)

Response: The tax waiver letter supports the inpatient and outpatient revenue services taxes assessed through the two taxes. The combined rate equals the approved waiver rate of "0.88% of inpatient and outpatient net patient revenues". Exclusions for the taxes referenced in Question 6 are as listed in the waiver approval letter.

10. In Table Five under the column labeled "Identify the permissible class for this tax/assessment, the State wrote, "acute care hospitals" However, "acute care hospitals" are not one of the permissible classes listed in statute at section 1903 (w)(7) of the Social Security Act or 42 CFR § 433.56. However, CMS does have a record of a West Virginia tax waiver on inpatient hospital services and outpatient hospital services. Does the State mean "inpatient hospital services and outpatient hospital services" instead of "acute care hospitals"?

Response: Yes. The preprint is amended to reflect the correct terminology.

11. Are there any changes to the structure of the tax in terms of included or excluded providers or to the tax rates since CMS's approval of the tax waiver for the tax in question on June 1, 2012? If so, please describe.

Response: There has been no change to the structure of the tax in terms of included or excluded providers. The non-broad-based tax on inpatient services and outpatient services in West Virginia is assessed through two separate taxes, which when combined equal the assessment rate in the waiver.

12. Using the most recent data available, can the State please provide the total dollar amount raised by the tax?

Response: The tax raised on inpatient hospital services in calendar year 2022 totals \$16 million. The tax raised on outpatient hospital services in calendar year 2022 totals \$22.1 million.

13. For the purposes of the 6% calculation listed at 42 CFR § 433.68 (f)(3)(i)(A) can the State please provide the percentage of net patient revenue raised by the tax for each permissible class? For example, please provide separate percentages for inpatient hospital services and outpatient hospital services.

WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630

Round 1 Question Set

September 27, 2022

State Responses December 16, 2022

Response: The tax raises 0.75% of the inpatient net patient revenue of hospitals subject to the tax. The tax also raises 0.75% of the outpatient net patient revenue of hospitals subject to the tax.

**WV Fee OTH1 Renewal 20220701-20230630:**

6. Is the "Tax on Acute Care Hospitals" and the "SB 546 Health Care Provider Tax" listed in the two pre-prints the same tax?

Response: The taxes are identical except for the uses. The taxes are assessed on the same group of acute care hospitals and have the same non-acute care hospital exclusions. The combined tax rate of the two taxes is 0.88% of inpatient and outpatient hospital net patient revenues. The "Tax on Acute Care Hospitals" has a tax rate of 0.75% and the "SB 546 Health Care Provider Tax" has a tax rate of 0.13%. (0.75% + 0.13% = 0.88%)

7. Is the tax waiver approval letter attached to the cover email for the tax in question? (Please see the waiver attached to the cover email.)

Response: The tax waiver letter supports the inpatient and outpatient revenue services taxes assessed through the two taxes. The combined rate equals the approved waiver rate of "0.88% of inpatient and outpatient net patient revenues". Exclusions for the taxes referenced in Question 6 are as listed in the waiver approval letter.

8. In Table Five under the column labeled "Identify the permissible class for this tax/assessment, the State wrote, "acute care hospitals" However, "acute care hospitals" are not one of the permissible classes listed in statute at section 1903 (w)(7) of the Social Security Act or 42 CFR § 433.56. However, CMS does have a record of a West Virginia tax waiver on inpatient hospital services and outpatient hospital services. Does the State mean "inpatient hospital services and outpatient hospital services" instead of "acute care hospitals"?

Response: Yes. The preprint is amended to reflect the correct terminology. The tax used to fund this program is assessed on inpatient hospital services and outpatient hospital services.

9. Are there any changes to the structure of the tax in terms of included or excluded providers or to the tax rates since CMS's approval of the tax waiver for the tax in question on June 1, 2012? If so, please describe.

Response: There has been no change to the included or excluded providers. The non-broad-based tax on inpatient services and outpatient services in West Virginia is assessed through two separate taxes, which when combined equal the assessment rate in the waiver.

10. Using the most recent data available, can the State please provide the total dollar amount raised by the tax?

Response: The tax raised on inpatient hospital services in calendar year 2022 totals \$2.8 million. The tax raised on outpatient hospital services in calendar year 2022 totals \$3.8 million.

11. For the purposes of the 6% calculation listed at 42 CFR § 433.68 (f)(3)(i)(A) can the State please provide the percentage of net patient revenue raised by the tax for each permissible class? For example, please provide separate percentages for inpatient hospital services and outpatient hospital services.

WV\_Fee\_OTH1\_Renewal\_20220701-20230630  
Round 1 Question Set  
September 27, 2022  
State Responses December 16, 2022

Response: The tax raises 0.13% of the inpatient net patient revenue of hospitals subject to the tax. The tax also raises 0.13% of the outpatient net patient revenue of hospitals subject to the tax.

Thanks so much for your review, and please reach out if you have questions or concerns!

Happy Holidays,

Tara

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Thursday, October 27, 2022 10:33 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS)

<[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hi Jonathan,

Thanks for reaching out to check on this preprint. R1 questions have been with the state for a while now. State response was due 10/17, but DMCP still hasn't received it. The state seems to be having some technical difficulties with their response sets – they've sent me blank documents a couple of times, for example.

DMCP did issue the questions from FMG as a part of the R1 question set and will share any response we receive as soon as possible.

Thanks again,

Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Wednesday, October 26, 2022 11:01 AM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hello Tara,

We wanted to check back in on the status of this pre-print. Thank you.

Best,

Jonathan

Jonathan Endelman

Social Science Research Analyst

Centers for Medicare & Medicaid Services (CMS)

Center for Medicaid and CHIP Services (CMCS)

Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Tuesday, July 26, 2022 8:55 AM  
**To:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Thanks, Jonathan. We will pass these questions along to the state in our R1 question set and share the response with FMG when received!

Thanks again,

Tara

**From:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Tuesday, July 26, 2022 9:52 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Tara,

Please see our questions attached. Please let us know if we can be of any further assistance. Thank you.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
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410.786.4738  
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7500 Security Blvd.

Mail Stop, S3-14-28  
 Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, July 15, 2022 11:37 AM  
**To:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Subject:** FMG Consultation Request: WV preprints

Good morning FMG,

The Division of Managed Care Policy (DMCP) is currently reviewing two 438.6(c) preprint submissions from West Virginia received yesterday July 14<sup>th</sup>, and the state described the source of the non-federal share of the payment arrangements as Health Care-Related Provider tax(es)/assessment(s). Could you please let us know if FMG has any concerns with this funding source and/or has follow up questions that you'd like us to send the state by **July 29**?

More information for your review:

The state provided the following information in Tables 5 and 6 for **WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630**:

requester in the table.

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. Tax on acute care hospitals	Acute care hospitals	No	Yes	Yes		No
ii						

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Tax on acute care hospitals	09/01/2011	Approved (for broad-based waiver)	06/01/2012
ii			

The state provided the following information in Tables 5 and 6 for WV\_Fee\_OTH1\_Renewal\_20220701-20230630:

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. SB 546 Health Care Provider Tax	Acute care hospital	No	Yes	Yes		No
ii						

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Tax on acute care hospitals	09/01/2011	Approved (for broad-based waiver)	06/01/2012
ii			

Again, we would appreciate FMG’s review and comments/questions by **July 29**. If DMCP does not receive a response by this deadline, we will assume that you have no questions for the state on the financing of this payment arrangement at this time.

I've attached the preprints for additional reference. Please feel free to loop in additional FMG staff as needed.

Many thanks,

Tara



Message

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**From:** Giles, John (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 1/9/2023 4:09:45 PM  
**To:** CMS State Directed Payment; (b)(6)  
(b)(6)  
**CC:** Caulder, Tara; (b)(6)  
(b)(6) Giles, John (CMS/CMCS)  
(b)(6)  
(b)(6)  
**Subject:** RE: RE: FMG Consultation Request: WV preprints

Shouldn't FMG handle this via their own process and not our SDP process?

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Sent:** Monday, January 9, 2023 10:04 AM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** FW: FMG Consultation Request: WV preprints

Hi John,

Wanted to flag this for you; we have a meeting with FMG later today. We can ask for more info, but it is feeling like FMG is treating SDPs differently than SPAs, like in NY.

Do you want us to push back on FMG?

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 8:27 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Mosley, Larrica (CMS/CMCS)

<larrica.mosley@cms.hhs.gov>

**Subject:** RE: FMG Consultation Request: WV preprints

Tara,

After discussing the issue with Rory, it appears that West Virginia performed only two statistical calculations for its taxes back in 2012, one for IP and one for OP, when it should have done four because it has two sets of IP and OP taxes as opposed to one. One set of taxes, "Tax on Acute Care Hospitals" is on inpatient hospital services and outpatient hospital services. Another, SB 546 Health Care Provider Tax, is likewise on inpatient hospital services and outpatient hospital services. For the purposes of the tax waiver that it submitted back in 2012, it appears that West Virginia combined these two taxes into one tax waiver submission. However, the statute and the regulation governing health care-related taxes makes it clear that the tax waivers are granted on a per tax basis not on a per permissible class basis.

Section 1903 (w)(3)(E)(i) states that, "A State may submit an application to the Secretary requesting that the Secretary treat a tax as a broad-based health care related tax, notwithstanding that the tax does not apply to all health care items or services in class (or all providers of such items and services), provides for a credit, deduction, or exclusion, is not applied uniformly, or otherwise does not meet the requirements of subparagraph (B) or (C)." (emphasis added) Likewise 42 CFR 433.72 states, "A State may submit to CMS a request for a waiver if a health care-related tax does not meet any or all of the following." Therefore, states need separate statistical calculations, B1/B2 or P1/P2 as applicable, for each health care-related tax that is not broad-based or uniform. They cannot submit one tax waiver for all taxes that are imposed on a permissible class, for example inpatient hospital services and outpatient hospital services. Because West Virginia has four taxes, two on inpatient hospital services and two on outpatient hospital services, they should submit four statistical calculations.

The 6% indirect hold harmless test, described at 42 CFR 433.68(f)(3)(i)(A), however, remains a per-permissible class calculation. The regulation reads,

*"An indirect guarantee will be determined to exist under a two prong "guarantee" test. If the health care-related tax or taxes on each health care class are applied at a rate that produces revenues less than or equal to 6 percent of the revenues received by the taxpayer, the tax or taxes are permissible under this test. The phrase "revenues received by the taxpayer" refers to the net patient revenue attributable to the assessed permissible class of health care items or services."*

The regulation makes clear that the 6% test is a per class test, not a per tax test. To arrive at this number, states should add up all of the health care-related taxes that they have on a permissible class and then divide that by the net patient revenue for that permissible class. For that reason, separate calculations should be performed for inpatient hospital services and outpatient hospital services.

Would it be possible for West Virginia to separate out its hospital tax in this manner and resubmit it to CMS with the four statistical calculations as indicated above? Please let us know if this would be a burden and we can discuss possible options. Thank you.

Jonathan

Jonathan Endelman  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, December 21, 2022 10:57 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hi Jonathan,

After many months, WV finally submitted responses to our R1 questions for preprints WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630 and WV\_Fee\_OTH1\_Renewal\_20220701-20230630. **Can FMG please review the state's financing response and let DMCP know if you have further questions by COB January 4<sup>th</sup>?** We understand that schedules may be tight due to the holidays, so please let us know if you need more time for your review.

All the documentation for each of these preprints can be found in the WV folder on BOX here: [WV](#). I have also attached the response documents here for ease of access. The responses to FMG's financing questions are under the heading "SECTION VI: FUNDING FOR THE NON-FEDERAL SHARE," in each preprint. The answers are similar in each document, with differences only in the last 2 questions. Pasted below for convenience:

**WV Fee IPH.OPH.AMC.PC Renewal 20220701-20230630:**

8. Is the "Tax on Acute Care Hospitals" and the "33 546 Health Care Provider Tax" listed in the two pre-prints the same tax?

Response: The taxes are identical except for the uses. The taxes are assessed on the same group of acute care hospitals and have the same non-acute care hospital exclusions. The combined tax rate of the two taxes is 0.88% of inpatient and outpatient hospital net patient revenues. The "Tax on Acute Care Hospitals" has a tax rate of 0.75% and the "33 546 Health Care Provider Tax" has a tax rate of 0.13%. (0.75% + 0.13% = 0.88%)

9. Is the tax waiver approval letter attached to the cover email for the tax in question? (Please see the waiver attached to the cover email.)

Response: The tax waiver letter supports the inpatient and outpatient revenue services taxes assessed through the two taxes. The combined rate equals the approved waiver rate of "0.88% of inpatient and outpatient net patient revenues". Exclusions for the taxes referenced in Question 6 are as listed in the waiver approval letter.

10. In Table Five under the column labeled "Identify the permissible class for this tax/assessment, the State wrote, "acute care hospitals" However, "acute care hospitals" are not one of the permissible classes listed in statute at section 1903 (w)(7) of the Social Security Act or 42 CFR § 433.56. However, CMS does have a record of a West Virginia tax waiver on inpatient hospital services and outpatient hospital services. Does the State mean "inpatient hospital services and outpatient hospital services" instead of "acute care hospitals"?

Response: Yes. The preprint is amended to reflect the correct terminology.

11. Are there any changes to the structure of the tax in terms of included or excluded providers or to the tax rates since CMS's approval of the tax waiver for the tax in question on June 1, 2012? If so, please describe.

Response: There has been no change to the structure of the tax in terms of included or excluded providers. The non-broad-based tax on inpatient services and outpatient services in West Virginia is assessed through two separate taxes, which when combined equal the assessment rate in the waiver.

12. Using the most recent data available, can the State please provide the total dollar amount raised by the tax?

Response: The tax raised on inpatient hospital services in calendar year 2022 totals \$16 million. The tax raised on outpatient hospital services in calendar year 2022 totals \$22.1 million.

13. For the purposes of the 6% calculation listed at 42 CFR § 433.68 (f)(3)(i)(A) can the State please provide the percentage of net patient revenue raised by the tax for each permissible class? For example, please provide separate percentages for inpatient hospital services and outpatient hospital services.

WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630

Round 1 Question Set

September 27, 2022

State Responses December 16, 2022

Response: The tax raises 0.75% of the inpatient net patient revenue of hospitals subject to the tax. The tax also raises 0.75% of the outpatient net patient revenue of hospitals subject to the tax.

**WV Fee OTH1 Renewal 20220701-20230630:**

6. Is the "Tax on Acute Care Hospitals" and the "SB 546 Health Care Provider Tax" listed in the two pre-prints the same tax?

Response: The taxes are identical except for the uses. The taxes are assessed on the same group of acute care hospitals and have the same non-acute care hospital exclusions. The combined tax rate of the two taxes is 0.88% of inpatient and outpatient hospital net patient revenues. The "Tax on Acute Care Hospitals" has a tax rate of 0.75% and the "SB 546 Health Care Provider Tax" has a tax rate of 0.13%. (0.75% + 0.13% = 0.88%)

7. Is the tax waiver approval letter attached to the cover email for the tax in question? (Please see the waiver attached to the cover email.)

Response: The tax waiver letter supports the inpatient and outpatient revenue services taxes assessed through the two taxes. The combined rate equals the approved waiver rate of "0.88% of inpatient and outpatient net patient revenues". Exclusions for the taxes referenced in Question 6 are as listed in the waiver approval letter.

8. In Table Five under the column labeled "Identify the permissible class for this tax/assessment, the State wrote, "acute care hospitals" However, "acute care hospitals" are not one of the permissible classes listed in statute at section 1903 (w)(7) of the Social Security Act or 42 CFR § 433.56. However, CMS does have a record of a West Virginia tax waiver on inpatient hospital services and outpatient hospital services. Does the State mean "inpatient hospital services and outpatient hospital services" instead of "acute care hospitals"?

Response: Yes. The preprint is amended to reflect the correct terminology. The tax used to fund this program is assessed on inpatient hospital services and outpatient hospital services.

9. Are there any changes to the structure of the tax in terms of included or excluded providers or to the tax rates since CMS's approval of the tax waiver for the tax in question on June 1, 2012? If so, please describe.

Response: There has been no change to the included or excluded providers. The non-broad-based tax on inpatient services and outpatient services in West Virginia is assessed through two separate taxes, which when combined equal the assessment rate in the waiver.

10. Using the most recent data available, can the State please provide the total dollar amount raised by the tax?

Response: The tax raised on inpatient hospital services in calendar year 2022 totals \$2.8 million. The tax raised on outpatient hospital services in calendar year 2022 totals \$3.8 million.

11. For the purposes of the 6% calculation listed at 42 CFR § 433.68 (f)(3)(i)(A) can the State please provide the percentage of net patient revenue raised by the tax for each permissible class? For example, please provide separate percentages for inpatient hospital services and outpatient hospital services.

WV\_Fee\_OTH1\_Renewal\_20220701-20230630  
Round 1 Question Set  
September 27, 2022  
State Responses December 16, 2022

Response: The tax raises 0.13% of the inpatient net patient revenue of hospitals subject to the tax. The tax also raises 0.13% of the outpatient net patient revenue of hospitals subject to the tax.

Thanks so much for your review, and please reach out if you have questions or concerns!

Happy Holidays,

Tara

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Thursday, October 27, 2022 10:33 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS)

<[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hi Jonathan,

Thanks for reaching out to check on this preprint. R1 questions have been with the state for a while now. State response was due 10/17, but DMCP still hasn't received it. The state seems to be having some technical difficulties with their response sets – they've sent me blank documents a couple of times, for example.

DMCP did issue the questions from FMG as a part of the R1 question set and will share any response we receive as soon as possible.

Thanks again,

Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Wednesday, October 26, 2022 11:01 AM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hello Tara,

We wanted to check back in on the status of this pre-print. Thank you.

Best,

Jonathan

Jonathan Endelman

Social Science Research Analyst

Centers for Medicare & Medicaid Services (CMS)

Center for Medicaid and CHIP Services (CMCS)

Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Tuesday, July 26, 2022 8:55 AM  
**To:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Thanks, Jonathan. We will pass these questions along to the state in our R1 question set and share the response with FMG when received!

Thanks again,

Tara

**From:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Tuesday, July 26, 2022 9:52 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Tara,

Please see our questions attached. Please let us know if we can be of any further assistance. Thank you.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
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 Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, July 15, 2022 11:37 AM  
**To:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Subject:** FMG Consultation Request: WV preprints

Good morning FMG,

The Division of Managed Care Policy (DMCP) is currently reviewing two 438.6(c) preprint submissions from West Virginia received yesterday July 14<sup>th</sup>, and the state described the source of the non-federal share of the payment arrangements as Health Care-Related Provider tax(es)/assessment(s). Could you please let us know if FMG has any concerns with this funding source and/or has follow up questions that you'd like us to send the state by **July 29**?

More information for your review:

The state provided the following information in Tables 5 and 6 for **WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630**:

request for the state.

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. Tax on acute care hospitals	Acute care hospitals	No	Yes	Yes		No
ii						



**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Tax on acute care hospitals	09/01/2011	Approved (for broad-based waiver)	06/01/2012
ii			

The state provided the following information in Tables 5 and 6 for WV\_Fee\_OTH1\_Renewal\_20220701-20230630:

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. SB 546 Health Care Provider Tax	Acute care hospital	No	Yes	Yes		No
ii						

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Tax on acute care hospitals	09/01/2011	Approved (for broad-based waiver)	06/01/2012
ii			

Again, we would appreciate FMG's review and comments/questions by **July 29**. If DMCP does not receive a response by this deadline, we will assume that you have no questions for the state on the financing of this payment arrangement at this time.

I've attached the preprints for additional reference. Please feel free to loop in additional FMG staff as needed.

Many thanks,

Tara

Message

---

**From:** CMS State Directed Payment <[REDACTED]> (b)(6)  
**Sent:** 1/9/2023 4:17:00 PM  
**To:** Giles, John (CMS/CMCS) <[REDACTED]> (b)(6)  
**CC:** Caulder, Tara (CMS/CMCS) <[REDACTED]> (b)(6)  
**Subject:** RE: RE: FMG Consultation Request: WV preprints

I would generally agree; we can ask FMG about that. We can also ask if they have concerns about if moving the SDP approval ahead while they work with the state on this.

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Sent:** Monday, January 9, 2023 11:10 AM  
**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Cc:** Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Subject:** RE: FMG Consultation Request: WV preprints

Shouldn't FMG handle this via their own process and not our SDP process?

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Sent:** Monday, January 9, 2023 10:04 AM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** FW: FMG Consultation Request: WV preprints

Hi John,

Wanted to flag this for you; we have a meeting with FMG later today. We can ask for more info, but it is feeling like FMG is treating SDPs differently than SPAs, like in NY.

Do you want us to push back on FMG?

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 8:27 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Mosley, Larrica (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Tara,

After discussing the issue with Rory, it appears that West Virginia performed only two statistical calculations for its taxes back in 2012, one for IP and one for OP, when it should have done four because it has two sets of IP and OP taxes as opposed to one. One set of taxes, "Tax on Acute Care Hospitals" is on inpatient hospital services and outpatient hospital services. Another, SB 546 Health Care Provider Tax, is likewise on inpatient hospital services and outpatient hospital services. For the purposes of the tax waiver that it submitted back in 2012, it appears that West Virginia combined these two taxes into one tax waiver submission. However, the statute and the regulation governing health care-related taxes makes it clear that the tax waivers are granted on a per tax basis not on a per permissible class basis.

Section 1903 (w)(3)(E)(i) states that, "A State may submit an application to the Secretary requesting that the Secretary treat a tax as a broad-based health care related tax, notwithstanding that the tax does not apply to all health care items or services in class (or all providers of such items and services), provides for a credit, deduction, or exclusion, is not applied uniformly, or otherwise does not meet the requirements of subparagraph (B) or (C)." (emphasis added) Likewise 42 CFR 433.72 states, "A State may submit to CMS a request for a waiver if a health care-related tax does not meet any or all of the following." Therefore, states need separate statistical calculations, B1/B2 or P1/P2 as applicable, for each health care-related tax that is not broad-based or uniform. They cannot submit one tax waiver for all taxes that are imposed on a permissible class, for example inpatient hospital services and outpatient hospital services. Because West Virginia has four taxes, two on inpatient hospital services and two on outpatient hospital services, they should submit four statistical calculations.

The 6% indirect hold harmless test, described at 42 CFR 433.68(f)(3)(i)(A), however, remains a per-permissible class calculation. The regulation reads,

*"An indirect guarantee will be determined to exist under a two prong "guarantee" test. If the health care-related tax or taxes on each health care class are applied at a rate that produces revenues less than or equal to 6 percent of the revenues received by the taxpayer, the tax or taxes are permissible under this test. The phrase "revenues received by the taxpayer" refers to the net patient revenue attributable to the assessed permissible class of health care items or services."*

The regulation makes clear that the 6% test is a per class test, not a per tax test. To arrive at this number, states should add up all of the health care-related taxes that they have on a permissible class and then divide that by the net patient revenue for that permissible class. For that reason, separate calculations should be performed for inpatient hospital services and outpatient hospital services.

Would it be possible for West Virginia to separate out its hospital tax in this manner and resubmit it to CMS with the four statistical calculations as indicated above? Please let us know if this would be a burden and we can discuss possible options. Thank you.

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Wednesday, December 21, 2022 10:57 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Hi Jonathan,

After many months, WV finally submitted responses to our R1 questions for preprints WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630 and WV\_Fee\_OTH1\_Renewal\_20220701-20230630. **Can FMG please review the state's financing response and let DMCP know if you have further questions by COB January 4<sup>th</sup>?** We understand that schedules may be tight due to the holidays, so please let us know if you need more time for your review.

All the documentation for each of these preprints can be found in the WV folder on BOX here: [WV](#). I have also attached the response documents here for ease of access. The responses to FMG's financing questions are under the heading "SECTION VI: FUNDING FOR THE NON-FEDERAL SHARE," in each preprint. The answers are similar in each document, with differences only in the last 2 questions. Pasted below for convenience:

**WV Fee IPH.OPH.AMC.PC Renewal 20220701-20230630:**

8. Is the "Tax on Acute Care Hospitals" and the "33 546 Health Care Provider Tax" listed in the two pre-prints the same tax?

Response: The taxes are identical except for the uses. The taxes are assessed on the same group of acute care hospitals and have the same non-acute care hospital exclusions. The combined tax rate of the two taxes is 0.88% of inpatient and outpatient hospital net patient revenues. The "Tax on Acute Care Hospitals" has a tax rate of 0.75% and the "33 546 Health Care Provider Tax" has a tax rate of 0.13%. (0.75% + 0.13% = 0.88%)

9. Is the tax waiver approval letter attached to the cover email for the tax in question? (Please see the waiver attached to the cover email.)

Response: The tax waiver letter supports the inpatient and outpatient revenue services taxes assessed through the two taxes. The combined rate equals the approved waiver rate of "0.88% of inpatient and outpatient net patient revenues". Exclusions for the taxes referenced in Question 6 are as listed in the waiver approval letter.

10. In Table Five under the column labeled "Identify the permissible class for this tax/assessment, the State wrote, "acute care hospitals" However, "acute care hospitals" are not one of the permissible classes listed in statute at section 1903 (w)(7) of the Social Security Act or 42 CFR § 433.56. However, CMS does have a record of a West Virginia tax waiver on inpatient hospital services and outpatient hospital services. Does the State mean "inpatient hospital services and outpatient hospital services" instead of "acute care hospitals"?

Response: Yes. The preprint is amended to reflect the correct terminology.

11. Are there any changes to the structure of the tax in terms of included or excluded providers or to the tax rates since CMS's approval of the tax waiver for the tax in question on June 1, 2012? If so, please describe.

Response: There has been no change to the structure of the tax in terms of included or excluded providers. The non-broad-based tax on inpatient services and outpatient services in West Virginia is assessed through two separate taxes, which when combined equal the assessment rate in the waiver.

12. Using the most recent data available, can the State please provide the total dollar amount raised by the tax?

Response: The tax raised on inpatient hospital services in calendar year 2022 totals \$16 million. The tax raised on outpatient hospital services in calendar year 2022 totals \$22.1 million.

13. For the purposes of the 6% calculation listed at 42 CFR § 433.68 (f)(3)(i)(A) can the State please provide the percentage of net patient revenue raised by the tax for each permissible class? For example, please provide separate percentages for inpatient hospital services and outpatient hospital services.

WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630

Round 1 Question Set

September 27, 2022

State Responses December 16, 2022

Response: The tax raises 0.75% of the inpatient net patient revenue of hospitals subject to the tax. The tax also raises 0.75% of the outpatient net patient revenue of hospitals subject to the tax.

