DEPARTMENT OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

Executive Secretariat

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FROM: Kenneth Choe

FAX NUMBER: (202) 690-7203
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URGENT

URGENT

NOTE TO REVIEWERS

Please review immediately the attached documents on provider taxes. They should reflect the most recent comments made by the Department and the White House.

(1) Fact sheet, as revised by the White House

(2) Questions and answers

(3) State Medicaid Directors letter

(4) Boilerplate for state-specific letters

(5) Examples of state-specific letters

Please provide essential comments directly to Jim Frizzera, HCFA, (410) 786-9535; (410) 786-3252 (fax) no later than 3:30 p.m. today, October 7.

Please note that representatives of the Department and the White House are presently meeting to discuss this issue. You will be notified if the outcome of this meeting impacts your review of these documents.

Ken Choe
10/6

cc: Kevin Thurm, DS
LaVarne Burton, ES
Harriet Rabb/Anna Durand/Henry Goldberg, OGC
Christy Schmidt, ASPE
John Callahan/Ashley Files/Peter Harbage, ASMB
Rich Tarplin/Sharon Clarkin, ASL
Laurie Boeder/Mary Kahn, ASPA
Katie Steele/Faith McCormick/Alison Greene, IGA
Chris Jennings/Jeanne Lambrew, DPC
Jack Lew/Bonnie Washington, OMB

FACT SHEET ON MEDICAID HEALTH CARE-RELATED TAXES

October 8, 1997

BACKGROUND

During the late 1980s, many States established financing schemes that had the effect of increasing their Federal Medicaid funds without using additional State resources. Typically, States would raise funds from health care providers (through provider taxes or "donations"), then pay back those providers through increased Medicaid payments. Since the Federal government pays at least half of Medicaid payments, the provider taxes or donations would be repaid in large part by Federal matching payments. Using this mechanism, States were able to increase Medicaid payments to providers without realizing increased costs.

The widespread use of these financing mechanisms contributed to the extraordinary increases in Federal Medicaid expenditures in the late 1980s and early 1990s. One report found that provider tax revenue rose from $400 million in 6 states in 1990 to $8.7 billion in 39 States in 1992. There was a similar increase in Federal Medicaid spending, which more than doubled between 1988 and 1992, with an average annual rate of over 20 percent. The number of people served by Medicaid did not rise by nearly so much and, in fact, unofficial reports suggested that some States used the funds generated through this scheme for non-Medicaid purposes such as roads and stadiums.

In response to this unprecedented drain on the Federal Treasury, Congress passed "The Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991" (Public Law 102-234). The first stand-alone piece of Medicaid legislation in the program's history, this law permits States to use revenue from health care-related taxes to claim Federal Medicaid matching payments only to the extent that these taxes are broad based (i.e., applied to all providers in a permissible class); uniform (i.e., same for all providers within the group); and are not part of a "hold harmless" arrangement (i.e., the taxes are not devised to repay dollar-for-dollar the provider who was initially assessed). The law also precluded States from using provider donations, except in very limited circumstances. In addition, the law introduced limits on how much States could pay hospitals through the disproportionate share hospital (DSH) program — the primary way that States repaid their provider taxes or donations.

The final regulation for this law was published in 1993 after extensive consultation with the States and the National Governors' Association. The regulation defined which taxes are permissible, HCFA's methodology for determining permissibility of taxes, and a process for requesting waiver approval for tax programs that are either not broad based and/or uniform.

HCFA has communicated with States — through letters, a national conference, and State contacts at the regional level — about the Administration's concerns with many of these tax programs. Many states have responded with waiver requests and questions about their programs or HCFA interpretations. Today, policy guidance about our current interpretation of the provider tax law and regulations is being described in a State Medicaid Directors' letter and a *Federal Register* notice . HCFA will also send some States letters about its preliminary findings about their particular taxes' compliance with the law and/or the need for additional information.

POLICY CLARIFICATIONS

In its ongoing review and update of regulations, HCFA has determined that several changes in its implementation of the Medicaid provider tax provisions are appropriate, as described in today's letter to State Medicaid Directors (dated October 8, 1997). First, HCFA will clarify its interpretation of taxes that are considered uniform. It will permit taxes on occupied beds or patient days to be considered uniform (previously, only taxes on all beds and all days were considered uniform). Second, the letter states that States do not need to submit a new waiver request for a tax subject to an existing waiver if there is a uniform change in the tax rate. The letter also reminds States that they may suggest additional classes of providers to qualify as "broad based" and that they should submit quarterly reports on their provider taxes and donations. These clarifications have resulted in the determination that 10 States' taxes are permissible and require no further review.

In addition, HCFA has published in the October 8, 1997 *Federal Register* a correcting amendment to the provider tax regulation regarding its interpretation of the uniformity test. It lowers the threshold for allowable tax programs based on regional variations, enacted and in effect prior to November 24, 1992. The correction is to conform the regulation to HCFA and Congress's intent to recognize such taxes as generally redistributive.

CONCERNS AND QUESTIONS ABOUT CERTAIN STATES' TAXES

Today, HCFA will also send letters to some States discussing their particular provider taxes — specifically, notifying them that some of their tax programs are permissible, may be out of compliance with current law, and/or require additional information in order to be assessed.

HCFA has identified several health care-related tax programs that appear to be inconsistent with the statutory provisions. These provider taxes may fail to be broad based; uniform; and/or contain a hold harmless provision. There is sufficient concern about these States' programs to justify an audit if additional information is not offered. However, these letters are intended as a starting point for discussions. In no instance will HCFA disallow payments without discussions with the affected State and a financial audit.

In addition, HCFA has asked some States for more information on their tax programs. It has identified a series of tax programs that are not broad based or uniform but could possibly qualify for a waiver. HCFA is notifying these States that they should provide additional information needed for their waiver requests.

Twenty-two States will receive letters. Ten of these States will be notified that some of their questionable taxes are permitted through the policy clarifications described above. Eleven States will be informed that they may have impermissible taxes. Another 9 States will be asked to supply additional information needed to evaluate their requests for waiver of broad based and/or uniformity requirements. **[Certain States fall into more than one of these categories]**

HCFA will immediately contact each State to schedule a meeting at the earliest possible point to exchange information and discuss all issues relating to their taxes. HCFA's goal is to establish whether the taxes in question are impermissible and, if so, end their use. We encourage States to fully engage in discussions with HCFA to facilitate equitable and expeditious resolutions.

FOR INTERNAL USE

HEALTH CARE RELATED TAX DRAFT QUESTIONS & ANSWERS

1.Q. How will you make sure vulnerable people are not hurt, or kicked off Medicaid rolls as the federal government recoups its overpayments from states?

