

**MEDICAID OPERATIONS MANUAL
TRANSMITTAL LETTER**

September 26, 2011

TO: CUSTODIANS OF MEDICAID OPERATIONS MANUAL
FROM: MARTA E. STAGLIANO, CHIEF, COMPLIANCE
SUBJECT: MEDICAID OPERATIONS MANUAL CHANGES
CHAPTER 1100 – LONG TERM PROVIDER TAX

BACKGROUND AND EXPLANATION

Medicaid Operations Manual (MOM) Chapter 1100 – Long Term Provider Tax, was created to add the collection methodology for Long Term Care Provider Tax to Nevada Medicaid policy. The collection methodology is being revised to assure compliance with Federal law pertaining to health care-related policy. The revisions include changing the calculation of the tax rate to make the tax generally redistributive and changing the definition of revenues on which the tax base is calculated.

These policy changes are effective October 1, 2011.

MATERIAL TRANSMITTED

MTL 22/11
CHAPTER 1100 – LONG TERM
PROVIDER TAX

MATERIAL SUPERSEDED

Manual Section	Section Title	Background and Explanation of Policy Changes, Clarifications and Updates
1100	Whole Chapter	New Chapter.

DIVISION OF HEALTH CARE FINANCING AND POLICY

MEDICAID OPERATIONS MANUAL
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LONG TERM CARE PROVIDER TAX

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MEDICAID OPERATIONS MANUAL	Subject: INTRODUCTION

1100 INTRODUCTION

Nevada Revised Statute (NRS) 422.3775 requires each nursing facility licensed in Nevada to pay a fee assessed by the Division of Health Care Financing and Policy (DHCFP) to increase the quality of nursing care. The fee revenues are deposited in the Fund to Increase the Quality of Nursing Care (Budget Account 3160) established in the State Treasury. One percent of the fees pay administrative costs of collecting the fees and enhancing reimbursement to nursing facilities. The remaining fee revenues plus any Treasurer's Interest Distribution received in Budget Account 3160 must be used to increase the rates paid to nursing facilities for providing Medicaid services.

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1101 AUTHORITY

Section 1903(w) of the Social Security Act allows States to levy health care-related taxes under certain conditions. 42 Code of Federal Regulation (CFR) 433.68 regulates health care related taxes that are levied by States. Nevada Revised Statutes (NRS) 422.3755 through 422.379 establish a health care-related tax for free-standing, intermediate care and skilled nursing facilities in Nevada. This Chapter addresses provisions for assessing and collecting the Long Term Care Provider Tax.

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1102 DEFINITIONS

ADMINISTRATIVE FEE

One percent of the provider tax revenues from nursing facilities is retained by the Division of Health Care Financing and Policy (DHCFP) for administration of the Provider Tax program. This is the administrative fee.

ADMINISTRATIVE PENALTIES

In accordance with Nevada Revised Statute (NRS) 422.379, an administrative penalty of 1% of the fee owed is assessed per day for late payments. The maximum days a penalty is charged for any single payment is ten days.

BASE QUARTER

The Base Quarter is defined as the quarter beginning six months prior to the quarter in which the Long Term Care Provider Tax is being collected. (For tax collections in the quarter beginning July 1, 2011, the Base Quarter is January 1 through March 31, 2011.)

B1 / B2 TEST

A test described in 42 Code of Federal Regulation (CFR) 433.68(e)(2) that demonstrates that a health care-related tax is generally redistributive. The test is required for taxes that receive a waiver from the federal requirements that health care-related taxes must be broad based and uniform.

BROAD BASED HEALTH CARE RELATED TAX

A health care-related tax is considered to be broad based if the tax is imposed on at least all health care items or services in the class or providers of such items or services furnished by all non-Federal, non-public providers in the State, and is imposed uniformly.

CHARITABLE CONTRIBUTIONS

Charitable contributions are gifts or donations of cash or cash equivalent goods or services donated by an individual or organization that is in excess of any value provided by the nursing facility to the contributor. NRS 422.3775 excludes charitable contributions from revenues used to calculate the amount of provider tax.

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CONTRACTUAL ALLOWANCES AND DISCOUNTS ON PATIENT ACCOUNTS

Contractual allowances and discounts are reductions in charges given to payers through contracts or other agreements between the nursing facility and the payer. When beds are reimbursed at a discounted rate but are accounted for at full price in the facility's gross revenues, the contractual allowances and discounts must be removed from the gross revenues before the provider tax amount is calculated.