**WV Fee OTH1 Renewal 20220701-20230630:**

6. Is the "Tax on Acute Care Hospitals" and the "SB 546 Health Care Provider Tax" listed in the two pre-prints the same tax?

Response: The taxes are identical except for the uses. The taxes are assessed on the same group of acute care hospitals and have the same non-acute care hospital exclusions. The combined tax rate of the two taxes is 0.88% of inpatient and outpatient hospital net patient revenues. The "Tax on Acute Care Hospitals" has a tax rate of 0.75% and the "SB 546 Health Care Provider Tax" has a tax rate of 0.13%. (0.75% + 0.13% = 0.88%)

7. Is the tax waiver approval letter attached to the cover email for the tax in question? (Please see the waiver attached to the cover email.)

Response: The tax waiver letter supports the inpatient and outpatient revenue services taxes assessed through the two taxes. The combined rate equals the approved waiver rate of "0.88% of inpatient and outpatient net patient revenues". Exclusions for the taxes referenced in Question 6 are as listed in the waiver approval letter.

8. In Table Five under the column labeled "Identify the permissible class for this tax/assessment, the State wrote, "acute care hospitals" However, "acute care hospitals" are not one of the permissible classes listed in statute at section 1903 (w)(7) of the Social Security Act or 42 CFR § 433.56. However, CMS does have a record of a West Virginia tax waiver on inpatient hospital services and outpatient hospital services. Does the State mean "inpatient hospital services and outpatient hospital services" instead of "acute care hospitals"?

Response: Yes. The preprint is amended to reflect the correct terminology. The tax used to fund this program is assessed on inpatient hospital services and outpatient hospital services.

9. Are there any changes to the structure of the tax in terms of included or excluded providers or to the tax rates since CMS's approval of the tax waiver for the tax in question on June 1, 2012? If so, please describe.

Response: There has been no change to the included or excluded providers. The non-broad-based tax on inpatient services and outpatient services in West Virginia is assessed through two separate taxes, which when combined equal the assessment rate in the waiver.

10. Using the most recent data available, can the State please provide the total dollar amount raised by the tax?

Response: The tax raised on inpatient hospital services in calendar year 2022 totals \$2.8 million. The tax raised on outpatient hospital services in calendar year 2022 totals \$3.8 million.

11. For the purposes of the 6% calculation listed at 42 CFR § 433.68 (f)(3)(i)(A) can the State please provide the percentage of net patient revenue raised by the tax for each permissible class? For example, please provide separate percentages for inpatient hospital services and outpatient hospital services.

WV\_Fee\_OTH1\_Renewal\_20220701-20230630  
Round 1 Question Set  
September 27, 2022  
State Responses December 16, 2022

Response: The tax raises 0.13% of the inpatient net patient revenue of hospitals subject to the tax. The tax also raises 0.13% of the outpatient net patient revenue of hospitals subject to the tax.

Thanks so much for your review, and please reach out if you have questions or concerns!

Happy Holidays,

Tara

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Thursday, October 27, 2022 10:33 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS)

<[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hi Jonathan,

Thanks for reaching out to check on this preprint. R1 questions have been with the state for a while now. State response was due 10/17, but DMCP still hasn't received it. The state seems to be having some technical difficulties with their response sets – they've sent me blank documents a couple of times, for example.

DMCP did issue the questions from FMG as a part of the R1 question set and will share any response we receive as soon as possible.

Thanks again,

Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Wednesday, October 26, 2022 11:01 AM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hello Tara,

We wanted to check back in on the status of this pre-print. Thank you.

Best,

Jonathan

Jonathan Endelman

Social Science Research Analyst

Centers for Medicare & Medicaid Services (CMS)

Center for Medicaid and CHIP Services (CMCS)



Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Tuesday, July 26, 2022 8:55 AM  
**To:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Thanks, Jonathan. We will pass these questions along to the state in our R1 question set and share the response with FMG when received!

Thanks again,

Tara

**From:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Tuesday, July 26, 2022 9:52 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Tara,

Please see our questions attached. Please let us know if we can be of any further assistance. Thank you.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.

Mail Stop, S3-14-28  
 Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, July 15, 2022 11:37 AM  
**To:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Subject:** FMG Consultation Request: WV preprints

Good morning FMG,

The Division of Managed Care Policy (DMCP) is currently reviewing two 438.6(c) preprint submissions from West Virginia received yesterday July 14<sup>th</sup>, and the state described the source of the non-federal share of the payment arrangements as Health Care-Related Provider tax(es)/assessment(s). Could you please let us know if FMG has any concerns with this funding source and/or has follow up questions that you'd like us to send the state by **July 29**?

More information for your review:

The state provided the following information in Tables 5 and 6 for **WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630**:

requester in this table.

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. Tax on acute care hospitals	Acute care hospitals	No	Yes	Yes		No
ii.						

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Tax on acute care hospitals	09/01/2011	Approved (for broad-based waiver)	06/01/2012
ii			

The state provided the following information in Tables 5 and 6 for WV\_Fee\_OTH1\_Renewal\_20220701-20230630:

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. SB 546 Health Care Provider Tax	Acute care hospital	No	Yes	Yes		No
ii						

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Tax on acute care hospitals	09/01/2011	Approved (for broad-based waiver)	06/01/2012
ii			

Again, we would appreciate FMG's review and comments/questions by **July 29**. If DMCP does not receive a response by this deadline, we will assume that you have no questions for the state on the financing of this payment arrangement at this time.

I've attached the preprints for additional reference. Please feel free to loop in additional FMG staff as needed.

Many thanks,

Tara

Message

**From:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 1/9/2023 4:20:08 PM  
**To:** CMS State Directed Payment (b)(6)  
(b)(6)  
**CC:** Caulder, Tara (CMS/CMCS) (b)(6)  
(b)(6); Giles, John (CMS/CMCS)  
**Subject:** RE: RE: FMG Consultation Request: WV preprints

Exactly – this seems out of scope for the SDP review process. Particularly, for something back in 2012.

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Sent:** Monday, January 9, 2023 11:17 AM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** RE: FMG Consultation Request: WV preprints

I would generally agree; we can ask FMG about that. We can also ask if they have concerns about if moving the SDP approval ahead while they work with the state on this.

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Monday, January 9, 2023 11:10 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Shouldn't FMG handle this via their own process and not our SDP process?

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services

Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Monday, January 9, 2023 10:04 AM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Cc:** Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>  
**Subject:** FW: FMG Consultation Request: WV preprints

Hi John,

Wanted to flag this for you; we have a meeting with FMG later today. We can ask for more info, but it is feeling like FMG is treating SDPs differently than SPAs, like in NY.

Do you want us to push back on FMG?

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 8:27 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Mosley, Larrica (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Tara,

After discussing the issue with Rory, it appears that West Virginia performed only two statistical calculations for its taxes back in 2012, one for IP and one for OP, when it should have done four because it has two sets of IP and OP taxes as opposed to one. One set of taxes, "Tax on Acute Care Hospitals" is on inpatient hospital services and outpatient hospital services. Another, SB 546 Health Care Provider Tax, is likewise on inpatient hospital services and outpatient hospital services. For the purposes of the tax waiver that it submitted back in 2012, it appears that West Virginia combined these two taxes into one tax waiver submission. However, the statute and the regulation governing health care-related taxes makes it clear that the tax waivers are granted on a per tax basis not on a per permissible class basis.

Section 1903 (w)(3)(E)(i) states that, "A State may submit an application to the Secretary requesting that the Secretary treat a tax as a broad-based health care related tax, notwithstanding that the tax does not apply to all health care items or services in class (or all providers of such items and services), provides for a credit, deduction, or exclusion, is not applied uniformly, or otherwise does not meet the requirements of subparagraph (B) or (C)." (emphasis added) Likewise 42 CFR 433.72 states, "A State may submit to CMS a request for a waiver if a health care-related tax does not meet any or all of the following." Therefore, states need separate statistical calculations, B1/B2 or P1/P2 as applicable, for each health care-related tax that is not broad-based or uniform. They cannot submit one tax waiver for all taxes that are imposed on a permissible class, for example inpatient hospital services and outpatient hospital services. Because West

Virginia has four taxes, two on inpatient hospital services and two on outpatient hospital services, they should submit four statistical calculations.

The 6% indirect hold harmless test, described at 42 CFR 433.68(f)(3)(i)(A), however, remains a per-permissible class calculation. The regulation reads,

*“An indirect guarantee will be determined to exist under a two prong “guarantee” test. If the health care-related tax or taxes on each health care class are applied at a rate that produces revenues less than or equal to 6 percent of the revenues received by the taxpayer, the tax or taxes are permissible under this test. The phrase “revenues received by the taxpayer” refers to the net patient revenue attributable to the assessed permissible class of health care items or services.”*

The regulation makes clear that the 6% test is a per class test, not a per tax test. To arrive at this number, states should add up all of the health care-related taxes that they have on a permissible class and then divide that by the net patient revenue for that permissible class. For that reason, separate calculations should be performed for inpatient hospital services and outpatient hospital services.

Would it be possible for West Virginia to separate out its hospital tax in this manner and resubmit it to CMS with the four statistical calculations as indicated above? Please let us know if this would be a burden and we can discuss possible options. Thank you.

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Wednesday, December 21, 2022 10:57 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CCSQ) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hi Jonathan,

After many months, WV finally submitted responses to our R1 questions for preprints WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630 and WV\_Fee\_OTH1\_Renewal\_20220701-20230630. **Can FMG please review the state's financing response and let DMCP know if you have further questions by COB January 4<sup>th</sup>?** We understand that schedules may be tight due to the holidays, so please let us know if you need more time for your review.

All the documentation for each of these preprints can be found in the WV folder on BOX here: [WV](#). I have also attached the response documents here for ease of access. The responses to FMG's financing questions are under the heading "SECTION VI: FUNDING FOR THE NON-FEDERAL SHARE," in each preprint. The answers are similar in each document, with differences only in the last 2 questions. Pasted below for convenience:

**WV Fee IPH.OPH.AMC.PC Renewal 20220701-20230630:**



8. Is the "Tax on Acute Care Hospitals" and the "33 546 Health Care Provider Tax" listed in the two pre-prints the same tax?

Response: The taxes are identical except for the uses. The taxes are assessed on the same group of acute care hospitals and have the same non-acute care hospital exclusions. The combined tax rate of the two taxes is 0.88% of inpatient and outpatient hospital net patient revenues. The "Tax on Acute Care Hospitals" has a tax rate of 0.75% and the "33 546 Health Care Provider Tax" has a tax rate of 0.13%. (0.75% + 0.13% = 0.88%)

9. Is the tax waiver approval letter attached to the cover email for the tax in question? (Please see the waiver attached to the cover email.)

Response: The tax waiver letter supports the inpatient and outpatient revenue services taxes assessed through the two taxes. The combined rate equals the approved waiver rate of "0.88% of inpatient and outpatient net patient revenues". Exclusions for the taxes referenced in Question 6 are as listed in the waiver approval letter.

10. In Table Five under the column labeled "Identify the permissible class for this tax/assessment, the State wrote, "acute care hospitals" However, "acute care hospitals" are not one of the permissible classes listed in statute at section 1903 (w)(7) of the Social Security Act or 42 CFR § 433.56. However, CMS does have a record of a West Virginia tax waiver on inpatient hospital services and outpatient hospital services. Does the State mean "inpatient hospital services and outpatient hospital services" instead of "acute care hospitals"?

Response: Yes. The preprint is amended to reflect the correct terminology.

11. Are there any changes to the structure of the tax in terms of included or excluded providers or to the tax rates since CMS's approval of the tax waiver for the tax in question on June 1, 2012? If so, please describe.

Response: There has been no change to the structure of the tax in terms of included or excluded providers. The non-broad-based tax on inpatient services and outpatient services in West Virginia is assessed through two separate taxes, which when combined equal the assessment rate in the waiver.

12. Using the most recent data available, can the State please provide the total dollar amount raised by the tax?

Response: The tax raised on inpatient hospital services in calendar year 2022 totals \$16 million. The tax raised on outpatient hospital services in calendar year 2022 totals \$22.1 million.

13. For the purposes of the 6% calculation listed at 42 CFR § 433.68 (f)(3)(i)(A) can the State please provide the percentage of net patient revenue raised by the tax for each permissible class? For example, please provide separate percentages for inpatient hospital services and outpatient hospital services.

WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630

Round 1 Question Set

September 27, 2022

State Responses December 16, 2022

Response: The tax raises 0.75% of the inpatient net patient revenue of hospitals subject to the tax. The tax also raises 0.75% of the outpatient net patient revenue of hospitals subject to the tax.

**WV Fee OTH1 Renewal 20220701-20230630:**

6. Is the "Tax on Acute Care Hospitals" and the "SB 546 Health Care Provider Tax" listed in the two pre-prints the same tax?

Response: The taxes are identical except for the uses. The taxes are assessed on the same group of acute care hospitals and have the same non-acute care hospital exclusions. The combined tax rate of the two taxes is 0.88% of inpatient and outpatient hospital net patient revenues. The "Tax on Acute Care Hospitals" has a tax rate of 0.75% and the "SB 546 Health Care Provider Tax" has a tax rate of 0.13%. (0.75% + 0.13% = 0.88%)

7. Is the tax waiver approval letter attached to the cover email for the tax in question? (Please see the waiver attached to the cover email.)

Response: The tax waiver letter supports the inpatient and outpatient revenue services taxes assessed through the two taxes. The combined rate equals the approved waiver rate of "0.88% of inpatient and outpatient net patient revenues". Exclusions for the taxes referenced in Question 6 are as listed in the waiver approval letter.

8. In Table Five under the column labeled "Identify the permissible class for this tax/assessment, the State wrote, "acute care hospitals" However, "acute care hospitals" are not one of the permissible classes listed in statute at section 1903 (w)(7) of the Social Security Act or 42 CFR § 433.56. However, CMS does have a record of a West Virginia tax waiver on inpatient hospital services and outpatient hospital services. Does the State mean "inpatient hospital services and outpatient hospital services" instead of "acute care hospitals"?

Response: Yes. The preprint is amended to reflect the correct terminology. The tax used to fund this program is assessed on inpatient hospital services and outpatient hospital services.

9. Are there any changes to the structure of the tax in terms of included or excluded providers or to the tax rates since CMS's approval of the tax waiver for the tax in question on June 1, 2012? If so, please describe.

Response: There has been no change to the included or excluded providers. The non-broad-based tax on inpatient services and outpatient services in West Virginia is assessed through two separate taxes, which when combined equal the assessment rate in the waiver.

10. Using the most recent data available, can the State please provide the total dollar amount raised by the tax?

Response: The tax raised on inpatient hospital services in calendar year 2022 totals \$2.8 million. The tax raised on outpatient hospital services in calendar year 2022 totals \$3.8 million.

11. For the purposes of the 6% calculation listed at 42 CFR § 433.68 (f)(3)(i)(A) can the State please provide the percentage of net patient revenue raised by the tax for each permissible class? For example, please provide separate percentages for inpatient hospital services and outpatient hospital services.

WV\_Fee\_OTH1\_Renewal\_20220701-20230630  
Round 1 Question Set  
September 27, 2022  
State Responses December 16, 2022

Response: The tax raises 0.13% of the inpatient net patient revenue of hospitals subject to the tax. The tax also raises 0.13% of the outpatient net patient revenue of hospitals subject to the tax.

Thanks so much for your review, and please reach out if you have questions or concerns!

Happy Holidays,

Tara

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Thursday, October 27, 2022 10:33 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS)

<[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hi Jonathan,

Thanks for reaching out to check on this preprint. R1 questions have been with the state for a while now. State response was due 10/17, but DMCP still hasn't received it. The state seems to be having some technical difficulties with their response sets – they've sent me blank documents a couple of times, for example.

DMCP did issue the questions from FMG as a part of the R1 question set and will share any response we receive as soon as possible.

Thanks again,

Tara

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Wednesday, October 26, 2022 11:01 AM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>

**Subject:** RE: FMG Consultation Request: WV preprints

Hello Tara,

We wanted to check back in on the status of this pre-print. Thank you.

Best,

Jonathan

Jonathan Endelman

Social Science Research Analyst

Centers for Medicare & Medicaid Services (CMS)

Center for Medicaid and CHIP Services (CMCS)

Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Tuesday, July 26, 2022 8:55 AM  
**To:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Thanks, Jonathan. We will pass these questions along to the state in our R1 question set and share the response with FMG when received!

Thanks again,

Tara

**From:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Tuesday, July 26, 2022 9:52 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Subject:** RE: FMG Consultation Request: WV preprints

Tara,

Please see our questions attached. Please let us know if we can be of any further assistance. Thank you.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
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410.786.4738  
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7500 Security Blvd.

Mail Stop, S3-14-28  
 Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Friday, July 15, 2022 11:37 AM  
**To:** Endelman, Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Goldstein, Stuart S. (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Cuno, Richard A. (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; McClure, Deborah A. (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>  
**Cc:** Snyder, Laura M. (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Subject:** FMG Consultation Request: WV preprints

Good morning FMG,

The Division of Managed Care Policy (DMCP) is currently reviewing two 438.6(c) preprint submissions from West Virginia received yesterday July 14<sup>th</sup>, and the state described the source of the non-federal share of the payment arrangements as Health Care-Related Provider tax(es)/assessment(s). Could you please let us know if FMG has any concerns with this funding source and/or has follow up questions that you'd like us to send the state by **July 29**?

More information for your review:

The state provided the following information in Tables 5 and 6 for **WV\_Fee\_IPH.OPH.AMC.PC\_Renewal\_20220701-20230630**:

request for the state.

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. Tax on acute care hospitals	Acute care hospitals	No	Yes	Yes		No
ii						

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Tax on acute care hospitals	09/01/2011	Approved (for broad-based waiver)	06/01/2012
ii			

The state provided the following information in Tables 5 and 6 for WV\_Fee\_OTH1\_Renewal\_20220701-20230630:

**Table 5: Health Care-Related Provider Tax/Assessment(s)**

Name of the Health Care-Related Provider Tax / Assessment (enter each on a separate line)	Identify the permissible class for this tax / assessment	Is the tax / assessment broad-based?	Is the tax / assessment uniform?	Is the tax / assessment under the 6% indirect hold harmless limit?	If not under the 6% indirect hold harmless limit, does it pass the "75/75" test?	Does it contain a hold harmless arrangement that guarantees to return all or any portion of the tax payment to the tax payer?
i. SB 546 Health Care Provider Tax	Acute care hospital	No	Yes	Yes		No
ii						

**Table 6: Health Care-Related Provider Tax/Assessment Waivers**

Name of the Health Care-Related Provider Tax/Assessment Waiver (enter each on a separate line)	Submission Date	Current Status (Under Review, Approved)	Approval Date
i. Tax on acute care hospitals	09/01/2011	Approved (for broad-based waiver)	06/01/2012
ii			

Again, we would appreciate FMG’s review and comments/questions by **July 29**. If DMCP does not receive a response by this deadline, we will assume that you have no questions for the state on the financing of this payment arrangement at this time.

I've attached the preprints for additional reference. Please feel free to loop in additional FMG staff as needed.

Many thanks,

Tara

Message

**From:** Tsai, Daniel (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 4/12/2023 1:54:14 AM  
**To:** Dervan, Elizabeth (CMS/OL); (b)(6)  
(b)(6); Kirchgraber, Kate  
Mauser, Gayle (CMS/OL)  
(b)(6)  
**CC:** Hannah Katch (CMS/OA); (b)(6)  
(b)(6)  
(b)(6)  
Perrie Briskin (CMS/OA)  
**Subject:** FW: FW: Action Alert: DPP Dear Colleague

Liz and folks – see below...

(They have a quote from a comment letter I made on MFAR as well)

**From:** Melanie Nathanson <mnathanson@n-hdc.com>  
**Sent:** Tuesday, April 11, 2023 9:52 PM  
**To:** Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Subject:** FW: Action Alert: DPP Dear Colleague

FYSA

**WARNING: This email originated outside of BayCare. BE CAUTIOUS clicking links and opening attachments. Use the Report Phishing and Spam button to report malicious emails and contact the IS Service Desk with all other suspicious activity.**



**TO:** FHA Member Chief Executive Officers, Chief Financial Officers and Government Relations Executives  
**FROM:** Mary C. Mayhew, President and Chief Executive Officer, Florida Hospital Association



**SUBJECT:** Action Alert: DPP Dear Colleague  
**DATE:** April 11, 2022

Dear FHA Members,

This email is intended to provide an update on current actions to ensure the CMS informational bulletin regarding redistribution arrangements in the context of directed payment programs is not implemented:

- Today, Representatives Moskowitz and Bean sent a “dear colleague” to members of Florida’s delegation regarding the February 17 CMS directed payment program (DPP) informational bulletin. The letter, addressed to HHS Secretary Becerra, CMS Administrator Brooks-LaSure, and Medicaid Director Tsai, calls on the Centers for Medicare and Medicaid Services to withdraw the informational bulletin, which “creates needless uncertainty for the hospitals that serve [Florida’s] communities.” Last year and now, members of Florida’s delegation have united to ensure our state’s continued access to directed payment programs. These programs ensure hospitals are able to provide continued access to care for the state’s most vulnerable patients.

**FHA members should reach out to their congressional offices and ask them to join Representatives Moskowitz and Bean as signatories of this “dear colleague”**

**letter.** When contacting the office you can direct them to

[Harshitha.Teppala@mail.house.gov](mailto:Harshitha.Teppala@mail.house.gov) in Rep. Moskowitz’s office or

[richard.lamura@mail.house.gov](mailto:richard.lamura@mail.house.gov) in Rep. Bean’s office. If you need contact information for your members of congress, please reach out to Michael Williams at [michaelw@fha.org](mailto:michaelw@fha.org).

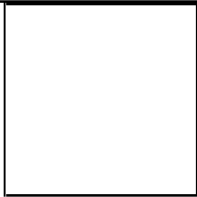
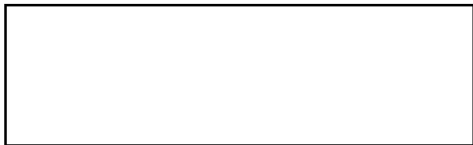
- In last week’s Capitol Update FHA reported on the filing of a Texas lawsuit challenging CMS’s interpretation of the statute governing hold harmless agreements related to Medicaid tax and match programs. We noted: On Wednesday, the state of Texas filed a lawsuit against CMS and HHS to permanently enjoin enforcement of its February 17 bulletin, which declared that private redistribution arrangements, in the context of local tax programs to fund the state’s share of a Medicaid match, are illegal.

The lawsuit alleges that the bulletin is outside of the Agency’s statutory authority, and even if it were not, it would violate the Administrative Procedures Act. The lawsuit quotes 2020 comments from Medicaid Administrator Daniel Tsai (then serving as the Massachusetts Medicaid Director) that call the Agency’s interpretation “an unprecedented federal overreach...[that] exceeded CMS’ statutory authority.” This is consistent with FHA’s understanding of the applicable provisions of the Social Security Act.

The suit asks the court to “declare unlawful and set aside the February 17 bulletin” and issue a preliminary and permanent injunction, prohibiting enforcement of the February 17 bulletin.

We will continue to provide updates to our members on any developments related to CMS’s efforts to implement the informational bulletin. If you have any questions do not hesitate to contact Michael Williams or me.

Sincerely,



**Mary C. Mayhew**

**President and CEO**

Florida Hospital Association

P 850-222-9800

M (b)(6)

E

W



Message

**From:** CMS State Directed Payment (b)(6)  
(b)(6)

**Sent:** 4/4/2023 7:05:32 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS); (b)(6)

(b)(6) Bonelli, Anna  
(b)(6) Boston, Beverly  
(b)(6) sinclair, michael  
(b)(6) Badaracco, Andrew  
(b)(6) Goldstein, Stuart  
(b)(6) Yablochnikov, Daniil  
(b)(6) Lyles, Tia (CMS/CMCS)  
(b)(6) Thompson, Christopher  
(b)(6); Arnold, Charlie  
(b)(6) Clark, Jennifer  
(b)(6) Cuno, Richard  
(b)(6) Fan, Kristin  
(b)(6) Heitt, Melissa  
(b)(6) McClure, Deb  
(b)(6) Mosley, Elle  
(b)(6) Schoonover, Matthew  
(b)(6)

**CC:** Loizias, Alex (CMS/CMCS); (b)(6)  
(b)(6) Snyder, Laura  
(b)(6) Giles, John (CMS/CMCS)

**Subject:** RE: RE: Texas SFY23 Approval Letters and SFY24 Draft Submissions

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This year that information can be found in an Excel workbook with “preprint-addendum” in the title. See the tab labeled “Table 5.A.”

Thanks!  
Alex

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**Sent:** Tuesday, April 4, 2023 7:41 AM  
**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Boston, Beverly (CMS/CMCS) <Beverly.Boston@cms.hhs.gov>; sinclair, michael (CMS/CMCS) <Michael.Sinclair@cms.hhs.gov>; Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Lyles, Tia (CMS/CMCS) <Tia.Lyles@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>  
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Social Science Research Analyst  
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Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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1.  
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2.  
TX Fee AMC.PC.SP Renewal 20230901-20240831 (TIPPS)
1.  
TX VBP.Fee NF Renewal 20230901-20240831 (QIPP)

3. Thanks and please reach out with any questions,

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**From:** CMS State Directed Payment (b)(6)  
**Sent:** 4/4/2023 8:25:55 PM  
**To:** Endelman (he/him), Jonathan (b)(6); CMS State Directed (b)(6); Bonelli, Anna (b)(6); Boston, Beverly (b)(6); sinclair, michael (b)(6); Badaracco, Andrew (b)(6); Goldstein, Stuart (b)(6); Yablochnikov, Daniil (b)(6); Lyles, Tia (CMS/CMCS) (b)(6); Thompson, Christopher (b)(6); Arnold, Charlie (b)(6); Clark, Jennifer (b)(6); Cuno, Richard (b)(6); Fan, Kristin (b)(6); Heitt, Melissa (b)(6); McClure, Deb (b)(6); Mosley, Elle (b)(6); Schoonover, Matthew (b)(6); Giles, John (CMS/CMCS) (b)(6)

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(b)(6)

**Sent:** 4/10/2023 7:51:45 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS); (b)(6); Bonelli, Anna  
(b)(6); Boston, Beverly  
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**CC:** Snyder, Laura (CMS/CMCS); (b)(6); Giles, John (CMS/CMCS)  
(b)(6)

**Subject:** RE: RE: Texas SFY23 Approval Letters and SFY24 Draft Submissions

Hi Jonathan,

We're prepping our feedback to the State on the draft SFY 24 submissions and plan to note instances where there's a significant difference in the number of IGT or provider donation entities compared to SFY 23. Since we're not issuing questions at this point, we plan to just make the State aware that we will likely issue up questions regarding the number of entities in the course of the formal federal review process.

