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DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop 52-26-12  
Baltimore, Maryland 21244-1850



**Center for Medicaid and State Operations**

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MAR 30 2010

Sandeep Wadhwa, MD, MBA  
Medical Director  
Colorado Department of Health Care Policy and Financing  
1570 Grant Street  
Denver, Colorado 80203

Dear Dr. Wadhwa:

This is in response to your request for waivers of the broad based and uniformity requirements related to a tax on certain inpatient hospital patient days and outpatient hospital charges. Upon review and consideration of the information formally provided to the Center for Medicare & Medicaid Services (CMS) on September 30, 2009 and January 8, 2010, I am pleased to inform you that your request for waivers of the broad based and uniformity provisions of section 1903(w)(3)(B) and (C) of the Social Security Act (the Act) is approved.

The tax structure for which Colorado requested waiver would be imposed as follows:

- (i) Institutions for Mental Disease are excluded from the tax;
- (ii) Rehabilitation hospitals are excluded from the tax;
- (iii) Long term care hospitals are excluded from the tax;
- (iv) Managed care days are taxed at \$60.47 per inpatient hospital day;
- (v) Non-managed care days are taxed at \$270.26 per inpatient hospital day;
- (vi) High volume Medicaid and Colorado Indigent Care Program (CICP) providers are taxed at a 47.79% discount from the non-managed care rate per inpatient hospital day;
- (vii) Essential Access Hospitals are taxed at a 60% discount from the non-managed care rate per inpatient hospital day;
- (viii) High volume Medicaid and Colorado Indigent Care Program (CICP) outpatient providers receive a 0.84% discounted rate;
- (ix) All other outpatient hospitals are assessed at a rate of 0.346% of outpatient charges.

Section 1903(w)(3)(E) of the Act specifies that the Secretary shall approve broad-based and uniformity waiver applications if the net impact of the tax is generally redistributive and that the amount of the tax is not directly correlated to Medicaid payments.

The Federal regulation at 42 CFR 433.68(e)(2) describes the statistical test necessary for a State to demonstrate that the proposed tax structure is generally redistributive. Colorado's statistical

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demonstration is addressed below. Moreover, the Federal regulation at 42 CFR 433.68(f) describes the circumstances in which a direct correlation would exist. Upon review of Colorado's statute implementing the proposed hospital tax and the review of Colorado's methodology for increasing Medicaid reimbursement to hospitals, it appears that no direct correlation exists between the tax and associated increases in Medicaid reimbursement.

### **Analysis**

To determine the generally redistributive nature of the proposed inpatient and outpatient hospital tax, Colorado calculated the slope (expressed as B1) of a linear regression for a broad-based and uniform tax in which the dependent variable was each hospital's percentage share of the total tax paid if the tax was uniformly imposed on all hospitals in Colorado and the independent variable was each hospital's number of Medicaid patient days for the inpatient tax and each hospital's Medicaid outpatient charges for the outpatient tax.

Colorado then calculated the slope (expressed as B2) of a linear regression for the State's actual proposed tax program in which the dependent variable was each hospital's percentage share of the total tax paid, and the independent variable was the number of Medicaid patient days for each hospital for the inpatient tax and each hospital's Medicaid outpatient charges for the outpatient tax.

Using the patient day and tax rate data you provided, CMS also performed the regression analysis calculations required in the regulations for the proposed taxes. CMS finds that the result of the generally redistributive calculation is **1.001** and **1.0012** for the Colorado inpatient and outpatient hospital tax, respectively.

Therefore, we are able to approve your request for a waiver of the broad based and uniformity provisions of section 1903(w)(3)(C) of the Act for the proposed inpatient and outpatient hospital tax.

The Federal regulations at 42 CFR 433.72(c)(1) specify that a waiver will be effective for tax programs commencing on or after August 13, 1993, on the first day of the calendar quarter in which the waiver is received by CMS. CMS received the State of Colorado's request for waiver of the broad based and uniformity requirements on September 30, 2009, with a requested effective date of July 1, 2009. Therefore, the effective date of Colorado's request for waiver s of the broad based and uniformity requirements is July 1, 2009.

CMS reserves the right to perform a financial management review at any time to ensure that the State operation of the hospital tax continues to meet the requirements of section 1903(w) of the Act.

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I hope this information addresses all of your concerns, if you have further questions or need additional information please contact Stuart Goldstein at (410) 786-0694.

Sincerely,



Cindy Mann  
Director

Center for Medicaid and State Operations

cc: Richard Allen  
Associate Regional Administrator  
Denver Regional Office