A. The Administration's record of protecting Medicaid and the people it serves is well documented. One of the major reasons why the President vetoed the 1995 Republican budget bill was its intent to dramatically reduce its Medicaid funding and eliminate the guarantee of health care to low income and disabled Americans. It would not support policies that disadvantage Medicaid beneficiaries. The Administration's actions will increase the public's confidence in the Federal oversight of the Medicaid program.

2.Q. New York's Governor and Congressional Delegation have made it clear that no less than a "hold harmless" outcome (meaning the state owes no money to the Federal government) to the Administration's review of provider taxes would be acceptable. They feel the HCFA action taken today unfairly exposes New York to over $500 million in liabilities that the state's Medicaid program cannot afford to pay. Don't you care about the hospitals and the poor people that the Medicaid program serves?

A. First, the President's record of support for the Medicaid program is longstanding and clear. He fought long and hard to ensure that the program would not be block granted and that guarantee of health coverage for millions of Americans would be preserved.

Second, the announcement today makes clear that New York cannot be held liable for over $1 billion in regional provider taxes that were previously in question. This is -- without question -- the largest provider tax that New York relied on and, as such, today's action relieves the state of major budgetary concerns.

Third, the outstanding provider taxes still in question are just that -- still in question. There are a number of provider taxes that appear to be out of compliance with current law and regulation. As the government's enforcement agency for Medicaid, HHS must make certain that all state taxes comply with the law. However, this is the beginning of the process. New York, and every other state notified today that they may be similarly out of compliance, will have the opportunity to provide information to illustrate that their cited provider tax is consistent with the law.

FOR INTERNAL USE

But let's be clear: to ensure the Medicaid program is well run and serves the taxpayers who support it, we must be certain that the Federal Treasury is not impermissibly being tapped to underwrite costs that are the responsibility of the states. To not do so would be unfair to those other states (and the taxpayers who support them) who are in compliance.

3.Q. What is HCFA's rationale for a change in some of its policies regarding these taxes? Does it clarify the status of state provider taxes or are some still open to dispute?

A. The law allows the Secretary to determine if a tax meets the statute's requirement that a health care related tax is permissible if it is broad based, uniform, and does not contain a "hold harmless" provision (an arrangement whereby the taxpayer is assured it will get the money back). After careful review of our interpretation of the law, we have determined that one of the types of taxes we questioned - those imposed on providers based on patient days or the occupied beds - are indeed uniform. In addition, we have determined States do not need to submit a new waiver request for a tax under its existing waiver if there is a uniform change in the rate. Thirdly, HCFA has published in the Federal Register a correcting amendment to the uniformity test in the regulation lowering the threshold for allowable tax programs based on regional variations, enacted and in effect prior to November 24, 1992. These policy clarifications and corrections have resulted in the determination that 10 States' taxes are permissible and require no further review. However, HCFA still has questions and concerns about other States' tax programs. In addition to the policy clarifications being transmitted today, HCFA will also send letters to some States discussing their particular provider taxes.

4.Q. HCFA plans to send auditors into states with impermissible provider taxes. What exactly will they be looking for?

A. States with provider taxes that appear to be impermissible will have an opportunity to provide new information that could preclude an audit. In the case of an audit, auditors will conduct on-site examinations to determine the total revenue collected from each health care related tax program HCFA determined to be out of compliance. This will help HCFA determine the amount each state needs to reimburse the federal government for impermissibly collected federal matching funds.

5.Q. What is impermissible about the taxes that have been disallowed? What does "broad based and uniform" mean?

FOR INTERNAL USE

A. None of the health care related taxes in question have been disallowed, but HCFA has sufficient grounds to begin to audit certain States' tax programs. HCFA is still reviewing these programs. However, impermissible health care related taxes fall into three general categories: taxes imposed on groups not listed in the statute or regulation ("bad classes"); taxes returned to the taxpayers ("hold harmless"); and taxes that fail the broad based and/or uniformity waiver test. In general a broad based health care related tax is one that applies to all members of a class or category. Uniform health care related taxes mean a tax which is levied at the same rate for all those in a particular group or class. A "hold harmless" means that the taxes are returned to the taxpayer.

6.Q. Many states have had waiver applications at HCFA for several years. Why did this action take so long?

A. Reviewing the state waiver requests did take longer than we would have liked. The evaluation of each waiver request is a lengthy and complicated process that often requires HCFA to seek additional information from states and for states to resubmit calculations that may have been done in error. After a careful review of each waiver request, HCFA is now issuing letters to several states.

7.Q. Are some states getting a better deal than others? Can you say unequivocally that this policy is being applied fairly among all the states?

A. No state is getting "a better deal" than another state. The HCFA policy has a national application and effect. For instance, all states that tax hospitals based on the number of days they have patients in the hospital (occupied bed/or patient days) or only make a uniform change in the rate of a tax that is otherwise broad-based are now considered to have permissible taxes, to the extent these tax programs do not contain a hold harmless provision.

8.Q. Do you expect states to sue over this recovery attempt? What is your response?

A. We hope that States will agree to fully engage in discussions with HCFA to facilitate equitable and expeditious resolutions, rather than pursue lengthy and costly lawsuits. If a State opts not to discuss these issues with HCFA, then the normal course of action would ensue. HCFA would conduct a financial audit to determine the total revenue collected from each health care related tax program HCFA has determined to be out of compliance.

HCFA would then issue a "disallowance" to the State for the amount of impermissible collected federal matching funds. If a State disagrees with HCFA's decision, it can file an appeal with the Departmental Appeals Board (DAB). If a State disagrees with the DAB decision, it can pursue the issue in court.

9.Q. How many states owe money to the federal government because of inappropriate provider taxes? How far into the past is the federal government going to examine state provider taxes?

A. HCFA has identified 11 states with *potentially* impermissible taxes. No final determination has been made. HCFA will perform audits to make the final determination. As to the "look back" period, most states were given nine months after the law's Jan. 1, 1992 effective date to bring their taxes into compliance. That transition for most states ended on Oct. 1, 1992. Two states' transition period ended Jan. 1, 1993 and eight states' transition period ended July 1, 1993. All impermissible taxes since this look back could be subject to a disallowance.

10.Q. Does this complete the provider tax examination, or is the federal government going to come back to the states later with more disallowances?

A. The letters that are being sent currently do not complete HCFA's review of the health care related tax issue. There are several health care related tax programs for which HCFA still needs additional information from the states involved. If the agency finds violations, disallowances will be issued. Of course, states will continue to levy new taxes, and HCFA will continue to review these taxes for compliance with the law.

11.Q. How much in total does the federal government expect to recover?

