vizient®

September 18, 2026

Submitted electronically via: https://www.regulations.gov/

The Honorable Dr. Mehmet Oz
Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd
Baltimore, MD 21244

Re: Medicaid Program; Amending the Indirect Hold Harmless Threshold of Healthcare-Related Taxes (CMS-2452-P)

Dear Administrator Oz,

Vizient® appreciates the opportunity to comment on the Centers for Medicare and Medicaid Services (CMS) Proposed Rule on the Medicaid Program; Amending the Indirect Hold Harmless Threshold of Healthcare-Related Taxes (CMS-2452–P) (hereinafter, "Proposed Rule"). Vizient is concerned that, if finalized, the Proposed Rule would result in significant and unnecessary disruption to state Medicaid programs, Medicaid beneficiaries, and the health systems who serve these patients. Given these and other concerns detailed below, Vizient urges CMS to reconsider certain aspects of the Proposed Rule.

Background

Vizient enables healthcare providers to deliver better, more affordable care by improving financial sustainability, enhancing system performance, and accelerating strategic growth. More than two-thirds of the nation's acute care providers and more than one-third of ambulatory providers rely on Vizient solutions and services. By combining the nation's most influential healthcare leader networks with industry-leading data and analytics, comprehensive solutions, and advisory services through Kaufman Hall, Vizient helps providers achieve financial, clinical, and operational excellence. Headquartered in Irving, Texas, Vizient has offices throughout the United States. Learn more at vizient.com.

Recommendations

Throughout the Proposed Rule, CMS seeks to implement statutory changes from Section 71115 of the Working Families Tax Cut (WFTC) legislation[1], which prevents states from establishing new provider taxes or increasing provider taxes that were not already enacted and in effect as of July 4, 2025. In addition, for Medicaid expansion states, Section 71115 gradually phases down the allowable indirect hold harmless threshold for existing grandfathered provider taxes by 0.5

[1] CMS refers to Public Law 119-21 as the "Working Families Tax Cut" (WFTC) legislation. This law is also known as the One Big Beautiful Bill Act (OBBBA).

percentage points per year beginning in FY 2028, reducing the threshold from 6% to 3.5% by FY 2032.[2] However, the Proposed Rule includes policies that are not included in the WFTC legislation which may burden states, such as eliminating a portion of a test (e.g., the 75/75 test) that functions to permit provider taxes above the threshold amount in certain circumstances and creating a new permissible provider tax class, among others. These proposed policies will unnecessarily limit and disrupt state flexibility to operate their Medicaid programs and could adversely affect beneficiary access to care. Accordingly, Vizient urges CMS to withdraw several proposals and offers recommendations to limit disruptions to patient access to Medicaid services.

Permissible Healthcare-Related Taxes

Proposed Interpretation of "Enacted"

Section 71115 of the WFTC legislation requires CMS to establish new state- and provider-class-specific indirect hold harmless thresholds based on provider taxes for which, as of July 4, 2025, a state had enacted the tax and imposed the tax on the applicable provider class.[3] However, Section 71115 of the WFTC legislation does not define the term "enacted." CMS proposes to interpret the term "enacted" to mean that a state completed the legislative process necessary to authorize the specific tax structure in effect as of July 4, 2025. CMS's proposed interpretation of "enacted" is generally consistent with the agency's initial interpretation of this term in a November 2025 Dear Colleague letter, although the Proposed Rule no longer includes the approval of any required broad-based or uniformity waiver in the definition of "enacted."[4] In comparison to the November 2025 Dear Colleague letter, the proposed interpretation of "enacted" provides a more flexible standard for determining whether a provider tax qualifies for a state-specific indirect hold harmless threshold by removing confusing language related to the approval of certain waivers. In addition, the proposed interpretation is more straightforward, as it focuses primarily on completion of the legislative process necessary to authorize the tax structure. Vizient appreciates the agency's efforts to provide a more flexible and simple interpretation of "enacted" and encourages CMS to finalize the proposal.

Proposed Interpretation of "Imposes"

CMS proposes to interpret the term "imposes" to mean that a provider tax was legally in effect as of July 4, 2025, and, where applicable, had received any required CMS waiver approval.[5] The

---

[2] https://www.congress.gov/bill/119th-congress/house-bill/1/text

[3] If no indirect hold harmless thresholds on provider taxes were enacted and imposed as of July 4, 2025 then the state's indirect hold harmless threshold would generally be 0%, significantly limiting the state's ability to use provider taxes to help finance Medicaid.

