July 14, 2025

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-2448-P
P.O. Box 8016
Baltimore, MD 21244-8016

[CMS-2448-P**]** Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations – Closing a Health Care-Related Tax Loophole Proposed Rule (CMS-2448-P)

Submitted electronically via: https://www.regulations.gov/docket/CMS-2025-0052

Dear Administrator Oz,

LeadingAge appreciates the intent of CMS to improve the integrity of the Medicaid program through the rule making process. We are grateful for the opportunity to submit comments on the CMS notice of proposed rulemaking: ([CMS-2448-P] "Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations – Closing a Health Care-Related Tax Loophole Proposed Rule (CMS-2448-P)."

The mission of LeadingAge is to be the trusted voice for aging. We represent more than 5,400 nonprofit aging services providers and other mission-driven organizations serving older adults that touch millions of lives every day. Alongside our members and 36 partners in 41 states, we use advocacy, education, applied research, and community-building to make America a better place to grow old. Our membership encompasses the entire continuum of aging services, including skilled nursing, assisted living, memory care, affordable housing, retirement communities, adult day programs, community-based services, hospice, and home-based care. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home.

Medicaid reimbursements for long-term nursing home care are below the costs to provide care in nearly every state. Provider taxes offer a lifeline by raising revenues to augment base per-diem rates for nursing homes, incentivize and reimburse for quality care based on metrics and data, and stabilize access for older adults and their families. CMS must ensure that states are afforded adequate time to transition plans, we suggest no less than three years, for revenues on which states are reliant to limit participant impact. If states aren't provided an adequate runway to rework their taxes or find other sources of revenues, states will be unable to pay providers resulting in closures that harm older adults across the country.

We know some states use revenues from taxes CMS proposes to deem non-compliant with this rule to fund parts of their nursing home payment structures. Without these programs, already underfunded nursing homes will close. When a nursing home shutters in a rural area, residents could be moved more than 100 miles away to the next closest nursing home. The distance can be insurmountable for loved

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ones to visit. For residents whom have experienced this, the lack of visitation and family companionship results in precipitous declines in resident health, cognition, and wellbeing, reducing their quality of life and increasing the needs to be met by the receiving nursing home. These declines are in no way relative to the care or engagement of the nursing home, but rather a deterioration of the resident's mental and subsequently physical health resulting from isolation from family. Additionally, the nursing home receives no additional funding as a residents' needs increase, regardless of cause.

Additionally, - because nursing home payer mixes have a much higher Medicaid percentage than in other provider tax classes on the aggregate we have significant concerns with the concept of this rule as it applies to nursing home provider taxes. Because of the high Medicaid payer mix, taxes could be misconstrued to be unduly burdening the Medicaid program, when in reality other total taxable units are negligible. The application of proposed definitions and explanations around proxy terminology will be difficult to assess as they apply to nursing home provider taxes because of high Medicaid utilization within the provider class. For these reasons, taxes on nursing homes should be exempted from these new requirements.

Provider Taxes on Nursing Homes are Inherently Medicaid Heavy- and unavoidably so- therefore nursing home taxes should be exempt from these new requirements.

We urge CMS to consider that taxes imposed on nursing homes could be intrinsically more difficult to assess for compliance with 'generally redistributive principles' because of the high proportion of nursing home services that are paid by Medicaid. On average, Medicaid pays for 60-70% of nursing home stays across the country. Many states use tiered nursing home tax structures that have been deemed compliant for years, though could now face additional scrutiny under the terms of this proposed rule. Further, many states tier their taxes in a way that carves out Medicare revenues from the tax structure, as is allowed at 42 CFR 433.68(d), while still meeting uniformity requirements. This is consistent with exclusions of taxation on Medicare Advantage plans and should remain. Private pay revenues in nursing homes make up a small portion of total revenues, providing a tenuous balance when considering if a tax is unduly burdensome on Medicaid units. Additionally, people are living longer but with more significant care needs; more people will outlive their savings and need to access Medicaid nursing home services. Increases in Medicaid payer proportions relative to total payments may begin to shift taxes to look as though they are not compliant, though the taxable class cannot be expanded nor borne on others than those with a high proportion of Medicaid.

