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## Medicaid Provider Tax Guidance Narrows

Policy Impacts Last-Minute State Changes (FL,TX) & MCO Tax Loophole (CA,NY)

Relevant Companies



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**CMS issued preliminary letter [guidance](#) to states, providing MCO/hospital thinking on the implementation of provider taxes; rulemaking is forthcoming.** The guidance is based on provisions from the *One Big Beautiful Bill Act (OBBBA)* and enacted through the *Working Families Tax Cuts Legislation (WFTCL)*. It clarifies how new statutory limits on state provider taxes will be interpreted, provides definitions for key concepts such as “enacted” and “imposed,” and establishes transition periods for states with noncompliant tax structures.

**The number of hospital taxes with waivers subject to the longer transition period is not yet clear.** Despite the longer runway to adjust, CMS is expected to finalize additional criteria through rulemaking that could make obtaining these waivers a significant challenge going forward for all provider taxes.

**Separately, state directed payment (SDP) approval letters are beginning to move.** This is because the government has reopened.

### »» Key Points

**The CMS guidance clarifies how provider tax policies will be applied in practice in a 6-page guidance.** The guidance defines which taxes count toward the indirect hold harmless thresholds, distinguishing between “enacted” and “imposed”, and sets specific transition deadlines for bringing in noncompliant taxes: FY 2026 for MCO taxes and FY 2028 for other provider tax classes.

**CMS signals a lenient approach – offering support and flexibility to states during the transition – while defining enforcement for MCO taxes, which have been most prone to loophole abuses.** In practice, the guidance turns the statutory text into actionable steps without altering the law. For context, the CBO scored these provisions at [\(\\$191B/10\)](#) for provider taxes (effective October 1, 2026) and [\(\\$35B/10\)](#) for the uniform tax requirement (effective upon enactment).

**PROVIDER TAX REVENUE CEILING (TX, FL)**

**The central issue for the guidance is how CMS defines the ceiling on provider tax revenue.** CMS sets that ceiling based on taxes “enacted and imposed” as of July 4, 2025. As a reminder, in the days leading up to passage, several states and counties, including Texas and Florida, acted quickly to create new provider taxes or modify existing ones.

**The definitions laid out by CMS are narrower than many states anticipated: Some newly created or revised provider taxes (TX, FL) may not qualify for grandfathering.** More specifically, the CMS requirement for approval of a broad-based or uniformity waiver for the tax will likely have implications for several states who made last-minute adjustments to their tax and may have believed that process to come later.

**Under this guidance, CMS defines “enacted” versus “imposed.”**

- “Enacted” means the legislative process was fully completed, including CMS approval of any required broad-based or uniformity waiver, for the tax structure in effect on July 4, 2025.
- “Imposed” means the state was collecting revenue under that structure as of that date, including cases where collections were delayed but aligned with historical practice.
- Waiver proposals that were pending on or submitted after July 4, 2025 will not be considered. CMS will instead rely on the most recent approved waiver tied to actual revenue collection

**As a reminder, effective October 1, 2026, states cannot impose new or increased provider taxes that exceed a defined indirect hold harmless threshold.** Thresholds are based on how much a state was already taxing as of July 4, 2025: (1) non-expansion states are capped at the percentage of net patient revenue taxes as of July 4, 2025 and (2) expansion states are subject to a restrictive phase-down beginning in FY 2028, decreasing annually until reaching 3.5% in FY 2032.

## **MCO TAX RATES (CA, NY)**

**CMS also clarifies that a tax will not be considered “generally redistributive.”** This includes the structures used in California and New York, where states impose significantly higher MCO tax rates on Medicaid business than on commercial business.

**CMS will allow two transition periods:**

- For MCO taxes that rely on this approach (CA and NY), with waivers approved before July 4, 2025, will have a one-year transition.
- For all other affected taxes with waivers approved before that date (including hospitals), the transition period extends through the end of the state fiscal year that ends in 2028, but not beyond October 1, 2028.

**Some states taxed Medicaid business more than 100x higher than commercial business.** As a reminder, OBBBA seeks to address and eliminate the loophole related to non-redistributive taxes that states have utilized over the past several years. The provision establishes rules to prevent states from designing taxes that disproportionately burden Medicaid providers compared with non-Medicaid providers. CMS highlights that this loophole has been widely misused, especially in MCO taxes.

**CMS pays particular attention to MCOs, which has seen the most significant use of the loophole.** These taxes are subject to the shortest transition timeline, requiring states to comply by the end of their state fiscal year in 2026. CMS also notes that several states had been cautioned about questionable MCO tax structures

before they were put in place. The agency is prioritizing MCO reforms because these taxes shifted a disproportionate share of Medicaid financing to the federal government.

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