Federation of American Hospitals

Charlene K. MacDonald
President and CEO

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Via electronic submission at *http://www.regulations.gov*

The Honorable Mehmet Oz, MD
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2452–P
P.O. Box 8010
Baltimore, MD 21244–8010

Re: Medicaid Program; Amending the Indirect Hold Harmless Threshold of Health Care-Related Taxes (CMS–2452–P)

Dear Dr. Oz:

The Federation of American Hospitals (FAH) appreciates the opportunity to submit comments to the Centers for Medicare & Medicaid Services (CMS) on the Medicaid Indirect Hold Harmless Threshold of Provider Taxes Proposed Rule, published in the Federal Register on July 23, 2026 (91 Fed. Reg. 46,562). FAH is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, DC and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

FAH supports the goal of a fiscally sound and accountable Medicaid program. Provider taxes play an important role in supporting sustainable Medicaid programs and preserving access to care for the millions of individuals who rely on Medicaid for coverage. Medicaid is, by design, a federal-state partnership, and states have long relied on a combination of state resources, including permissible provider taxes, to finance their share of the program and respond to the unique needs of their populations and health care systems. FAH supports appropriate accountability, transparency, and fiscal discipline in Medicaid financing. At the same time, the mechanisms used to achieve these objectives should be administratively workable for states and providers and avoid unnecessary regulatory complexity and burden.

Given the significant differences in state Medicaid programs, financing structures, and health care markets, CMS should preserve appropriate flexibility for states to work with the agency to demonstrate compliance and achieve the underlying policy objectives rather than relying exclusively on uniform approaches that may not account for legitimate state-specific circumstances. This balance can strengthen program integrity while preserving states' ability to sustainably finance their Medicaid programs and maintain access to care.

Executive Summary

Congress adopted section 71115 of the Working Families Tax Cut (WFTC) (Pub. L. 119-21) and our comments address its implementation. As proposed, the rule would reach beyond what the statute requires and would add cost, complexity, and uncertainty for states and providers, and ultimately for the patients and communities our members serve. Congress directed that the new indirect hold harmless thresholds be established as "the Secretary determines," and we urge CMS to use that flexibility to implement section 71115 with the least possible disruption.

FAH appreciates the improvements CMS made in the Proposed Rule relative to its November 2025 Dear Colleague letter, particularly in the definitions of "enacted" and "imposed." Building on that progress, and consistent with the Administration's direction to reduce regulatory burden and compliance risk, FAH recommends that CMS:

- Adopt a simpler, prospective approach to calculating and applying the new thresholds, including a safe harbor for states whose tax rates and structures remain unchanged from July 4, 2025, so that states and providers are not exposed to compliance actions for circumstances beyond their control;
- Strike the second sentence of the proposed definition of "enacted," which would treat routine administrative steps taken under an already-enacted tax as though the tax were not enacted as of July 4, 2025;
- Refine the definition of "imposed" so that a state is not disadvantaged by CMS's own processing timelines, including where a broad-based or uniformity tax waiver, or a state directed payment preprint, was pending on July 4, 2025 and was later approved with an effective date on or before that date;
- Determine compliance on a state fiscal year basis, consistent with current regulation and longstanding practice, rather than shifting to the federal fiscal year;
- Codify in regulatory text the data remediation protections described in the preamble, with flexibility to extend the two-year window when circumstances require; and
- Preserve the net patient revenue methodologies that states have used and CMS has approved for decades, rather than adopt a new definition that could place previously approved taxes out of compliance.

FAH also identifies a technical correction to proposed § 433.70(b), which cross-references a paragraph that does not exist. Our detailed comments are below.