As stated previously, Medicaid payments for nursing home care are typically below the costs to provide care and services. Therefore, many of our member nursing homes backfill those losses with philanthropic funds or increased private pay rates on other residents. Nursing homes are already cross-subsidizing or 'redistributing' funds from outside of Medicaid payments to continue the provision of quality care for the Medicaid program. This redistribution comes at no cost to the federal government and great care must be taken in compliance reviews of nursing home provider taxes to assure that these fragile structures can continue to subsidize low Medicaid reimbursements.

Because of the limited payer mix for nursing facility services, taxes on nursing facilities are unavoidably borne upon the Medicaid unit. CMS application of a standard for determining compliance will surely be difficult. For this reason, nursing home taxes should be exempt from the provisions within this proposed rule.

Proxy Terminology and Exclusions should be flexible for nursing home provider taxes

Taxes on nursing homes in many states use tiers and refer to terminology that may not otherwise have a policy application. Some states use licensure status in other provider groups like continuing care retirement communities (CCRCs). Other states reference providers that otherwise serve multiple levels of care as definitions for tax-rate tiers, without a codified definition. Even if these terms are not otherwise defined in a state's statute or regulations, CMS should take a gratuitous view of these taxes. CMS goes to great lengths to explain its position on proxy terminology, though leaves significant room for interpretation. LeadingAge commends this interpretive space for nursing home provider taxes and urges ongoing allowability of these taxes without unduly burdening states to redefine their tax classes or codify similar terminology to other licensure categories.

Currently included in regulation are allowable exclusions from taxable classes for hospitals (42 CFR 433.68(e)(2)(iii)(B); and 42 CFR 433.68(e)(1)(iii)(B)) in rural areas, that are financially distressed, are serving medically underserved areas, among others. Post-acute care for older adults and long-term nursing home placements are stressing the fragile financing of nursing homes. Allowing states to structure taxes that exempt similarly positioned nursing homes would allow states further flexibility in designing provider taxes that meet generally redistributive principles. We urge CMS to consider including exemptions for nursing homes that reflect the similar stresses of hospitals offering care in rural and underserved areas. The proposed rule does not include addition of this exemption for nursing homes though we suggest that it should.

Resulting from the high Medicaid-payer proportion, the use of proxy terminology will be ambiguous and could inadvertently be construed to target Medicaid.

Adequate implementation time must be assured to minimize risks to nursing home reimbursements.
Ensuring that states have adequate runway to ensure no interruption of provider payments because of CMS rulemaking is critical. For states that have had potentially non-compliant taxes approved within two years of final publication, the timeline for transition should be shifted to not less than five years from the rule becoming final regardless of when the tax was last approved by CMS. Provider taxes offer critical sources of funding for states. Base rate augmentation for nursing home services, quality programs, and access payments keep struggling long-term care providers available for their communities.

The implementation runways in the proposed rule are too short. Longer, more reasonable timelines will allow states time to consider alternatives, hire consultants to support tax structure redesign, and ensure a transparent process with stakeholders. Significant changes to reimbursement structures will destabilize the provider network without adequate transition time. Minimal interruption should be the priority of states and CMS in assuring program integrity via compliance with any future rules.

Conclusion
States are currently undertaking significant program redesigns as they face declining state revenues and compliance with recent enactment of H.R. 1. As states continue to navigate financing challenges, allowing adequate compliance time and thoroughly assessing the effects of the proposed rule on other taxed classes are of paramount importance. We urge CMS to continue to support states in their use of nursing home taxes, despite limitations in the provider class that make them inherently vulnerable to perceived noncompliance based on the tax burden attributable to Medicaid units.

As advocates for high quality long-term services and supports across the aging services continuum, LeadingAge members will continue to serve the Medicaid population where they can, though structural

changes to financing mechanisms must be carefully considered to assure ongoing access for older adults across the country. We support CMS' efforts to maintain Medicaid as a viable and vibrant program to support older adults, wherever they call home. Please contact Georgia Goodman (ggoodman@leadingage.org) with questions.

Sincerely,

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