A. HCFA's primary goals is to end the use of impermissible taxes. In order to determine the amount of repayment owed to the federal government, audits must be performed to determine the exact amount of revenue collected from any impermissible health care related taxes. Furthermore, HCFA will offer to meet with the states for possible negotiations of settlement agreements. However, based on initial estimates through March 1997, HCFA has identified 11 states with impermissible taxes and 9 states with tax programs requiring approval of waivers.

FOR INTERNAL USE

HCFA estimates the total amount of impermissible taxes to be between $2 billion and $4 billion.

12.Q. Isn't HCFA just issuing these disallowance letters to provide cover for President Clinton's use of the line-item veto of a special fix for New York's improper provider taxes that had been in the Balanced Budget Act?

A. No. HCFA has been reviewing state requests of waivers of the health care related tax laws for some time. The letters issued today were in the pipeline prior to the President's action. The item canceled by President Clinton would have given preferential treatment to New York by allowing that state to continue relying on potentially impermissible taxes to fund its share of the Medicaid program. This preferential treatment would have increased Medicaid costs, would have been unfair to states playing by the rules and would have established a costly precedent.

13.Q. What kind of hospitals, and which States benefit from the occupied bed/patient day policy change?

A. Broad based occupied bed/patient day taxes are imposed on all hospitals providing inpatient hospitals services in a State. This includes acute care hospitals, rehabilitation hospitals, psychiatric hospitals, and any other non-acute care hospital in a State.

All States that have taxes based on occupied beds/patient days would have permissible taxes under the clarification.

[8 States - Alabama, DC, Louisiana, Mississippi, Montana, South Carolina, Utah, Wisconsin]

14.Q. The "correcting amendment" would change the generally redistributive waiver test threshold from .85 to .7. Is it true that this new number benefits only the State of New York? Is this another attempt by New York to get some sort of special fix? Why is HCFA so determined to give NY special treatment in the first place?

A HCFA is attempting to satisfy Congressional intent to consider a tax program enacted and in effect prior to November 24, 1992, based solely on regional variations to be generally redistributive. While it is HCFA's understanding that the State of New York is the only State that has a tax

program of this nature, the corrected amendment is not an attempt to give the State of New York preferential treatment. Instead, it is HCFA's responsibility to implement the statute and apply a proper percentage to the generally redistributive test to consider taxes based on regional variation to be generally redistributive.

15.Q. How much in total does the Federal government expect to recover from the State of New York?

A. The exact amount of possibly impermissible taxes in New York is not known at this time. First, we must obtain any and all information from the state on the status of their provider taxes. Second, we would need to conduct financial audits to ascertain the exact amount of money at stake. Preliminary estimates suggest that this could, with no additional information, sum up to more than $500 million. However, New York will also benefit from several clarifications of existing law that makes clear that over $1 billion in provider taxes is permissible.

16.Q. HCFA recently published the allotments for child health and has provided guidance to States on how to apply for access to this money. HCFA is now threatening to disallow billions of dollars under the Medicaid program, which also serves otherwise uninsured children. Aren't these two initiatives working at cross-purposes?

A. HCFA is not questioning the expenditures made by States with potentially impermissible health care related taxes. The health care related taxes at issue are a source of the States' funding of Medicaid expenditures. The statute is very clear with respect to permissible sources of funding based on health care related taxes. To the extent a State funds any Medicaid or child health expenditure(s) with a broad based, uniform tax on a permissible class of items or services which does not hold taxpayers harmless for their tax costs, HCFA will allow the State to use that revenue as its match for Medicaid expenditures. However, States with impermissible health care related taxes that did not abide by the law are subject to HCFA's disallowance of the funding.

17.Q. Due to the substantial amount of money involved, does HCFA intend to negotiate any of the impermissible tax disallowances?

A. HCFA wants to end the use of impermissible taxes as soon as possible. We intend to meet with states immediately to discuss all issues regarding impermissible health care related taxes. HCFA's goal is to establish whether

the taxes in question are impermissible and if so, end their use. We strongly encourage states to fully engage in discussions with HCFA to facilitate equitable and expeditious resolutions.

18.Q. **The Mayor's Office, the Governor's Office, the New York Hospital Association, and even Al Sharpton are threatening to sue the Federal Government over this provider tax issue. Do you have any response to these threats?**

A. They certainly have the right to sue, but we would hope that these parties would allow the Governor's office and the Health Care Financing Administration to work through the normal process before they pursue a lengthy and potentially expensive legal response. We do believe, however, that the Courts will uphold the Department's interpretation of the law and the regulations that interpret the statute.

19.Q. **What about the issue of the constitutionality of the line item veto and Senator Moynihan's indication that he supports a challenge of the President's veto?**

A: We believe that the President's line item veto power authority, which was authorized in statute by the Congress, would be upheld in any court challenge.

20.Q. **What is the White House's involvement in this issue?**

A. Medicaid enforcement actions are handled directly by the Department of Health and Human Services, and the Health Care Financing Administration (HCFA) in particular. As we do for all similar types of public announcements, the White House and the Office of Management and Budget have reviewed HCFA's policy clarifications and preliminary findings on states' compliance with current law and regulations related to provider taxes. However, the White House has no direct involvement with enforcement actions and negotiations with individual states.

ALL STATES - GENERAL POLICY LETTER

Dear State Medicaid Director:

We are writing to inform you of several policy interpretations which the Health Care Financing Administration (HCFA) has recently adopted. These interpretations relate to the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, Pub. L. No. 102-234 § 2(a)(codified at section 1903(w) of the Social Security Act (the Act)), and related regulations, and were adopted as part of a thorough review of HCFA's policies in the area of provider taxes. While this letter addresses only policies of broad, general applicability, in the near future some States will receive additional correspondence that will explain how HCFA believes these and other tax policies affect the specific provider taxes that have been enacted in your State.

As you know, the Medicaid Voluntary Contribution and Provider Specific Tax Amendments were enacted to limit Federal financial participation (FFP) in States' medical assistance expenditures when the States receive funds from, among other sources, impermissible health care related taxes. Under the Act, States may continue to receive FFP with respect to "broad based" and "uniform" health care related taxes. According to section 1903(w)(3)(B), a broad based health care related tax means a health care related tax which is imposed with respect to a permissible class of items or services on all providers in that class. In addition, under section 1903(w)(3)(C)of the Act, a uniform health care related tax means a tax which is imposed with respect to a permissible class of items or services at the same rate for all providers. For those taxes which are not broad based or uniform, the Secretary may grant waivers if she finds that the taxes in question are "generally redistributive," pursuant to section 1903(w)(3)(E) of the Act.

