
July 15, 2022

Todd Richardson, Director
MO HealthNet Division
Department of Social Services
Broadway State Office Building
PO Box 6500
Jefferson City, Missouri 65102-6500

Dear Director Richardson:

The Centers for Medicare & Medicaid Services (CMS) is providing this letter as a companion to the approval of Missouri's state directed payment preprints, MO_Fee_IPH_New_20220701-20230630 and MO_Fee_OPH_New_20220701-20230630. CMS is concerned that the state's use of revenues derived from its Federal Reimbursement Allowance (FRA) tax program as a source of Missouri's non-federal share for these preprints may not comply with certain health care-related tax requirements in section 1903(w)(4) of the Social Security Act (the Act) and implementing regulations in 42 CFR 433.68(f)(3).

As we understand the FRA tax program arrangement, Missouri imposes a tax of less than 6 percent of net patient revenues on hospital services (inpatient and outpatient). These revenues provide the state with the source of funding for the non-federal share of payments for hospital services and increased managed care capitation rates that support increased payments to hospitals. A voluntary FRA pool program operated by the Missouri Hospital Association (MHA) then appears to redistribute Medicaid payments among the participating hospitals using a formula that ensures hospitals paying more in tax than they receive in Medicaid payments are not harmed by the tax. Such an arrangement appears to ensure that participating hospitals are held harmless for all or a portion of their FRA tax, which would violate section 1903(w)(4) of the Act and implementing regulations in 42 CFR 433.68(f)(3).

As discussed in a July 20, 2020 letter from CMS to the state, CMS understood that the state would ensure that the pooling arrangement would end for contract rating periods after June 30, 2021 and that all hospital payments would be financed and paid in accordance with all applicable federal requirements. However, based on various communications between CMS and the state relating to referenced state directed payments, it appears the state does not intend to ensure that the FRA pooling arrangement has ended consistent with CMS's understanding articulated in the July 20, 2020 letter.

CMS takes its responsibility for financial oversight of the Medicaid program seriously to ensure its long-term health and financial stability. CMS remains committed to ensuring that the non-federal share of Medicaid expenditures comply with all applicable federal requirements, including section 1903(w)(4) of the Act and federal regulations at 42 CFR 433.68(f)(3). At this time, CMS intends to conduct a focused review of the state's FRA program relating to expenditures for the quarter beginning July 1, 2022, which the state would typically report to CMS on the Form CMS-64 in October 2022. Should CMS determine that the FRA tax program involves a hold harmless arrangement, we intend to initiate formal action to reduce the state's medical assistance expenditures

before calculating federal financial participation (FFP), as required by section 1903(w)(1)(A)(iii) of the Act, on a quarterly basis.

Although CMS intends to focus its review on the FRA tax on expenditures for the quarter beginning July 1, 2022, please note that CMS may also seek to recover FFP for earlier periods based on the results of this review, another CMS review, or review by another oversight entity (such as the Department of Health and Human Services Office of Inspector General or the Single State Auditor).

If the FRA-related hold harmless arrangements described above no longer exist or if Missouri has initiated action to end those arrangements, such as informing providers to cease the pooling and redistribution of Medicaid payments, please provide a detailed description of any actions taken by the state and/or participating hospitals to this end.

CMS is committed to providing additional technical assistance on this issue and is available to continue discussions with Missouri to ensure its sources of non-federal share meet all applicable federal requirements.

Sincerely,

Rory Howe
Director
Financial Management Group
Center for Medicaid and CHIP Services