Does that make sense to you? Anything else you think is worth noting for the State? We're cognizant of the ongoing OIG LPPF audit and don't want to potentially overstep.

Many thanks,

Alex

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>

**Sent:** Tuesday, April 4, 2023 4:26 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Boston, Beverly (CMS/CMCS) <Beverly.Boston@cms.hhs.gov>; sinclair, michael (CMS/CMCS) <Michael.Sinclair@cms.hhs.gov>; Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Lyles, Tia (CMS/CMCS) <Tia.Lyles@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Heitt, Melissa (CMS/FCHCO) <Melissa.Heitt@cms.hhs.gov>; McClure, Deb (CMS/CMCS) <Deborah.McClure@cms.hhs.gov>; Mosley, Elle (CMS/CMCS) <larrica.mosley@cms.hhs.gov>; Schoonover, Matthew (CMS/CMCS) <matthew.schoonover@cms.hhs.gov>

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**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Tuesday, April 4, 2023 3:06 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; sinclair, michael (CMS/CMCS) <[Michael.Sinclair@cms.hhs.gov](mailto:Michael.Sinclair@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Lyles, Tia (CMS/CMCS) <[Tia.Lyles@cms.hhs.gov](mailto:Tia.Lyles@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Cc:** Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Subject:** RE: Texas SFY23 Approval Letters and SFY24 Draft Submissions

Hi Jonathan,

This year that information can be found in an Excel workbook with “preprint-addendum” in the title. See the tab labeled “Table 5.A.”

Thanks!  
Alex

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Tuesday, April 4, 2023 7:41 AM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; sinclair, michael (CMS/CMCS) <[Michael.Sinclair@cms.hhs.gov](mailto:Michael.Sinclair@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Lyles, Tia (CMS/CMCS) <[Tia.Lyles@cms.hhs.gov](mailto:Tia.Lyles@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Cc:** Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Subject:** RE: Texas SFY23 Approval Letters and SFY24 Draft Submissions

Hello Alex. Last year, Texas submitted something called “Attachment G” that listed every LPPF that was funding the SDPs. Do you know if they are planning to send something like that again?

Best,

Jonatahn

Jonathan Endelman, PhD

Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Monday, April 3, 2023 2:28 PM

**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; sinclair, michael (CMS/CMCS) <[Michael.Sinclair@cms.hhs.gov](mailto:Michael.Sinclair@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Lyles, Tia (CMS/CMCS) <[Tia.Lyles@cms.hhs.gov](mailto:Tia.Lyles@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>

**Cc:** Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Subject:** Texas SFY23 Approval Letters and SFY24 Draft Submissions

Hi all,

Per our discussion at today's DMCP/FMG meeting, attached are Texas' SFY 2023 SDP approval letters. I've also linked to Texas' SFY 2024 draft preprint submissions below. **Note that these are incomplete submissions and are not under formal federal review.** Our goal is to provide the state with initial feedback on these drafts by next Friday, April 14<sup>th</sup>.

1. **TX Fee Oth Renewal 20230901-20240831 (BHS)**
  
1. **TX Fee IPH.OPH.BHI Renewal 20230901-20240831 (CHIRP)**
1. **TX Fee Oth1 Renewal 20230901-20240831 (RAPPS)**
2. **TX Fee AMC.PC.SP Renewal 20230901-20240831 (TIPPS)**
1. **TX VBP.Fee NF Renewal 20230901-20240831 (QIPP)**

3. Thanks and please reach out with any questions,
4. Alex

Message

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**From:** CMS State Directed Payment (b)(6)  
(b)(6)  
**Sent:** 1/30/2023 3:09:23 PM  
**To:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** For Signature - IL\_Fee\_NF2\_New\_20220101-20221231  
**Attachments:** IL\_Fee\_NF2\_New\_20220101-20221231 Approval Package.pdf

Hi John,

Please find attached and prepped for your signature an approval package for IL\_Fee\_NF2\_New\_20220101-20221231. Details outlined below. Juliet has peer reviewed.

Thanks and please reach out with any questions,  
Alex

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Sent:** Wednesday, September 28, 2022 10:37 AM  
**To:** Kuhn, Juliet (CMS/CMCS) <Juliet.Kuhn@cms.hhs.gov>  
**Cc:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Subject:** Peer Review - IL\_Fee\_NF2\_New\_20220101-20221231

- Tiered incentive payments for NFs based on CMS Star Ratings
- Initial submission
- Funded via a provider tax. FMG reviewed and did not have any questions/concerns.
- This impacts both the HealthNet and MMAI duals program; the Duals office has reviewed and did not have any questions/concerns
- As the state noted that the SDP is compliant with Medicare UPL and the payment methodology is aligned with an approved SPA, I believe that they satisfactorily demonstrated that the SDP will result in reasonable, attainable and appropriate payment levels.
- Incorporated into rates as a SPT
- Neither DQ nor OACT had any follow up questions or conditions of concurrence.

Message

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**Sent:** 2/1/2023 5:34:42 PM  
**To:** Deboy, Alissa (CMS/CMCS) (b)(6) Smith, Carrie  
(b)(6)  
**CC:** Gibson, Alexis (CMS/CMCS) (b)(6) Snyder, Laura  
(b)(6)  
**Subject:** FL Preprint Update

Hi Dan – here is the latest information on the FL preprint submission:

- We received one hospital preprint from FL for review last night at 4:22pm. This is the preprint that was approved last year with conditional language and the companion letter noting our concerns with the LPPF state financing.
- The team has been assessing the preprint for completeness today, and we can confirm that we have completeness issues that will require follow-up with the state prior to entering the preprint into federal review (see attached email for completeness issues that we flagged for FL today).
- The state’s rating period began October 1, 2022. We advise states to submit preprints 90 days in advance of the rating period. We have followed-up with the state numerous times on outstanding preprints, including this preprint. In the email response acknowledging receipt of the preprint today, we again flagged that the state was delinquent on the following items:
  - Preprint amendment related to Florida’s revised HCBS Spending plan;
  - FL Proposal D 2020-2021 revised preprint amendment; and
  - Five additional SDP preprints for the 2022-2023 rating period.

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

Message

**From:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 3/9/2023 4:37:25 PM  
**To:** Badaracco, Andrew (CMS/CMCS); (b)(6)  
(b)(6)  
**CC:** Bonelli, Anna (CMS/CMCS); (b)(6)  
(b)(6) Giles, John (CMS/CMCS)  
(b)(6) Loizias, Alex (CMS/CMCS)  
(b)(6) Wilson, Andrew  
(b)(6) Caulder, Tara  
(b)(6) Mikow, Asher  
(b)(6) Thompson,  
Christopher (CMS/CMCS); (b)(6)  
(b)(6) Yablochnikov, Daniil  
(b)(6) Motley (she/her),  
Danielle (CMS/CMCS); (b)(6)  
(b)(6) Juhring, Heather  
(b)(6) Johns, Hamilton  
(b)(6) Kennedy, Jocelyn  
(b)(6) Carroll, Lisa  
**(b)(6)**  
**Subject:** RE: RE: SDP NPRM follow-up

Hi Andrew,

I am sorry, but we go more feedback on this round of clearance of the NPRM; this is the last round before show stoppers, so hopefully it is the last. S

Specifically, OMB had the following comment: "Some of the messaging in footnote 64 (and 66) appears contradict the characterization of these supplemental payments in MFAR. Please confirm FMG is comfortable with the footnote and if not please incorporate FMG edits."

Here is the footnote (should like very very familiar):

Footnote (footnotes 64 and 66 are the same): "CMS has approved Medicaid state plan amendments authorizing such targeted Medicaid supplemental payment methodologies for qualified practitioner services up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20a%20lternate%20fee%20schedule%20is%20used>. As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid



practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).”

Are there any edits to this that you’d want us to incorporate? We took all the edits you had proposed last time we asked you to review, but wanted to reconfirm given OMB’s request.

Thanks,  
Laura

**From:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Sent:** Wednesday, February 8, 2023 11:20 AM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Mikow, Asher (CMS/CMCS) <Asher.Mikow@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Motley (she/her), Danielle (CMS/CMCS) <Danielle.Motley@cms.hhs.gov>; Juhring, Heather (CMS/CMCS) <Heather.Juhring@cms.hhs.gov>; Johns, Hamilton (CMS/CMCS) <Hamilton.Johns@cms.hhs.gov>; Kennedy, Jocelyn (CMS/CMCS) <Jocelyn.Kennedy@cms.hhs.gov>; Carroll, Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>  
**Subject:** RE: SDP NPRM follow-up

Hi Laura & team –

Please see our team’s below suggested responses and edits (in **bold**). Note that I didn’t have any comments on Q3.

One overall note for both 1 & 2 below is that the authority for the ACR really does come from 1902(a)(30)(A) and from the idea that ACRs are applicable to services are not otherwise limited to a Medicare-equivalent UPL under 42 CFR 447.271, 42 CFR 447.272, 447.321, and 447.325. As there is otherwise no UPL for physician, the ACR was a means to ensure that physician supplemental payments (particularly for those in state or county run academic medical centers, where they could access a significant portion of IGT funding), would be limited to the amounts that would otherwise be paid by the commercial market noting that commercial payers had an interest in keeping payment rates at a reasonable, competitive level in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).

1. Preamble: “We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services (**for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and safety net hospitals.**”

Footnote at the end of this sentence, “CMS has approved Medicaid state plan amendments authorizing **such targeted Medicaid supplemental payment methodologies for qualified practitioner services** up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>” **As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where**

private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).

(b)(5)

2. Preamble, “Finally, using the ACR provided some parity with Medicaid FFS payment policy for **supplemental** payments for qualified practitioner services (**for example, physicians under the physician services benefit**) provided in academic medical centers, **physician practices**, and safety net hospitals.”

(b)(5)

3. Preamble, “We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available.”  
OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?  
Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

**We’re in agreement with #3.**

Let us know if you have any questions.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Sunday, February 5, 2023 11:36 AM

**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>;

Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS)

<[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>

**Subject:** SDP NPRM follow-up

Hi Andrew,

We are back into clearance again with the NPRM on SDPs. We have received official comments from OGC and informal/unofficial comments from OMB. There are 3 that I wanted to run past you to see if you agree or would suggest changes/edits. Any chance you could look at these by COB Thursday? Also happy to meet if that would help.

Thanks,  
Laura

1. Preamble: "We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services at an academic medical center and for safety net hospitals." Footnote at the end of this sentence, "CMS has approved Medicaid state plan amendments authorizing payment methodologies up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>"

**(b)(5)**

2. Preamble, "Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates."

**(b)(5)**

3. Preamble, "We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available." OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?  
Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)

Message

**From:** Badaracco, Andrew (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 3/9/2023 4:42:37 PM  
**To:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Bonelli, Anna (CMS/CMCS) (b)(6)  
(b)(6) Giles, John (CMS/CMCS)  
(b)(6) Loizias, Alex (CMS/CMCS)  
(b)(6) Wilson, Andrew  
(b)(6) Calder, Tara  
(b)(6) Mikow, Asher  
(b)(6) ]; Thompson,  
(b)(6) ]; Yablochnikov, Daniil  
(b)(6) Motley (she/her),  
(b)(6) Juhring, Heather  
(b)(6) Johns, Hamilton  
(b)(6) Kennedy, Jocelyn  
(b)(6) Carroll, Lisa

**Subject:** RE: RE: SDP NPRM follow-up

Hey Laura –

It's not a problem. What's your deadline for a response? That's a strange comment considering that we didn't finalize MFAR but it sounds like they're saying that the characterization of these payments doesn't match the historical characterization we provided in MFAR (though I think we took some of the language below from the NRPM), but I'd like take a look at it and get back to you.

If it's at all possible, I would appreciate being able to see the preamble language that informed the footnote here, just to make sure I have some context if you're able to share the draft NPRM.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Thursday, March 9, 2023 11:37 AM  
**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Calder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Mikow, Asher (CMS/CMCS) <Asher.Mikow@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Motley (she/her), Danielle (CMS/CMCS)

<Danielle.Motley@cms.hhs.gov>; Juhring, Heather (CMS/CMCS) <Heather.Juhring@cms.hhs.gov>; Johns, Hamilton (CMS/CMCS) <Hamilton.Johns@cms.hhs.gov>; Kennedy, Jocelyn (CMS/CMCS) <Jocelyn.Kennedy@cms.hhs.gov>; Carroll, Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>

**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I am sorry, but we got more feedback on this round of clearance of the NPRM; this is the last round before show stoppers, so hopefully it is the last. S

Specifically, OMB had the following comment: "Some of the messaging in footnote 64 (and 66) appears contradict the characterization of these supplemental payments in MFAR. Please confirm FMG is comfortable with the footnote and if not please incorporate FMG edits."

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Are there any edits to this that you'd want us to incorporate? We took all the edits you had proposed last time we asked you to review, but wanted to reconfirm given OMB's request.

Thanks,  
Laura

**From:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>

**Sent:** Wednesday, February 8, 2023 11:20 AM

**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>;

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Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>

**Subject:** RE: SDP NPRM follow-up

Hi Laura & team –

Please see our team's below suggested responses and edits (in **bold**). Note that I didn't have any comments on Q3.

One overall note for both 1 & 2 below is that the authority for the ACR really does come from 1902(a)(30)(A) and from the idea that ACRs are applicable to services are not otherwise limited to a Medicare-equivalent UPL under 42 CFR 447.271, 42 CFR 447.272, 447.321, and 447.325. As there is otherwise no UPL for physician, the ACR was a means to ensure that physician supplemental payments (particularly for those in state or county run academic medical centers, where they could access a significant portion of IGT funding), would be limited to the amounts that would otherwise be paid by the commercial market noting that commercial payers had an interest in keeping payment rates at a reasonable, competitive level in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).

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**(b)(5)**

2. Preamble, “Finally, using the ACR provided some parity with Medicaid FFS payment policy for **supplemental** payments for qualified practitioner services **(for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and safety net hospitals.**”

**(b)(5)**

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OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?  
Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

**We’re in agreement with #3.**

Let us know if you have any questions.

Thanks!

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**Sent:** Sunday, February 5, 2023 11:36 AM  
**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
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**Subject:** SDP NPRM follow-up

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Thanks,  
Laura

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**(b)(5)**



(b)(5)

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(b)(5)

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Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)

Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)

**Sent:** 3/9/2023 4:53:47 PM

**To:** Badaracco, Andrew (CMS/CMCS) (b)(6)  
(b)(6)

**CC:** Bonelli, Anna (CMS/CMCS) (b)(6)  
(b)(6) Giles, John (CMS/CMCS)  
(b)(6) Loizias, Alex (CMS/CMCS)  
(b)(6) Wilson, Andrew  
(b)(6) Caulder, Tara  
(b)(6) Mikow, Asher  
(b)(6) Thompson,  
(b)(6) Yablochnikov, Daniil  
(b)(6) Motley (she/her),  
(b)(6) Juhring, Heather  
(b)(6) Johns, Hamilton  
(b)(6) Kennedy, Jocelyn  
(b)(6) Carroll, Lisa

**Subject:** RE: RE: SDP NPRM follow-up

Hi Andrew,

I agree with you; it is strange. Happy to provide the preamble. I've excerpted the language below, but if you'd prefer to have a link to the draft, let me know. The highlighted sentences are what the footnote is tagged to. In terms of timing, could you get it back to me by COB Monday? I know that is quick, but we are on a very turnaround.

Thanks,  
Laura

Preamble:

“We note that States have been approved to make Medicaid FFS supplemental payments up to the ACR for qualified practitioner services (for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and for safety net hospitals.[FOOTNOTE ON THIS SENTENCE] CMS had previously approved SDPs that resulted in total payment rates up to the ACR for the same providers that States had approved State plan authority to make supplemental payments up to the ACR in Medicaid FFS. Additionally, while CMS does not review the provider payment rate assumptions for all services underlying Medicaid managed care rate development, we had recently approved Medicaid managed care

contracts in one State where plans are paid capitation rates developed assuming the use of commercial rates paid to providers for all services covered in the contract.”

....

“CMS ultimately interpreted the current § 438.6(c)(2)(i) (which we propose to re-designate as § 438.6(c)(2)(ii)(I) and (J) along with revisions to better reflect our interpretation) to allow total payment rates in an SDP up to the ACR. The statutory and regulatory requirements for the UPL in Medicaid FFS do not apply to risk-based managed care plans; therefore, permitting States to direct MCOs, PIHPs, PAHPs to make payments higher than the UPL does not violate any Medicaid managed care statutory or regulatory requirements. We internally acknowledged at the time and subsequently that our standard applied the ACR benchmark more broadly across more services and provider types than allowed under Medicaid FFS. Our rationale for doing so was that using the ACR allowed States more discretion than the Medicaid UPL because it allows States to ensure that Medicaid managed care enrollees have access to care that is comparable to access for the broader general public. Also, using the ACR presented the least disruption for States as they were transitioning existing, and often long-standing, pass-through payments<sup>[1]</sup> into SDPs, while at the same time providing a ceiling for SDPs to protect against the potential of SDPs threatening States’ ability to comply with our interpretation of current § 438.6(c)(2)(i) that total provider payment rates resulting from SDPs be reasonable, appropriate and attainable. Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates. [FOOTNOTE ON THIS SENTENCE]”

**From:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>

**Sent:** Thursday, March 9, 2023 11:43 AM

**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>;

Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS)

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Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>

**Subject:** RE: SDP NPRM follow-up

Hey Laura –

It’s not a problem. What’s your deadline for a response? That’s a strange comment considering that we didn’t finalize MFAR but it sounds like they’re saying that the characterization of these payments doesn’t match the historical characterization we provided in MFAR (though I think we took some of the language below from the NRPM), but I’d like take a look at it and get back to you.

If it’s at all possible, I would appreciate being able to see the preamble language that informed the footnot here, just to make sure I have some context if you’re able to share the draft NPRM.

Thanks!

---

<sup>[1]</sup> Pass-through payments are defined in § 438.6(a) as, “any amount required by the State to be added to the contracted payment rates, and considered in calculating the actuarially sound capitation rate between the MCO, PIHP, or PAHP and hospitals, physicians, or nursing facilities that is not for a specific service or benefit provided to a specific enrollee covered under the contract, a provider payment methodology permitted under § 438.6(c), a sub-capitated payment arrangement for a specific set of services and enrollees covered under the contract; GME payments; or FQHC or RHC wrap around payments.”

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Thursday, March 9, 2023 11:37 AM

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**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I am sorry, but we got more feedback on this round of clearance of the NPRM; this is the last round before show stoppers, so hopefully it is the last. S

Specifically, OMB had the following comment: "Some of the messaging in footnote 64 (and 66) appears contradict the characterization of these supplemental payments in MFAR. Please confirm FMG is comfortable with the footnote and if not please incorporate FMG edits."

Here is the footnote (should like very very familiar):

Footnote (footnotes 64 and 66 are the same): "CMS has approved Medicaid state plan amendments authorizing such targeted Medicaid supplemental payment methodologies for qualified practitioner services up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used>. As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A)."

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Message

**From:** Badaracco, Andrew (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 3/9/2023 6:26:36 PM  
**To:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**CC:** Bonelli, Anna (CMS/CMCS); (b)(6)  
(b)(6); Giles, John (CMS/CMCS)  
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(b)(6); uhring, Heather  
(b)(6); Johns, Hamilton  
(b)(6); Kennedy, Jocelyn  
(b)(6); Carroll, Lisa

**Subject:** RE: RE: SDP NPRM follow-up

It may be useful to have a link to the draft. It's not clear if OMB is referencing concern about the whole footnote or about one or two lines of the footnote. Looking at MFAR, we characterize these payments as follows:

We note that, without a regulatory standard to govern UPLs for practitioner services, CMS has allowed states to make Medicaid supplemental payments for practitioner services up to Medicare payment amounts or, based on data documentation, up to the average commercial rate (ACR) made to providers. As discussed later in this proposed rule, ACRs are payments developed using the average of some commercial payers' payment rates for medical services to establish a supplemental Medicaid rate for certain practitioners, typically physicians, under the state plan. Unlike other supplemental payments subject to UPLs, some of these practitioner supplemental payments have resulted in payments to providers in excess of a reasonable estimate of what Medicare would have paid for the services furnished, as the relevant ACRs generally are higher than Medicare rates. This result is possible because there currently is no UPL applicable to payments for practitioner services based on a reasonable.

To me, this is what is being communicated in the Footnote, so I'm not quite sure what their issue is with the text.

Also, COB Monday should be fine.

Thanks!



**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Sent:** Thursday, March 9, 2023 11:54 AM

**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Mikow, Asher (CMS/CMCS) <Asher.Mikow@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Motley (she/her), Danielle (CMS/CMCS) <Danielle.Motley@cms.hhs.gov>; Juhring, Heather (CMS/CMCS) <Heather.Juhring@cms.hhs.gov>; Johns, Hamilton (CMS/CMCS) <Hamilton.Johns@cms.hhs.gov>; Kennedy, Jocelyn (CMS/CMCS) <Jocelyn.Kennedy@cms.hhs.gov>; Carroll, Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>

**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I agree with you; it is strange. Happy to provide the preamble. I've excerpted the language below, but if you'd prefer to have a link to the draft, let me know. The highlighted sentences are what the footnote is tagged to. In terms of timing, could you get it back to me by COB Monday? I know that is quick, but we are on a very turnaround.

Thanks,  
Laura

Preamble:

“We note that States have been approved to make Medicaid FFS supplemental payments up to the ACR for qualified practitioner services (for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and for safety net hospitals.[FOOTNOTE ON THIS SENTENCE] CMS had previously approved SDPs that resulted in total payment rates up to the ACR for the same providers that States had approved State plan authority to make supplemental payments up to the ACR in Medicaid FFS. Additionally, while CMS does not review the provider payment rate assumptions for all services underlying Medicaid managed care rate development, we had recently approved Medicaid managed care contracts in one State where plans are paid capitation rates developed assuming the use of commercial rates paid to providers for all services covered in the contract.”

....

“CMS ultimately interpreted the current § 438.6(c)(2)(i) (which we propose to re-designate as § 438.6(c)(2)(ii)(I) and (J) along with revisions to better reflect our interpretation) to allow total payment rates in an SDP up to the ACR. The statutory and regulatory requirements for the UPL in Medicaid FFS do not apply to risk-based managed care plans; therefore, permitting States to direct MCOs, PIHPs, PAHPs to make payments higher than the UPL does not violate any Medicaid managed care statutory or regulatory requirements. We internally acknowledged at the time and subsequently that our standard applied the ACR benchmark more broadly across more services and provider types than allowed under Medicaid FFS. Our rationale for doing so was that using the ACR allowed States more discretion than the Medicaid UPL because it allows States to ensure that Medicaid managed care enrollees have access to care that is comparable to access for the broader general public. Also, using the ACR presented the least disruption for States as they were transitioning existing, and often long-standing, pass-through payments<sup>[1]</sup> into SDPs, while at the same time providing a ceiling for

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<sup>[1]</sup> Pass-through payments are defined in § 438.6(a) as, “any amount required by the State to be added to the contracted payment rates, and considered in calculating the actuarially sound capitation rate between the MCO, PIHP, or PAHP and hospitals, physicians, or nursing facilities that is not for a specific service or benefit provided to a specific enrollee covered under the contract, a provider payment methodology permitted under § 438.6(c), a sub-capitated payment

SDPs to protect against the potential of SDPs threatening States' ability to comply with our interpretation of current § 438.6(c)(2)(i) that total provider payment rates resulting from SDPs be reasonable, appropriate and attainable. Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates. [FOOTNOTE ON THIS SENTENCE]"

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Sent:** Thursday, March 9, 2023 11:43 AM

**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>;

Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS)

<[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS)

<[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>;

Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS)

<[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton

(CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll,

Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>

**Subject:** RE: SDP NPRM follow-up

Hey Laura –

It's not a problem. What's your deadline for a response? That's a strange comment considering that we didn't finalize MFAR but it sounds like they're saying that the characterization of these payments doesn't match the historical characterization we provided in MFAR (though I think we took some of the language below from the NRPM), but I'd like take a look at it and get back to you.

If it's at all possible, I would appreciate being able to see the preamble language that informed the footnot here, just to make sure I have some context if you're able to share the draft NPRM.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Thursday, March 9, 2023 11:37 AM

**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>;

Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS)

<[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS)

<[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>;

Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS)

<[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton

(CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll,

Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>

**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I am sorry, but we go more feedback on this round of clearance of the NPRM; this is the last round before show stoppers, so hopefully it is the last. S

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arrangement for a specific set of services and enrollees covered under the contract; GME payments; or FQHC or RHC wrap around payments."

Specifically, OMB had the following comment: “Some of the messaging in footnote 64 (and 66) appears contradict the characterization of these supplemental payments in MFAR. Please confirm FMG is comfortable with the footnote and if not please incorporate FMG edits.”

Here is the footnote (should like very very familiar):

Footnote (footnotes 64 and 66 are the same): “CMS has approved Medicaid state plan amendments authorizing such targeted Medicaid supplemental payment methodologies for qualified practitioner services up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used>. As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).”

Are there any edits to this that you’d want us to incorporate? We took all the edits you had proposed last time we asked you to review, but wanted to reconfirm given OMB’s request.

Thanks,  
Laura

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Sent:** Wednesday, February 8, 2023 11:20 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll, Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>  
**Subject:** RE: SDP NPRM follow-up

Hi Laura & team –

Please see our team’s below suggested responses and edits (in **bold**). Note that I didn’t have any comments on Q3.

One overall note for both 1 & 2 below is that the authority for the ACR really does come from 1902(a)(30)(A) and from the idea that ACRs are applicable to services are not otherwise limited to a Medicare-equivalent UPL under 42 CFR 447.271, 42 CFR 447.272, 447.321, and 447.325. As there is otherwise no UPL for physician, the ACR was a means to ensure that physician supplemental payments (particularly for those in state or county run academic medical centers, where they could access a significant portion of IGT funding), would be limited to the amounts that would otherwise be paid by the commercial market noting that commercial payers had an interest in keeping payment rates at a reasonable, competitive level in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).

1. Preamble: “We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services **(for example, physicians under the physician services benefit) provided in** academic medical centers, **physician practices,** and safety net hospitals.”