In this letter, we first clarify HCFA's interpretation of the requirement that health care related taxes be applied uniformly. Second, we clarify that, when the Secretary has granted a waiver with regard to a health care related tax because she has concluded that the tax is generally redistributive, a later uniform change in the rate of tax will not require the State to submit a new waiver request. Third, we are reminding States of their opportunity to propose additional classes of providers, items, or services which the Secretary may consider including as permissible classes. Fourth, we are reminding States that all provider related donation revenue and health care related tax revenue, which includes licensing fee revenue, must be reported to HCFA on the HCFA-form 64.11A.

First, with regard to the requirement that health care related taxes be uniformly imposed, the implementing Federal regulation at 42 C.F.R. § 433.68(d)(iv) specifies that a health care related tax will be considered uniformly imposed if the tax is imposed on items or services on a basis other than those provided by statute, and the State establishes to the satisfaction of the Secretary that the amount of the tax is the same for each provider of such items or services in the class. We are clarifying that HCFA interprets 42 C.F.R. § 433.68(d)(iv) to include health care related taxes on the occupied beds of a facility or the patient days of a facility. HCFA has concluded that, to the extent the rate of a health care related tax is the same for each occupied bed or patient day and the tax is applied to all providers in the permissible class of services, a health care related tax program based on occupied beds or patient days will be considered uniformly applied. Previously, HCFA had interpreted the Act to require that the tax be applied to all beds or all days to be considered uniform.

Second, where States have sought and obtained waivers for existing health care related tax programs, HCFA is clarifying that a uniform change in the rate of tax will not require a new waiver. To the extent a State makes no other revisions to an existing health care-related tax program (e.g., modifications to provider or revenue exclusions), HCFA would not view a uniform change in the tax rate as a new health care related tax program.

Third, section 1903(w)(7)(A)(ix) of the Act states that the Secretary may establish, by regulation, classes of health care items and services, other than those listed by statute. The implementing regulation, at 42 C.F.R. § 433.56 specifies 10 additional permissible classes of items and services. In addition, the preamble to the implementing regulation indicates that the Secretary will consider adding additional classes if States can demonstrate the need for additional designations and that any proposed class meets the following criteria: 1) the revenue of the class is not predominantly from Medicaid and Medicare (not more than 50 percent from Medicaid and not more than 80 percent from Medicaid, Medicare, and other Federal programs combined); 2) the class is clearly identifiable, for example, by designation through State licensing programs, recognition for Federal statutory purposes, or inclusion as a provider in State plans; and 3) the class is nationally recognized rather than unique to a State. This is a reminder and an invitation to States that they may identify additional classes.

Fourth, section 1903(w)(7)(F) of the Act defines the term "tax" to include any licensing fee, assessment, or other mandatory payment. Therefore, any licensing fee applied to the items or services listed by statute and/or regulation must comply with the

law. Furthermore, section 42 CFR 433.56(a)(19) requires that for health care items or services not listed by regulation on which the State has enacted a licensing fee or certification fee, the fee must be broad based, uniform, not contain a hold harmless provision, and the aggregate amount of the fee cannot exceed the State's estimated cost of operating the licensing or certification program. Section 42 CFR 433.68(c)(3) states that waivers from the uniform and broad based requirements will automatically be granted in cases of variations in licensing and certification fees for providers if the amount of such fee is not more than $1,000 annually per provider and the total amount raised by the Stat from the fees is used in the administration of the licensing or certification program. This is a reminder to States that any licensing or certification fee imposed on providers of health care items or services is considered a health care related tax.

Finally, section 1903(d)(6)(A) of the Act requires that States include in their quarterly expenditure reports, information related to provider-related donations and health care-related taxes. This is a reminder to report all provider-related donation revenue and health care-related tax revenue on the HCFA-form 64.11A

If you have any questions concerning these policy clarifications, please contact your regional office.

Sincerely,

Sally K. Richardson
Director
Center for Medicaid and State Operations

cc: All Regional Administrators

All HCFA Associate Regional Administrators
Division of Medicaid and State Operations

Lee Partridge
American Public Welfare Association

Joy Wilson
National Conference of State Legislatures

Jennifer Baxendell
National Governors' Association

GROUP 1 - PERMISSIBLE TAX ONLY

LETTER TO: D.C., Ohio, Mississippi, Montana, South Carolina, and Wisconsin

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Dear (State Medicaid Director):

This letter informs you about the Health Care Financing Administration's (HCFA's) review of your health care-related tax program. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Today HCFA is sending an All State Medicaid Directors letter clarifying its interpretation of the uniformity provisions specified at 42 CFR 433.68(d)(iv) and its policy regarding a rate change to an existing health care-related tax program. As a result of this clarification waiver approval is not necessary for the (name of tax program) to be considered permissible. The (rate percentage(s)) tax on the (tax base(s)) of (provider class(es)) for which you submitted a request for waiver approval of the broad based and uniformity requirements meets the applicable provisions of the statute and regulations. Thus as currently structured, this provider tax is permissible and requires no further review.

If you have any additional questions, please contact (ARA for DMSO) at (phone number).

Sincerely,

Regional Administrator

GROUP 2 - IMPERMISSIBLE TAX ONLY

LETTER TO: Indiana, Maine, Massachusetts, Minnesota, Missouri, and Nevada

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Dear (State Medicaid Director):

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of (XXXX) imposed a (rate percentage) tax on the (tax base(s)) of (provider class(es)). The (type of tax) tax (specify provision of the tax that does not comply with the appropriate requirement).

Section (statute citation) of the Social Security Act specifies (description of provision violated).

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these preliminary findings. HCFA's goal is to establish whether the tax in question is impermissible and, if so, end its use. We encourage you to fully engage in discussions with HCFA to facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact (ARA for DMSO) at (phone number).

Sincerely,

Regional Administrator

GROUP 3 - PERMISSIBLE TAX, IMPERMISSIBLE TAX, & ADDITIONAL INFORMATION

LETTER TO: New York

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Dear (State Medicaid Director):

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of (name of State) generates revenue from at least (number of taxes) health care related tax programs. We have reviewed these tax programs and have made the preliminary determination that they fall into the following categories.

Permissible Health Care Related Taxes

HCFA has determined that several of your provider taxes are permissible and require no further review.

First (description of first tax that is considered permissible).

Potentially Impermissible Taxes

The State of (XXXX) imposed a (rate percentage) tax on the (tax base(s)) of (provider class(es)). The (type of tax) tax (specify provision of the tax that does not comply with the appropriate requirement).

Section (statute citation) of the Social Security Act specifies (description of provision violated).

Request for Additional Information

For HCFA to assess the permissibility of your other health care-related tax programs, more information is needed.

You have indicated that certain fees are not health care related.

You have submitted a request for a waiver of the broad based and uniformity requirements for the (rate percentage) tax on the (tax base(es)) of (provider class(es)).