[4] CMS issued a November 2025 Dear Colleague Letter that said CMS would consider a provider tax to be "enacted" when the state or locality completed the legislative process necessary to authorize the tax structure in effect on July 4, 2025; and any required broad-based or uniformity waiver had been approved by CMS by July 4, 2025. The Proposed Rule removes the waiver approval requirement from the term "enacted." https://www.medicaid.gov/medicaid/downloads/providertax_dcl_11142025.pdf

[5] CMS considered several alternative ways to interpret which provider taxes would qualify under Section 71115. The agency considered requiring CMS waiver approval as part of the definition of a tax being "enacted," but ultimately concluded that waiver approval is more appropriately tied to whether a tax is "imposed." CMS also considered allowing taxes without required waiver approval to qualify but rejected that approach because a

proposed interpretation is broader than the agency's approach in the November 2025 Dear Colleague letter, where CMS interpreted a provider tax to be "imposed" only if the tax was actively generating revenue as of July 4, 2025. [6] Vizient believes this interpretation will provide more stability to Medicaid programs and less disruption to care and encourages CMS to finalize the proposal.

Revision of the Second Prong of the Indirect Hold Harmless Test (the 75/75 Test)

In the Proposed Rule, beginning on or after October 1, 2026, CMS proposes to discontinue use of the 75/75 test, which is the second prong of a two-part test that determines whether a provider tax creates an impermissible indirect hold harmless arrangement. Currently, if the provider tax exceeds the applicable indirect hold harmless threshold, CMS will evaluate the tax under the 75/75 test before finding an impermissible indirect hold harmless arrangement. The 75/75 test measures whether 75% of taxpayers, including providers, receive 75% or more of their total tax costs back in enhanced Medicaid payments or other state payments.[7] While the 75/75 test currently has limited use, it provides states with an important second level of review when a provider tax exceeds the applicable provider tax threshold but may still be permissible. Eliminating the 75/75 test unnecessarily removes an additional opportunity for states to demonstrate that providers are not being reimbursed for the cost of the provider tax.[8] To prevent disruption to state Medicaid programs, Vizient suggests CMS withdraw the proposed elimination of the 75/75 test.

In addition, the WFTC legislation does not require CMS to eliminate the 75/75 test. By eliminating the 75/75 test, CMS would remove a critical flexibility that has long been part of the Medicaid provider tax framework without regard for potential unintended consequences. As Congress already authorized significant changes to the Medicaid program, Vizient urges CMS to withdraw any proposals that were not included in the WFTC legislation, especially those that would be more disruptive to Medicaid programs if finalized.

Lastly, the 75/75 test may also become increasingly important as the WFTC legislation lowers applicable provider tax thresholds for many states over time. As states adapt to more restrictive financing limits, more provider taxes may approach or exceed the applicable thresholds. Retaining the 75/75 test would ensure that states continue to have an opportunity to demonstrate that a provider tax does not create an impermissible hold harmless arrangement, even when collections exceed the applicable threshold. Provider taxes remain a critical source of Medicaid financing for hospitals and health systems, and eliminating this important safeguard could unnecessarily

---

tax that requires a waiver is not permissible until CMS approves it. In addition, CMS considered requiring a tax to be actively collecting revenue as of July 4, 2025, but decided this would unfairly exclude taxes that were legally in effect but collected on a delayed or infrequent schedule.

[6] https://www.medicaid.gov/medicaid/downloads/providertax_dcl_11142025.pdf

[7] The indirect hold harmless test is to determine whether a provider tax guarantees providers repayment of their tax costs, which is prohibited under federal Medicaid financing rules. An indirect hold harmless arrangement exists when a tax structure effectively repays providers for the taxes they paid through Medicaid or other state payments. Historically, CMS used the 6% threshold and the 75/75 test to identify these arrangements.

[8] CMS explains that the WFTC legislation's new provider tax thresholds and requirements make the 75/75 test unnecessary and could encourage states to maintain or increase provider tax collections above statutory limits. CMS further notes that the 75/75 test is a regulatory policy rather than a statutory requirement and has rarely been used successfully.

restrict state financing flexibility and increase pressure on Medicaid funding. Again, Vizient recommends that CMS withdraw its proposal to eliminate the 75/75 test.