FUND TO INCREASE THE QUALITY OF NURSING CARE

The fund created in the Nevada State Treasury where Provider Tax revenues are deposited. It is also referred to as Budget Account 3160.

GROSS REVENUES FOR SERVICES PROVIDED TO PATIENTS

Revenues derived from providing services to patients, including such items as transportation, therapies, pharmacy, etc., as well as charges for nursing services.

INTEREST ON LATE PAYMENT

The DHCFP charges interest at 1.5% per month or fraction of a month for payments that are paid later than the thirtieth day of the month following the report month.

INTERMEDIATE CARE FACILITY

An intermediate care facility means an establishment operated and maintained to provide 24-hour personal and medical supervision for a person who does not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide. It does not include facilities meeting the requirements of a general or other special hospital, a facility for care and treatment of the mentally retarded, or a facility operated by the State of Nevada or any of its political subdivisions.

MAXIMUM ALLOWABLE FEDERAL TAX RATE

The maximum Federal tax rate is the percentage tax rate stipulated in Federal law or the CFR applied to the provider revenues as they are defined by Federal law or regulations.

MEDICAID HOSPICE PATIENT DAYS

Medicaid hospice patient days are days when a nursing facility resident enrolled in long term care hospice occupies a bed, and Medicaid pays all or any part of the costs long term hospice care, unless Medicare pays a portion of the charges. If Medicare pays any of the charges for the patient day, the day is excluded from the Medicaid hospice patient days and included in Medicare

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hospice patient days. Medicaid hospice patient days do not include patients whose Medicaid application is pending.

MEDICAID OCCUPANCY RATE

The Medicaid occupancy rate is the ratio of Medicaid nursing facility and Medicaid long term care hospice patient days to total occupied bed days. Medicaid Occupancy Rate = (Medicaid Patient Days + Medicaid Hospice Patient Days) / Total Occupied Bed Days.

MEDICAID PATIENT DAYS

Medicaid patient days are days when a nursing facility resident occupies a bed and Medicaid pays all or any part of the nursing facility charges, unless Medicare pays a portion of the charges. If Medicare pays all or any part of the nursing facility charges for the patient day, the day is excluded from Medicaid patient days and counted in Medicare patient days. Medicaid patient days do not include patients whose Medicaid application is pending.

MEDICAID OCCUPANCY RATE

The Medicaid occupancy rate is the ratio of Medicaid nursing facility and Medicaid long term care hospice patient days to total occupied bed days. Medicaid Occupancy Rate = (Medicaid Patient Days + Medicaid Hospice Patient Days) / Total Occupied Bed Days.

MEDICARE HOSPICE PATIENT DAYS

Medicaid hospice patient days are days when a nursing facility resident enrolled in long term care hospice occupies a bed, and Medicare pays all or any part of the charges.

MEDICARE PATIENT DAYS

Medicare patient days are days when a nursing facility resident occupies a bed and Medicare pays all or any part of the nursing facility charges.

NET REVENUES FROM PATIENT SERVICES

Net revenues from patient services are the gross revenues from providing services to patients minus contractual disallowances and discounts. Gross revenue from providing services to patients does not include other revenue not related to patient care and charitable contributions.

NON-MEDICARE PATIENT DAYS

Non-Medicare patient days are patient days when Medicare does not pay any part of the nursing facility charges. They include Medicaid patient days and days paid for by sources other than

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Medicaid and Medicare. NRS 422.3775 requires nursing facilities to pay an assessment on non-Medicare patient days only.

NURSING FACILITY

Nursing facility means an intermediate care facility as defined in Section 1102.11 or a skilled nursing facility as defined in Section 1102.27

NURSING FACILITY MONTHLY REPORT AND FEE ASSESSED TO INCREASE QUALITY OF NURSING CARE (NF MONTHLY REPORT)

This report, developed by the DHCFP and completed by nursing facilities, is the monthly informational report required by NRS 422.378. It includes actual patient day and revenue information that are used to estimate provider tax revenues for subsequent months. The report also serves as an invoice which calculates the facilities tax assessment for the month just past on which it is reporting.

OCCUPIED BED DAY

An occupied bed day is a day or portion of a day when a bed is occupied by a nursing facility resident.

