

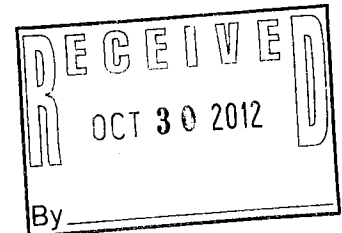
DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid and CHIP Services

Mr. Tom Betlach, Director
Arizona Health Care Cost
Containment System (AHCCCS)
801 East Jefferson St.
Phoenix, AZ 85034

OCT 29 2012



Dear Mr. Betlach:

This is in response to your request for waiver of the broad based and uniformity requirements related to a tax on certain nursing facility patient days. Upon review and consideration of the information formally provided to Centers for Medicare and Medicaid Services (CMS) on June 21, 2012, I am pleased to inform you that your request for waiver 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 Arizona requested waiver would be imposed as follows:

- (i) Medicare patient days are excluded from the tax;
- (ii) Continuing care retirement communities are excluded from the tax;
- (iii) Nursing facilities with 58 or fewer beds are excluded from the tax;
- (iv) Nursing facilities with 43,500 or more annual Medicaid days are assessed \$1.00 per non-Medicare patient day;
- (v) All other nursing facilities are assessed \$7.50 per non-Medicare patient day.

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. Arizona's statistical 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 Arizona's statute implementing the proposed nursing facility tax and the review of Arizona's methodology for increasing Medicaid reimbursement to nursing facilities, it appears that no direct correlation exists between the tax and associated increase in Medicaid reimbursement.

Analysis

To determine the generally redistributive nature of the proposed nursing facility patient day tax, Arizona calculated the slope (expressed as B1) of a linear regression for a broad-based and uniform tax in which the dependent variable was each nursing facility's percentage share of the total tax paid, if the tax was

uniformly imposed on all nursing facility patient days in the state and the independent variable was each nursing facility's number of Medicaid patient days.

Arizona 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 nursing facility's percentage share of the total tax paid, and the independent variable was the number of Medicaid patient days for each nursing facility.

Using the patient day and tax rate data you provided, CMS also performed the regression analysis calculations required in the regulations for the proposed tax. CMS finds that the result of the generally redistributive calculation for the Arizona nursing facility patient day tax is **1.0026**.

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 nursing facility patient day tax.

The federal regulations at 42 CFR 433.72(c)(2) 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 Arizona's request for waiver of the broad based and uniformity requirements on June 21, 2012 with a requested effective date of October 1, 2012. Therefore, the effective date of Arizona's request for waiver of the broad based and uniformity requirements is October 1, 2012.

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

I hope this information addresses all of your concerns, if you have further questions or need additional information please contact Richard Cuno at (410) 786-1111.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Mann".

Cindy Mann
Director