After reviewing your waiver request, we need the following additional information in order to determine if your waiver is approvable:

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these preliminary findings. HCFA's goal is to establish whether the tax in question is impermissible and, if so, end its use. We encourage you to fully engage in discussions with HCFA to facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact (ARA for DMSO) at (phone number).

Sincerely,

Regional Administrator

GROUP 4 - PERMISSIBLE TAX & IMPERMISSIBLE TAX

LETTER TO: Louisiana

_____
_____
_____
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Dear (State Medicaid Director):

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of (name of State) generates revenue from at least (number of taxes) health care related tax programs. We have reviewed these tax programs and have made the preliminary determination that they fall into the following categories.

Permissible Health Care Related Taxes

Today HCFA is sending an All State Medicaid Directors letter clarifying its interpretation of the uniformity provisions specified at 42 CFR 433.68(d)(iv) and its policy regarding a rate change to an existing health care-related tax program. As a result of this clarification waiver approval is not necessary for the (name of tax program) to be considered permissible. The (rate percentage(s)) tax on the (tax base(s)) of (provider class(es)) for which you submitted a request for waiver approval of the broad based and uniformity requirements meets the applicable provisions of the statute and regulations. Thus as currently structured, this provider tax is permissible and requires no further review.

Potentially Impermissible

Based on information received by HCFA, the State of (XXXX) imposed a (rate percentage) tax on the (tax base(s)) of (provider class(es)). The (type of tax) tax (specify provision of the tax that does not comply with the appropriate requirement).

Section (statute citation) of the Social Security Act specifies (description of provision violated).

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these preliminary findings. HCFA's goal is to establish whether the tax in question is impermissible and, if so, end its use. We encourage you to fully engage in discussions with HCFA to facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact (ARA for DMSO) at (phone number).

Sincerely,

Regional Administrator

GROUP 5 - PERMISSIBLE TAX & ADDITIONAL INFORMATION

LETTER TO: Alabama and Utah

_____
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_____
_____

Dear (State Medicaid Director):

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of (name of State) generates revenue from at least (number of taxes) health care related tax programs. We have reviewed these tax programs and have made the preliminary determination that they fall into the following categories.

Permissible Health Care Related Taxes

Today HCFA is sending an All State Medicaid Directors letter clarifying its interpretation of the uniformity provisions specified at 42 CFR 433.68(d)(iv) and its policy regarding a rate change to an existing health care-related tax program. HCFA has determined that the State of (XXX)'s (tax program) is permissible.

Request for Additional Information

For HCFA to assess the permissibility of (# of tax programs) of your health care-related tax programs, more information is needed. First, you have submitted a request for a waiver of the broad based and uniformity requirements for the (rate percentage) tax on the (tax base(es)) of (provider class(es)).

After reviewing your waiver request, we need the following information in order to determine if your waiver is approvable:

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of

these health care related tax programs. We encourage you to fully engage in discussions with HCFA to facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact (ARA for DMSO) at (phone number).

Sincerely,

Regional Administrator

GROUP 6 - ADDITIONAL INFORMATION ON WAIVER ONLY

LETTER TO: Connecticut, Florida, and New Hampshire

_____
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_____
_____

Dear (State Medicaid Director):

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

For HCFA to assess the permissibility of (#) of your health care-related tax programs more information is needed. First, based on information received by HCFA, the State of (XXX) imposes (type of tax program).

After reviewing your waiver request, we need the following information in order to determine if your waiver is approvable:

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these health care related tax programs. We encourage you to fully engage in discussions with HCFA to facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact (ARA for DMSO) at (phone number).

Sincerely,

Regional Administrator

GROUP 7 - IMPERMISSIBLE TAX & ADDITIONAL INFORMATION

LETTER TO: Hawaii, Illinois, and Tennessee

_____
_____
_____
_____

Dear (State Medicaid Director):

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of (name of State) generates revenue from at least (number of taxes) health care related tax programs. We have reviewed these tax programs and have made the preliminary determination that they fall into the following categories.

Potentially Impermissible Taxes

One of the State of (XXXX)'s health care-related taxes appears to be impermissible. The State imposed a (rate percentage) tax on the (tax base(s)) of (provider class(es)). The (type of tax) tax (specify provision of the tax that does not comply with the appropriate requirement).

Section (statute citation) of the Social Security Act specifies (description of provision violated).

Request for Additional Information

More information is needed to assess the permissibility of your (rate percentage) tax on the (tax base(es)) of (provider class(es)).

After reviewing your waiver request, we need the following information in order to determine if your waiver is approvable:

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these health care related tax programs. We encourage you to fully engage in discussions with HCFA to facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact (ARA for DMSO) at (phone number).

Sincerely,

Regional Administrator

Ms. Nancy Ellery
Administrator
Division of Health Policy and Services
1400 Broadway
Helena, Montana 59601

Dear Ms. Ellery:

This letter informs you about the Health Care Financing Administration's (HCFA's) review of your health care-related tax program. As you know, Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Today HCFA is sending an All State Medicaid Directors letter clarifying its interpretation of the uniformity provisions specified at 42 CFR 433.68(d)(iv) and its policy regarding a rate change to an existing health care-related tax program. As a result of this clarification waiver approval is not necessary for the nursing facility occupied bed tax to be considered permissible. The $2.80 tax on the occupied beds of nursing facilities for which you submitted a request for waiver approval of the broad based and uniformity requirements meets the applicable provisions of the statute and regulations. Thus, as currently structured, this provider tax is permissible and requires no further review.

If you have any additional questions, please contact Spencer Ericson, Associate Regional Administrator, Division of Medicaid and State Operations at (303) 844-4024, extension 426.

Sincerely,

Mary Kay Smith
Regional Administrator
Denver Regional Office

Mr. Bruce Bullen, Commissioner
Division of Medical Assistance
600 Washington Street
Boston, Massachusetts 02111

Dear Mr. Bullen:

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax program. As you know, Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of Massachusetts imposes a 6.95% tax on the private sector revenues of acute care hospitals. It appears that the acute care hospital tax does not meet the definition of a broad based and uniform health care related tax, because it does not apply to all providers of inpatient hospitals services at a uniform rate. Specifically, non-acute care hospitals, Medicaid revenues, public payor revenues, and non-acute care revenues are excluded from the tax.

The Commonwealth of Massachusetts has requested that acute care hospital services be recognized as a permissible class of health care items and services in addition to the already identified permissible classes of health care items and services under section 1903(w)(7)(A) of the Social Security Act (the Act) and section 433.56(a) of the implementing Federal regulation. In addition, the Secretary may establish, by regulation, other permissible classes of health care items or services that meet a set of identifiable criteria. However we have reviewed your tax program and do not believe this class of health care services should be recognized as a permissible class of health care items and services(see enclosed State Medicaid Directors' Letter for criteria used in this assessment).