OTHER PATIENT DAYS

Other patient days are days when no reimbursement is received from Medicaid or Medicare for nursing facility or long-term care hospice charges

OTHER REVENUE NOT RELATED TO PATIENT CARE

This is revenue that is not included in the calculation of the provider tax because it does not derive from providing patient services. It can include items such as meals charged to employees or guests, investment income, rental of facilities and equipment, and similar revenue sources.

PENDING MEDICAID DAYS

Pending Medicaid days are patient days for residents who have submitted a Medicaid application but whose eligibility has not yet been adjudicated by the Nevada Division of Welfare and Supportive Services (DWSS). Pending Medicaid days do not include patients who have submitted a Medicaid application, the eligibility has been adjudicated, and eligibility has been denied.

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SKILLED NURSING FACILITY

A skilled nursing facility means an establishment which provides continuous skilled nursing and related care as prescribed by a physician to a patient in the facility who is not in an acute episode of illness and whose primary need is the availability of such care on a continuous basis. It does not include a facility which meets requirements of a general or special hospital.

STATE MEDICAL ASSISTANCE PERCENTAGE (SMAP)

The SMAP is the state share of a Medicaid medical services payment.

SUPPLEMENTAL PAYMENT TO NURSING FACILITIES

Supplemental payments are monthly lump sum payments to nursing facilities providing Medicaid services. Provider tax revenues and Medicaid federal matching funds are used to make the payments.

TREASURER'S INTEREST DISTRIBUTION

Treasurer's interest distribution is the actual amount of interest revenue deposited in Budget Account 3160 by the Nevada State Treasurer following the end of each quarter.

UNIFORMLY IMPOSED HEALTH CARE-RELATED TAX

A health care-related tax is considered to be imposed uniformly if the tax is the same amount for every provider furnishing those items or services within a class of items or services.

UNIFORM TAX RATE

The higher tax rate for facilities that do not qualify as waived facilities is designated the uniform tax rate, which is the rate that the tax would be if Nevada did not have a waiver.

WAIVER

A waiver allows States, with CMS approval, to operate a health care-related tax that is not broad based, is not uniform, or both. The waiver of the broad based requirement allows States to exempt some items, services, or providers of the class designated for the tax. A waiver of the uniformity requirement allows States to tax items, services, or providers in the class at different rates or amounts.

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WAIVERED FACILITY

A nursing facility with a Medicaid Occupancy Rate of 65% or higher which pays taxes at a lower rate than other facilities because of Nevada Medicaid's approved waiver of the requirement that health care-related taxes must be uniform.

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1103 PROCEDURES FOR ESTIMATING TAX REVENUE AND SETTING TAX RATES

The amount of revenue available from Provider Tax is estimated quarterly using actual patient day counts and actual net revenue from patient services reported by the nursing facilities in the Base Quarter.

The tax rate is set at or below the maximum allowable federal tax rate. The percentage rate is multiplied times the total nursing facility reported net revenue from patient services in the Base Quarter to estimate the total tax revenue for the current quarter.

Nevada's Long-Term Care Provider Tax does not meet the federal requirement that health care-related taxes must be broad based because, by statute, it excludes privately owned, hospital-based nursing facilities and because it does not tax Medicare patient days. Therefore, it must have a waiver of the broad-based requirement. To receive Centers for Medicare and Medicaid Services (CMS) approval of the waiver, the Division of Health Care Financing and Policy (DHCFP) must demonstrate that the tax is generally redistributive. However, if all facilities are taxed at the same rate, the tax is not generally redistributive. Therefore, the DHCFP must also receive CMS approval for a waiver of the federal requirement that health care-related taxes must be uniform.

The DHCFP sets two tax rates per quarter. Nursing facilities with a Medicaid occupancy rate of 65% or higher will pay a rate that is lower than that of nursing facilities whose Medicaid occupancy rate is lower than 65%.

Tax rates are set using the B1/B2 Test, which the tax must pass to demonstrate it is generally redistributive. Nevada's B1/B2 Test calculates the slope (B1) of a linear regression for a broad-based and uniform tax in which the dependent variable is each facility's percentage share of total tax paid and the independent variable is each facility's Medicaid bed days. The test next calculates the slope (B2) of Nevada's actual tax in which the dependent variable is the facility's share of total tax paid, and the independent variable is the number of Medicaid bed days for each facility. The ratio of B1 to B2 must be 1 or higher for the tax to be generally redistributive.