Footnote at the end of this sentence, “CMS has approved Medicaid state plan amendments authorizing **such targeted Medicaid supplemental** payment methodologies **for qualified practitioner services** up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at

<https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>.

Instructions specific to qualified practitioner services ACR are further described in the following instructions:

<https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>” **As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).**

**(b)(5)**

2. Preamble, “Finally, using the ACR provided some parity with Medicaid FFS payment policy for **supplemental** payments for qualified practitioner services **(for example, physicians under the physician services benefit) provided in** academic medical centers, **physician practices,** and safety net hospitals.”

**(b)(5)**

3. Preamble, “We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available.”  
OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?

Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

**We're in agreement with #3.**

Let us know if you have any questions.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Sunday, February 5, 2023 11:36 AM  
**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** SDP NPRM follow-up

Hi Andrew,

We are back into clearance again with the NPRM on SDPs. We have received official comments from OGC and informal/unofficial comments from OMB. There are 3 that I wanted to run past you to see if you agree or would suggest changes/edits. Any chance you could look at these by COB Thursday? Also happy to meet if that would help.

Thanks,  
Laura

1. Preamble: "We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services at an academic medical center and for safety net hospitals." Footnote at the end of this sentence, "CMS has approved Medicaid state plan amendments authorizing payment methodologies up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>"

**(b)(5)**

2. Preamble, "Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates."

**(b)(5)**

**(b)(5)**

3. Preamble, “We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available.”

OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?

Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)

Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 1/8/2023 9:06:31 PM  
**To:** Bonelli, Anna (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Kuhn, Juliet (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** RE: RE: NPRM on SDPs

Hi Anna,

We had a few comments in the Payment rate section that related to Medicaid FFS payment policy that I wanted to run past you all. I think these are likely questions for Andrew B or his group; just let me know if you'd prefer to reach out or if I should.

Thanks,  
Laura

- 1) OGD has suggested the following edit, "Generally for inpatient and outpatient services, these UPL requirement apply to three classes of facilities based on ownership status: state-owned, non-State Government-owned, and private." DMCP's understanding was that this was always the case and are questioning if the word "generally" is accurate. Can FMG opine? Would you recommend deleting "generally" or keeping it?
- 2) We got the following comments (C31 and C33) from OGC asking for the regulation or SMDL for allowing supplemental payments up to ACR. The best links we could find were the following; please let us know if there is a better link to cite to.

<https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used>

<https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>

(b)(5)

**From:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Sent:** Friday, January 6, 2023 12:09 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <Juliet.Kuhn@cms.hhs.gov>  
**Subject:** RE: NPRM on SDPs

Cool. That sounds great. Thanks!

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Friday, January 6, 2023 11:07 AM

**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Also, just FYI – can't remember who got this and who didn't, but the next round of clearance will be CMS Rd 3/ HHS Rd 2 / OMB Rd 1; so all three levels at once....fun times. I flag because that means OACT will still get another shot next round and I think they had a comment in your section...we though originally this would be the last round for CMS...

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 11:00 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Awesome. Thank you so much, Laura.

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 10:57 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Hi Anna,

Separate payment terms is a whole fun (haha) portion of the rule we are working through – so I'll spare you the details and your general assessment is in the ballpark; SPTs are a mechanism for the state to provide the funds to the plan to pay out the SDP (instead of building it into the capitation rate). So I would say that the financing rules apply to the SDP as a whole, irrespective of how the state pays the plans the funds for the SDP.

As for the draft we are working on, here is the link. I believe you have been working in the correct one; I saw your comment responses in the version we've been working in. Just a reminder – there are comments in the C and I pages; I pages are the reg text.

<https://share.cms.gov/center/CMCS/DEHPG/DMCP/438%20Revision%202439/Forms/AllItems.aspx?RootFolder=%2Fcenter%2FCMCS%2FDEHPG%2FDMCP%2F438%20Revision%202439%2FMaster%20documents%2FCMS%20Round%202%2FCMS%202%2EHHS%201%20Masters%20and%20Log&View=%7B7CB9B7CB%2DFB8D%2D4F95%2DB57A%2D9201EDF71EAB%7D>

Thanks,  
Laura

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 9:26 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

One more thing. Sorry to ask, but would you mind sending me the draft you are working on? I see one with edits from Juliet so I'm pretty confident I've been using the right one but just want to triple check because there have been a lot of links sent out. Thank you!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Wednesday, January 4, 2023 11:53 AM



**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>

**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>; Regmi, Pooja (CMS/CMCS) <[Pooja.Regmi@cms.hhs.gov](mailto:Pooja.Regmi@cms.hhs.gov)>;  
Gentile, Amy (CMS/CMCS) <[Amy.Gentile@cms.hhs.gov](mailto:Amy.Gentile@cms.hhs.gov)>

**Subject:** NPRM on SDPs

Hi Anna,

I wanted to check in and coordinate on this round of NPRM clearance. We have combined all the comments from OGC, HHS and CMS into 1 doc for the C pages (SDPs preamble) that we will work from. Happy to share with you our SDP team's process for this go around if you want to follow that.

I also wanted to flag for you a comment from OGC on C55 of the master in the finance section – it relates to the authority (1903(w) vs. 1903(m)). It is a long comment – copied below, but at the end SLB offers if we need to discuss this separately, to let OGC know so that we can work this out before the next round of clearance.

Wanted to flag given that the turnaround is fast. Happy to meet to discuss further – I think OACT had a much shorter but related comment too.

**(b)(5)**

We know there's an 1903(w) problem, but is the reason the SDP proposal would be unapprovable the actuarial soundness requirement or because paying FFP would violate 1903(w) and approving the SDP would result in a needlessly inefficient pay & chase?

If CMS thinks there is some issue with section 1903(m)(2)(A)(iii) and the actuarial soundness requirement, CMS needs to explain that because I do not understand how the source of the non-federal share makes the rates unsound. (Is CMS suggesting that the capitation rates are being based on the tax money available to the state instead of the underlying cost of covered services?)

If we need to discuss this separately, please let OGC know so that we can work this out before the next round of clearance.

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)

Message

**From:** Badaracco, Andrew (CMS/CMCS); (b)(6)  
(b)(6)

**Sent:** 3/13/2023 9:01:58 PM

**To:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)

**CC:** Penelli, Anna (CMS/CMCS); (b)(6)  
(b)(6) Giles, John (CMS/CMCS)  
(b)(6) Loizias, Alex (CMS/CMCS)  
(b)(6) Wilson, Andrew  
(b)(6) Caulder, Tara  
(b)(6) Mikow, Asher  
(b)(6) Thompson, Christopher (CMS/CMCS); (b)(6)  
(b)(6) Yablochnikov, Daniil  
(b)(6); Motley (she/her),  
(b)(6); Juhring, Heather  
(b)(6); Johns, Hamilton  
(b)(6) Kennedy, Jocelyn  
(b)(6); Carroll, Lisa  
(b)(6)

**Subject:** RE: RE: SDP NPRM follow-up

Hey Laura –

I consulted with our staff, and determined that this is consistent with the description of the physician ACR in MFAR. Two minor tweaks to the sentences in the preamble, so that it more closely ties into the MFAR preamble. The language tweaks below come directly from 84 FR 63762 of the MFAR preamble.

“We note that States have been approved to make Medicaid FFS supplemental payments up to the ACR for qualified **practitioners affiliated with and furnishing** services (for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and for safety net hospitals.[FOOTNOTE ON THIS SENTENCE]

Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioners **affiliated with and furnishing** services in academic medical centers, **physician practices, and** safety net hospitals where CMS has approved such rates. [FOOTNOTE ON THIS SENTENCE]”

Otherwise this is good to go.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Sent:** Thursday, March 9, 2023 11:54 AM

**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Mikow, Asher (CMS/CMCS) <Asher.Mikow@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Motley (she/her), Danielle (CMS/CMCS) <Danielle.Motley@cms.hhs.gov>; Juhring, Heather (CMS/CMCS) <Heather.Juhring@cms.hhs.gov>; Johns, Hamilton (CMS/CMCS) <Hamilton.Johns@cms.hhs.gov>; Kennedy, Jocelyn (CMS/CMCS) <Jocelyn.Kennedy@cms.hhs.gov>; Carroll, Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>

**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I agree with you; it is strange. Happy to provide the preamble. I've excerpted the language below, but if you'd prefer to have a link to the draft, let me know. The highlighted sentences are what the footnote is tagged to. In terms of timing, could you get it back to me by COB Monday? I know that is quick, but we are on a very turnaround.

Thanks,  
Laura

Preamble:

“We note that States have been approved to make Medicaid FFS supplemental payments up to the ACR for qualified practitioner services (for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and for safety net hospitals.[FOOTNOTE ON THIS SENTENCE] CMS had previously approved SDPs that resulted in total payment rates up to the ACR for the same providers that States had approved State plan authority to make supplemental payments up to the ACR in Medicaid FFS. Additionally, while CMS does not review the provider payment rate assumptions for all services underlying Medicaid managed care rate development, we had recently approved Medicaid managed care contracts in one State where plans are paid capitation rates developed assuming the use of commercial rates paid to providers for all services covered in the contract.”

....  
“CMS ultimately interpreted the current § 438.6(c)(2)(i) (which we propose to re-designate as § 438.6(c)(2)(ii)(I) and (J) along with revisions to better reflect our interpretation) to allow total payment rates in an SDP up to the ACR. The statutory and regulatory requirements for the UPL in Medicaid FFS do not apply to risk-based managed care plans; therefore, permitting States to direct MCOs, PIHPs, PAHPs to make payments higher than the UPL does not violate any Medicaid managed care statutory or regulatory requirements. We internally acknowledged at the time and subsequently that our standard applied the ACR benchmark more broadly across more services and provider types than allowed under Medicaid FFS. Our rationale for doing so was that using the ACR allowed States more discretion than the Medicaid UPL because it allows States to ensure that Medicaid managed care enrollees have access to care that is comparable to access for the broader general public. Also, using the ACR presented the least disruption for States as they were transitioning existing, and often long-standing, pass-through payments<sup>[1]</sup> into SDPs, while at the same time providing a ceiling for

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<sup>[1]</sup> Pass-through payments are defined in § 438.6(a) as, “any amount required by the State to be added to the contracted payment rates, and considered in calculating the actuarially sound capitation rate between the MCO, PIHP, or PAHP and hospitals, physicians, or nursing facilities that is not for a specific service or benefit provided to a specific enrollee covered under the contract, a provider payment methodology permitted under § 438.6(c), a sub-capitated payment

SDPs to protect against the potential of SDPs threatening States' ability to comply with our interpretation of current § 438.6(c)(2)(i) that total provider payment rates resulting from SDPs be reasonable, appropriate and attainable. Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates. [FOOTNOTE ON THIS SENTENCE]"

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Sent:** Thursday, March 9, 2023 11:43 AM

**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>;

Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS)

<[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS)

<[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>;

Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS)

<[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton

(CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll,

Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>

**Subject:** RE: SDP NPRM follow-up

Hey Laura –

It's not a problem. What's your deadline for a response? That's a strange comment considering that we didn't finalize MFAR but it sounds like they're saying that the characterization of these payments doesn't match the historical characterization we provided in MFAR (though I think we took some of the language below from the NRPM), but I'd like take a look at it and get back to you.

If it's at all possible, I would appreciate being able to see the preamble language that informed the footnot here, just to make sure I have some context if you're able to share the draft NPRM.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Thursday, March 9, 2023 11:37 AM

**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>;

Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS)

<[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS)

<[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>;

Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS)

<[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton

(CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll,

Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>

**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I am sorry, but we go more feedback on this round of clearance of the NPRM; this is the last round before show stoppers, so hopefully it is the last. S

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arrangement for a specific set of services and enrollees covered under the contract; GME payments; or FQHC or RHC wrap around payments."

Specifically, OMB had the following comment: "Some of the messaging in footnote 64 (and 66) appears contradict the characterization of these supplemental payments in MFAR. Please confirm FMG is comfortable with the footnote and if not please incorporate FMG edits."

Here is the footnote (should like very very familiar):

Footnote (footnotes 64 and 66 are the same): "CMS has approved Medicaid state plan amendments authorizing such targeted Medicaid supplemental payment methodologies for qualified practitioner services up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used>. As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A)."

Are there any edits to this that you'd want us to incorporate? We took all the edits you had proposed last time we asked you to review, but wanted to reconfirm given OMB's request.

Thanks,  
Laura

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Sent:** Wednesday, February 8, 2023 11:20 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll, Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>  
**Subject:** RE: SDP NPRM follow-up

Hi Laura & team –

Please see our team's below suggested responses and edits (in **bold**). Note that I didn't have any comments on Q3.

One overall note for both 1 & 2 below is that the authority for the ACR really does come from 1902(a)(30)(A) and from the idea that ACRs are applicable to services are not otherwise limited to a Medicare-equivalent UPL under 42 CFR 447.271, 42 CFR 447.272, 447.321, and 447.325. As there is otherwise no UPL for physician, the ACR was a means to ensure that physician supplemental payments (particularly for those in state or county run academic medical centers, where they could access a significant portion of IGT funding), would be limited to the amounts that would otherwise be paid by the commercial market noting that commercial payers had an interest in keeping payment rates at a reasonable, competitive level in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).

1. Preamble: “We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services **(for example, physicians under the physician services benefit) provided in** academic medical centers, **physician practices,** and safety net hospitals.”

Footnote at the end of this sentence, “CMS has approved Medicaid state plan amendments authorizing **such targeted Medicaid supplemental** payment methodologies **for qualified practitioner services** up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at

<https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>.

Instructions specific to qualified practitioner services ACR are further described in the following instructions:

<https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>” **As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).**

**(b)(5)**

2. Preamble, “Finally, using the ACR provided some parity with Medicaid FFS payment policy for **supplemental** payments for qualified practitioner services **(for example, physicians under the physician services benefit) provided in** academic medical centers, **physician practices,** and safety net hospitals.”

**(b)(5)**

3. Preamble, “We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available.”  
OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?

Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

**We're in agreement with #3.**

Let us know if you have any questions.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Sunday, February 5, 2023 11:36 AM  
**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** SDP NPRM follow-up

Hi Andrew,

We are back into clearance again with the NPRM on SDPs. We have received official comments from OGC and informal/unofficial comments from OMB. There are 3 that I wanted to run past you to see if you agree or would suggest changes/edits. Any chance you could look at these by COB Thursday? Also happy to meet if that would help.

Thanks,  
Laura

1. Preamble: "We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services at an academic medical center and for safety net hospitals." Footnote at the end of this sentence, "CMS has approved Medicaid state plan amendments authorizing payment methodologies up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>"

**(b)(5)**

2. Preamble, "Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates."

**(b)(5)**

**(b)(5)**

3. Preamble, “We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available.”

OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?

Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)



Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
**Sent:** 3/14/2023 3:29:56 PM  
**To:** Badaracco, Andrew (CMS/CMCS) (b)(6)  
**CC:** Bonelli, Anna (CMS/CMCS) (b)(6); Giles, John (CMS/CMCS)  
(b)(6); Loizias, Alex (CMS/CMCS)  
(b)(6); Wilson, Andrew  
(b)(6); Caulder, Tara  
(b)(6); Mikow, Asher  
(b)(6); Thompson,  
(b)(6); Yablochnikov, Daniil  
(b)(6); Motley (she/her),  
(b)(6); Juhring, Heather  
(b)(6); Johns, Hamilton  
(b)(6); Kennedy, Jocelyn  
(b)(6); Carroll, Lisa

**Subject:** RE: RE: SDP NPRM follow-up

Thanks, Andrew! We'll update the draft with these tweaks and let OMB know that we did consult with you all and made minor revisions to align with MFAR.

Thanks,  
Laura

**From:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Sent:** Monday, March 13, 2023 5:02 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Mikow, Asher (CMS/CMCS) <Asher.Mikow@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Motley (she/her), Danielle (CMS/CMCS) <Danielle.Motley@cms.hhs.gov>; Juhring, Heather (CMS/CMCS) <Heather.Juhring@cms.hhs.gov>; Johns, Hamilton (CMS/CMCS) <Hamilton.Johns@cms.hhs.gov>; Kennedy, Jocelyn (CMS/CMCS) <Jocelyn.Kennedy@cms.hhs.gov>; Carroll, Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>  
**Subject:** RE: SDP NPRM follow-up

Hey Laura –

I consulted with our staff, and determined that this is consistent with the description of the physician ACR in MFAR. Two minor tweaks to the sentences in the preamble, so that it more closely ties into the MFAR preamble. The language tweaks below come directly from 84 FR 63762 of the MFAR preamble.

“We note that States have been approved to make Medicaid FFS supplemental payments up to the ACR for qualified **practitioners affiliated with and furnishing** services (for example, physicians under the physician services benefit) ~~provided~~ in academic medical centers, physician practices, and ~~for~~ safety net hospitals.[FOOTNOTE ON THIS SENTENCE]

Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioners **affiliated with and furnishing** services in academic medical centers, **physician practices, and** safety net hospitals where CMS has approved such rates. [FOOTNOTE ON THIS SENTENCE]”

Otherwise this is good to go.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Thursday, March 9, 2023 11:54 AM

**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll, Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>

**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I agree with you; it is strange. Happy to provide the preamble. I've excerpted the language below, but if you'd prefer to have a link to the draft, let me know. The highlighted sentences are what the footnote is tagged to. In terms of timing, could you get it back to me by COB Monday? I know that is quick, but we are on a very turnaround.

Thanks,  
Laura

Preamble:

“We note that States have been approved to make Medicaid FFS supplemental payments up to the ACR for qualified practitioner services (for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and for safety net hospitals.[FOOTNOTE ON THIS SENTENCE] CMS had previously approved SDPs that resulted in total payment rates up to the ACR for the same providers that States had approved State plan authority to make supplemental payments up to the ACR in Medicaid FFS. Additionally, while CMS does not review the provider payment rate assumptions for all services underlying Medicaid managed care rate development, we had recently approved Medicaid managed care contracts in one State where plans are paid capitation rates developed assuming the use of commercial rates paid to providers for all services covered in the contract.”

....

“CMS ultimately interpreted the current § 438.6(c)(2)(i) (which we propose to re-designate as § 438.6(c)(2)(ii)(I) and (J) along with revisions to better reflect our interpretation) to allow total payment rates in an SDP up to the ACR. The statutory and regulatory requirements for the UPL in Medicaid FFS do not apply to risk-based managed care plans; therefore, permitting States to direct MCOs, PIHPs, PAHPs to make payments higher than the UPL does not violate any Medicaid managed care statutory or regulatory requirements. We internally acknowledged at the time and subsequently that our standard applied the ACR benchmark more broadly across more services and provider types than allowed under Medicaid FFS. Our rationale for doing so was that using the ACR allowed States more discretion than the Medicaid UPL because it allows States to ensure that Medicaid managed care enrollees have access to care that is comparable to access for the broader general public. Also, using the ACR presented the least disruption for States as they were transitioning existing, and often long-standing, pass-through payments<sup>[1]</sup> into SDPs, while at the same time providing a ceiling for SDPs to protect against the potential of SDPs threatening States’ ability to comply with our interpretation of current § 438.6(c)(2)(i) that total provider payment rates resulting from SDPs be reasonable, appropriate and attainable. Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates. [FOOTNOTE ON THIS SENTENCE]”

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Sent:** Thursday, March 9, 2023 11:43 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll, Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>  
**Subject:** RE: SDP NPRM follow-up

Hey Laura –

It’s not a problem. What’s your deadline for a response? That’s a strange comment considering that we didn’t finalize MFAR but it sounds like they’re saying that the characterization of these payments doesn’t match the historical characterization we provided in MFAR (though I think we took some of the language below from the NRPM), but I’d like take a look at it and get back to you.

If it’s at all possible, I would appreciate being able to see the preamble language that informed the footnot here, just to make sure I have some context if you’re able to share the draft NPRM.

Thanks!

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<sup>[1]</sup> Pass-through payments are defined in § 438.6(a) as, “any amount required by the State to be added to the contracted payment rates, and considered in calculating the actuarially sound capitation rate between the MCO, PIHP, or PAHP and hospitals, physicians, or nursing facilities that is not for a specific service or benefit provided to a specific enrollee covered under the contract, a provider payment methodology permitted under § 438.6(c), a sub-capitated payment arrangement for a specific set of services and enrollees covered under the contract; GME payments; or FQHC or RHC wrap around payments.”

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Thursday, March 9, 2023 11:37 AM

**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll, Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>

**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I am sorry, but we got more feedback on this round of clearance of the NPRM; this is the last round before show stoppers, so hopefully it is the last. S

Specifically, OMB had the following comment: "Some of the messaging in footnote 64 (and 66) appears contradict the characterization of these supplemental payments in MFAR. Please confirm FMG is comfortable with the footnote and if not please incorporate FMG edits."

Here is the footnote (should like very very familiar):

Footnote (footnotes 64 and 66 are the same): "CMS has approved Medicaid state plan amendments authorizing such targeted Medicaid supplemental payment methodologies for qualified practitioner services up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used>. As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A)."

Are there any edits to this that you'd want us to incorporate? We took all the edits you had proposed last time we asked you to review, but wanted to reconfirm given OMB's request.

Thanks,  
Laura

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Sent:** Wednesday, February 8, 2023 11:20 AM

**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>;

Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Motley (she/her), Danielle (CMS/CMCS) <Danielle.Motley@cms.hhs.gov>; Juhring, Heather (CMS/CMCS) <Heather.Juhring@cms.hhs.gov>; Johns, Hamilton (CMS/CMCS) <Hamilton.Johns@cms.hhs.gov>; Kennedy, Jocelyn (CMS/CMCS) <Jocelyn.Kennedy@cms.hhs.gov>; Carroll, Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>

**Subject:** RE: SDP NPRM follow-up

Hi Laura & team –

Please see our team’s below suggested responses and edits (in **bold**). Note that I didn’t have any comments on Q3.

One overall note for both 1 & 2 below is that the authority for the ACR really does come from 1902(a)(30)(A) and from the idea that ACRs are applicable to services are not otherwise limited to a Medicare-equivalent UPL under 42 CFR 447.271, 42 CFR 447.272, 447.321, and 447.325. As there is otherwise no UPL for physician, the ACR was a means to ensure that physician supplemental payments (particularly for those in state or county run academic medical centers, where they could access a significant portion of IGT funding), would be limited to the amounts that would otherwise be paid by the commercial market noting that commercial payers had an interest in keeping payment rates at a reasonable, competitive level in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).

1. Preamble: “We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services **(for example, physicians under the physician services benefit) provided in** academic medical centers, **physician practices**, and safety net hospitals.”

Footnote at the end of this sentence, “CMS has approved Medicaid state plan amendments authorizing **such targeted Medicaid supplemental** payment methodologies **for qualified practitioner services** up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at

<https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>.

Instructions specific to qualified practitioner services ACR are further described in the following instructions:

<https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>” **As practitioner payments are not otherwise subject to**

**Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).**

**(b)(5)**

2. Preamble, “Finally, using the ACR provided some parity with Medicaid FFS payment policy for **supplemental** payments for qualified practitioner services **(for example, physicians under the physician services benefit) provided in** academic medical centers, **physician practices**, and safety net hospitals.”

**(b)(5)**

(b)(5)

3. Preamble, “We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available.”  
OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?  
Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

**We’re in agreement with #3.**

Let us know if you have any questions.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Sunday, February 5, 2023 11:36 AM  
**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>  
**Subject:** SDP NPRM follow-up

Hi Andrew,

We are back into clearance again with the NPRM on SDPs. We have received official comments from OGC and informal/unofficial comments from OMB. There are 3 that I wanted to run past you to see if you agree or would suggest changes/edits. Any chance you could look at these by COB Thursday? Also happy to meet if that would help.

Thanks,  
Laura

1. Preamble: “We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services at an academic medical center and for safety net hospitals.”  
Footnote at the end of this sentence, “CMS has approved Medicaid state plan amendments authorizing payment methodologies up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit->

[demonstrations/index.html](#). Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>”

**(b)(5)**

2. Preamble, “Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates.”

**(b)(5)**

3. Preamble, “We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available.”  
OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?  
Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)





Message

**From:** Badaracco, Andrew (CMS/CMCS); (b)(6)  
(b)(6)  
**Sent:** 3/14/2023 3:30:38 PM  
**To:** Snyder, Laura (CMS/CMCS); (b)(6)  
(b)(6)  
**CC:** Bonelli, Anna (CMS/CMCS); (b)(6)  
(b)(6); Giles, John (CMS/CMCS)  
(b)(6); Loizias, Alex (CMS/CMCS)  
(b)(6); Wilson, Andrew  
(b)(6); Caulder, Tara  
(b)(6); Mikow, Asher  
(b)(6); Thompson,  
Christopher (CMS/CMCS); (b)(6)  
(b)(6); Yablochnikov, Daniil  
(b)(6); Motley (she/her),  
(b)(6); Juhring, Heather  
(b)(6); Johns, Hamilton  
(b)(6); Kennedy, Jocelyn  
(b)(6); Carroll, Lisa

**Subject:** RE: RE: SDP NPRM follow-up

Excellent - Good luck with the rest of the clearance process!

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Tuesday, March 14, 2023 11:30 AM  
**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Mikow, Asher (CMS/CMCS) <Asher.Mikow@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Motley (she/her), Danielle (CMS/CMCS) <Danielle.Motley@cms.hhs.gov>; Juhring, Heather (CMS/CMCS) <Heather.Juhring@cms.hhs.gov>; Johns, Hamilton (CMS/CMCS) <Hamilton.Johns@cms.hhs.gov>; Kennedy, Jocelyn (CMS/CMCS) <Jocelyn.Kennedy@cms.hhs.gov>; Carroll, Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>  
**Subject:** RE: SDP NPRM follow-up

Thanks, Andrew! We'll update the draft with these tweaks and let OMB know that we did consult with you all and made minor revisions to align with MFAR.

Thanks,  
Laura

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Sent:** Monday, March 13, 2023 5:02 PM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll, Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>  
**Subject:** RE: SDP NPRM follow-up

Hey Laura –

I consulted with our staff, and determined that this is consistent with the description of the physician ACR in MFAR. Two minor tweaks to the sentences in the preamble, so that it more closely ties into the MFAR preamble. The language tweaks below come directly from 84 FR 63762 of the MFAR preamble.

