

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



Lisa Lee  
Commissioner  
Commonwealth of Kentucky, Cabinet for Health and Family Services  
Department for Medicaid Services  
275 East Main Street 6-WA  
Frankfort, Kentucky 40621-0001

Dear Ms. Lee:

This is in response to your request for a waiver of the broad-based requirements related to an outpatient hospital services assessment on qualifying Kentucky hospitals. Upon review and consideration of the information formally provided to the Centers for Medicare and Medicaid Services (CMS) on November 30, 2022, I am writing to inform you that your request for a waiver of the broad-based provisions of section 1903(w)(3)(B) of the Social Security Act (the Act) is approved.

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

- (i) University hospitals are excluded from the tax;
- (ii) State mental hospitals are excluded from the tax;
- (iii) Rural emergency hospitals are excluded from the tax;
- (iv) Critical access hospitals are excluded from the tax; and
- (v) All other hospitals are assessed at a rate of 4.86 percent of net outpatient revenues

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 the amount of the tax is not directly correlated to Medicaid payments.

Federal regulations at 42 CFR 433.68(e)(1) describe the statistical test necessary for a state to demonstrate that the proposed tax structure is generally redistributive. Kentucky's statistical demonstration is addressed below. Moreover, federal regulations at 42 CFR 433.68(f) describe the circumstances in which a direct correlation would exist. Upon review of Kentucky's submission of the proposed outpatient hospital assessment, and of Kentucky's methodology for increasing Medicaid reimbursement to hospitals, it appears that no direct correlation exists between the tax and any associated increases in Medicaid reimbursement.

## Analysis

To determine the generally redistributive nature of the net patient revenue assessment on outpatient hospital services, Kentucky calculated the proportion (expressed as P1) of the tax revenue applicable to Medicaid if the tax were broad-based and applied to all providers of outpatient hospital services within the class.

Kentucky then calculated the proportion (expressed as P2) of the tax revenue applicable to Medicaid under the tax program for which the Commonwealth was seeking a waiver. Kentucky then divided P1 by P2 to calculate its redistribution statistic.

Using the discharge and tax rate data you provided, CMS also performed the calculations required in the regulations for the proposed tax. CMS finds that the result of the generally redistributive calculation for the Kentucky outpatient hospital assessment is **1.095543**.

Therefore, we are able to approve your request for a waiver of the broad-based provisions of section 1903(w)(3)(B) of the Act for the proposed outpatient hospital assessment. Please be advised that any future changes to the taxing structure, including a non-uniform change to the approved tax rates, may require the Commonwealth of Kentucky to submit a new broad-based and/or uniformity waiver request.

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 Commonwealth of Kentucky's request for a waiver of the broad-based requirements on November 30, 2022 with a requested effective date of January 1, 2023. Therefore, the effective date of Kentucky's request for a waiver of the broad-based requirements is January 1, 2023. Please be advised that any changes to the federal requirements concerning health care-related taxes may require the Commonwealth to come into compliance by modifying its tax structure.

CMS reserves the right to perform a financial management review at any time to ensure that the Commonwealth's operation of the tax on outpatient hospital services 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 Jonathan Endelman at (410) 786-4738.

Sincerely,

Rory Howe  
Director  
Financial Management Group