

## CMS IMPLEMENTATION OF OBBBA PROVIDER TAX PROVISIONS

### KEY TAKEAWAYS

- States impose health care related taxes on classes of providers to finance the non-federal share of Medicaid expenditures.
- Funds raised from provider taxes enable states to bolster provider payment rates and improve coverage for Medicaid beneficiaries.
- Changes in the One Big Beautiful Bill Act (OBBBA) prohibit new or increased provider taxes and decrease existing provider tax rates in Medicaid expansion states.
- CMS released guidance and a final regulation restrictively interpreting key terms related to the OBBBA's provider tax changes, such as when a tax is considered to be enacted and imposed.

### BACKGROUND

The One Big Beautiful Bill Act ([OBBBA, P.L. 119-2](#)), which was signed into law on July 4, 2025, includes significant changes to Medicaid, including eligibility changes and restrictions on mechanisms that states use for financing their share of Medicaid spending (i.e., permissible provider taxes). The Centers for Medicare & Medicaid Services (CMS) issued guidance and a final regulation related to implementation of the Medicaid provisions in the OBBBA. In the [dear colleague letter issued on November 14, 2025](#), CMS interpreted provisions of Sections 71115 and 71117 of the OBBBA, relating to limits on provider taxes used by states to finance the non-federal share of Medicaid expenditures. The guidance defines key terms, provides for a transition period for states with uniformity waivers subject to section 71117, and addresses the interplay between sections 71115 and 71117. CMS' [February 2, 2026, final rule](#) addresses implementation of Section 71117, including modifying the transition period for states with uniformity waivers. CMS' interpretation of the provider tax provisions of the OBBBA will have implications for states' ability to finance the non-federal share of Medicaid, ultimately affecting provider payments.

### DISCUSSION

#### Section 71115

States use various financing mechanisms to finance the nonfederal share of Medicaid, including health care-related taxes (provider taxes) levied on classes of providers in the state, such as hospitals and nursing facilities. CMS requires that provider taxes be broad-based (imposed on all non-governmental providers in a class), uniform (consistent in amount and scope across providers in the class), and not hold taxpayers harmless (indirectly or directly guarantee that the providers paying the tax will receive payments covering the costs of paying the tax). If a state sets a provider tax at six percent or less of net patient revenue on providers in a class, it is presumed to pass the indirect hold harmless requirement. States may seek waivers from CMS of the broad-based and uniform requirements if they prove the tax is generally redistributive and meets certain statistical tests.

Section 71115 prohibits states, beginning on Oct. 1, 2026, from imposing new or increased provider taxes that were not in effect as of the date of enactment (that is, they were not "enacted" and "imposed" as of July 4, 2025). Section 71115 also instructs CMS to phase down existing provider taxes (those that were "enacted" and "imposed" as of July 4, 2025 and thus considered grandfathered) in Medicaid expansion states, by lowering the indirect hold harmless

threshold by 0.5 percentage points each year, beginning in fiscal year 2028, until the thresholds reach 3.5 percent in 2032.

### CMS' Interpretation of Enacted and Imposed

In the guidance, CMS defines the terms “enacted” and “imposed,” which are referenced in Section 71115 of the OBBBA for purposes of the moratorium on new or increased provider taxes after the date of enactment. CMS will consider a tax to have been enacted as of July 4, 2025, and thus not a new provider tax, if two conditions are met:

- The applicable state or local government has completed the entire legislative process necessary to authorize the tax (either initially or to amend an existing tax) that supports the specific tax structure that is in effect on July 4, 2025. Adjustments or amendments made after this date would not be considered part of the enacted tax structure.
- If the tax requires a broad-based and/or uniformity tax waiver, CMS has approved the waiver as of July 4, 2025.

CMS will consider a tax to have been imposed as of July 4, 2025, if:

- A state or local government (directly or by way of a delegated administrative agency) was actively collecting revenue, as of July 4, 2025, associated with the specific enacted tax structure in effect on that date.

### Section 71117

Section 71117 specifies additional requirements for when a provider tax will be considered generally redistributive for purposes of being approved for a waiver of the uniformity requirement. These changes are intended to prohibit states from imposing differential tax rates on providers within a class based on their Medicaid volume. This provision is expected to primarily affect taxes on managed care organizations in states that previously received uniformity waivers that do not comply with the new legislative requirement, essentially requiring these states to restructure their current taxes. There are seven states that have managed care organization taxes that are directly affected by Section 71117: California, Illinois, Massachusetts, Michigan, New York, Ohio, and West Virginia. In addition to its managed care organization tax, California has a hospital tax with a uniformity waiver that is believed to be affected by Section 71117. Congress allowed for CMS to provide up to a three-year transition period for affected states.

