



May 13, 2014

Ms. Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2370-P
P.O. Box 8016
Baltimore, MD 21244-8016

Dear Administrator Tavenner:

On behalf of Medicaid Health Plans of America (MHPA), I thank you for the work your agency is doing to implement the Affordable Care Act (ACA). However, I would like to point out an issue that is of great concern to the Medicaid program and Medicaid managed care plans: the lack of clear guidance to state Medicaid agencies on the proper treatment of the insurance tax contained in the ACA.

MHPA is the national trade association solely representing Medicaid managed care plans that contract with states to provide health coverage to Medicaid beneficiaries, our nation's poorest citizens. MHPA represents 117 health plans in 33 states and DC, covering over 18 million Medicaid enrollees. Through innovative programs, MHPA member plans provide high quality cost-effective care, help ensure program integrity, and provide states with Medicaid budget predictability. Full-risk capitated managed care currently serves over 50% of the Medicaid population and this percentage is growing.

The capitation rates that states pay health plans allow plans to ensure access to needed health benefits as well as cover the cost of doing business. The federal government, through the Balanced Budget Act of 1997, ensures adequate payments to health plans by requiring states to develop actuarially sound capitation rates that include medical costs as well as taxes, fees, and other expenses. This requirement acts as an important consumer protection.

The Health Insurance Providers Fee, or health insurance tax, contained in section 9010 of the ACA, is placed on most health insurers including Medicaid health plans. The fee is an excise tax that is not tax deductible by the Internal Revenue Service (IRS), so there is also a gross up to account for. In accordance with actuarial sound rate-setting standards, both the insurance tax as well as the gross up should be included in the capitation rates paid to health plans.

Over the past year, health plans have noted confusion among states and plans as to how the insurance tax will be handled in payments to plans. MHPA has alerted the Centers for Medicare & Medicaid Services (CMS) on the effect this uncertainty is having on the plans. Because of this lack of clarity on what is or should be clear policy, it is incumbent on CMS to provide direct guidance to the states rather than informal discussions regarding particular state decisions.

Medicaid health plans and states need clear written direction from CMS that tells Medicaid agencies that the insurance tax and the income tax effect must be factored into the rate-setting process and covered in payments to plans. As a tax, it should be treated like any other cost of doing business and handled in accordance with regulations at 42 CFR 438.6(c) that require actuarially sound rate-setting. CMS should also handle it in accordance with the 2005 American Academy of Actuaries practice note that guides actuaries in certifying Medicaid premiums and defines actuarially sound premium rates as covering taxes and assessments.

Administrator Tavenner

May 13, 2014

Page 2

MHPA is extremely disappointed that CMS has not provided clear guidance on this issue and urges that CMS provide written guidance to states so that state Medicaid directors and health plans do not misunderstand this new tax and plans can be assured actuarially sound payment rates. Furthermore, MHPA encourages CMS to coordinate with the IRS on developing and issuing guidance on the tax.

MHPA appreciates the hard work that CMS staff do to gather stakeholder input from health plans on a variety of issues, including ACA implementation. However it's important that the agency continue to factor in the health plan impact in its policy-development activities concerning Medicaid. For example, MHPA understands that CMS is fairly far along in updating its standing Medicaid managed care regulations. MHPA strongly suggests soliciting Medicaid managed care plan input early in the process when the agency is undertaking an effort that largely affects Medicaid managed care.

Thank you for your prompt consideration of MHPA's request for written guidance on the insurance tax and related gross up. If you have any questions, please contact Amy Ingham at aingham@mhpa.org or 202-857-5726.

Respectfully,



Jeff M. Myers
President and CEO
Medicaid Health Plans of America