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Health Care Provider Taxes

During its 2003 session, the Legislature passed HB 2747 which imposes taxes on four types of businesses that provide health services to many of Oregon's Medicaid clients: long-term care facilities (nursing homes), hospitals, Medicaid managed health care plans, and Programs of All-inclusive Care for the Elderly (PACE). The Department of Human Services (DHS) was given oversight of the taxes. Although none of these taxes is part of Ballot Measure 30, they are important to the state's 2003-05 Medicaid budget.

Why did the 2003 Legislature impose these Medicaid provider taxes?

States typically impose health care provider taxes in order to generate revenue that is used to finance Medicaid services. Medicaid provides acute health and long-term care to numerous low-income Oregonians. Services include those provided by nursing homes, assisted living facilities, hospitals, doctors, pharmacies, and mental health practitioners. The state reimburses health care entities for the services they provide to persons eligible for the Medicaid program. The program is jointly funded by the state and federal governments. For most Medicaid programs, Oregon pays 40% of the cost and the federal government pays 60%. Within federal constraints, provider tax revenue can be used as the state's share, or "match." Consequently, provider taxes are often imposed with the expectation that the revenue these taxes generate will be used to enhance a state's Medicaid program by adding more services or eligibility groups, or by increasing Medicaid provider rates.

In Oregon, the policy discussions surrounding the enactment of provider taxes in HB 2747 included consideration of how the new revenues would be spent. The long-term care facilities tax was to increase nursing facility rates and improve the financial stability of the nursing home industry. In addition, HB 2747 directed $12.5 million of the long-term care provider tax into the General Fund. The Medicaid managed care health plan provider tax was to be used to partially fund an Oregon Health Plan (OHP) Standard population hospital benefit funded through Medicaid for the 2003-05 biennium. Hospital provider tax revenue was to be used to partially fund an OHP Standard hospital benefit, to increase Medicaid rates to certain hospitals, and to restore the practice of allowing OHP eligibility retroactively, after medical costs have already been incurred.

Because these taxes are linked so closely with federal Medicaid funding issues, the Centers for Medicare and Medicaid Services (CMS), the federal agency governing Medicaid, is often involved in approving various components of these arrangements. To avoid inappropriate use of federal match using a provider tax mechanism, Medicaid law and regulations limit tax rates to 6% of provider revenue. The tax must be broad-based and uniform, applied at a consistent rate across all providers in a particular service category. For example, a nursing home tax cannot specifically exclude certain providers who have only private pay (no Medicaid) clients or charge them a lower tax.

The tax plan may not violate "hold harmless" provisions of federal regulations. In other words, the tax plan must not intentionally protect any subset of providers by ensuring that their higher Medicaid reimbursement will necessarily cover their tax cost. Broad-based provider taxes, coupled with higher Medicaid reimbursement, generally create winners and losers within provider groups. For example, a nursing home that has no Medicaid clients is required to pay the tax, but it will receive no financial offset by virtue of higher Medicaid reimbursement. On the flipside, a nursing home with a significant proportion of Medicaid clients may receive an increase in Medicaid reimbursement that is larger than the amount of the provider tax it paid.

The federal regulations do, under certain circumstances, allow CMS to waive some of the provider tax plan requirements. In order for CMS to waive regulations, the state must make a waiver application and demonstrate that the tax plan will still meet certain other regulations or financial tests.

HB 2747 Provider Taxes

The following table summarizes the amount of revenue, the purposes, and the sunset dates for the four provider taxes that are part of HB 2747. The revenue amounts are estimates made in August 2003.

Provider and Tax Rate	*2003-05 Revenue*	*Purpose of the Tax and Uses of Revenue*	*Sunset Date*
Hospitals under ORS 442.015, but excluding special inpatient care facilities. Tax rate up to 3% of hospital net revenue.	$49.0 million	"…funding health services…including, but not limited to" increasing hospital reimbursement rates; expanding or continuing OHP Standard hospital services; paying DHS administrative costs to assess the tax."	January 2, 2010
Managed Care Plans that contract with DHS under ORS 414.725. Tax rate up to 6% of managed care plan premiums.	$ 57.1 million	"…funding the state medical assistance program, including but not limited to health services provided by prepaid managed care health services organizations."	January 2, 2010
Long Term Care Facilities under ORS 442.015. Tax rate is equal to 6% of gross revenue.	$49.9 million	$12.5 million of the net tax revenue is transferred to the General Fund during the 2003-05 biennium. The rest "may be used to fund Medicaid-certified long term care facilities" using a reimbursement method specified in HB 2747 that includes rebasing or developing a new rate based upon an analysis of nursing facility costs.	January 2, 2008
PACE sites that are paid on a capitated basis and integrate Medicare and Medicaid financing. Tax equal to 5% of total capitation payments made by DHS.	$ 1.5 million	The PACE tax revenue is for "funding programs of all-inclusive care for elderly persons…that are a part of the Oregon Medicaid reimbursement system."	January 2, 2008

What federal approvals are required for these taxes to be implemented?

If a state seeks waivers of federal provider tax regulations, the federal approval process is more complicated. In the case of Oregon's long-term care provider tax, HB 2747 requires DHS to submit an application to waive the broad-based tax regulation. The proposal to increase Medicaid reimbursement associated with the tax requires DHS to submit a state plan amendment that also must be approved by CMS. If the waiver is approved, certain facilities will be exempt from the tax.

The state also applied for a waiver of the broad-based requirement with respect to the hospital provider tax. Specifically, the state is seeking a waiver to exclude Type A and B hospitals and the state's own psychiatric hospitals. Implementation of the hospital tax is contingent upon CMS approval of the waiver.

In the case of the managed care tax, Oregon is not seeking waivers, but CMS must approve the managed care contract changes that increase capitation rates paid to managed care plans.

Although the CMS approval process can be time-consuming, the federal government must ensure that its Medicaid funds are expended in ways that are consistent with Medicaid law and are fiscally responsible. CMS must also be aware of how waiver approvals in Oregon could affect other states' waiver requests and the expenditure growth of the overall Medicaid program.

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