### Transition Period for Provider Taxes with Uniformity Waivers

In CMS' Preserving Medicaid Funding for Vulnerable Populations-Closing a Health Care-Related Tax Loophole final rule, CMS provides transition periods for states that have existing uniformity waivers from CMS that do not comply with the new legislative requirements prohibiting states from imposing higher taxes on Medicaid providers relative to low-Medicaid providers:

- States with waivers for Medicaid managed care organization (MCO)-based taxes approved on or after April 3, 2024, will have until the end of calendar year (CY) 2026.
- MCO-based taxes approved two years or more before April 3, 2026, will have until the end of the state's fiscal year (SFY) 2027.
- Taxes based on all other permissible classes (e.g. a hospital tax) will have through the end of SFY 2028, but no later than September 30, 2028.

While these transitions are shorter than the three years permitted by the OBBBA, they are longer than what was originally included in both [a May 2025 proposed rule](#) for all provider classes and CMS’ November 14, 2025, guidance for MCO taxes.

Tax Class	Most Recent Waiver Approval	Compliance Deadline (Proposed Rule)	Compliance Deadline (Final Rule)
<b>MCO</b>	2 Years or Less Before Rule Effective Date	No Transition Period	End of CY 2026
<b>MCO</b>	More Than 2 Years Before Rule Effective Date	One Year from The Rule’s Implementation Date	End of SFY 2027
<b>Non-MCO</b>	Only applicable to the proposed rule, which was based on the same 2-year criteria as the MCO taxes	Dependent On Waiver Approval Timeframe If Enacted 2 Years or Less, Or More Than 2 Years Before Effective Date	End of SFY 2028

### Interaction of Sections 71115 and 71117

CMS further clarified in the final rule that states may modify taxes that no longer meet broad-based and uniform requirements to comply with the new uniformity rules and still qualify for “grandfathering” under the new tax moratorium as long as the tax does not exceed the new indirect hold harmless threshold established under the law. In other words, CMS believes states should be able to restructure those taxes without changing the percentage of the tax.

### IMPLICATIONS

CMS notes the guidance is preliminary, and it will address these topics in depth in future rulemaking. However, CMS’ definitions of “enacted” and “imposed” are restrictive, particularly in states that enacted provider taxes in the lead-up to the passage of OBBBA but that were not “imposed” under CMS’ definition as of July 4, 2025. For example, if a state with a newly enacted provider tax was not actively collecting the tax from providers by July 4, this could fail to meet CMS’ definition of “imposed.” Furthermore, states that had enacted provider taxes before July 4 but still had pending uniformity or broad-based waiver requests as of July 4 would not have met the cut-off and thus would not be able to maintain their provider tax under CMS’ guidance.

Finally, with regard to uniformity waivers, CMS imposed a shorter transition period than the maximum three years allowed by the legislation, which could make it difficult for states to bring their managed care organization taxes into compliance by the dedicated timelines. Depending on a specific state’s fiscal year and when CMS last approved the state’s tax waiver the date by which the state would have to comply with the new uniformity waiver requirements could be as soon as December 31, 2026, (for those states with a uniformity waiver approved on or after April 3, 2024) or as late as September 30, 2028 (for states with a non-MCO tax).

### RESOURCES

[One Big Beautiful Bill Act](#) (OBBBA, P.L. 119-2)

CMS [Dear Colleague Letter](#), Section 71115 and 71117 of Working Families Tax Cuts Legislation on Provider Taxes, November 14, 2025.

CMS Final Rule, [Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations-Closing a Health Care-Related Tax Loophole](#) (February 2, 2026)

CMS Proposed Rule, [Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations-Closing a Health Care-Related Tax Loophole](#) (May 15, 2025)

Additional [AAMC Medicaid and Payment Financing Resources](#)

Georgetown University Center for Children and Families, [CMS Issues New Guidance on H.R. 1's Restrictions on State Use of Provider Taxes to Finance Medicaid](#), November 18, 2025.

KFF, [5 Key Facts About Medicaid and Provider Taxes](#), December 1, 2025.

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