In addition, the Commonwealth of Massachusetts has requested a waiver of the broad based and uniformity requirement for its acute care hospital tax. Even if the HCFA had determined that this tax was in a permissible class (i.e. inpatient hospital services), it appears to not have met the redistributive test required for waiver approval. Section 1903(w)(3)(E)(ii)(1) of the Act specifies that the Secretary shall approve an application for a waiver of the broad based and uniformity requirements if the State establishes to the satisfaction of the Secretary that the net impact of the tax and associated

expenditures under title XIX as proposed by the State is generally redistributive in nature. Section 42 CFR 433.68(e)(2) defines the numerical test to determine whether a tax is generally redistributive. The test basically requires the State to calculate the slope of two linear regressions to assess the relationship between each provider's tax contribution and Medicaid revenue both if the tax program were broad based and uniform (defined as B1) and the tax program as proposed (defined as B2). If the State demonstrates to the satisfaction of the Secretary that the value of B1/B2 is 1 or greater, HCFA will automatically approve the waiver request.

It does not appear that the acute care hospital tax passes the generally redistributive test. The waiver test calculation you submitted to determine the generally redistributive nature of this health care related tax program was performed incorrectly . In general, a greater volume of tax collection was represented in the B1 portion than the B2 portion. HCFA recalculated the test based on the data provided in the waiver request, and it appears that this health care related tax program does not meet the generally redistributive waiver test threshold.

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these preliminary findings. HCFA's goal is to establish whether the tax in question is impermissible and, if so, end its use. We encourage you to fully engage in discussions with HCFA to facilitate and equitable and expeditious resolution.

If you have any additional questions, please contact Ron Preston, Associate Regional Administrator, Division of Medicaid and State Operations at (617) 565-1230.

Sincerely,

Sidney Kaplan
Regional Administrator
Boston Regional Office

Ms. Ann Clemency Kohler, Director
Office of Medicaid Management
New York State Department of Health
ESP Corning Tower Building, Room 1466
Albany, New York 12237

Dear Ms. Kohler:

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs.

As you know, Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act (the Act) and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of New York generates revenue from at least thirty-one (31) health care related tax programs. We have reviewed these tax programs and have made preliminary determinations that they fall into the following categories.

Permissible Health Care Related Taxes

HCFA has determined that several of your provider taxes are permissible and require no further review.

First, HCFA has published in the October 8, 1997 *Federal Register* a correcting amendment to the provider tax regulation regarding its interpretation of the uniformity test. It lowers the threshold for allowable tax programs based on regional variations, enacted and in effect prior to November 24, 1992. The correction is to conform the regulation to HCFA and Congress's intent to recognize such taxes as generally redistributive. Based on information given to HCFA staff verbally by the State, we believe that this change affects New York's regional tax, making it permissible. However, to ensure that the tax is permissible, we ask that you submit in writing the information necessary to confirm our mutual understanding about New York's regional tax structure.

Second, you have submitted requests for a waiver of the broad based and uniformity requirements for the following three (3) health care related tax programs:

1. Statewide Planning and Research and Cooperative System Fee Assessment - 0.1% of the total cost of inpatient hospital services.

2. Statewide Planning and Research and Cooperative System Fee Assessment - 0.1% of total cost of outpatient hospital services.

3. Supplemental Commercial Insurer Differential - 11% of inpatient hospital rates of payment charged to commercial insurers.

Section 1903(w)(3)(E)(ii)(1) of the Act specifies that the Secretary shall approve an application for a waiver of the broad based and uniformity requirements if the State establishes to the satisfaction of the Secretary that the net impact of the tax and associated expenditures under title XIX as proposed by the State is generally redistributive in nature. Section 42 CFR 433.68(e)(2) defines the numerical test to determine whether a tax is generally redistributive. This test basically requires the State to calculate the slope of two linear regressions to assess the relationship between each provider's tax contribution and Medicaid revenue both if the tax program were broad based and uniform (defined as B1) and the tax program as proposed (defined as B2). If the State demonstrates to the satisfaction of the Secretary that the value of B1/B2 is 1 or greater, HCFA will automatically approve the waiver request.

Although the waiver test calculations you submitted were performed incorrectly, HCFA re-calculated the test based on the data provided in these waiver requests and these three (3) health care related tax programs meet the generally redistributive waiver test threshold.

Finally, the State of New York has provided information that the assessment on services provided in intermediate care facilities for the mentally retarded (ICFs/MR) is applied at a uniform rate to all providers in the class, and does not hold taxpayers harmless for their tax costs. Therefore, the ICF/MR tax, imposed under the Health Facilities Cash Receipts Assessment Program, is permissible.

Potentially Impermissible Taxes

Two types of New York provider taxes appear to be impermissible. First, several taxes do not appear to be broad based since they are not applied to a permissible class of providers. The State of New York, under the Health Facilities Cash Receipts Assessment Program, imposes a 0.6% tax on personal care services, mental retardation day treatment services, licensed freestanding comprehensive primary care treatment center services, licensed freestanding dental treatment center services, licensed freestanding dialysis treatment center services, licensed freestanding rehabilitation therapy treatment center services, and licensed freestanding speech and hearing treatment center services.

In addition, under the Patient Services Payment Allowance, the State of New York imposes a variable assessment between 5.98%-8.18% on licensed freestanding comprehensive primary care treatment center services, licensed freestanding dental treatment center services, licensed freestanding dialysis treatment center services, licensed freestanding rehabilitation therapy treatment center services, and licensed freestanding speech and hearing treatment center services.

The State of New York has requested that all of these classes of services be recognized as permissible. The State provided analysis to support the request for additional classes of health care items or services.

As you know, none of the health care related taxes and fees imposed on the above mentioned services are identified in section 1903(w)(7)(A) of the Social Security Act or section 433.56(a) of the implementing Federal regulation as permissible classes of health care items and services. In addition, the Secretary may establish, by regulation, other permissible classes of health care items and services that meet a set of identifiable criteria. However, we have reviewed your tax programs and do not believe these classes of health care services should be recognized as permissible classes of health care items and services (see enclosed State Medicaid Director's letter for criteria used in this assessment). However, Section 433.56(a) does identify dental services, rehabilitation therapy services, speech therapy services, and audiological therapy services as permissible classes of health care services. To the extent the State of New York imposes a tax on all providers of these services in the State at a uniform rate, without holding taxpayers harmless, the tax would be considered permissible.

Second, you have submitted requests for a waiver of the broad based and uniformity requirements for the following five (5) health care related tax programs:

1. Bad Debt and Charity Care for Financially Distressed Hospitals Allowance - .235% on the non-Medicare revenues for inpatient hospital services.