Classes of Healthcare Services and Providers Defined

CMS proposes creating a new permissible provider tax class for services of health insurers that are not already included in the existing managed care organization (MCO) provider tax class.[9] The proposed class would include commercial health insurers and insurers offering high-deductible, catastrophic, short-term limited-duration, dental-only, and vision-only coverage.[10] While CMS characterizes this proposal as a means of providing regulatory clarity for existing health insurer taxes, the WFTC legislation did not establish or require CMS to create a new permissible class. In addition, the creation of a new provider tax class raises significant questions regarding how the new class would fit within the existing provider tax framework. For example, CMS acknowledges that some overlap may exist between the proposed health insurer class and the existing MCO provider tax class but does not clearly explain how CMS will distinguish between these two provider tax classes or how specific entities, products, and arrangements would be classified. Given this ambiguity and potential disruption that could result, in addition to there being no legislative requirement to implement the new provider tax class, Vizient suggests CMS consider less disruptive approaches to provide regulatory clarity.

In the Proposed Rule, CMS notes that existing health insurer taxes may be used to support Medicaid financing, but the agency also discusses the use of provider tax revenues to support broader health coverage initiatives, including state exchange-related activities. As a result, it is unclear whether CMS intends for taxes imposed under the proposed health insurer class to be used exclusively for Medicaid purposes or for broader health coverage initiatives. Should CMS create a new provider tax class, Vizient encourages the agency to provide additional explanation regarding the intended purpose of the proposed health insurer provider tax class and the permissible uses of revenues the tax generates. Any such clarifications should ensure that patient access to care is not disrupted as a result of variable potential uses of provider tax revenues.

Data Remediation

CMS proposes to assess compliance using actual provider tax collection and net patient revenue data, rather than relying on estimates and projections that have historically been accepted for certain compliance reviews. As such, compliance determinations would be delayed until actual provider tax collections and net patient revenue data become available, followed by a two-year data remediation period for states to submit all required data and make any necessary corrections and adjustments to their tax collections to ensure the tax has not exceeded the final threshold. As a result, states may set provider taxes based on reasonable projections, only to later be found

[9] MCOs, health maintenance organizations (HMOs), and preferred provider organizations (PPOs) are already recognized in the existing permissible MCO class under current Medicaid provider tax regulations.

[10] The agency is proposing this change based on their opinion that several states currently impose taxes on health insurers to help finance Medicaid, even though health insurers are not currently recognized as a permissible provider tax class under federal regulations.

noncompliant years later when CMS evaluates compliance using actual data and then potentially undergoes remedial steps, which may be disruptive. The proposed approach introduces substantial uncertainty into Medicaid financing and makes it more difficult for states to plan for future program expenditures, as they may need to take remedial steps or face other penalties if projections do not come to fruition. To prevent additional disruption to state Medicaid financing, Vizient recommends CMS withdraw the proposed compliance approach and provide more flexibility to states, including allowing states to rely on estimates, projections, and historical experience to demonstrate compliance.

Limitation on Level of Federal Financial Participation (FFP) for Revenue from Healthcare-Related Taxes

CMS aims to retain the existing penalty framework for impermissible provider taxes but proposes to codify the agency's interpretation that if a provider class exceeds its applicable indirect hold harmless threshold, all provider tax revenue collected within that class may be subject to recoupment. If CMS determines that federal funds were improperly claimed because of a noncompliant provider tax, the agency may recover those funds through established Medicaid overpayment, deferral, or disallowance processes. The proposed provider-class-level recoupment could result in significant financial consequences for states, especially since the recoupment amount is not just for the amount collected above the threshold. As a result, states could face repayment obligations years after the revenues have been spent. Given the significant financial uncertainty associated with the penalty framework and proposed clarification, Vizient urges CMS to significantly ease the penalty so that all provider tax revenues within a given class are not subject to recoupment.

Conclusion

Vizient appreciates CMS's efforts to gain additional feedback regarding the Proposed Rule. Vizient membership includes a variety of hospitals ranging from independent, community-based hospitals to large, integrated healthcare systems that serve acute and non-acute care needs. In closing, on behalf of Vizient, I would like to thank CMS for providing the opportunity to respond to this Proposed Rule. Please feel free to contact me, or Randi Gold at Randi.Gold@vizientinc.com, if you have any questions or if Vizient may provide any assistance as you consider these recommendations.

Respectfully submitted,

Shoshana Krilow
Senior Vice President of Public Policy and Government Relations
Vizient