The tax rate for the waived facilities is set at the highest rate possible to achieve 1 on the B1/B2 Test. The rate is set in dollars and cents and will be carried to two decimal places (\$DD.CC). If the B1/B2 ratio is .9999 at \$15.00 and 1.00025 at \$14.99, the tax rate for the waived facilities is set at \$14.99.

The higher tax rate for the other facilities is set by subtracting the total amount of tax revenue from the waived facilities from the total estimated tax revenue to determine the total tax revenue paid by the facilities that are not paying the waived rate. The estimated total number of non-Medicare bed days for the facilities paying the higher tax rate will be divided into the total amount of tax revenue to be paid by facilities not paying the waived rate to determine the per day tax rate for the facilities that are not paying the waived rate.

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1104 PROCEDURES FOR COLLECTING PROVIDER TAX

Each month all taxed Nursing Facilities (NFs) will complete the NF Monthly Report providing actual patient day counts and actual revenue amounts for the previous month. The NF Monthly Report, along with remittance of the facility's prior month's Provider Tax, will be transmitted to The DHCFP not later than the 30th day of the month following the reporting month. The January report is due not later than the last day of February.

For payments that are not remitted by the due date, the DHCFP charges an administrative penalty of 1% of the Provider Tax owed per day that the payment is late. The maximum days a penalty is charged for any single payment is ten. All administrative penalties are credited to the Fund to Increase the Quality of Nursing Care.

The DHCFP charges interest on late payments at a rate of 1.5% of the late amount per month or fraction of a month that the payment is late. All interest on late Provider Tax payments is credited to the Fund to Increase the Quality of Nursing Care.

Upon receipt of the NF Monthly Report and Provider Tax Remittance, the DHCFP logs the data and the amount of the payment in a provider tax log for the appropriate year. A copy of the NF Monthly Report is copied to or scanned into the Rates and Cost Containment Unit's shared drive in the file for the appropriate fiscal year.

Fifteen days prior to the beginning of a new quarter, the DHCFP will notify each of the facilities of the patient day counts it has on file for the facility for the Base Quarter. Facilities will be allowed 10 days to correct the patient day counts. This will permit the facility to include in their Medicaid bed day counts any patients who may have been pending Medicaid at the time the report was initially completed but who were later made retroactively eligible for one or more months of the quarter.

When actual revenue data is reported for the quarter, the DHCFP calculates whether more provider tax was collected than the maximum allowable federal tax rate multiplied by actual nursing facility net revenues from patient services. If excess tax was collected in the quarter, the DHCFP makes the calculation for the state fiscal year to-date. If the state fiscal year to-date calculation does not exceed the maximum allowable federal tax rate, the provider tax collections will be retained. If the state fiscal year to-date calculation exceeds the maximum allowable federal tax rate, the DHCFP will return the excess tax to the nursing facilities. Provider tax will be refunded to each nursing facility according to the percentage of total tax the facility paid during the quarter.

If Provider Tax revenues in a quarter exceed the amount required to pay the state share of Supplemental Payments to NF, as described in the Nevada Medicaid State Plan, Attachment 4.19D, the excess funds will be used to replenish the Provider Tax Reserve or to reduced the tax rate in the next full quarter after the surplus has been determined.

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1105 PROVIDER TAX RESERVE

A Reserve is created in Category 86 of Budget Account 3160. The Reserve will be maintained at not more than \$900,000.

The funds in the Reserve will not be used to increase nursing facility per diem rates.

The funds in the Reserve may be used for the following purposes:

- a. To avoid a substantial, one-time decrease in the Supplemental Payments to NF caused by an unanticipated shortfall in Provider Tax Fund collections due to errors or incorrect estimates of taxable days.
- b. To repay excess Provider Tax Fund collections.
- c. To correct for a shortfall in Provider Tax Fund collections due to late Provider Tax Fund payments.
- d. To repay State General Fund monies that were properly used to pay out Supplemental Payments to NF.
- e. To address fiscal emergencies or circumstances which arise pertaining to the Provider Tax Program to maintain or increase Supplemental Payments to NF.

When Reserve funds are expended, they will be restored using surplus collections of Provider Tax, if the total amount collected during the year does not exceed 6% of net revenues from patient services.