“We note that States have been approved to make Medicaid FFS supplemental payments up to the ACR for qualified **practitioners affiliated with and furnishing** services (for example, physicians under the physician services benefit) ~~provided~~ in academic medical centers, physician practices, and ~~for~~ safety net hospitals.[FOOTNOTE ON THIS SENTENCE]

Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioners **affiliated with and furnishing** services in academic medical centers, **physician practices, and** safety net hospitals where CMS has approved such rates. [FOOTNOTE ON THIS SENTENCE]”

Otherwise this is good to go.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Thursday, March 9, 2023 11:54 AM  
**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll, Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>  
**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I agree with you; it is strange. Happy to provide the preamble. I've excerpted the language below, but if you'd prefer to have a link to the draft, let me know. The highlighted sentences are what the footnote is tagged to. In terms of timing, could you get it back to me by COB Monday? I know that is quick, but we are on a very turnaround.

Thanks,  
Laura

Preamble:

“We note that States have been approved to make Medicaid FFS supplemental payments up to the ACR for qualified practitioner services (for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and for safety net hospitals.[FOOTNOTE ON THIS SENTENCE] CMS had previously approved SDPs that resulted in total payment rates up to the ACR for the same providers that States had approved State plan authority to make supplemental payments up to the ACR in Medicaid FFS. Additionally, while CMS does not review the provider payment rate assumptions for all services underlying Medicaid managed care rate development, we had recently approved Medicaid managed care contracts in one State where plans are paid capitation rates developed assuming the use of commercial rates paid to providers for all services covered in the contract.”

....  
“CMS ultimately interpreted the current § 438.6(c)(2)(i) (which we propose to re-designate as § 438.6(c)(2)(ii)(I) and (J) along with revisions to better reflect our interpretation) to allow total payment rates in an SDP up to the ACR. The statutory and regulatory requirements for the UPL in Medicaid FFS do not apply to risk-based managed care plans; therefore, permitting States to direct MCOs, PIHPs, PAHPs to make payments higher than the UPL does not violate any Medicaid managed care statutory or regulatory requirements. We internally acknowledged at the time and subsequently that our standard applied the ACR benchmark more broadly across more services and provider types than allowed under Medicaid FFS. Our rationale for doing so was that using the ACR allowed States more discretion than the Medicaid UPL because it allows States to ensure that Medicaid managed care enrollees have access to care that is comparable to access for the broader general public. Also, using the ACR presented the least disruption for States as they were transitioning existing, and often long-standing, pass-through payments<sup>[1]</sup> into SDPs, while at the same time providing a ceiling for SDPs to protect against the potential of SDPs threatening States’ ability to comply with our interpretation of current § 438.6(c)(2)(i) that total provider payment rates resulting from SDPs be reasonable, appropriate and attainable. Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates. [FOOTNOTE ON THIS SENTENCE]”

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Sent:** Thursday, March 9, 2023 11:43 AM

**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll,

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<sup>[1]</sup> Pass-through payments are defined in § 438.6(a) as, “any amount required by the State to be added to the contracted payment rates, and considered in calculating the actuarially sound capitation rate between the MCO, PIHP, or PAHP and hospitals, physicians, or nursing facilities that is not for a specific service or benefit provided to a specific enrollee covered under the contract, a provider payment methodology permitted under § 438.6(c), a sub-capitated payment arrangement for a specific set of services and enrollees covered under the contract; GME payments; or FQHC or RHC wrap around payments.”

Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>

**Subject:** RE: SDP NPRM follow-up

Hey Laura –

It's not a problem. What's your deadline for a response? That's a strange comment considering that we didn't finalize MFAR but it sounds like they're saying that the characterization of these payments doesn't match the historical characterization we provided in MFAR (though I think we took some of the language below from the NRPM), but I'd like take a look at it and get back to you.

If it's at all possible, I would appreciate being able to see the preamble language that informed the footnot here, just to make sure I have some context if you're able to share the draft NPRM.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

**Sent:** Thursday, March 9, 2023 11:37 AM

**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>

**Cc:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Loizias, Alex (CMS/CMCS) <Alexandra.Loizias@cms.hhs.gov>; Wilson, Andrew (CMS/CMCS) <Andrew.Wilson1@cms.hhs.gov>; Caulder, Tara (CMS/CMCS) <Tara.Caulder@cms.hhs.gov>; Mikow, Asher (CMS/CMCS) <Asher.Mikow@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>; Yablochnikov, Daniil (CMS/CMCS) <Daniil.Yablochnikov@cms.hhs.gov>; Motley (she/her), Danielle (CMS/CMCS) <Danielle.Motley@cms.hhs.gov>; Juhring, Heather (CMS/CMCS) <Heather.Juhring@cms.hhs.gov>; Johns, Hamilton (CMS/CMCS) <Hamilton.Johns@cms.hhs.gov>; Kennedy, Jocelyn (CMS/CMCS) <Jocelyn.Kennedy@cms.hhs.gov>; Carroll, Lisa (CMS/CMCS) <Lisa.Carroll@cms.hhs.gov>

**Subject:** RE: SDP NPRM follow-up

Hi Andrew,

I am sorry, but we go more feedback on this round of clearance of the NPRM; this is the last round before show stoppers, so hopefully it is the last. S

Specifically, OMB had the following comment: "Some of the messaging in footnote 64 (and 66) appears contradict the characterization of these supplemental payments in MFAR. Please confirm FMG is comfortable with the footnote and if not please incorporate FMG edits."

Here is the footnote (should like very very familiar):

Footnote (footnotes 64 and 66 are the same): "CMS has approved Medicaid state plan amendments authorizing such targeted Medicaid supplemental payment methodologies for qualified practitioner services up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20a%20lternate%20fee%20schedule%20is%20used>. As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A)."

Are there any edits to this that you'd want us to incorporate? We took all the edits you had proposed last time we asked you to review, but wanted to reconfirm given OMB's request.

Thanks,  
Laura

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Sent:** Wednesday, February 8, 2023 11:20 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Mikow, Asher (CMS/CMCS) <[Asher.Mikow@cms.hhs.gov](mailto:Asher.Mikow@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Motley (she/her), Danielle (CMS/CMCS) <[Danielle.Motley@cms.hhs.gov](mailto:Danielle.Motley@cms.hhs.gov)>; Juhring, Heather (CMS/CMCS) <[Heather.Juhring@cms.hhs.gov](mailto:Heather.Juhring@cms.hhs.gov)>; Johns, Hamilton (CMS/CMCS) <[Hamilton.Johns@cms.hhs.gov](mailto:Hamilton.Johns@cms.hhs.gov)>; Kennedy, Jocelyn (CMS/CMCS) <[Jocelyn.Kennedy@cms.hhs.gov](mailto:Jocelyn.Kennedy@cms.hhs.gov)>; Carroll, Lisa (CMS/CMCS) <[Lisa.Carroll@cms.hhs.gov](mailto:Lisa.Carroll@cms.hhs.gov)>  
**Subject:** RE: SDP NPRM follow-up

Hi Laura & team –

Please see our team's below suggested responses and edits (in **bold**). Note that I didn't have any comments on Q3.

One overall note for both 1 & 2 below is that the authority for the ACR really does come from 1902(a)(30)(A) and from the idea that ACRs are applicable to services are not otherwise limited to a Medicare-equivalent UPL under 42 CFR 447.271, 42 CFR 447.272, 447.321, and 447.325. As there is otherwise no UPL for physician, the ACR was a means to ensure that physician supplemental payments (particularly for those in state or county run academic medical centers, where they could access a significant portion of IGT funding), would be limited to the amounts that would otherwise be paid by the commercial market noting that commercial payers had an interest in keeping payment rates at a reasonable, competitive level in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).

1. Preamble: "We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services (**for example, physicians under the physician services benefit) provided in academic medical centers, physician practices, and safety net hospitals.**"  
Footnote at the end of this sentence, "CMS has approved Medicaid state plan amendments authorizing **such targeted Medicaid supplemental** payment methodologies **for qualified practitioner services** up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20OSPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>" **As practitioner payments are not otherwise subject to Medicaid UPL requirements, in 42 C.F.R. 447 subparts C and F, the ACR is a mechanism by which CMS can review Medicaid practitioner supplemental payments compared to average commercial market rates where private insurance companies have an interest in setting reasonable, competitive rates in a manner in which we could feel confident was economic and efficient and consistent with 1902(a)(30)(A).**

**(b)(5)**

2. Preamble, “Finally, using the ACR provided some parity with Medicaid FFS payment policy for **supplemental** payments for qualified practitioner services (**for example, physicians under the physician services benefit**) **provided in** academic medical centers, **physician practices**, and safety net hospitals.”

**(b)(5)**

3. Preamble, “We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available.”  
OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?  
Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

**We’re in agreement with #3.**

Let us know if you have any questions.

Thanks!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Sunday, February 5, 2023 11:36 AM

**To:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Cc:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Wilson, Andrew (CMS/CMCS) <[Andrew.Wilson1@cms.hhs.gov](mailto:Andrew.Wilson1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>

**Subject:** SDP NPRM follow-up

Hi Andrew,

We are back into clearance again with the NPRM on SDPs. We have received official comments from OGC and informal/unofficial comments from OMB. There are 3 that I wanted to run past you to see if you agree or would suggest changes/edits. Any chance you could look at these by COB Thursday? Also happy to meet if that would help.

Thanks,  
Laura

1. Preamble: "We note that States have been approved to make Medicaid supplemental payments up to the ACR for qualified practitioner services at an academic medical center and for safety net hospitals." Footnote at the end of this sentence, "CMS has approved Medicaid state plan amendments authorizing payment methodologies up to the average commercial rate under 1902(a)(30)(A) of the Social Security Act. Additional information on this and other payment demonstrations is published on Medicaid.gov at <https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>. Instructions specific to qualified practitioner services ACR are further described in the following instructions: <https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used.>"

**(b)(5)**

2. Preamble, "Finally, using the ACR provided some parity with Medicaid FFS payment policy for payments for qualified practitioner services at academic medical centers and safety net hospitals where CMS has approved such rates."

**(b)(5)**

3. Preamble, "We also propose that the demonstration must use payment data that excludes payments to FQHCs, RHCs and any non-commercial payers such as Medicare and excludes any payment data for services or codes that the applicable Medicaid managed care plans do not cover under the contracts with the State that will include the SDP. We would consider Marketplace plans to be commercial payers, and therefore, payment data from Marketplace plans should be included when available." OMB informal comment: Is this how the ACR UPL is designed and demonstrated in FFS? If not, why adopt a different approach?  
Proposed Response: Yes, this is in alignment with ACR UPL demonstration instructions in FFS.

Laura Snyder  
(she/her/hers)

Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)



Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 1/9/2023 1:14:28 PM  
**To:** Bonelli, Anna (CMS/CMCS) (b)(6)  
(b)(6)  
**CC:** Kuhn, Juliet (CMS/CMCS) (b)(6)  
(b)(6)  
**Subject:** RE: RE: NPRM on SDPs

Thanks, Anna!

**From:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Sent:** Sunday, January 8, 2023 4:42 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <Juliet.Kuhn@cms.hhs.gov>  
**Subject:** RE: NPRM on SDPs

Hi Laura, I sent this to DFP with a request for info tomorrow.

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Sunday, January 8, 2023 4:07 PM  
**To:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <Juliet.Kuhn@cms.hhs.gov>  
**Subject:** RE: NPRM on SDPs  
**Importance:** High

Hi Anna,

We had a few comments in the Payment rate section that related to Medicaid FFS payment policy that I wanted to run past you all. I think these are likely questions for Andrew B or his group; just let me know if you'd prefer to reach out or if I should.

Thanks,  
Laura

- 1) OGD has suggested the following edit, "Generally for inpatient and outpatient services, these UPL requirement apply to three classes of facilities based on ownership status: state-owned, non-State Government-owned, and private." DMCP's understanding was that this was always the case and are questioning if the word "generally" is accurate. Can FMG opine? Would you recommend deleting "generally" or keeping it?
- 2) We got the following comments (C31 and C33) from OGC asking for the regulation or SMDL for allowing supplemental payments up to ACR. The best links we could find were the following; please let us know if there is a better link to cite to.

<https://www.medicaid.gov/medicaid/downloads/upl-instructions-qualified-practitioner-services-replacement-new.pdf#:~:text=CMS%20has%20approved%20SPAs%20that%20use%20the%20following,payments%20or%20an%20alternate%20fee%20schedule%20is%20used>

<https://www.medicaid.gov/medicaid/financial-management/payment-limit-demonstrations/index.html>

(b)(5)

(b)(5)

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 12:09 PM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Cool. That sounds great. Thanks!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 11:07 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Also, just FYI – can't remember who got this and who didn't, but the next round of clearance will be CMS Rd 3/ HHS Rd 2 / OMB Rd 1; so all three levels at once...fun times. I flag because that means OACT will still get another shot next round and I think they had a comment in your section...we though originally this would be the last round for CMS...

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 11:00 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Awesome. Thank you so much, Laura.

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 10:57 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Hi Anna,

Separate payment terms is a whole fun (haha) portion of the rule we are working through – so I'll spare you the details and your general assessment is in the ballpark; SPTs are a mechanism for the state to provide the funds to the plan to pay out the SDP (instead of building it into the capitation rate). So I would say that the financing rules apply to the SDP as a whole, irrespective of how the state pays the plans the funds for the SDP.

As for the draft we are working on, here is the link. I believe you have been working in the correct one; I saw your comment responses in the version we've been working in. Just a reminder – there are comments in the C and I pages; I pages are the reg text.

<https://share.cms.gov/center/CMCS/DEHPG/DMCP/438%20Revision%202439/Forms/AllItems.aspx?RootFolder=%2FCenter%2FCMCS%2FDEHPG%2FDMCP%2F438%20Revision%202439%2FMaster%20documents%2FCMS%20Round%202%2F>

Thanks,  
Laura

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 9:26 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

One more thing. Sorry to ask, but would you mind sending me the draft you are working on? I see one with edits from Juliet so I'm pretty confident I've been using the right one but just want to triple check because there have been a lot of links sent out. Thank you!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Wednesday, January 4, 2023 11:53 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>; Regmi, Pooja (CMS/CMCS) <[Pooja.Regmi@cms.hhs.gov](mailto:Pooja.Regmi@cms.hhs.gov)>; Gentile, Amy (CMS/CMCS) <[Amy.Gentile@cms.hhs.gov](mailto:Amy.Gentile@cms.hhs.gov)>  
**Subject:** NPRM on SDPs

Hi Anna,

I wanted to check in and coordinate on this round of NPRM clearance. We have combined all the comments from OGC, HHS and CMS into 1 doc for the C pages (SDPs preamble) that we will work from. Happy to share with you our SDP team's process for this go around if you want to follow that.

I also wanted to flag for you a comment from OGC on C55 of the master in the finance section – it relates to the authority (1903(w) vs. 1903(n)). It is a long comment – copied below, but at the end SLB offers if we need to discuss this separately, to let OGC know so that we can work this out before the next round of clearance.

Wanted to flag given that the turnaround is fast. Happy to meet to discuss further – I think OACT had a much shorter but related comment too.

(b)(5)

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)

Message

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**From:** Snyder, Laura (CMS/CMCS) <(b)(6)>  
(b)(6)  
**Sent:** 1/9/2023 8:25:56 PM  
**To:** Giles, John (CMS/CMCS) <(b)(6)>  
(b)(6)  
**Subject:** FW: FW: NPRM on SDPs

**From:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Sent:** Monday, January 9, 2023 8:16 AM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Kuhn, Juliet (CMS/CMCS) <Juliet.Kuhn@cms.hhs.gov>  
**Subject:** FW: NPRM on SDPs

Does this get you what you need?

**From:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Sent:** Monday, January 9, 2023 7:06 AM  
**To:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>  
**Subject:** RE: NPRM on SDPs

Hi Anna,

See below.

Thanks,  
Andrew

**From:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Sent:** Sunday, January 8, 2023 4:42 PM  
**To:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>; Thompson, Christopher (CMS/CMCS) <Christopher.Thompson@cms.hhs.gov>  
**Subject:** FW: NPRM on SDPs  
**Importance:** High

Hi Andrew and Chris,  
Would you mind taking a look at this for DMCP? We are trying to finish responding to comments on the MC rule by Wed, so I'm sure they'd appreciate hearing from you tomorrow maybe? Thanks!  
anna

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Sunday, January 8, 2023 4:07 PM  
**To:** Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <Juliet.Kuhn@cms.hhs.gov>  
**Subject:** RE: NPRM on SDPs  
**Importance:** High

Hi Anna,

We had a few comments in the Payment rate section that related to Medicaid FFS payment policy that I wanted to run past you all. I think these are likely questions for Andrew B or his group; just let me know if you'd prefer to reach out or if I should.

Thanks,  
Laura

- 1) OGD has suggested the following edit, "Generally for inpatient and outpatient services, these UPL requirement apply to three classes of facilities based on ownership status: state-owned, non-State Government-owned, and private." DMCP's understanding was that this was always the case and are questioning if the word "generally" is accurate. Can FMG opine? Would you recommend deleting "generally" or keeping it?

**I really don't have a strong opinion here either way because there are a couple of ways to look at it. Yes, it's always the case for nearly all services subject to 447.272 and 321, but if it just says "inpatient and outpatient services" whereas the UPL requirements apply to IP, OP, NF, Clinic, and ICF, then maybe "generally" fits. PRTF does not have that designation (447.325). So, it's suggesting that there's some nuance to the policy, and that doesn't cause me any concern.**

**(b)(5)**

**My understanding has been that the authority for the ACR has always been only 1902(a)(30)(A). There really isn't any regulation or SMDL that describes how a state calculates and ACR. At some point back in 2000, a state was looking to make exorbitant supplemental payments to certain physicians and our team was looking to try to measure economy and efficiency of the new proposed payments. Physicians were not subject to 447.321, so we couldn't apply a Medicare limit, and the ACR was a measure of economy and efficiency. If we couldn't enforce a Medicare limit, we could at least look to commercial payers and if they were paying those rates, then we could be comfortable that the ACR was economic and efficient. I was not working at CMS at the time, so I'm not as clear on the exact history of it, but once it became part of our SPA approval and approved other state proposals like it, it became policy. When we tried to end the ACR under the MFAR proposed rule, here's what we said about the history:**

"When ACR-based payments were first approved in 2000, we found that state ACR amounts were between 150 percent and 165 percent of the Medicare rates for the same services. In recent years, however, states have sought to make Medicaid practitioner supplemental payments based on calculations reflecting amounts of approximately 300 percent to 400 percent of the Medicare rate. While these percentage are outliers among states making ACR payments, those amounts were considerably larger than we had otherwise seen. In federal FY 2018, the most recent full fiscal year for which data was reported, states claimed approximately \$1.32 billion in (total computable) expenditures for supplemental payments made to physicians and other licensed practitioners. As states and practitioners realized that Medicaid payments could be increased through the use of ACR-based supplemental payment methodologies and with funding from IGTs, states began to explore expanding the ACR-based supplemental payments to other Medicaid participating practitioners.

Although we questioned whether making Medicaid payments at up to 400 percent of Medicare rates was consistent with economy and efficiency as required under section 1902(a)(30)(A) of the Act, we continued to approve ACR methodologies submitted by states consistent with our historic view that such methodologies that

relied on commercial data were permissible under the relevant statutory standards, and because we had not established an upper bound for practitioner supplemental payments through rulemaking.”

(b)(5)

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 12:09 PM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Cool. That sounds great. Thanks!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 11:07 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Also, just FYI – can’t remember who got this and who didn’t, but the next round of clearance will be CMS Rd 3/ HHS Rd 2 / OMB Rd 1; so all three levels at once...fun times. I flag because that means OACT will still get another shot next round and I think they had a comment in your section...we though originally this would be the last round for CMS...

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 11:00 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Awesome. Thank you so much, Laura.

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 10:57 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

Hi Anna,

Separate payment terms is a whole fun (haha) portion of the rule we are working through – so I’ll spare you the details and your general assessment is in the ballpark; SPTs are a mechanism for the state to provide the funds to the plan to pay out the SDP (instead of building it into the capitation rate). So I would say that the financing rules apply to the SDP as a whole, irrespective of how the state pays the plans the funds for the SDP.

As for the draft we are working on, here is the link. I believe you have been working in the correct one; I saw your comment responses in the version we've been working in. Just a reminder – there are comments in the C and I pages; I pages are the reg text.

<https://share.cms.gov/center/CMCS/DEHPG/DMCP/438%20Revision%202439/Forms/AllItems.aspx?RootFolder=%2Fcenter%2FCMCS%2FDEHPG%2FDMCP%2F438%20Revision%202439%2FMaster%20documents%2FCMS%20Round%202%2FCMS%202%2EHHS%201%20Masters%20and%20Log&View=%7B7CB9B7CB%2DFB8D%2D4F95%2DB57A%2D9201EDF71EAB%7D>

Thanks,  
Laura

**From:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Sent:** Friday, January 6, 2023 9:26 AM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: NPRM on SDPs

One more thing. Sorry to ask, but would you mind sending me the draft you are working on? I see one with edits from Juliet so I'm pretty confident I've been using the right one but just want to triple check because there have been a lot of links sent out. Thank you!

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Wednesday, January 4, 2023 11:53 AM  
**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>  
**Cc:** Kuhn, Juliet (CMS/CMCS) <[Juliet.Kuhn@cms.hhs.gov](mailto:Juliet.Kuhn@cms.hhs.gov)>; Regmi, Pooja (CMS/CMCS) <[Pooja.Regmi@cms.hhs.gov](mailto:Pooja.Regmi@cms.hhs.gov)>; Gentile, Amy (CMS/CMCS) <[Amy.Gentile@cms.hhs.gov](mailto:Amy.Gentile@cms.hhs.gov)>  
**Subject:** NPRM on SDPs

Hi Anna,

I wanted to check in and coordinate on this round of NPRM clearance. We have combined all the comments from OGC, HHS and CMS into 1 doc for the C pages (SDPs preamble) that we will work from. Happy to share with you our SDP team's process for this go around if you want to follow that.

I also wanted to flag for you a comment from OGC on C55 of the master in the finance section – it relates to the authority (1903(w) vs. 1903(n)). It is a long comment – copied below, but at the end SLB offers if we need to discuss this separately, to let OGC know so that we can work this out before the next round of clearance.

Wanted to flag given that the turnaround is fast. Happy to meet to discuss further – I think OACT had a much shorter but related comment too.

(b)(5)



**(b)(5)**

Laura Snyder  
(she/her/hers)  
Technical Director  
Division of Managed Care Policy  
Centers for Medicaid and CHIP Services  
Phone: 410-786-3198  
[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)

Message

**From:** Gentile, Amy (CMS/CMCS) (b)(6)  
**Sent:** 4/28/2023 1:11:15 PM (b)(6)  
**To:** Giles, John (CMS/CMCS) (b)(6)  
Burch Mack, Rebecca  
Snyder, Laura  
Gibson, Alexis  
Jones, Elizabeth  
**Subject:** RE: RE: [FR] Public Inspection Documents from Centers for Medicare & Medicaid Services

FYI- This language was included in the 1557 NPRM. I assumed it was because of the extraordinarily high likelihood of litigation on 1557, but I guess it's now going to be standard.

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Sent:** Friday, April 28, 2023 9:04 AM  
**To:** Gentile, Amy (CMS/CMCS) <Amy.Gentile@cms.hhs.gov>; Burch Mack, Rebecca (CMS/CMCS) <Rebecca.BurchMack@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>; Jones, Elizabeth (CMS/CMCS) <Elizabeth.Jones@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Subject:** FW: [FR] Public Inspection Documents from Centers for Medicare & Medicaid Services

Please review and we can discuss. It might be helpful to share with Anna B. in FMG too. Thanks!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Burke, Sherry Lynn (HHS/OGC) (b)(6)  
**Sent:** Friday, April 28, 2023 8:20 AM  
**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Burns, Amanda Paige (CMS/CMCS) <AmandaPaige.Burns@cms.hhs.gov>; Gentile, Amy (CMS/CMCS) <Amy.Gentile@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Cc:** Kosin, Donald (HHS/OGC) (b)(6) Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Subject:** RE: [FR] Public Inspection Documents from Centers for Medicare & Medicaid Services

Thanks John.

(b)(5)

(b)(5)

Best,  
Sherry Lynn

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Friday, April 28, 2023 7:02 AM  
**To:** Burke, Sherry Lynn (HHS/OGC) <[SherryLynn.Burke@hhs.gov](mailto:SherryLynn.Burke@hhs.gov)>; Burns, Amanda Paige (CMS/CMCS) <[AmandaPaige.Burns@cms.hhs.gov](mailto:AmandaPaige.Burns@cms.hhs.gov)>; Gentile, Amy (CMS/CMCS) <[Amy.Gentile@cms.hhs.gov](mailto:Amy.Gentile@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: [FR] Public Inspection Documents from Centers for Medicare & Medicaid Services

Thank you Sherry Lynn and Don for everything you do to make our rules the best. ☺ Have a wonderful weekend!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Burke, Sherry Lynn (HHS/OGC) <[SherryLynn.Burke@hhs.gov](mailto:SherryLynn.Burke@hhs.gov)>  
**Sent:** Thursday, April 27, 2023 4:55 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Burns, Amanda Paige (CMS/CMCS) <[AmandaPaige.Burns@cms.hhs.gov](mailto:AmandaPaige.Burns@cms.hhs.gov)>; Gentile, Amy (CMS/CMCS) <[Amy.Gentile@cms.hhs.gov](mailto:Amy.Gentile@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Cc:** Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>  
**Subject:** FW: [FR] Public Inspection Documents from Centers for Medicare & Medicaid Services

Congrats on the NPRM going out.