2. Health Care Services Allowance - .23% on the non-Medicare revenues for inpatient hospital services.

3. Bad Debt and Charity Care and Capital Statewide Pool Assessment - 1% of inpatient hospital service revenue.

4. Health Facilities Cash Receipts Assessment Program - overall 0.6% of inpatient hospital service revenue

5. Health Facilities Cash Receipts Assessment Program - overall 0.6% of outpatient hospital service revenue

Based on the information provided in your waiver requests, informal communication between New York State staff and HCFA staff to date, and re-calculations performed by HCFA, it appears that these five (5) health care related tax programs do not meet the generally redistributive waiver test threshold.

Request for Additional Information

For HCFA to assess the permissibility of your other health care-related tax programs that have raised questions, more information is needed.

First, the State of New York believes that these user and licensing fees are not health care related taxes. These include the following user or licensing fees: a $.50 per triplicate prescription user fee; a $1,000 certificate of need application user fee, plus an additional fee of .4% of project costs; a .9% mortgage development user fee, and a .2% mortgage operational user fee; a .9% mortgage closing user fee and a .5% mortgage refinancing user fee; and licensing fees of $600, $20, $50 for the manufacturing and dispensing of controlled substances.

HCFA believes the above mentioned user and licensing fees meet the definition of section 1903(w)(7)(F) of the Act which specifies that the term "tax" includes any licensing fee, assessment, or other mandatory payment and, therefore, are health care related taxes. In order for these health care related taxes to be considered permissible, they must be broad based, uniform, and not hold taxpayers harmless for their tax costs. Therefore, we ask that you please submit requests for waivers of the broad based and uniformity requirements for each of these fees.

Second, you have submitted requests for a waiver of the broad based and uniformity requirements for seven (7) additional health care related tax programs, listed below:

1. Health Facilities Cash Receipts Assessment Program - 0.6%on the monthly cash receipts received from certified home health agency and long-term home health care services and other operating income.

2. Patient Services Payment Allowance - variable rate between 5.98%-8.18% on the payment rates for inpatient hospital services

3. Patient Services Payment Allowance - variable rate between 5.98%-8.18% on the payment rates for outpatient services

4. Patient Services Payment Allowance - variable rate between 5.98%-8.18% on the payment rates for ambulatory surgical center services

5. Patient Services Payment Allowance - variable rate between 5.98%-8.18% on the payment rates for freestanding clinical laboratory services

6. Health Maintenance Organization (HMO) Differential - variable assessment on inpatient hospital service revenue: Also, please revise the generally redistributive waiver test calculation to include hospital specific data.

7. Nursing Facility Cash Receipts Assessment Program - 0.6% on assessable income for nursing facility services: Also, Please provide a copy of the State statute enacting the nursing facility cash receipts assessment program. It is not clear which provision of the State statute permits the exclusion of the St. Francis Geriatric and Health Center and the Osborne Home. These two facilities were not discussed in the summary you provided.

For each of these tax programs, you should revise the generally redistributive waiver test calculations for these health care related taxes to include all revenues related to providers in the B1 portion of the calculation. In addition, please remove all providers that are excluded from the assessment from the B2 portion of these calculations. The availability of this information is necessary to determine whether these taxes are in compliance.

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these preliminary findings. HCFA's goal is to establish whether the taxes in question are impermissible and, if so, end their use. We encourage you to fully engage in discussions with HCFA to facilitate and equitable and expeditious resolution.

If you have any additional questions, please contact Alan Saperstein, Associate Regional Administrator, Division of Medicaid and State Operations at (212) 264-2500.

Sincerely,

Judy Berek
Regional Administrator
New York Regional Office

Mr. Thomas D. Collins, Director
Bureau of Health Services Financing
Department of Health and Hospitals
P.O. Box 91030
Baton Rouge, Louisiana 70821-9030

Dear Mr. Collins:

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know, Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of Louisiana generates revenue from at least three (3) health care related tax programs. We have reviewed these tax programs and have made the preliminary determination that they fall into the following categories.

Permissible Health Care Related Taxes

Today HCFA is sending an All State Medicaid Directors letter clarifying its interpretation of the uniformity provisions specified at 42 CFR 433.68(d)(iv) and its policy regarding a rate change to an existing health care-related tax program. As a result of this clarification waiver approval is not necessary for the tax programs imposed on intermediate care facilities for the mentally retarded (ICFs/MR) to be considered permissible. The $8.74 and $8.84 health care related taxes on the occupied beds of ICFs/MR for which you submitted a request for waiver approval of the uniformity requirements meets the applicable provisions of the statute and regulations. Thus, as currently structured, these tax provider taxes are permissible and require no further review.

Potentially Impermissible Taxes

The State of Louisiana imposes a $3.68 tax on the occupied beds of nursing facilities. The nursing facility occupied bed tax contains a grant program established to offset the nursing facility tax. HCFA believes the grant program associated with this nursing facility tax program violates the hold harmless provisions contained in section 1903(w)(4)(A) and (C) of the Social Security Act (the Act).

Section 1903(w)(4)(A)of the Act specifies that a hold harmless provision exists when the State or other unit of local government imposing the tax provides (directly or indirectly) for a payment (other then title XIX) to taxpayers and the amount of such payment is positively correlated to either the amount of such tax or to the difference between the amount of the tax and the amount of the payment under the State plan.

Section 1903(w)(4)(C) of the Act specifies that a hold harmless provision exists when the State or other unit of local government imposing the tax provides (directly or indirectly) for any payment, offset or waiver that guarantees to hold taxpayers harmless for any portion of the cost of the tax.

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these preliminary findings. HCFA's goal is to establish whether the tax in question is impermissible and, if so, end its use. We encourage you to fully engage in discussions with HCFA to facilitate and equitable and expeditious resolution.

If you have any additional questions, please contact Roger Perez, Associate Regional Administrator, Division of Medicaid and State Operations at (214) 767-6300.

Sincerely,

Ed Lessard
Regional Administrator
Dallas Regional Office

Ms. Gwendolyn H. Williams, Commissioner
Alabama Medicaid Agency
501 Dexter Avenue
P.O. Box 5624
Montgomery, Alabama 36103

Dear Ms. Williams:

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know, Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act (the Act) and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of Alabama generates revenue from at least two (2) health care related tax programs. We have reviewed these tax programs and have made the preliminary determination that they fall into the following categories.

Permissible Health Care Related Taxes

Today HCFA is sending an All State Medicaid Directors letter clarifying its interpretation of the uniformity provisions specified at 42 CFR 433.68(d)(iv) and its policy regarding a rate change to an existing health care-related tax program. As a result of this clarification waiver approval is not necessary for the inpatient hospital inpatient day tax to be considered permissible. The $25 tax on the patient days of inpatient hospitals for which you submitted a request for waiver approval of the broad based and uniformity requirements meets the applicable provisions of the statute and regulations. Thus, as currently structured, this provider tax is permissible and requires no further review.