I. Permissible Health Care-Related Taxes (Part II.C)

FAH objects to the aspects of the Proposed Rule that would unnecessarily increase burden on providers and states and would create disruptions and uncertainty regarding the financing of the Medicaid program, all of which ultimately affect beneficiaries. FAH believes CMS's proposed definitions, calculations, and applications of the indirect hold harmless threshold go beyond statutory requirements and instead should rely more heavily on previously and currently permitted approaches, consistent with the Secretary's statutory flexibility. The Proposed Rule should be amended to ensure that existing taxes that "the Secretary determines [are] within the hold harmless threshold as of" July 4, 2025, and that, for example, a state leaves untouched do not result in potential compliance actions and retroactive adjustments on taxpayers.[1] Unfortunately, as currently constructed, CMS's proposal could cause states' taxes to run afoul of the newly calculated nine-digit threshold, even if states make no changes to their taxes. CMS should use the flexibility provided by the statute to ensure that the WFTC provisions are implemented efficiently, effectively, and with the least disruption and uncertainty.

The WFTC legislation requires the determination of hold harmless thresholds based on the percentage of net patient revenue calculated for each state and class of the tax that the state "has enacted … and imposes … " as of July 4, 2025.[2] FAH wishes to acknowledge the improvements in the definitions of "enacted" and "imposed" that CMS has included in the Proposed Rule, compared to its initial guidance published in November 2025 (Dear Colleague letter).[3] Nevertheless, additional modifications are needed.

CMS Should Further Modify Proposed Definition of "Enacted" Consistent with Statute and Plain Meaning

FAH objects to CMS attempting to extend the definition of "enacted" such that certain administrative adjustments through a state budget office, for example, occurring after July 4, 2025 would mean that the tax is not considered enacted as of that date. States are regularly authorized to take routine administrative steps or are delegated authority to adjust taxes after they are enacted. These are permissible activities that do not fall under the plain meaning of the word "enacted."

The first sentence of CMS's proposed definition of "enacted" generally aligns with the statute and plain meaning: "Enacted means that the applicable State or local government has completed the entire legislative process necessary to authorize (either initially or to amend an existing tax, as applicable) the specific tax structure that was in effect on July 4, 2025."[4] With that, the definition should be complete.

CMS's proposed second sentence for "enacted" states: "The enacted tax structure as of July 4, 2025, does not include administrative (for example, through a state budget office) or legislative adjustments to a tax structure (including revenue increases) after July 4, 2025, that are retroactively applicable to July 4, 2025, or earlier."[5] This sentence would inappropriately disqualify certain taxes due to administrative and other activities that may appropriately be taken to

implement and even adjust a tax, under the broad authority of an enacted tax, but that occur *after* "the applicable State or local government has completed the entire legislative process … ." Later in the preamble, in a different context, CMS says, "[T]here are instances where we will view a tax as continuous despite reauthorization cycles, to ensure taxes that are otherwise continuous are not excluded simply due to the State's reauthorization process."[6] Such reauthorization cycles may require appropriate administrative or legislative adjustments. Notwithstanding CMS's assurance in the preamble, the proposed regulatory text could be interpreted to mean otherwise. As such, not only do those activities not fit under the concept of "enacted," but the second sentence of the proposed definition should be deleted altogether. The concerns that CMS appears to be addressing here are more appropriate and effectively accounted for under the definition of "imposed", which addresses what was in effect on July 4, 2025. Thus, the second sentence of the definition of "enacted" in the Proposed Rule is confusing, inappropriate in its location, substantively unnecessary and should be struck.

CMS Should Further Modify Proposed Definition of "Imposed" to Account for Another Situation

As a preliminary matter, FAH believes that CMS must give effect to Congress's deliberate change in verb tense between "has enacted" and "imposes" and interpret the "imposes" requirement as identifying the nature and object of the enacted tax. Briefly, Congress's use of the term "has enacted" in the present-perfect tense imposes a requirement of a completed legislative action by the specified date. In contrast, the "imposes" provision, drafted in the simple-present tense, most naturally describes what the enacted law does: It imposes a tax on a specified class. CMS's proposed interpretation, however, instead reads the "imposes" requirement as having a temporal focus, requiring an effective date on or before July 4, 2025. Under this interpretation, a state that has enacted a tax by July 4, 2025, and imposes that tax on a specified class but specifies a definite, later effective date without requiring further government action to activate the tax would not satisfy the "imposes" requirement with respect to the tax. FAH does not believe that this comports with Congress's intent or the precise statutory text and instead recommends a definition of "imposes" that removes the proposed, temporal focus.

