

PUBLICATION

CMS Reminds Providers of How Reasonable Cost Principles Apply to Provider Taxes [Ober|Kaler]

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Under the Medicaid statute, states are permitted to generate revenue by imposing “healthcare-related taxes” on classes of healthcare providers and to use those tax revenues to pay for services provided under the Medicaid State Plan. 42 U.S.C. § 1396b(w)(3)-(4). Those taxes had long been treated by most Medicare intermediaries as Medicare reimbursable costs, consistent with PRM § 2122.1, under which taxes levied by the state are allowable costs. In its final IPPS rule issued on August 16, 2010, however, CMS “clarified” its payment policy regarding these taxes, stating that, while provider taxes are reimbursable as reasonable costs, the tax expense must be reduced by Medicaid payments that the provider received from the state that were “associated with the assessed tax.” Only this net amount, according to CMS, is reimbursable.

Some providers are currently challenging the CMS clarification at the PRRB and in the courts. In the meantime, however, CMS published on its list serve on March 29, 2012, a “reminder” to providers of how to treat their healthcare-related taxes on their cost reports. CMS stated in its reminder that “although a particular provider tax may be an allowable Medicare cost, when payments associated with the assessed tax are made to the provider, Medicare will recognize only the net tax expense incurred by the provider.” In other words, the tax expense claimed must be “reduced by payments the provider received that are associated with the tax.”

Ober|Kaler's Comments

Given that most states employ “provider taxes” as a funding mechanism, the CMS 2010 clarification affects most providers that continue to be paid, in whole or in part, on a cost basis by Medicare. Those providers have good reason to question CMS's “clarification.” If the providers wish to challenge CMS's position, therefore, they should consider offsetting on their cost reports any payments received from the state against the allowable Medicaid tax costs and then list the full amount of the tax costs as a “protested item.” In that way, providers may preserve their appeal rights to challenge the validity of CMS's position by filing appeals at the PRRB.