Request for Additional Information

For HCFA to assess the permissibility of your other heath care-related tax program, more information is necessary. You have submitted a request for a waiver of the broad based and uniformity requirements for the $.10 tax on the outpatient prescriptions drugs with a value of $3 or more. After reviewing your waiver request, the State of Alabama still needs to submit the generally redistributive test for waiver of the broad based and uniformity requirements.

Section 1903(w)(3)(E)(ii)(I) of the Act specifies that the Secretary shall approve an application for waiver of the broad based and uniformity requirements if the State establishes to the satisfaction of the Secretary that the net impact of the tax and associated expenditures under title XIX as proposed by the State is generally redistributive in nature. Section 42 CFR 433.68(e)(2) defines the numerical test the State must calculate to determine whether a tax is generally redistributive. This test basically requires the State to calculate the slope of two linear regressions to assess the relationship between each provider's tax contribution and Medicaid revenue both if the tax program were broad based and uniform (defined as B1) and the tax program as proposed (defined as B2). If the State demonstrates to the satisfaction of the Secretary that the value of B1/B2 is 1 or greater than 1, HCFA will automatically approve the waiver request.

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these health care related taxes. We encourage you to fully engage in discussions with HCFA to facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact Gene Grasser, Associate Regional Administrator, Division of Medicaid and State Operations at (404) 331-2418.

Sincerely,

Rose-Crum Johnson
Regional Administrator
Atlanta Regional Office

Mr. David Parella, Deputy Commissioner
Department of Social Services
25 Sigourney Street
Hartford, Connecticut 06106-5116

Dear Mr. Parella:

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

For HCFA to assess the permissibility of your health care-related tax programs more information is needed. Based on information received by HCFA, the State of Connecticut imposes a six percent (6%) tax on all hospital charges for patient care services. The acute care hospital tax does not appear to meet the definition of a broad based and uniform health care related tax, because it does not apply to all providers of inpatient hospitals services at a uniform rate. Specifically, non-acute care hospitals, Medicare and Medicaid revenues are excluded from the tax.

Section 1903(w)(3)(E)(ii)(I) of the Act specifies that the Secretary shall approve an application for waiver of the broad based and uniformity requirements if the State establishes to the satisfaction of the Secretary that the net impact of the tax and associated expenditures under title XIX as proposed by the State is generally redistributive in nature. Section 42 CFR 433.68(e)(2) defines the numerical test the State must calculate to determine whether a tax is generally redistributive. This test basically requires the State to calculate the slope of two linear regressions to assess the relationship between each provider's tax contribution and Medicaid revenue both if the tax program were broad based and uniform (defined as B1) and the tax program as proposed (defined as B2). If the State demonstrates to the satisfaction of the Secretary that the value of B1/B2 is 1 or greater, HCFA will automatically approve the waiver request.

There is potential for this provider tax to be determined to be in compliance. However, such determination cannot be made in the absence of additional information.

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these health care related taxes. We encourage you to fully engage in discussions with HCFA to

facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact Ron Preston, Associate Regional Administrator, Division of Medicaid and State Operations at (617) 565-1230.

Sincerely,

Sidney Kaplan
Regional Administrator
Boston Regional Office

Mr. Chuck C. Duarte, Administrator
Med QUEST Division
Department of Human Services
P.O. Box 339
Honolulu, Hawaii 96809-0339

Dear Mr. Duarte:

This letter informs you about the current status of the Health Care Financing Administration's (HCFA's) review of your health care-related tax programs. As you know Public Law 102-234, "The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991" amended provisions of Title XIX of the Social Security Act and established new limitations on Federal financial participation (FFP) when States receive funds donated by providers and revenues generated by certain health care related taxes. The law also established a definition of the types of health care related tax revenues States are permitted to receive without a reduction in FFP. Such taxes are broad based taxes which apply to all health care providers in a given class in a uniform manner and which do not hold taxpayers harmless for their tax costs.

Based on information received by HCFA, the State of Hawaii generated revenue from at least two (2) health care related tax programs. We have reviewed these tax programs and have made preliminary determinations that they fall into the following categories.

Potentially Impermissible

One of the State of Hawaii's health care-related taxes appears to be impermissible. The State imposed a six percent (6%) tax on the revenues of nursing facilities. The nursing facility tax contained a medical service excise tax credit to private pay patients. HCFA believes the tax credit to private pay patients associated with this nursing facility revenue tax program may violate the hold harmless provision contained in section 1903(w)(4)(A) of the Social Security Act (the Act).

Section 1903(w)(4)(A)of the Act specifies that a hold harmless provision exists when the State or other unit of local government imposing the tax provides (directly or indirectly) for a payment (other then title XIX) to taxpayers and the amount of such payment is positively correlated to either the amount of such tax or to the difference between the amount of the tax and the amount of the payment under the State plan.

Request for Additional Information

More information is needed to assess the permissibility of your four percent (4%) health care related tax on the income of non-profit hospitals for inpatient and outpatient hospital services. Because a for-profit hospital and certain hospital income were excluded from the tax program, the hospital tax program does not appear to meet the broad based and uniformity requirements of section 1903(w)(3)(B) and (C) of the Act. However, the State can request waiver approval of these requirements as described below.

Section 1903(w)(3)(E)(ii)(I) of the Act specifies that the Secretary shall approve an application for waiver of the broad based and uniformity requirements if the State establishes to the satisfaction of the Secretary that the net impact of the tax and associated expenditures under title XIX as proposed by the State is generally redistributive in nature. Section 42 CFR 433.68(e)(2) defines the numerical test the State must calculate to determine whether a tax is generally redistributive. This test basically requires the State to calculate the slope of two linear regressions to assess the relationship between each provider's tax contribution and Medicaid revenue both if the tax program were broad based and uniform (defined as B1) and the tax program as proposed (defined as B2). If the State demonstrates to the satisfaction of the Secretary that the value of B1/B2 is 1 or greater, HCFA will automatically approve the waiver request.

There is potential for these provider taxes to be determined to be in compliance. However, such determination cannot be made in the absence of additional information.

A representative of HCFA will be contacting you shortly to arrange a meeting for discussion of these preliminary findings. HCFA's goal is to establish whether the taxes in question are impermissible and, if so, end their use. We encourage you to fully engage in discussion with HCFA to facilitate an equitable and expeditious resolution.

If you have any additional questions, please contact Richard Chambers, Associate Regional Administrator, Division of Medicaid and State Operations at (415) 744-3600.

Sincerely,

Beth Abbott
Regional Administrator
San Francisco Regional Office