To the extent that CMS disagrees, however, FAH suggests that CMS make further refinements to the waiver approval language in the proposed definition. Compared to the definition in CMS's Dear Colleague letter, the definition of "imposed" in the Proposed Rule is much improved: "Imposed means that the tax was in effect on July 4, 2025. If the tax requires a broad-based or uniformity tax waiver, CMS has approved the tax waiver with an effective date of July 4, 2025, or earlier." The second sentence of the proposed definition differs from the Dear Colleague letter; in the Dear Colleague letter (1) that sentence appeared in the definition of "enacted" rather than "imposed," and (2) CMS must have *approved* the tax waiver *as of July 4, 2025*. FAH appreciates these changes because (1) a tax waiver submission to or approval by CMS does not pertain to the plain meaning of "enacted," and (2) as CMS says, "this revised interpretation more appropriately reflects CMS and State practices regarding waiver requests and effective dates."[7]

The latter point merits elaboration. A state may have enacted a tax and put all the administrative pieces in place to make that tax in effect on or before July 4, 2025, except for needing CMS's approval of a tax waiver. Even if that tax waiver has not been approved by CMS *as of* July 4, 2025, because the tax takes effect and applies on or before July 4, 2025, after CMS's approval, then the tax meets the definition of imposed, as proposed. Whether or not the tax is considered "imposed" should not rely only on whether or not CMS approved an administrative request by that date, when all of the state activities and submissions had previously occurred. To further clarify the sentence, to link to the specific amounts approved in the waiver, we propose that it be replaced with the following language: "If a state had a broad-based or uniformity waiver pending approval on July 4, 2025, the tax amount in the approved waiver is considered imposed if the waiver had an effective date of July 4, 2025, or earlier."

FAH suggests that CMS allow for a similar instance where "imposed" should not rely only on whether or not the agency approved an administrative request by that date, when all of the state activities and submissions had previously occurred. This is in the case of CMS's approval of a State directed payment (SDP). In many states, provider taxes may be enacted but not put into effect until it is certain that providers will receive permissible SDPs pursuant to CMS approval. We propose language regarding SDPs that is comparable to that in the Proposed Rule for tax waivers, so that whether or not a tax is considered imposed is not contingent on CMS's approval of a SDP as of July 4, 2025 if it is approved to be effective on or before July 4, 2025: "If a State had a State directed payment preprint pending on July 4, 2025, that is approved by CMS with an effective date of July 4, 2025, or earlier, the tax is considered imposed at the amount required for such CMS-approved State directed payment." This change would also appropriately reflect CMS and state practices, in this case pertaining to the CMS approval process for SDPs. Our proposed modification attempts to capture this situation where the imposition of a tax effective on or before July 4, 2025, awaits administrative approval from CMS.

As previously mentioned, the preamble of the Proposed Rule states, "[T]here are instances where we will view a tax as continuous despite reauthorization cycles, to ensure taxes that are otherwise continuous are not excluded simply due to the State's reauthorization process."[8] Similarly, the Proposed Rule suggests that a tax would be considered "imposed" even in instances where the State legislature has provided a standing authority for a tax or to increase a tax at an unspecified time, if taxpayers were subject to a legally enforceable obligation to pay the tax or increase as of July 4, 2025.[9] CMS should consider providing these clarifications in the regulatory text.

CMS Should Not Implement Section 71115 on a Federal Fiscal Year Basis

FAH opposes the implementation of section 71115 beginning on October 1, 2026, which is nine months prior to the start of the State fiscal year in the vast majority of states. By statute, the change to the applicable percent threshold under section 71115 is applicable "for fiscal years beginning on or after October 1, 2026."[10] Because most states operate on a July 1 to June 30 State fiscal year, the fiscal year beginning on or after October 1, 2026 would, in most states, refer to the fiscal year beginning on July 1, 2027. This approach would be consistent with CMS' general use of State fiscal years in the State Fiscal Administration regulations at 42 CFR Part 433 and aligns with the best reading of the statutory language. CMS, however, proposes to specify an effective date based on the Federal fiscal year "to provide clarity as to CMS' interpretation."[11] Much of the associated explanation for this interpretation is only provided in connection with the monitoring process (discussed further below). FAH opposes this approach as it inappropriately advances the applicability date under section 71115.

