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OHIO HEALTH CARE ASSOCIATION

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Thank you for the opportunity to provide comments on the proposed rule, "Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations—Closing a Health Care-Related Tax Loophole Proposed Rule (RIN 0938-AV58, CMS–2448–P)." The Ohio Health Care Association represents nearly 1,200 providers of healthcare services in Ohio, ranging from Assisted Living, Skilled Nursing, Home Health, Hospice and Intellectual Disability/Developmental Disability services. As providers of long-term services and support and post-acute care, our members rely on Medicaid funding for a majority of the care and services they provide to Ohio's most vulnerable populations. As such, they are uniquely impacted by changes to Medicaid funding sources in our state.

Since 2009, Ohio has used health related managed care taxes on Medicaid Managed Care Organizations (MCOs). In 2014, CMS issued SHO #14-001 instructing Ohio to come into compliance with the broad-based requirement. On December 7, 2016, CMS approved a waiver for Ohio effective July 1, 2017 that brought the state's proposed MCO tax into compliance. For nine years, our state has used this CMS approved tax as part of our funding calculation to base budgetary decisions on in caring for the millions of Ohioans who receive Medicaid services. Per Section 1903(w)(3)(E)(ii)(I) of the Act, "the Secretary shall approve a State's application for a waiver of the broad based and/or uniformity requirements for a health care-related tax, if the State demonstrates to the Secretary's satisfaction that the tax meets specified criteria, including that the net impact of the health care-related tax and associated Medicaid expenditures as proposed by the State is generally redistributive in nature." While we appreciate that the Administration has deemed these taxes inappropriate, our state was compliant with the requirements described.

We do not wish to argue the validity of the loophole used by Ohio and several other states. Rather, we implore CMS to pursue the discontinuation of these health-related taxes through a reasonable transition period, as described in H.R. 1.:

> SEC. 71117. REQUIREMENTS REGARDING WAIVER OF UNIFORM TAX REQUIREMENT FOR MEDICAID PROVIDER TAX. (c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of enactment of this Act, subject to any applicable transition period determined appropriate by the Secretary of Health and Human Services, not to exceed 3 fiscal years.

In the proposed rule, CMS suggests "the transition period length would be the length of time between the effective date of the final rule and when the State's health care-related tax waiver that no longer conforms to regulatory requirements would have to be modified or discontinued to avoid a reduction in medical assistance expenditures. This timing would allow those affected States at least one full State fiscal year to adjust the tax in order to come into compliance." In Ohio, our budgetary cycle operates on a biennium schedule, with appropriations made every 2 years. If the rule is finalized in 2025, this would not give us adequate time to create an alternative to the existing MCO tax before the start of our next biennium in July 2027. We strongly urge CMS to allow the full 3 fiscal years allotted by H.R.1, particularly for states who are outside of the 2-3 year window of implementation.

CMS supports the notion of requiring more time for this transition, as well, within the rule. In reference to previous instances of attempting to prevent states from designing MCO taxes to target Medicaid MCOs and the Deficit Reduction Act of 2005 (DRA), "realizing that States would need time to address financial impacts within their State budgets and enact potentially necessary legislative modifications to health care-related tax programs, the DRA provided a grace period to allow States to come into compliance by October 1, 2009." This would set a precedent for what we would consider adequate time to make the type of budgetary changes required.

Thank you for the opportunity to participate in stakeholder feedback. Should you have any questions regarding our comments, please contact me directly.

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