**From:** Federal Register Subscriptions <[subscriptions@mail.federalregister.gov](mailto:subscriptions@mail.federalregister.gov)>  
**Sent:** Thursday, April 27, 2023 4:17 PM  
**To:** Burke, Sherry Lynn (HHS/OGC) <[SherryLynn.Burke@hhs.gov](mailto:SherryLynn.Burke@hhs.gov)>  
**Subject:** [FR] Public Inspection Documents from Centers for Medicare & Medicaid Services

subscription results for Thursday, April 27th, 2023 2 matching public inspection documents

# Public Inspection Documents from Centers for Medicare & Medicaid Services

## MATCHING SPECIAL FILINGS

Special Filing updated at 4:15 PM on Thursday, April 27, 2023

Centers for Medicare & Medicaid Services

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### Proposed Rules

Medicaid Program:

Ensuring Access to Medicaid Services

Filed on: 04/27/2023 at 4:15 pm  
Scheduled Pub. Date: 05/03/2023  
FR Document: [2023-08959](#)

[PDF 410 Pages \(1.02 MB\)](#)  
[Permalink](#)

**Medicaid and Children's Health Insurance Program Managed Care Access, Finance, and Quality**

Filed on: 04/27/2023 at 4:15 pm  
Scheduled Pub. Date: 05/03/2023  
FR Document: [2023-08961](#)

[PDF 501 Pages \(1.17 MB\)](#)  
[Permalink](#)

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Message

**From:** Burke, Sherry Lynn (HHS/OGC) [SherryLynn.Burke@hhs.gov]  
**Sent:** 1/25/2023 1:06:27 PM  
**To:** Kosin, Donald (HHS/OGC) [/i]; (b)(6); Giles, John (CMS/CMCS)  
**CC:** Burch Mack, Rebecca (CMS/CMCS); (b)(6); Snyder, Laura; (b)(6); Giles, John (CMS/CMCS); (b)(6); Gentile, Amy (CMS/CMCS); (b)(6); Vogel, Jeremy; (b)(6); Mannchen, Garrett; (b)(6)  
**Subject:** RE: RE: OMB Questions on the Managed Care NPRM

John,

(b)(5)

(b)(5)

Sherry Lynn

Q&A (moving it here for my convenience in having this all together):

SDPs:

(b)(5)

**From:** Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>

**Sent:** Tuesday, January 24, 2023 5:13 PM

**To:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Burke, Sherry Lynn (HHS/OGC) <SherryLynn.Burke@hhs.gov>

**Cc:** Burch Mack, Rebecca (CMS/CMCS) <Rebecca.BurchMack@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Gentile, Amy (CMS/CMCS) <Amy.Gentile@cms.hhs.gov>; Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>

**Subject:** RE: OMB Questions on the Managed Care NPRM

(b)(5)

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>

**Sent:** Tuesday, January 24, 2023 4:57 PM

**To:** Kosin, Donald (HHS/OGC) <(b)(6)>; Burke, Sherry Lynn (HHS/OGC) <(b)(6)>

**Cc:** Burch Mack, Rebecca (CMS/CMCS) <Rebecca.BurchMack@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Gentile, Amy (CMS/CMCS) <Amy.Gentile@cms.hhs.gov>

**Subject:** OMB Questions on the Managed Care NPRM

Hi Don and Sherry Lynn –

OMB has submitted some questions to DMCP and OGC, and asked that we consult with OGC. I've included OMB's questions below, and included DMCP's thoughts in red. OMB has requested a response before 12pm ET tomorrow (1/25) when we have a call with them, and we believe this will be a key issue for the DPC meeting on Friday when we talk about the managed care rule. Therefore, if at all possible, we'd really appreciate your review of these questions

when you are able, even if your advice is only preliminary. If this timeline is not realistic or possible, just let us know and we will work with OMB to adjust their expectations.

Please let us know if it would also be helpful to touch base verbally internally to aid your review. I've also attached a copy of the current proposed regulatory text for the NPRM for ease of review.

**ILOS:**

(1)

(2)

**(b)(5)**

DMCP response: We believe there would be authority to not approve a MCP contract that includes a proposed ILOS if the projected ILOS cost percentage exceeds 5%, and terminate an ILOS if the final ILOS cost percentage exceeds 5%. We do think there is a difference between the authority though for the two questions. For question (1), the proposal at § 438.16(e)(2)(ii) indicates that if CMS determines that a State is out of compliance with any requirement in this part... "CMS may require the State to terminate the use of an ILOS." This regulatory text is focused on termination of the use of an ILOS when it's out of compliance, so this won't be the regulatory text we'd look to for the ability to deny approval of a MCP contract that includes a proposed ILOS if the projected ILOS cost percentage is greater than 5%. We believe the authority for not approving the MCP contracts that include the proposed ILOS would be tied to the proposal at § 438.16(c)(1), which is focused on the projected ILOS cost percentage not exceeding 5%. For question (2), as the final ILOS cost percentage would be known after the ILOS is implemented, we do believe that the authority proposed in § 438.16(e)(2)(ii) would be appropriate to use to potentially terminate an ILOS if the final ILOS cost percentage exceeds 5% as this would be out of compliance with § 438.16(c)(1), and the proposal at § 438.16(e)(2)(ii) indicates that "If CMS determines that a State is out of compliance with any requirement in this part... CMS may require the State to terminate the use of an ILOS."

**SDPs:**

(1)

(2)

**(b)(5)**

DMCP response: We have redrafted § 438.6(c)(2)(ii) to be standards, which all SDPs must meet. If an SDP fails to meet the standards in § 438.6(c)(2)(ii), including but not limited to (G), CMS would not grant written prior approval and would formally deny the request from the state for written prior approval. SDPs other than those described in § 438.6(c)(1)(iii)(A) and (B) require written prior approval, which we operationalize through the preprint review process.

Thank you so much for your help on these OMB's questions.

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services



Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

Message

**From:** Giles, John (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 1/25/2023 4:42:18 PM  
**To:** Burke, Sherry Lynn (HHS/OGC); (b)(6)  
(b)(6) Kosin, Donald  
**CC:** Burch Mack, Rebecca (CMS/CMCS); (b)(6)  
(b)(6); Snyder, Laura  
(b)(6) Gentile, Amy  
(b)(6) Vogel, Jeremy  
(b)(6) Mannchen, Garrett  
(b)(6) Giles, John  
**Subject:** RE: RE: OMB Questions on the Managed Care NPRM

Thank you Sherry Lynn and Don for responding so quickly. We really appreciate your help. We will let you know if OMB has additional questions on these topics. Thank you again!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Burke, Sherry Lynn (HHS/OGC) <SherryLynn.Burke@hhs.gov>  
**Sent:** Wednesday, January 25, 2023 8:06 AM  
**To:** Kosin, Donald (HHS/OGC) <Donald.Kosin@HHS.GOV>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>  
**Cc:** Burch Mack, Rebecca (CMS/CMCS) <Rebecca.BurchMack@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Gentile, Amy (CMS/CMCS) <Amy.Gentile@cms.hhs.gov>; Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>  
**Subject:** RE: OMB Questions on the Managed Care NPRM

John,

(b)(5)

(b)(5)

Sherry Lynn

Q&A (moving it here for my convenience in having this all together):

SDPs:

(b)(5)

DMCP response: We have redrafted § 438.6(c)(2)(ii) to be standards, which all SDPs must meet. If an SDP fails to meet the standards in § 438.6(c)(2)(ii), including but not limited to (G), CMS would not grant written prior approval and would formally deny the request from the state for written prior approval. SDPs other than those described in § 438.6(c)(1)(iii)(A) and (B) require written prior approval, which we operationalize through the preprint review process.

**From:** Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>

**Sent:** Tuesday, January 24, 2023 5:13 PM

**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Burke, Sherry Lynn (HHS/OGC) <[SherryLynn.Burke@hhs.gov](mailto:SherryLynn.Burke@hhs.gov)>

**Cc:** Burch Mack, Rebecca (CMS/CMCS) <[Rebecca.BurchMack@cms.hhs.gov](mailto:Rebecca.BurchMack@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Gentile, Amy (CMS/CMCS) <[Amy.Gentile@cms.hhs.gov](mailto:Amy.Gentile@cms.hhs.gov)>; Vogel, Jeremy (HHS/OGC) <[Jeremy.Vogel@hhs.gov](mailto:Jeremy.Vogel@hhs.gov)>; Mannchen, Garrett (HHS/OGC) <[Garrett.Mannchen@hhs.gov](mailto:Garrett.Mannchen@hhs.gov)>

**Subject:** RE: OMB Questions on the Managed Care NPRM

(b)(5)

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Sent:** Tuesday, January 24, 2023 4:57 PM

**To:** Kosin, Donald (HHS/OGC) <[Donald.Kosin@HHS.GOV](mailto:Donald.Kosin@HHS.GOV)>; Burke, Sherry Lynn (HHS/OGC) <[SherryLynn.Burke@hhs.gov](mailto:SherryLynn.Burke@hhs.gov)>

**Cc:** Burch Mack, Rebecca (CMS/CMCS) <[Rebecca.BurchMack@cms.hhs.gov](mailto:Rebecca.BurchMack@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Gentile, Amy (CMS/CMCS) <[Amy.Gentile@cms.hhs.gov](mailto:Amy.Gentile@cms.hhs.gov)>

**Subject:** OMB Questions on the Managed Care NPRM

Hi Don and Sherry Lynn –

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Please let us know if it would also be helpful to touch base verbally internally to aid your review. I've also attached a copy of the current proposed regulatory text for the NPRM for ease of review.

**ILOS:**

(b)(5)

**DMCP response:** We believe there would be authority to not approve a MCP contract that includes a proposed ILOS if the projected ILOS cost percentage exceeds 5%, and terminate an ILOS if the final ILOS cost percentage exceeds 5%. We do think there is a difference between the authority though for the two questions. For question (1), the proposal at § 438.16(e)(2)(ii) indicates that if CMS determines that a State is out of compliance with any requirement in this part... "CMS may require the State to terminate the use of an ILOS." This regulatory text is focused on termination of the use of an ILOS when it's out of compliance, so this won't be the regulatory text we'd look to for the ability to deny approval of a MCP contract that includes a proposed ILOS if the projected ILOS cost percentage is greater than 5%. We believe the authority for not approving the MCP contracts that include the proposed ILOS would be tied to the proposal at § 438.16(c)(1), which is focused on the projected ILOS cost percentage not exceeding 5%. For question (2), as the final ILOS cost percentage would be known after the ILOS is implemented, we do believe that the authority proposed in § 438.16(e)(2)(ii) would be appropriate to use to potentially terminate an ILOS if the final ILOS cost percentage exceeds 5% as this would be out of compliance with § 438.16(c)(1), and the proposal at § 438.16(e)(2)(ii) indicates that "If CMS determines that a State is out of compliance with any requirement in this part... CMS may require the State to terminate the use of an ILOS."

**SDPs:**

(1)

**(b)(5)**

(2)

DMCP response: We have redrafted § 438.6(c)(2)(ii) to be standards, which all SDPs must meet. If an SDP fails to meet the standards in § 438.6(c)(2)(ii), including but not limited to (G), CMS would not grant written prior approval and would formally deny the request from the state for written prior approval. SDPs other than those described in § 438.6(c)(1)(iii)(A) and (B) require written prior approval, which we operationalize through the preprint review process.

Thank you so much for your help on these OMB's questions.

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

Message

**From:** Snyder, Laura (CMS/CMCS) (b)(6)  
**Sent:** 1/10/2023 1:11:49 PM (b)(6)  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) (b)(6); CMS State Directed  
(b)(6) Fan, Kristin (CMS/CMCS)  
(b)(6); Teal, Lela (CMS/CMCS)  
(b)(6) Arnold, Charlie (CMS/CMCS)  
(b)(6) Bonelli, Anna  
(b)(6) Clark, Jennifer  
(b)(6) Bruno, Richard  
(b)(6) Goldstein, Stuart  
**CC:** (b)(6) Gibson, Alexis  
**Subject:** RE: RE: North Carolina

Hi Jonathan and FMG colleagues,

Thank you for the update. As noted today, we are concerned with the length of time that this review has been on hold. We received the preprint in April 2022 and have been ready to approve this action pending this outstanding concern on the provider tax for several months. We appreciate that financing issues take time to resolve, but no questions have been issued to the state on the provider tax in months.

We appreciate that everyone is juggling several priorities, including NPRMs as well as ongoing work. However, we feel that continuing to hold this review in this manner is problematic.

If questions for the state cannot be finalized and sent to the state by COB 1/20, we will recommend moving ahead with approval of the SDP. We are happy to add language to the approval letter related to concerns around non-federal share if questions cannot be sent by that date; just let us know if you'd like to add the language and what language should be added.

We are happy to further discuss this if helpful.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Monday, January 9, 2023 3:27 PM  
**To:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Teal, Lela (CMS/CMCS) <Lela.Teal@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS)

<Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>  
**Cc:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Subject:** RE: North Carolina

Lovie,

North Carolina was brought up today during a meeting with Rory. He said he would take a look at the questions and get back to us soon. We just wanted to keep you updated. Thanks.

Best,

Jonathan

Jonathan Endelman  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Thursday, January 5, 2023 11:49 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Thank you Lovie. We are waiting on clearance to send the questions from Rory. I hope to bring this up with Charlie today at our meeting. Thank you.

Best,

Jonathan

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Mail Stop, S3-14-28

Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Thursday, January 5, 2023 10:39 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hi Anna and Jonathan,

Happy New Year! As a follow up to the emails below, can you provide a status update on FMG's question sets for NC. The state has requested updates regarding the questions since November 2022. Can you assist us with getting the questions cleared? We'd like to respond to the state and send any questions from FMG this week if possible.

Thanks,  
Lovie

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Thursday, December 15, 2022 12:05 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hello Lovie,

I can confirm that the issue was brought up at the meeting with Rory yesterday. Rory stated that he would take a look at the questions and loop back with us after he had a chance to review them. I will be sure to keep you updated as more information becomes available. Thank you.

Best,

Jonathan

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Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Thursday, December 15, 2022 10:58 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hello Lovie,

I believe there was supposed to be a meeting with Rory yesterday where we had planned to ask if Rory had taken a look at the questions for North Carolina. I am not sure if we brought that up at the meeting. Let me check and get back with you.

Best,

Jonathan

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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Thursday, December 15, 2022 10:03 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hi Jonathan,

I'm following up on the email below. Have you received feedback from Rory regarding the North Carolina question sets? The state is requesting a status update.

Thank you,  
Lovie

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Tuesday, December 13, 2022 1:45 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hi Jonathan and Stuart,

North Carolina is requesting a status update (please see attached email). During the FMG meeting yesterday and the email below you indicated you're waiting for feedback from Rory on the question sets. We'd like to respond to the state and send any questions from FMG this week if possible. We look forward to your update on next steps.

Thanks,  
Lovie

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Monday, November 28, 2022 12:04 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hi Jonathan—Great! Thanks for the update.

Lovie

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Monday, November 28, 2022 11:50 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Lovie,

Yes. We have questions about the tax waiver submission itself as well as about our hold harmless concerns. Similar to how we handled the Louisiana IP/OP hospital tax, our plan is to ask the questions related to the tax waiver submission itself to the state through the tax waiver submission process and our questions concerning possible hold harmless arrangements through the state-directed payment financing review process. On his request, we have sent both sets of

questions to Rory and are waiting to hear back from him with his feedback before sending the questions to the state. Please let us know if we can be of any further assistance at this time. Thank you.

Best,

Jonathan

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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Monday, November 28, 2022 10:18 AM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Subject:** RE: North Carolina

Hi Jonathan,

Happy Monday! North Carolina is requesting a status update regarding their tax waiver submission (please see attachment). Does FMG have follow questions for the state? I'll add this topic the DMCP/FMG meeting agenda for tomorrow.

Thanks,  
Lovie

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Tuesday, November 1, 2022 1:39 PM

**To:** Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>

**Subject:** FW: North Carolina

Dear all,

I started to review North Carolina's IP hospital services and OP hospital services health care-related taxes. I can already tell this one is going to require a lot of work before it gets to something approaching a tax for which we could recommend approval. It's certainly not the most straight forward or easily understandable submission we have ever

received. It's been a decade since the state has come in to us with a tax waiver submission and it shows. I don't think someone has worked on this data in a long time. In general, the more recent a tax waiver approval is, the better shape it tends to be. In an ideal world, states would go in every so often to make sure the data is correct, clean things up, etc. We had a section of MFAR that had an expiration date of three years for tax waivers that I think would have partially addressed this issue. Please see attached for questions and the submission from the State. Please also see attached for the tax waiver approval from 2011. Also, it would be good to hear more detail from Rory about what he knows specifically about the pooling and redistribution mechanism that we believe may be attached to this tax and the extant hold harmless concerns. I am copying DMCP for awareness. I will also copy when we send questions to the state.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
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Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Friday, October 7, 2022 2:35 PM

**To:** [cecilia.williams@dhhs.nc.gov](mailto:cecilia.williams@dhhs.nc.gov); [Betty.J.Staton@dhhs.nc.gov](mailto:Betty.J.Staton@dhhs.nc.gov)

**Cc:** Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>

**Subject:** North Carolina

Good afternoon Ms. Staton,

My name is Jonathan Endelman and I am a member of the tax team located in the Financial Management Group (FMG) at CMS. We are responsible for reviewing all health care-related tax waivers of the broad-based and uniformity requirements. We are acknowledging receipt of the State's submission of 10/6/2022 requesting a waiver of the broad-based and uniformity requirements for its inpatient and outpatient hospital services taxes. We will be in touch in case we have any questions or concerns over the course of our review. In the future, please address all tax waivers to:

Mr. Rory Howe, Director  
Financial Management Group  
Center for Medicaid and CHIP Services  
U.S. Department of Health & Human Services  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

Thank you.

Best,

Jonathan

Message

**From:** Endelman (he/him), Jonathan (CMS/CMCS) (b)(6)  
(b)(6)  
**Sent:** 1/10/2023 1:19:05 PM  
**To:** Snyder, Laura (CMS/CMCS) (b)(6)  
(b)(6) CMS State Directed  
Payment (b)(6)  
(b)(6); Fan, Kristin (CMS/CMCS)  
(b)(6); Teal, Lela (CMS/CMCS)  
(b)(6) Arnold, Charlie (CMS/CMCS)  
(b)(6) Bonelli, Anna  
(b)(6); Clark, Jennifer  
(b)(6) Cuno, Richard  
(b)(6); Goldstein, Stuart  
**CC:** (b)(6) Gibson, Alexis  
**Subject:** RE: RE: North Carolina

Thank you Laura. We look forward to working with you to resolve this issue.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
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410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>  
**Sent:** Tuesday, January 10, 2023 8:12 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Teal, Lela (CMS/CMCS) <Lela.Teal@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>

**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Gibson, Alexis (CMS/CMCS) <alexis.gibson@cms.hhs.gov>  
**Subject:** RE: North Carolina

Hi Jonathan and FMG colleagues,

Thank you for the update. As noted today, we are concerned with the length of time that this review has been on hold. We received the preprint in April 2022 and have been ready to approve this action pending this outstanding concern on the provider tax for several months. We appreciate that financing issues take time to resolve, but no questions have been issued to the state on the provider tax in months.

We appreciate that everyone is juggling several priorities, including NPRMs as well as ongoing work. However, we feel that continuing to hold this review in this manner is problematic.

If questions for the state cannot be finalized and sent to the state by COB 1/20, we will recommend moving ahead with approval of the SDP. We are happy to add language to the approval letter related to concerns around non-federal share if questions cannot be sent by that date; just let us know if you'd like to add the language and what language should be added.

We are happy to further discuss this if helpful.

Thanks,  
Laura

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Monday, January 9, 2023 3:27 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Lovie,

North Carolina was brought up today during a meeting with Rory. He said he would take a look at the questions and get back to us soon. We just wanted to keep you updated. Thanks.

Best,

Jonathan

Jonathan Endelman  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Thursday, January 5, 2023 11:49 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Thank you Lovie. We are waiting on clearance to send the questions from Rory. I hope to bring this up with Charlie today at our meeting. Thank you.

Best,

Jonathan

Jonathan Endelman  
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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Thursday, January 5, 2023 10:39 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hi Anna and Jonathan,

Happy New Year! As a follow up to the emails below, can you provide a status update on FMG's question sets for NC. The state has requested updates regarding the questions since November 2022. Can you assist us with getting the questions cleared? We'd like to respond to the state and send any questions from FMG this week if possible.

Thanks,  
Lovie



**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Thursday, December 15, 2022 12:05 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hello Lovie,

I can confirm that the issue was brought up at the meeting with Rory yesterday. Rory stated that he would take a look at the questions and loop back with us after he had a chance to review them. I will be sure to keep you updated as more information becomes available. Thank you.

Best,

Jonathan

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Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)  
**Sent:** Thursday, December 15, 2022 10:58 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hello Lovie,

I believe there was supposed to be a meeting with Rory yesterday where we had planned to ask if Rory had taken a look at the questions for North Carolina. I am not sure if we brought that up at the meeting. Let me check and get back with you.

Best,

Jonathan

Jonathan Endelman

Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
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410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Thursday, December 15, 2022 10:03 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hi Jonathan,

I'm following up on the email below. Have you received feedback from Rory regarding the North Carolina question sets? The state is requesting a status update.

Thank you,  
Lovie

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Tuesday, December 13, 2022 1:45 PM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hi Jonathan and Stuart,

North Carolina is requesting a status update (please see attached email). During the FMG meeting yesterday and the email below you indicated you're waiting for feedback from Rory on the question sets. We'd like to respond to the state and send any questions from FMG this week if possible. We look forward to your update on next steps.

Thanks,  
Lovie

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Monday, November 28, 2022 12:04 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Hi Jonathan—Great! Thanks for the update.

Lovie

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>  
**Sent:** Monday, November 28, 2022 11:50 AM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** RE: North Carolina

Lovie,

Yes. We have questions about the tax waiver submission itself as well as about our hold harmless concerns. Similar to how we handled the Louisiana IP/OP hospital tax, our plan is to ask the questions related to the tax waiver submission itself to the state through the tax waiver submission process and our questions concerning possible hold harmless arrangements through the state-directed payment financing review process. On his request, we have sent both sets of questions to Rory and are waiting to hear back from him with his feedback before sending the questions to the state. Please let us know if we can be of any further assistance at this time. Thank you.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Sent:** Monday, November 28, 2022 10:18 AM  
**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS)

<James.Burns@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>  
**Cc:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Subject:** RE: North Carolina

Hi Jonathan,

Happy Monday! North Carolina is requesting a status update regarding their tax waiver submission (please see attachment). Does FMG have follow questions for the state? I'll add this topic the DMCP/FMG meeting agenda for tomorrow.

Thanks,  
Lovie

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Sent:** Tuesday, November 1, 2022 1:39 PM  
**To:** Fan, Kristin (CMS/CMCS) <Kristin.Fan@cms.hhs.gov>; Teal, Lela (CMS/CMCS) <Lela.Teal@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>; Arnold, Charlie (CMS/CMCS) <Charlie.Arnold@cms.hhs.gov>; Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>; Burns, James (CMS/CMCS) <James.Burns@cms.hhs.gov>; Clark, Jennifer (CMS/CMCS) <Jennifer.Clark@cms.hhs.gov>; Cuno, Richard (CMS/CMCS) <Richard.Cuno@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>  
**Subject:** FW: North Carolina

Dear all,

I started to review North Carolina's IP hospital services and OP hospital services health care-related taxes. I can already tell this one is going to require a lot of work before it gets to something approaching a tax for which we could recommend approval. It's certainly not the most straight forward or easily understandable submission we have ever received. It's been a decade since the state has come in to us with a tax waiver submission and it shows. I don't think someone has worked on this data in a long time. In general, the more recent a tax waiver approval is, the better shape it tends to be. In an ideal world, states would go in every so often to make sure the data is correct, clean things up, etc. We had a section of MFAR that had an expiration date of three years for tax waivers that I think would have partially addressed this issue. Please see attached for questions and the submission from the State. Please also see attached for the tax waiver approval from 2011. Also, it would be good to hear more detail from Rory about what he knows specifically about the pooling and redistribution mechanism that we believe may be attached to this tax and the extant hold harmless concerns. I am copying DMCP for awareness. I will also copy when we send questions to the state.

Best,

Jonathan

Jonathan Endelman  
Social Science Research Analyst  
Centers for Medicare & Medicaid Services (CMS)  
Center for Medicaid and CHIP Services (CMCS)  
Financial Management Group (FMG)  
Division of Financial Policy (DFP)  
410.786.4738  
[jonathan.endelman@cms.hhs.gov](mailto:jonathan.endelman@cms.hhs.gov)  
7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** Endelman (he/him), Jonathan (CMS/CMCS)

**Sent:** Friday, October 7, 2022 2:35 PM

**To:** [cecilia.williams@dhhs.nc.gov](mailto:cecilia.williams@dhhs.nc.gov); [Betty.J.Staton@dhhs.nc.gov](mailto:Betty.J.Staton@dhhs.nc.gov)

**Cc:** Teal, Lela (CMS/CMCS) <[Lela.Teal@cms.hhs.gov](mailto:Lela.Teal@cms.hhs.gov)>; CMS State Directed Payment

<[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Burns, James (CMS/CMCS) <[James.Burns@cms.hhs.gov](mailto:James.Burns@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>

**Subject:** North Carolina

Good afternoon Ms. Staton,

My name is Jonathan Endelman and I am a member of the tax team located in the Financial Management Group (FMG) at CMS. We are responsible for reviewing all health care-related tax waivers of the broad-based and uniformity requirements. We are acknowledging receipt of the State's submission of 10/6/2022 requesting a waiver of the broad-based and uniformity requirements for its inpatient and outpatient hospital services taxes. We will be in touch in case we have any questions or concerns over the course of our review. In the future, please address all tax waivers to:

Mr. Rory Howe, Director  
Financial Management Group  
Center for Medicaid and CHIP Services  
U.S. Department of Health & Human Services  
7500 Security Boulevard  
Baltimore, Maryland 21244-1850

Thank you.

Best,

Jonathan

Message

---

**Sent:** 2/1/2023 7:21:46 PM  
**To:** Tsai, Daniel (CMS/CMCS); (b)(6)  
**CC:** Debov, Alissa (CMS/CMCS); (b)(6); Smith, Carrie; Giles, John (CMS/CMCS); Gibson, Alexis  
**Subject:** FL Managed Care Preprint Update  
**Attachments:** FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Hi Dan – here is the latest information on the FL preprint submission:

- We received one hospital preprint from FL for review last night at 4:22pm. This is the preprint that was approved last year with conditional language and the companion letter noting our concerns with the LPPF state financing.
- The team has been assessing the preprint for completeness today, and we can confirm that we have completeness issues that will require follow-up with the state prior to entering the preprint into federal review (see attached email for completeness issues that we flagged for FL today).
- The state’s rating period began October 1, 2022. We advise states to submit preprints 90 days in advance of the rating period. We have followed-up with the state numerous times on outstanding preprints, including this preprint. In the email response acknowledging receipt of the preprint today, we again flagged that the state was delinquent on the following items:
  - Preprint amendment related to Florida’s revised HCBS spending plan;
  - FL Proposal D 2020-2021 revised preprint amendment; and
  - Five additional SDP preprints for the 2022-2023 rating period.