CMS Should Continue Monitoring Based on Each State's Current Annual Compliance Window

FAH opposes provisions of the Proposed Rule that are unnecessarily complicated for stakeholders relative to current approaches, such as CMS's proposal to move compliance with the hold harmless threshold to a federal fiscal year (FFY) basis, instead of assessing compliance based on the fiscal year basis the state used for the tax as of July 4, 2025.

CMS asserts that it has the flexibility to define the statute's "for fiscal years beginning on or after October 1, 2026"[12] on an FFY or SFY basis and, in general, will interpret the statute to mean FFY "except in limited circumstances when the timing makes FFY application impossible or unreasonable."[13] However, to make monitoring and compliance effective on an FFY basis, CMS proceeds to explain all of the additional adjustments states would have to make that, while not quite impossible, are certainly unreasonable. The preamble of the Proposed Rule admits that this "non-alignment" between FFYs and SFYs would require most states (which have an SFY that does not align with the FFY) to alter their reporting for compliance purposes and subject them (particularly those facing the phase-down requirements in their thresholds) to complications in managing and tracking their tax revenue and compliance as their thresholds change during their SFY. As CMS said, "Most States have SFYs that do not align with the FFY, and therefore would need to ensure tax revenues attributable to portions of SFYs that fall within a FFY do not exceed the threshold."[14] With respect to expansion states, CMS further notes that they "may therefore need to make accommodations to account for the threshold decreasing on October 1, 2026, and for the classes subject to the phase down, which, beginning in FFY 2028, may occur mid-year for States whose SFYs do not align with the FFY."[15] The agency then proceeds to describe two complicated options, which would be rendered unnecessary if states were permitted to maintain their current annual compliance period.[16]

In terms of precedent, the relevant *current* regulation mentions only state fiscal years, not federal.[17] For example, when the threshold was lowered to 5.5 percent for January 1, 2008 through September 30, 2011, compliance was on an SFY basis. Current compliance monitoring is generally on an SFY basis. As CMS says, "Most States already report tax revenue and net patient revenue data on an SFY basis."[18] On that basis, in a different context, the Proposed Rule would calculate the new thresholds as enacted and imposed on July 4, 2025 on an SFY basis,[19] which we support. Consistent with that proposed policy, precedent, and current practice, CMS should remove references to "Federal fiscal year" in the Proposed Rule and instead assess compliance based on the fiscal year basis the applicable state use of the tax.

CMS says its proposal primarily affects when the newly calculated thresholds become effective for a state. The agency expresses concern that adopting an SFY basis would give some states "up to three additional quarters in relation to other States before the threshold became effective, an inconsistency that would be more pronounced for any possible State phase down … ."[20] Regarding the potential use of an SFY basis, CMS appears to express two concerns about the impact on the 48 states with an SFY that differs from the FFY: (1) the application of the WFTC thresholds would be effective later (6 to 11 months), and (2) in expansion states, the phase down would begin earlier (1 to 6 months).

The inconsistency would be "more pronounced" for expansion states with an SFY that does not align with the FFY (*i.e.*, every expansion state other than Michigan and the District of Columbia), with the phase down beginning 1 to 6 months earlier than it otherwise would have. On the other hand, the additional time before the effective date of the WFTC adjustment (relative to CMS's FFY election) would be beneficial to states to deal with the complex implementation and compliance issues under the Proposed Rule. Regardless of which fiscal year basis is used, all affected states would face a full year (four quarters) at a particular phase down rate. While it is true that the SFY basis would provide some states with brief additional time before new thresholds take effect (but then sooner for the phase down), we believe that initial inconsistency is merited compared to the long-term unreasonable and unnecessary complications that would result under an FFY approach that is not required by statute and, if anything, could be viewed as contrary to statute based on 1903(w)(4)(C)(ii) of the Social Security Act and CMS's established practice using state approaches in existing regulation.