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 240-904-2341  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

Message

**From:** CMS State Directed Payment (b)(6)  
(b)(6)  
**Sent:** 2/1/2023 6:35:55 PM  
**To:** Giering, Cole [cole.giering@ahca.myflorida.com]  
**CC:** Wallace, Tom [Thomas.Wallace@ahca.myflorida.com]; Sokoloski, Kristin [Kristin.Sokoloski@ahca.myflorida.com]; Barry, Joyce [Joyce.Barry@ahca.myflorida.com]; Cai, Jun [Jun.Cai@ahca.myflorida.com]; Lacroix, Rachel [Rachel.Lacroix@ahca.myflorida.com]; Giles, John (CMS/CMCS) [john.giles1@cms.hhs.gov]; Snyder, Laura (CMS/CMCS) [laura.snyder1@cms.hhs.gov]; CMS State Directed Payment [statedirectedpayment@cms.hhs.gov]  
**Subject:** FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930

Good morning,

Thank you for your submission. CMS has determined that we require responses to the below questions to ensure CMS has adequate documentation to begin our review.

- 1) Specifically, please include responses to the following incomplete sections:
  - o the provider payment analysis section is incomplete (Preprint Question 23/ Table 2); and
  - o the data sources and methodology are incomplete (Preprint Question 27).
- 2) In addition, the state noted several sections of the preprint that are incomplete and/or missing updated information including:
  - o Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
  - o Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
  - o Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Please provide the state's anticipated timeline to submit the updated information to CMS for review.

**We request that the state acknowledge receipt of this communication and respond within 2 working days to respond to the above questions.** CMS awaits the state's response to begin review of the preprint.

The control name for this preprint will be "FL\_Fee\_IPH.OPH4\_Renewal\_20221001-20230930." This control name must be used for all communication regarding the review of this preprint. CMS also requests that the state utilize this control name for the preprint when referencing this state directed payment within the applicable rate certification(s).

Thanks,  
Laura

**From:** CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Sent:** Wednesday, February 1, 2023 11:48 AM  
**To:** Giering, Cole <cole.giering@ahca.myflorida.com>  
**Cc:** Wallace, Tom <Thomas.Wallace@ahca.myflorida.com>; Sokoloski, Kristin <Kristin.Sokoloski@ahca.myflorida.com>; Barry, Joyce <Joyce.Barry@ahca.myflorida.com>; Cai, Jun <Jun.Cai@ahca.myflorida.com>; Lacroix, Rachel <Rachel.Lacroix@ahca.myflorida.com>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; CMS State Directed Payment <StateDirectedPayment@cms.hhs.gov>  
**Subject:** RE: FL\_Fee\_IPH.OPH4 RY 22/23 Renewal

Good Morning Cole,

Thank you for your email. CMS acknowledges receipt of the preprint and corresponding documents. We would like to request status updates regarding the state's anticipated timeframe to submit the following items:

- (1) Preprint amendment related to Florida's revised HCBS Spending Plan,
- (2) FL Proposal D 2020-2021 revised preprint amendment, and
- (3) The five state directed payment preprints for the October 1, 2022 through September 30, 2023 rating period.

Thank you,  
Lovie

**From:** Giering, Cole <[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)>  
**Sent:** Tuesday, January 31, 2023 4:22 PM  
**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>  
**Cc:** Wallace, Tom <[Thomas.Wallace@ahca.myflorida.com](mailto:Thomas.Wallace@ahca.myflorida.com)>; Sokoloski, Kristin <[Kristin.Sokoloski@ahca.myflorida.com](mailto:Kristin.Sokoloski@ahca.myflorida.com)>; Barry, Joycee <[Joycee.Barry@ahca.myflorida.com](mailto:Joycee.Barry@ahca.myflorida.com)>; Cai, Jun <[Jun.Cai@ahca.myflorida.com](mailto:Jun.Cai@ahca.myflorida.com)>; Lacroix, Rachel <[Rachel.Lacroix@ahca.myflorida.com](mailto:Rachel.Lacroix@ahca.myflorida.com)>  
**Subject:** FL\_Fee.IPH.OPH4 RY 22/23 Renewal

Good afternoon,

Please find attached the State of Florida's preprint for program year 3 of the hospital uniform rate increase directed payment program (CMS Provided State Directed Payment Identifier: FL\_Fee.IPH.OPH4).

**Please Note:** we are in the process of updating the calculation of gross Medicaid shortfall and allocation percentages by provider class based on CY 2021 claims and encounter experience. When this analysis is complete, we will amend this preprint to include final values for:

- Updated gross payment amounts based on CY 2021 Medicaid shortfall calculations (impacting responses to prompts 4 and 23 - 27).
- Updated estimated uniform percentage increase amounts (impacting response to prompt 19.b)
- Non-federal funding sources and amounts (impacting response to prompts 35 and 36).

Best,

## **Cole Giering, MPH**

Program Administrator

Rules and State Plan Unit

[cole.giering@ahca.myflorida.com](mailto:cole.giering@ahca.myflorida.com)

+1 850-412-4691 (Office)

BUREAU OF MEDICAID POLICY

AHCA HQ Bidg 3 Rm 2307D



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Message

**From:** Pryor, Rachel (HHS/OS/IOS) (b)(6)  
**Sent:** 4/21/2023 12:59:00 PM  
**To:** Tsai, Daniel (CMS/CMCS) (b)(6); Egorin, Melanie (b)(6)  
**CC:** Dervan, Elizabeth (CMS/OL) (b)(6); Katch (she/her), (b)(6); Hannah, J (CMS/OA) (b)(6)  
**Subject:** Re: Re: Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"

Had not seen this. Thanks so much.

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**From:** Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Sent:** Thursday, April 20, 2023 6:31:39 PM  
**To:** Pryor, Rachel (HHS/OS/IOS) <Rachel.Pryor@hhs.gov>; Egorin, Melanie (HHS/ASL) <Melanie.Egorin@hhs.gov>  
**Cc:** Dervan, Elizabeth (CMS/OL) <elizabeth.dervan@cms.hhs.gov>; Katch (she/her), Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>  
**Subject:** FW: Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"

See below...

**From:** Coney, Lillie <Lillie.Coney@mail.house.gov>  
**Sent:** Thursday, April 20, 2023 5:48 PM  
**To:** 'secretary@hhs.gov' <secretary@hhs.gov>; Mccluskie, Sean (HHS/IOS) <Sean.Mccluskie@hhs.gov>; Ramirez, Angela (HHS/IOS) <Angela.Ramirez@hhs.gov>; Brooks-LaSure, Chiquita (CMS/OA) <Chiquita.Brooks-LaSure@cms.hhs.gov>; Woronoff, Arielle (CMS/OL) <Arielle.Woronoff@cms.hhs.gov>; Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Cc:** Coney, Lillie <Lillie.Coney@mail.house.gov>; Arceo, Amy <Amy.Arceo@mail.house.gov>  
**Subject:** Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"  
**Importance:** High

April 19, 2023

The Honorable Xavier Becerra  
Secretary, U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 2021

The Honorable Daniel Tsai  
The Deputy Administrator and Director  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services

U.S. Department of Health and Human  
Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator and Director Tsai:

As members of the Texas Congressional Delegation, we have worked with President Biden and with you to improve access to care for all Americans, regardless of income or need. We applaud the Department of Health and Human Services (“HHS”) for its dedication to sustaining and strengthening the health care safety net. The Administration’s investment in the Medicaid program is invaluable, particularly as we transition out of a global public health emergency. We share the Administration’s commitment to supporting our most vulnerable communities and stand ready to assist with your agency’s laudable efforts.

However, while we closely align with your mission, we are deeply concerned by the Informational Bulletin (the “Bulletin”) entitled “Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments”, which was released by the Centers for Medicare & Medicaid Services (“CMS”) on February 17, 2023. The Bulletin echoes many of the themes of the Medicaid Fiscal Accountability Regulation (“MFAR”) proposed in 2019. The Bulletin specifically revives the agency’s attempts to assert its jurisdiction over wholly private arrangements between hospitals, lacking any state involvement.

As you may recall, the MFAR proposed rule received such strong bipartisan opposition that President Trump’s Administration initiated its withdrawal. President Biden also noted his opposition to MFAR as part of his campaign platform, followed by HHS taking quick action to withdraw the proposed rule in January 2021. Like President Biden, we recognized the existential threat the proposed policies posed to our communities’ hospitals and the Medicaid beneficiaries they serve, prompting us to introduce bipartisan legislation that would have halted any implementation of the MFAR proposed rule.

It is clear, however, that some within CMS continue to push the MFAR agenda despite its withdrawal and the agency lacking the authority to set forth such provider tax policies. In fact, the Office of Inspector General (“OIG”) previously opined that there are no regulations to preclude this type of arrangement. Moreover, when CMS raised this issue last year in federal court, a federal judge in Texas reasoned that CMS’s legal position was not at all in line with the Medicaid statute. In short, the Bulletin is a significant and inappropriate shift in policy by CMS that is inconsistent with current law and the agency’s own history of enforcement action.

A policy shift of this significance threatens not only the most vulnerable citizens of our home state, but Medicaid beneficiaries across the country. We question what good this policy shift will have for the health care safety net and how it will ensure equitable access to care for patients. In the nearly four years since CMS first announced its MFAR proposal, not a single time has CMS staff been able to quantify the impact or assure us that this policy will not disrupt equitable access to care.

Moreover, we wish to emphasize that the local provider taxes under attack serve a critical purpose: they provide an avenue for hospitals that have historically struggled to gain access to much-needed supplemental Medicaid payments. This path is a lifeline for hospitals along the southern border and in the 89 Texas counties where non-governmental hospitals are the primary providers for Medicaid patients—areas where Medicaid beneficiaries already have limited access to care. Absent the local financing mechanism, these hospitals, and the patients they serve once again face disenfranchisement.

For these reasons, we ask CMS to withdraw the Bulletin and refrain from seeking to enforce it until the agency can determine the impact it will have on the providers serving our Medicaid beneficiaries. Unless we understand how this policy enhances, rather than reduces equitable access to care, we will continue in our efforts to oppose the agency's policies.

Thank you for your attention to this very important matter.

Very Truly Yours

Sheila Jackson Lee  
Member of Congress

Colin Allred  
Member of Congress

Joaquin Castro  
Member of Congress

Jasmine Crockett  
Member of Congress

Henry Cuellar  
Member of Congress

Marc A. Veasey  
Member of Congress

Vincent Gonzalez  
Member of Congress

Regards,  
Lillie Coney  
Chief of Staff  
Congresswoman Sheila Jackson Lee (TX-18)  
2426 Rayburn HOB  
Washington, DC 20515  
(202) 225-3816  
(202) 870-6429  
Lillie.Coney@mail.house.gov

Message

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**From:** Ramirez, Angela (HHS/IOS) [Angela.Ramirez@hhs.gov]  
**Sent:** 4/21/2023 1:28:47 PM  
**To:** Coney, Lillie [Lillie.Coney@mail.house.gov]; Egorin, Melanie (HHS/ASL) (b)(6)  
Administrative Group (b)(6)  
**CC:** Arceo, Amy [Amy.Arceo@mail.house.gov]  
**Subject:** RE: RE: Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"

Thanks for reaching out. Connecting you with Melanie who oversees the leg team. (Moving others to bcc.)

Thanks again.

-A

**From:** Coney, Lillie <Lillie.Coney@mail.house.gov>  
**Sent:** Thursday, April 20, 2023 5:48 PM  
**To:** HHS Secretary (HHS/IOS) <secretary@hhs.gov>; Mccluskie, Sean (HHS/IOS) <Sean.Mccluskie@hhs.gov>; Ramirez, Angela (HHS/IOS) <Angela.Ramirez@hhs.gov>; 'chiquita.brooks-lasure@cms.hhs.gov' <chiquita.brooks-lasure@cms.hhs.gov>; Woronoff, Arielle (CMS/OL) <Arielle.Woronoff@cms.hhs.gov>; Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Cc:** Coney, Lillie <Lillie.Coney@mail.house.gov>; Arceo, Amy <Amy.Arceo@mail.house.gov>  
**Subject:** Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"  
**Importance:** High

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Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 2021

The Honorable Daniel Tsai  
The Deputy Administrator and Director  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator and Director Tsai:

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supporting our most vulnerable communities and stand ready to assist with your agency's laudable efforts.

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As you may recall, the MFAR proposed rule received such strong bipartisan opposition that President Trump's Administration initiated its withdrawal. President Biden also noted his opposition to MFAR as part of his campaign platform, followed by HHS taking quick action to withdraw the proposed rule in January 2021. Like President Biden, we recognized the existential threat the proposed policies posed to our communities' hospitals and the Medicaid beneficiaries they serve, prompting us to introduce bipartisan legislation that would have halted any implementation of the MFAR proposed rule.

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Thank you for your attention to this very important matter.

Very Truly Yours

Sheila Jackson Lee  
Member of Congress

Colin Allred  
Member of Congress

Joaquin Castro  
Member of Congress

Jasmine Crockett  
Member of Congress

Henry Cuellar  
Member of Congress

Marc A. Veasey  
Member of Congress

Vincent Gonzalez  
Member of Congress

Regards,  
Lillie Coney  
Chief of Staff  
Congresswoman Sheila Jackson Lee (TX-18)  
2426 Rayburn HOB  
Washington, DC 20515  
(202) 225-3816  
(202) 870-6429  
Lillie.Coney@mail.house.gov

Message

**From:** Katch (she/her), Hannah (CMS/OA); (b)(6)  
**Sent:** 4/12/2023 2:45:10 PM (b)(6)  
**To:** Briskin, Perrie (CMS/CMCS); (b)(6) Tsai, Daniel (CMS/CMCS)  
**Subject:** RE: RE: Action Alert: DPP Dear Colleague (b)(6)

Did you formally receive this letter yet?

**From:** Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Sent:** Tuesday, April 11, 2023 9:54 PM  
**To:** Dervan, Elizabeth (CMS/OL) <elizabeth.dervan@cms.hhs.gov>; Kirchgraber, Kate (CMS/OL) <Kate.Kirchgraber@cms.hhs.gov>; Mauser, Gayle (CMS/OL) <Gayle.Mauser@cms.hhs.gov>  
**Cc:** Katch (she/her), Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>; Costello, Anne Marie (CMS/CMCS) <AnneMarie.Costello@cms.hhs.gov>; Vitolo, Sara (CMS/CMCS) <Sara.Vitolo@cms.hhs.gov>; Briskin, Perrie (CMS/CMCS) <Perrie.Briskin@cms.hhs.gov>  
**Subject:** FW: Action Alert: DPP Dear Colleague

Liz and folks – see below...

(They have a quote from a comment letter I made on MFAR as well)

**From:** Melanie Nathanson <mnathanson@n-hdc.com>  
**Sent:** Tuesday, April 11, 2023 9:52 PM  
**To:** Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Subject:** FW: Action Alert: DPP Dear Colleague

FYSA

**WARNING: This email originated outside of BayCare. BE CAUTIOUS clicking links and opening attachments. Use the Report Phishing and Spam button to report malicious emails and contact the IS Service Desk with all other suspicious activity.**



**TO:** FHA Member Chief Executive Officers, Chief Financial Officers and Government Relations Executives  
**FROM:** Mary C. Mayhew, President and Chief Executive Officer, Florida Hospital Association  
**SUBJECT:** Action Alert: DPP Dear Colleague  
**DATE:** April 11, 2022

Dear FHA Members,

This email is intended to provide an update on current actions to ensure the CMS informational bulletin regarding redistribution arrangements in the context of directed payment programs is not implemented:

- Today, Representatives Moskowitz and Bean sent a “dear colleague” to members of Florida’s delegation regarding the February 17 CMS directed payment program (DPP) informational bulletin. The letter, addressed to HHS Secretary Becerra, CMS Administrator Brooks-LaSure, and Medicaid Director Tsai, calls on the Centers for Medicare and Medicaid Services to withdraw the informational bulletin, which “creates needless uncertainty for the hospitals that serve [Florida’s] communities.” Last year and now, members of Florida’s delegation have united to ensure our state’s continued access to directed payment programs. These programs ensure hospitals are able to provide continued access to care for the state’s most vulnerable patients.

**FHA members should reach out to their congressional offices and ask them to join Representatives Moskowitz and Bean as signatories of this “dear colleague”**

**letter.** When contacting the office you can direct them to

[Harshitha.Teppala@mail.house.gov](mailto:Harshitha.Teppala@mail.house.gov) in Rep. Moskowitz’s office or

[richard.lamura@mail.house.gov](mailto:richard.lamura@mail.house.gov) in Rep. Bean’s office. If you need contact information for your members of congress, please reach out to Michael Williams at [michaelw@fha.org](mailto:michaelw@fha.org).

- In last week’s Capitol Update FHA reported on the filing of a Texas lawsuit challenging CMS’s interpretation of the statute governing hold harmless agreements related to Medicaid tax and match programs. We noted: On Wednesday, the state of Texas filed a lawsuit against CMS and HHS to permanently enjoin enforcement of its February 17 bulletin, which declared that private redistribution arrangements, in the context of local tax programs to fund the state’s share of a Medicaid match, are illegal.

The lawsuit alleges that the bulletin is outside of the Agency’s statutory authority, and even if it were not, it would violate the Administrative Procedures Act. The lawsuit quotes 2020 comments from Medicaid Administrator Daniel Tsai (then serving as the Massachusetts Medicaid Director) that call the Agency’s interpretation “an unprecedented federal overreach...[that] exceeded CMS’ statutory authority.” This is consistent with FHA’s understanding of the applicable provisions of the Social Security Act.



The suit asks the court to “declare unlawful and set aside the February 17 bulletin” and issue a preliminary and permanent injunction, prohibiting enforcement of the February 17 bulletin.

We will continue to provide updates to our members on any developments related to CMS’s efforts to implement the informational bulletin. If you have any questions do not hesitate to contact Michael Williams or me.

Sincerely,

[Redacted]

[Redacted]

**Mary C. Mayhew**

**President and CEO**

Florida Hospital Association

P 850-222-9800

M (b)(6)

E

W

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Message

**From:** (b)(6)  
**Sent:** 4/20/2023 10:57:22 PM  
**To:** Tsai, Daniel (CMS/CMCS); (b)(6)  
**Subject:** RE: RE: Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"

Give me a call if you like this evening.

**From:** Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Sent:** Thursday, April 20, 2023 6:30 PM  
**To:** Dervan, Elizabeth (CMS/OL) <elizabeth.dervan@cms.hhs.gov>; (b)(6)  
(b)(6) Katch (she/her), Hannah (CMS/OA) <Hannah.Katch@cms.hhs.gov>; Ellis (she/her), Kyla (CMS/OA) <Kyla.Ellis@cms.hhs.gov>  
**Subject:** FW: Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"  
**Importance:** High

**From:** Coney, Lillie <Lillie.Coney@mail.house.gov>  
**Sent:** Thursday, April 20, 2023 5:48 PM  
**To:** 'secretary@hhs.gov' <secretary@hhs.gov>; Mccluskie, Sean (HHS/IOS) <Sean.Mccluskie@hhs.gov>; Ramirez, Angela (HHS/IOS) <Angela.Ramirez@hhs.gov>; Brooks-LaSure, Chiquita (CMS/OA) <Chiquita.Brooks-LaSure@cms.hhs.gov>; Woronoff, Arielle (CMS/OL) <Arielle.Woronoff@cms.hhs.gov>; Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>  
**Cc:** Coney, Lillie <Lillie.Coney@mail.house.gov>; Arceo, Amy <Amy.Arceo@mail.house.gov>  
**Subject:** Texas Congressional Delegation Letter on the CMS Informational Bulletin (the "Bulletin") entitled "Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments"  
**Importance:** High

April 19, 2023

The Honorable Xavier Becerra  
Secretary, U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 2021

The Honorable Daniel Tsai  
The Deputy Administrator and Director  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Becerra, Administrator Brooks-LaSure, and Deputy Administrator and Director Tsai:

As members of the Texas Congressional Delegation, we have worked with President Biden and with you to improve access to care for all Americans, regardless of income or need. We applaud the Department of Health and Human Services (“HHS”) for its dedication to sustaining and strengthening the health care safety net. The Administration’s investment in the Medicaid program is invaluable, particularly as we transition out of a global public health emergency. We share the Administration’s commitment to supporting our most vulnerable communities and stand ready to assist with your agency’s laudable efforts.

However, while we closely align with your mission, we are deeply concerned by the Informational Bulletin (the “Bulletin”) entitled “Health Care-Related Taxes and Hold Harmless Arrangements Involving the Redistribution of Medicaid Payments”, which was released by the Centers for Medicare & Medicaid Services (“CMS”) on February 17, 2023. The Bulletin echoes many of the themes of the Medicaid Fiscal Accountability Regulation (“MFAR”) proposed in 2019. The Bulletin specifically revives the agency’s attempts to assert its jurisdiction over wholly private arrangements between hospitals, lacking any state involvement.

As you may recall, the MFAR proposed rule received such strong bipartisan opposition that President Trump’s Administration initiated its withdrawal. President Biden also noted his opposition to MFAR as part of his campaign platform, followed by HHS taking quick action to withdraw the proposed rule in January 2021. Like President Biden, we recognized the existential threat the proposed policies posed to our communities’ hospitals and the Medicaid beneficiaries they serve, prompting us to introduce bipartisan legislation that would have halted any implementation of the MFAR proposed rule.

It is clear, however, that some within CMS continue to push the MFAR agenda despite its withdrawal and the agency lacking the authority to set forth such provider tax policies. In fact, the Office of Inspector General (“OIG”) previously opined that there are no regulations to preclude this type of arrangement. Moreover, when CMS raised this issue last year in federal court, a federal judge in Texas reasoned that CMS’s legal position was not at all in line with the Medicaid statute. In short, the Bulletin is a significant and inappropriate shift in policy by CMS that is inconsistent with current law and the agency’s own history of enforcement action.

A policy shift of this significance threatens not only the most vulnerable citizens of our home state, but Medicaid beneficiaries across the country. We question what good this policy shift will have for the health care safety net and how it will ensure equitable access to care for patients. In the nearly four years since CMS first announced its MFAR proposal, not a single time has CMS staff been able to quantify the impact or assure us that this policy will not disrupt equitable access to care.

Moreover, we wish to emphasize that the local provider taxes under attack serve a critical purpose: they provide an avenue for hospitals that have historically struggled to gain access to much-needed supplemental Medicaid payments. This path is a lifeline for hospitals along the southern border and in the 89 Texas counties where non-governmental hospitals are the primary providers for Medicaid patients—areas where Medicaid beneficiaries already have limited access to care. Absent the local financing mechanism, these hospitals, and the patients they serve once again face disenfranchisement.

For these reasons, we ask CMS to withdraw the Bulletin and refrain from seeking to enforce it until the agency can determine the impact it will have on the providers serving our Medicaid beneficiaries. Unless we understand how this policy enhances, rather than reduces equitable access to care, we will continue in our efforts to oppose the agency’s policies.

Thank you for your attention to this very important matter.

Very Truly Yours

Sheila Jackson Lee  
Member of Congress

Joaquin Castro  
Member of Congress

Henry Cuellar  
Member of Congress

Vincent Gonzalez  
Member of Congress

Colin Allred  
Member of Congress

Jasmine Crockett  
Member of Congress

Marc A. Veasey  
Member of Congress

Regards,  
Lillie Coney  
Chief of Staff  
Congresswoman Sheila Jackson Lee (TX-18)  
2426 Rayburn HOB  
Washington, DC 20515  
(202) 225-3816  
(202) 870-6429  
Lillie.Coney@mail.house.gov

Message

**From:** Endelman (he/him), Jonathan (CMS/CMCS); (b)(6)  
(b)(6)

**Sent:** 4/4/2023 8:18:47 PM

**To:** CMS State Directed Payment; (b)(6)  
(b)(6); Bonelli, Anna  
(b)(6); Boston, Beverly  
(b)(6); sinclair, michael  
(b)(6); Badaracco, Andrew  
(b)(6); Goldstein, Stuart  
(b)(6); Yablochnikov, Daniil  
(b)(6); Lyles, Tia (CMS/CMCS)  
(b)(6); Thompson, Christopher  
(b)(6); Arnold, Charlie  
(b)(6); Clark, Jennifer  
(b)(6); Cuno, Richard  
(b)(6); Fan, Kristin  
(b)(6); Heitt, Melissa  
(b)(6); McClure, Deb  
(b)(6); Mosley, Elle  
(b)(6); Schoonover, Matthew  
(b)(6)

**CC:** Loizias, Alex (CMS/CMCS); (b)(6)  
(b)(6); Snyder, Laura  
(b)(6); Giles, John (CMS/CMCS)

**Subject:** RE: RE: Texas SFY23 Approval Letters and SFY24 Draft Submissions

**Attachments:** Attachment G - Local Provider Participation Funds (1).xlsx; SFY 2024 CHIRP\_preprint-addendum (1).xlsx

Thanks. It looks like they have expanded. For CHIRP for example, there used to be nine LPPFs. Now there are thirty. Please see attached.

Best,

Jonathan

Jonathan Endelman, PhD

Social Science Research Analyst  
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7500 Security Blvd.  
Mail Stop, S3-14-28  
Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Tuesday, April 4, 2023 3:06 PM

**To:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; sinclair, michael (CMS/CMCS) <[Michael.Sinclair@cms.hhs.gov](mailto:Michael.Sinclair@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Lyles, Tia (CMS/CMCS) <[Tia.Lyles@cms.hhs.gov](mailto:Tia.Lyles@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Cc:** Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Subject:** RE: Texas SFY23 Approval Letters and SFY24 Draft Submissions

Hi Jonathan,

This year that information can be found in an Excel workbook with "preprint-addendum" in the title. See the tab labeled "Table 5.A."

Thanks!  
Alex

**From:** Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>

**Sent:** Tuesday, April 4, 2023 7:41 AM

**To:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>; Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; sinclair, michael (CMS/CMCS) <[Michael.Sinclair@cms.hhs.gov](mailto:Michael.Sinclair@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Lyles, Tia (CMS/CMCS) <[Tia.Lyles@cms.hhs.gov](mailto:Tia.Lyles@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>; Arnold, Charlie (CMS/CMCS) <[Charlie.Arnold@cms.hhs.gov](mailto:Charlie.Arnold@cms.hhs.gov)>; Clark, Jennifer (CMS/CMCS) <[Jennifer.Clark@cms.hhs.gov](mailto:Jennifer.Clark@cms.hhs.gov)>; Cuno, Richard (CMS/CMCS) <[Richard.Cuno@cms.hhs.gov](mailto:Richard.Cuno@cms.hhs.gov)>; Fan, Kristin (CMS/CMCS) <[Kristin.Fan@cms.hhs.gov](mailto:Kristin.Fan@cms.hhs.gov)>; Heitt, Melissa (CMS/FCHCO) <[Melissa.Heitt@cms.hhs.gov](mailto:Melissa.Heitt@cms.hhs.gov)>; McClure, Deb (CMS/CMCS) <[Deborah.McClure@cms.hhs.gov](mailto:Deborah.McClure@cms.hhs.gov)>; Mosley, Elle (CMS/CMCS) <[larrica.mosley@cms.hhs.gov](mailto:larrica.mosley@cms.hhs.gov)>; Schoonover, Matthew (CMS/CMCS) <[matthew.schoonover@cms.hhs.gov](mailto:matthew.schoonover@cms.hhs.gov)>

**Cc:** Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Subject:** RE: Texas SFY23 Approval Letters and SFY24 Draft Submissions

Hello Alex. Last year, Texas submitted something called "Attachment G" that listed every LPPF that was funding the SDPs. Do you know if they are planning to send something like that again?

Best,

Jonatahn

Jonathan Endelman, PhD  
Social Science Research Analyst  
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Baltimore, MD 21244-1850

**From:** CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Sent:** Monday, April 3, 2023 2:28 PM

**To:** Bonelli, Anna (CMS/CMCS) <[Anna.Bonelli@cms.hhs.gov](mailto:Anna.Bonelli@cms.hhs.gov)>; Boston, Beverly (CMS/CMCS) <[Beverly.Boston@cms.hhs.gov](mailto:Beverly.Boston@cms.hhs.gov)>; sinclair, michael (CMS/CMCS) <[Michael.Sinclair@cms.hhs.gov](mailto:Michael.Sinclair@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Yablochnikov, Daniil (CMS/CMCS) <[Daniil.Yablochnikov@cms.hhs.gov](mailto:Daniil.Yablochnikov@cms.hhs.gov)>; Lyles, Tia (CMS/CMCS) <[Tia.Lyles@cms.hhs.gov](mailto:Tia.Lyles@cms.hhs.gov)>; Thompson, Christopher (CMS/CMCS) <[Christopher.Thompson@cms.hhs.gov](mailto:Christopher.Thompson@cms.hhs.gov)>

**Cc:** Loizias, Alex (CMS/CMCS) <[Alexandra.Loizias@cms.hhs.gov](mailto:Alexandra.Loizias@cms.hhs.gov)>; Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Subject:** Texas SFY23 Approval Letters and SFY24 Draft Submissions

Hi all,

Per our discussion at today's DMCP/FMG meeting, attached are Texas' SFY 2023 SDP approval letters. I've also linked to Texas' SFY 2024 draft preprint submissions below. **Note that these are incomplete submissions and are not under formal federal review.** Our goal is to provide the state with initial feedback on these drafts by next Friday, April 14<sup>th</sup>.

1. **TX Fee Oth Renewal 20230901-20240831 (BHS)**
1. **TX Fee IPH.OPH.BHI Renewal 20230901-20240831 (CHIRP)**
2. **TX Fee Oth1 Renewal 20230901-20240831 (RAPPS)**
2. **TX Fee AMC.PC.SP Renewal 20230901-20240831 (TIPPS)**
1. **TX VBP.Fee NF Renewal 20230901-20240831 (QIPP)**

3. Thanks and please reach out with any questions,
4. Alex





Message

**From:** Endelman, Jonathan (he/him) /CMS/CMCS; (b)(6)  
**Sent:** 3/28/2023 5:32:33 PM  
**To:** Badaracco, Andrew (CMS/CMCS); (b)(6)  
Snyder, Laura  
Goldstein, Stuart  
**CC:** Giles, John (CMS/CMCS); (b)(6)  
**Subject:** RE: RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Thanks for this Andrew. This certainly sounds strange. It sounds like the state is using the proceeds from one health care-related tax (a tax on inpatient and outpatient hospital services) in order to serve as the basis for paying another health care-related tax (services of managed care organizations). Inpatient hospital services, outpatient hospital services, and services of managed care organizations are all separate permissible classes under Section 1903 (w)(7) of the Social Security Act and 42 CFR 433.56. If this is the case, that could be a hold harmless under Section 1903 (w)(4) and 42 CFR 433.68 (f) because the statute states that a hold harmless occurs where, "The State or other unit of government imposing the tax provides (directly or indirectly) for any payment, offset, or waiver that guarantees to hold taxpayers harmless for any portion of the costs of the tax." If this situation occurs as it is being described, the state may be giving an offset to the managed care organizations to hold them harmless for a portion of the tax, which would not be permissible. It looks like there are multiple, interlocking, complicated, moving parts in the state of Washington when it comes to the relationships between their managed care organizations and their hospitals that we need to get a better idea of understanding in order to know what is going on and if it would be in accordance with the requirements laid out in federal statute and regulation.

Best,

Jonathan

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**From:** Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>  
**Sent:** Tuesday, March 28, 2023 12:26 PM  
**To:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Goldstein, Stuart (CMS/CMCS) <STUART.GOLDSTEIN@cms.hhs.gov>; Endelman, Jonathan (CMS/CMCS) <Jonathan.Endelman@cms.hhs.gov>  
**Cc:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>

**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Thanks, Laura – We'll be looking out for follow ups on this.

Copying the email thread with Edwin for reference.

In this particular instance, they didn't say anything as of yet about which entities will be providing an IGT, but we'll be sure to advise on the upcoming drafts/SDPs. One thing to keep in mind, in particular in Edwin's email, they're talking about possibly shaving off some of the Medicaid SDPs and paying that money to the MCOs as an "assessment" of some kind. If there's no FFP involved in the state's payment to the MCO, then we're not super concerned about it. If there *is* FFP mixed into the amounts the MCOs are able to keep, then we would likely say that keeping revenue from a provider payment would not be allowable under 42 CFR 447.10. I don't know if you all have any similar regulations in MCOs, but considering as these are state directed payments, I would think that the whole of the Medicaid payment would be directed to the providers.

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Tuesday, March 28, 2023 8:02 AM

**To:** Goldstein, Stuart (CMS/CMCS) <[STUART.GOLDSTEIN@cms.hhs.gov](mailto:STUART.GOLDSTEIN@cms.hhs.gov)>; Endelman (he/him), Jonathan (CMS/CMCS) <[Jonathan.Endelman@cms.hhs.gov](mailto:Jonathan.Endelman@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Cc:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Subject:** FW: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

**Importance:** High

Hi Jonathan and Stuart,

Sorry to ask for a quick turnaround, but WA is asking for some feedback by COB today. As you'll see in the draft below, we don't have any kind of submission in house at this point. All that's been shared with us is a draft bill in the WA legislature for a new series of payments (SDPs and it looks like some FFS payments as well. We are making clear to the state that CMS doesn't comment on draft legislation, but wanted to give them some level of general TA. In that spirit, are you comfortable with the highlighted bullet that calls out the recent guidance you all put out on hold harmless?

Andrew – I added you as you were on the chain at one point from Edwin in DPO; there is definitely IGT funding involved in the legislation. I suspect this will be one that DMCP and FMG will want to discuss more if the legislation/state moves ahead with the proposal.

Thanks,  
Laura

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Monday, March 27, 2023 4:08 PM

**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>; Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>

**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Draft to share with Edwin; I still need to check with FMG on the link to their guidance:

Hi Edwin –

DMCP has reviewed the email and documents shared by Washington. We recognize the state requested feedback by COB 3/28. We've prepared a written response to share with the state; can you share this with the state?

“Thank you for your request. CMS does not comment on state legislation; however, CMS is happy to provide technical assistance for the state as it drafts submissions for CMS to review and approve, such as state directed payment preprints. While CMS does not currently have a draft SDP proposal before us, we do offer these general pieces of technical assistance as the state considers a future SDP submission:

- CMS is happy to review early drafts of preprint submissions. We have found this useful for both states and CMS as it generally allows CMS to identify any issues early, which may expedite the formal review processes.
- SDPs are reviewed by a federal review team, of which DMCP is one party. While early technical assistance helps to identify issues early, all preprints must go through a formal review process. Issues may be identified during the formal review process that were not identified during technical assistance.
- We strongly encourage states to submit SDPs at least 90 days in advance of the start of the rating period. Barring any notable policy issues, this timing generally allows for the state and CMS to work through the prior approval process, making it easier for states to appropriately incorporate the SDP into their contracts and rates. The later that states submit SDPs, the more likely that the related contracts and rates may be delayed and additional amendments may be needed. We do note that we cannot accept a preprint after the end of the rating period.
- We would also note that there is increased oversight interest in state directed payments, particularly in the financing of the non-federal share. We would recommend that the state consult with the appropriate FMG SMEs for any changing or new financing related to this SDP. We would also flag the following CIB that was published this past February on the use of provider taxes: <https://www.medicaid.gov/federal-policy-guidance/downloads/cib021723.pdf>.
- States must provide CMS with an evaluation plan that would evaluate the effectiveness of the SDP on furthering the goal(s) and objective(s) identified in the state’s Medicaid managed care quality strategy. CMS has released guidance on what elements states should include in their evaluation plan – including identifying measure(s) such as those from the Medicaid and CHIP core set, as well as identifying baselines and targets to evaluate the relative success of the SDP. If you have questions about this, we are happy to connect you with our DQHO colleagues for more technical assistance.
- State directed payments must be based on the delivery and utilization of services to Medicaid beneficiaries covered under the contract for the applicable rating period. Therefore, state directed payments must be tied to utilization and delivery of services covered under the contract during the corresponding contract rating period; payment cannot be based solely on historical utilization. We note that the documentation provided to us suggests the use of reconciliation processes, where interim payments would be made based on historical utilization and then reconciled to utilization under the contract. While CMS has approved such models in SDPs historically, we did want to note that CMS and states have found such arrangements to be operationally challenging to implement. There often is increased work for states and plans in administering the interim payments and then the reconciliation process. We have also seen a number of states implement such payment arrangements and have to submit additional rate certification amendments and contract amendments in light of reconciliations, which can be administratively burdensome and time consuming for both CMS and states.

For more information, we do recommend that you review our more recent guidance on SDPs:

<https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21001.pdf>. If you would like further technical assistance on a draft SDP for submission, please reach out to [statedirectedpayment@cms.hhs.gov](mailto:statedirectedpayment@cms.hhs.gov). We would also like to reiterate that the technical assistance provided above should not be considered CMS signing-off on or commenting on the state’s draft legislation.

Thank you”

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Sent:** Friday, March 24, 2023 5:34 PM

**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS)

<Andrew.Badaracco@cms.hhs.gov>

**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi John,

Thanks very much John for your guidance. Attached is their draft, I will contact Dr. Fotinos to make them aware CMS does not normally comment directly on a state's proposed legislation; their technical questions are noted below:

**Questions/Concerns:**

- **Washington state is requesting to transition their existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.**
- **The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment and an overall general discussion on permissibility of these items.**

Please let me know if I can help out in any other way. I will email Dr. Fotinos in the interim.

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email:Edwin.Walaszek1@cms.hhs.gov

**From:** Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>

**Sent:** Friday, March 24, 2023 5:19 PM

**To:** Walaszek, Edwin (CMS/CMCS) <Edwin.Walaszek1@cms.hhs.gov>

**Cc:** Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>; Badaracco, Andrew (CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>; Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>

**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Edwin – I can discuss with our team on Monday, but many of our folks (including Rebecca) are traveling on Monday. So, reviewing and providing formal feedback by 3/28 will likely not be possible. I can circle with our team on Monday and see if we have any high-level comments, but I can't guarantee what we can provide without additional details from the state. Is the attached document what the state is asking CMS to review? If so, is this draft legislation? CMS does not normally comment directly on a state's proposed legislation, but we can offer the state technical assistance. Again, I can circle with the team on Monday and see what high-level technical assistance we can provide under the timing being offered by the state. It might be helpful for the state to send over technical questions that our team can review.

I hope this helps!

John Giles, MPA

Director, Division of Managed Care Policy

Disabled and Elderly Health Programs Group

Center for Medicaid and CHIP Services

Centers for Medicare and Medicaid Services

Department of Health and Human Services

Phone: 410-786-5545

E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 5:09 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*  
**Importance:** High

Thank you John I appreciate that, I know next week will be difficult because of the meetings in Baltimore, especially since they are requesting a review by 3/28.

I took a look at your schedules for Monday and Rebecca will be OOO.

Do we need to necessarily have a call, or can the review and questions be conducted via email? They want this information Tuesday for their legislature.

Thank you,

**Edwin Walaszek**

Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email:[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 5:01 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi Edwin – thanks! I think we can start with DMCP (please include Rebecca Burch Mack, Laura Snyder, and myself). We will ensure our other team members attend as well. If the state needs to address specific IGT questions, I will note that FMG is best positioned to answer those questions. I will also note that our teams are traveling next week to Baltimore for onsite meetings with MCOG and DEHPG, so I am predicting that scheduling a meeting next week will be difficult, as most of our teams will be in all-day strategic planning meetings on-site.

Thanks for helping us coordinate!

John Giles, MPA  
Director, Division of Managed Care Policy  
Disabled and Elderly Health Programs Group  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:56 PM

**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>

**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*  
**Importance:** High

Hi John,

Thank you I will certainly do that, they emailed both of us. When I emailed Andrew initially about this he indicated FMG would eventually get pulled into the IGT questions, but as far as transitioning the payments, DMCP is a good starting point.

Questions/Concerns:

**Washington state is requesting to transition their existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.**

**The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment and an overall general discussion on permissibility of these items.**

They are looking for guidance by 3/28/23 the latest.

Should I setup a call with the state and DMCP only, or does FMG need to be on the call for their input. Andrew is out today and if FMG is needed should I contact Rory to see if he can make the call?

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email:[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Sent:** Friday, March 24, 2023 4:45 PM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>; Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>

**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi Edwin – it does seem like emails are crossing between multiple teams. ☺

Perhaps it makes the most sense to allow you to coordinate us in the way that makes the most sense. I am happy to help or participate however I can.

Thank you so much!

John Giles, MPA

Director, Division of Managed Care Policy

Disabled and Elderly Health Programs Group

Center for Medicaid and CHIP Services

Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Phone: 410-786-5545  
E-mail: [John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:39 PM  
**To:** Giles, John (CMS/CMCS) <[John.Giles1@cms.hhs.gov](mailto:John.Giles1@cms.hhs.gov)>  
**Cc:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi John,

My name is Edwin Walaszek and I am the Washington state lead, I just emailed Laura Snyder and for context I am just forwarding over the states initial request and some background, I know Dr. Fotinos emailed you directly.

Please let me know if I can help in anyway.

Thank you,

**Edwin Walaszek**

Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email:[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:28 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** RE: WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*

Hi Edwin,

We've received a separate request today from the state SMD on this topic; we'll follow-up after that meeting about any next steps.

Thanks,  
Laura

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 4:19 PM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** WA STATE IS REQUESTING EXPEDITED RESPONSE BY 3/28\*\*\*Technical Assistance Request-WSHA Safety Net\*\*\*  
**Importance:** High

Good afternoon Laura,

We emailed a few days back, I work in DPO as the Washington state lead, I emailed you regarding a question that was submitted by Washington state and a bill in their legislature. **Washington state is requesting an expedited review of their concerns by Tuesday March 28<sup>th</sup> if possible.**

The bill is expected to be introduced in the next couple of days and their legislative partners are anxious to learn more about the permissibility of the program under CMS rules.

There is a link to a recent news article in Washington that provides some background on this topic?

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwibu8-S2-\\_9AhXcMVkFHZwzDROQFnoECAwQAQ&url=https%3A%2F%2Fwww.king5.com%2Farticle%2Fnews%2Fhealth%2Fwsha-hospitals-calling-for-increased-medicaid-payments%2F281-dd424f3a-d9e0-49e6-bf7a-eb70590e0124&usg=AOvVaw2GfMqm1iV0kCroAtAFWktf](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwibu8-S2-_9AhXcMVkFHZwzDROQFnoECAwQAQ&url=https%3A%2F%2Fwww.king5.com%2Farticle%2Fnews%2Fhealth%2Fwsha-hospitals-calling-for-increased-medicaid-payments%2F281-dd424f3a-d9e0-49e6-bf7a-eb70590e0124&usg=AOvVaw2GfMqm1iV0kCroAtAFWktf)

Please let me know how I can help out. I apologize they never indicated this guidance was needed so quickly.

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email:Edwin.Walaszek1@cms.hhs.gov

**From:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>

**Sent:** Friday, March 24, 2023 3:52 PM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Cc:** Fotinos, Charissa (HCA) <[charissa.fotinos@hca.wa.gov](mailto:charissa.fotinos@hca.wa.gov)>

**Subject:** RE: Technical Assistance Request

Yes, that article is about this bill.

Tuesday, March 28<sup>th</sup> would be ideal.

**Abby Cole**

Section Manager, Hospital Finance & Drug Rebate

[Abby.cole@hca.wa.gov](mailto:Abby.cole@hca.wa.gov)

Office: 360-725-1835

She/Her (*why pronouns matter*)

Washington State

Health Care Authority

[hca.wa.gov](http://hca.wa.gov)

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**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 24, 2023 12:42 PM  
**To:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>  
**Cc:** Fotinos, Charissa (HCA) <[charissa.fotinos@hca.wa.gov](mailto:charissa.fotinos@hca.wa.gov)>  
**Subject:** Technical Assistance Request  
**Importance:** High

External Email

**From:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>  
**Sent:** Friday, March 24, 2023 3:32 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Cc:** Fotinos, Charissa (HCA) <[charissa.fotinos@hca.wa.gov](mailto:charissa.fotinos@hca.wa.gov)>  
**Subject:** RE: Technical Assistance Request

Hello Edwin,

I'm following up on this. Any updates as to when we can expect to be able to have a TA call with CMS? The bill is expected to be introduced in the next couple of days and our legislative partners are anxious to learn more about the permissibility of the program under CMS rules.

Thank you,  
Abby

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 12:29 PM  
**To:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>  
**Subject:** RE: Technical Assistance Request

External Email

Thanks very much Abby

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email: [Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>  
**Sent:** Wednesday, March 22, 2023 1:08 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Cc:** Klein, Evan (HCA) <[evan.klein@hca.wa.gov](mailto:evan.klein@hca.wa.gov)>; Atkinson, Megan M. (HCA) <[megan.atkinson@hca.wa.gov](mailto:megan.atkinson@hca.wa.gov)>; Lucero,

Catrina (HCA) <catrina.lucero@hca.wa.gov>

**Subject:** RE: Technical Assistance Request

Thank you.

We are looking to transition our existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.

The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment. We are hoping for an overall general discussion on permissibility of those items.

Thank you,

**Abby Cole**

Section Manager, Hospital Finance

[Abby.cole@hca.wa.gov](mailto:Abby.cole@hca.wa.gov)

Office: 360-725-1835

Pronouns: she/her

Washington  
Health

Authority

[hca.wa.gov](http://hca.wa.gov)

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**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Sent:** Thursday, March 16, 2023 3:19 PM

**To:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>

**Cc:** Klein, Evan (HCA) <[evan.klein@hca.wa.gov](mailto:evan.klein@hca.wa.gov)>; Atkinson, Megan M. (HCA) <[megan.atkinson@hca.wa.gov](mailto:megan.atkinson@hca.wa.gov)>; Lucero, Katrina (HCA) <[catrina.lucero@hca.wa.gov](mailto:catrina.lucero@hca.wa.gov)>

**Subject:** Technical Assistance Request

External Email

Good afternoon Abby and team:

Thank you for submitting this request, I am reaching to out the team to see if they have any preliminary questions and I will follow up with some available time .

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

CMS002329cv1579

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email:Edwin.Walaszek1@cms.hhs.gov

**From:** Cole, Abby (HCA) <[abby.cole@hca.wa.gov](mailto:abby.cole@hca.wa.gov)>

**Sent:** Thursday, March 16, 2023 2:09 PM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>

**Cc:** Klein, Evan (HCA) <[evan.klein@hca.wa.gov](mailto:evan.klein@hca.wa.gov)>; Atkinson, Megan M. (HCA) <[megan.atkinson@hca.wa.gov](mailto:megan.atkinson@hca.wa.gov)>; Lucero, Catrina (HCA) <[catrina.lucero@hca.wa.gov](mailto:catrina.lucero@hca.wa.gov)>

**Subject:** Technical Assistance Request

Hello Edwin,

I'm attaching a draft of a proposed bill for a revised hospital assessment in Washington State. I'm hoping you can help me get something scheduled with the right individuals so we can discuss the permissibility of the proposed changes.

Thank you,

**Abby Cole**

Section Manager, Hospital Finance & Drug Rebate

[Abby.cole@hca.wa.gov](mailto:Abby.cole@hca.wa.gov)

Office: 360-725-1835

She/Her (*why pronouns matter*)

Washington State  
Health Care Authority

[hca.wa.gov](http://hca.wa.gov)

[Connect with us](#)

**From:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>

**Sent:** Wednesday, March 22, 2023 4:00 PM

**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>;

CMS State Directed Payment <[StateDirectedPayment@cms.hhs.gov](mailto:StateDirectedPayment@cms.hhs.gov)>

**Cc:** Caulder, Tara (CMS/CMCS) <[Tara.Caulder@cms.hhs.gov](mailto:Tara.Caulder@cms.hhs.gov)>; Kivisaari, John (CMS/CMCS) <[John.Kivisaari@cms.hhs.gov](mailto:John.Kivisaari@cms.hhs.gov)>

**Subject:** RE: Technical Assistance-WA-WSHA Safety Net Draft

Hi Edwin,

Thanks for sharing and you've hit the right place. I've included our state directed payment mailbox on the email thread. For SDPs, Tara Caulder is our WA lead. I've also cc'ed John Kivisaari, the DMCO lead for WA, for awareness.

Let us take a look at this and follow-up with you on next steps.

Thanks,  
Laura

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 3:43 PM  
**To:** Snyder, Laura (CMS/CMCS) <[Laura.Snyder1@cms.hhs.gov](mailto:Laura.Snyder1@cms.hhs.gov)>  
**Subject:** Technical Assistance-WA-WSHA Safety Net Draft

Good afternoon Laura,

My name is Edwin Walaszek and I am the CMS Medicaid Washington state lead. I am reaching out to you as I was referred by Andrew Badaracco, Washington state has submitted a draft bill (attached) that will revise the rating of Washington State Hospitals.

The state is looking to transition their existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.

**The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment.**

They are hoping for an overall general discussion on permissibility of those items.

Thank you for any help you can provide, alternatively do you think it would be easier to setup a call with the state to discuss.

Please let me know if there are any other questions or concerns.

Thank you,

**Edwin Walaszek**  
Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services  
Email: [Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 3:38 PM  
**To:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>; Caughey, Tom (CMS/CMCS) <[Tom.Caughey@cms.hhs.gov](mailto:Tom.Caughey@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>  
**Subject:** RE: Technical Assistance-WA-WSHA Safety Net Draft

Hey Edwin –

Pass-through payments and state-directed payments are DMCP's policy area. Suggest you reach out to Laura Snyder.

Thanks!

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Wednesday, March 22, 2023 3:29 PM  
**To:** Caughey, Tom (CMS/CMCS) <[Tom.Caughey@cms.hhs.gov](mailto:Tom.Caughey@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** Technical Assistance-WA-WSHA Safety Net Draft

Hi Tom and team:

Thanks Tom, so I reached out to the state for some more specifics on their TA request regarding the draft by the legislature regarding the WSHA Safety Net draft.

The state is looking to transition their existing pass-through program to a directed payment to comply with CMS' requirements to sunset the pass throughs.

**The state would like to discuss the expansion of the program, the proposed tiers for payment of assessment and the addition of an intergovernmental transfer program to fund a directed payment.**

They are hoping for an overall general discussion on permissibility of those items.

Please let me know if there are any other questions or concerns.

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid Services

Email: [Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)

**From:** Walaszek, Edwin (CMS/CMCS) <[Edwin.Walaszek1@cms.hhs.gov](mailto:Edwin.Walaszek1@cms.hhs.gov)>  
**Sent:** Friday, March 17, 2023 11:38 AM  
**To:** Caughey, Tom (CMS/CMCS) <[Tom.Caughey@cms.hhs.gov](mailto:Tom.Caughey@cms.hhs.gov)>; Moreth, James (CMS/CMCS) <[James.Moreth@cms.hhs.gov](mailto:James.Moreth@cms.hhs.gov)>; Knight, Gary (CMS/CMCS) <[Gary.Knight@cms.hhs.gov](mailto:Gary.Knight@cms.hhs.gov)>; Badaracco, Andrew (CMS/CMCS) <[Andrew.Badaracco@cms.hhs.gov](mailto:Andrew.Badaracco@cms.hhs.gov)>  
**Subject:** RE: Technical Assistance-WA-WSHA Safety Net Draft

Good morning Tom,

Thank you, I will reach out to the state for more specifics.

Thank you,

**Edwin Walaszek**

Washington State Lead

Division of Program Operations – West | Medicaid & CHIP Operations  
Group

Center for Medicaid & CHIP Services | Centers for Medicare & Medicaid  
Services

Email:Edwin.Walaszek1@cms.hhs.gov

**From:** Caughey, Tom (CMS/CMCS) <Tom.Caughey@cms.hhs.gov>

**Sent:** Friday, March 17, 2023 11:23 AM

**To:** Walaszek, Edwin (CMS/CMCS) <Edwin.Walaszek1@cms.hhs.gov>;  
Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>; Knight,  
Gary (CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Badaracco, Andrew  
(CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>

**Subject:** RE: Technical Assistance-WA-WSHA Safety Net Draft

Hi Edwin,

Could the state please send questions they have before the call? Also, if they provide a little background on why they are making the changes could help. Thanks.

Tom Caughey, Funding Specialist  
Centers for Medicare & Medicaid Services  
Financial Management Group  
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**From:** Walaszek, Edwin (CMS/CMCS) <Edwin.Walaszek1@cms.hhs.gov>

**Sent:** Thursday, March 16, 2023 6:18 PM

**To:** Moreth, James (CMS/CMCS) <James.Moreth@cms.hhs.gov>;  
Caughey, Tom (CMS/CMCS) <Tom.Caughey@cms.hhs.gov>; Knight, Gary  
(CMS/CMCS) <Gary.Knight@cms.hhs.gov>; Badaracco, Andrew  
(CMS/CMCS) <Andrew.Badaracco@cms.hhs.gov>

**Subject:** Technical Assistance-WA-WSHA Safety Net Draft

Hello DRR team:

I am reaching out to the team because Washington state has submitted a draft bill (attached) that will revise the rating of Washington State Hospitals. The state is requesting to speak with CMS to discuss the acceptability of the proposed changes.

Are any questions or concerns I can help clarify with the state before scheduling some time with them?

Thank you,

Edwin Walaszek  
Washington State Lead  
Division of Program Operations – West | Medicaid & CHIP  
Operations Group  
Center for Medicaid & CHIP Services | Centers for Medicare &  
Medicaid Services  
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