CMS Should Apply a Less Burdensome, Prospective Approach for Calculating and Complying with New Thresholds

FAH opposes the level of detail and complexity in the Proposed Rule for calculating and complying with the updated hold harmless thresholds.

Under the Proposed Rule, CMS first calculates an interim threshold for each state and class, as applicable, based on interim data provided by states by December 31, 2026. Thus, states will not know their interim thresholds until 2027. By June 30, 2028, states must provide CMS with data for calculating the final thresholds that apply back to "fiscal years beginning on or after October 1, 2026". CMS "intends" to announce final thresholds by September 30, 2028, two years after the earliest application of the updated thresholds. Besides the uncertainty of not knowing for some time what a state's thresholds are, CMS adds that even if states make no changes to their tax rates, they could still be in violation of the thresholds due to circumstances beyond states' control. According to CMS, this could occur because, for example, net patient revenue happens to decrease relative to tax collections. "Accordingly, States must monitor their actual tax revenue relative to their applicable thresholds on an ongoing basis … ,"[21] even if they do not know what those thresholds are. CMS then says, "[d]ue to the importance of precision,"[22] that it intends to calculate the thresholds out to nine decimal places, warning that "every State is likely near or at the indirect hold harmless threshold because the threshold will be calculated based on the current revenue levels."[23]

Nothing in the WFTC legislation requires this level of precision or places so much importance on "precision" for implementation and compliance. On the other hand, the Medicaid statute has numerous references to the efficient and effective administration of the program. Unfortunately, CMS's proposed approach to compliance with section 71115 is burdensome and less effective and efficient than it could be, creating unnecessary unpredictability and potential disruption that is unwarranted. For decades, CMS has been working with states to monitor compliance with the hold harmless threshold. The agency should craft a less burdensome policy that does not put on states substantial risks of noncompliance and repayments due to the timelines and uncertainties resulting from the policies in the Proposed Rule.

At minimum, CMS should develop a safe harbor for states that, as of the effective date of the WFTC policy, have the same tax rates and structures in place as of July 4, 2025. For such states, there should be no substantially increased reporting or threat of compliance action for situations beyond the state's control, such as "if the net patient revenue for the permissible class decreases."[24] CMS should work with states to establish what their levels are based on their current methodologies as the agency has accepted for compliance purposes heretofore, in order to minimize disruption, uncertainty, and unnecessary reporting burden.

To the maximum extent possible, states should know in advance, prospectively, whether or not their tax policies for the year—particularly if they are unchanged—are in compliance. In the WFTC legislation, Congress did not require the level of detail, uncertainty, and retrospective analysis laid out in the Proposed Rule. In fact, in terms of the amount of legislative text, the changes to the Medicaid statute in section 71115 of the WFTC legislation were fairly modest, to amend the hold harmless thresholds. Congress did not require an overhaul or provide great detail regarding the calculations and application of the provisions, but instead called for the thresholds to be established as "the Secretary determines".[25] CMS should leverage that flexibility and discretion to simplify the calculations, compliance, and looming threats of enforcement action in light of the uncertainty that would be created under the Proposed Rule.

As an analogy, we point to changes made by section 71118 of the WFTC legislation, altering how CMS determines budget neutrality for 1115 demonstrations. For decades, states were required to provide regular, detailed reporting to ensure compliance with their 1115 demonstration's budget neutrality requirements, with additional requirements around the repayment of funds when they exceeded applicable levels based on *retrospective* reporting and analyses. Under the WFTC legislation, beginning January 1, 2027, CMS will make a *prospective* determination of budget neutrality. In a

letter to State Medicaid Directors, CMS said, "Under the approach CMS intends to propose, we would utilize new budget neutrality monitoring STCs [special terms and conditions] for a state's projected expenditures and would require states to complete corrective actions if expenditures substantially deviate from a state's projection" (emphasis added).[26] CMS should likewise adopt a prospective approach that imposes less regulatory burden and provides more certainty in its implementation of the indirect hold harmless threshold under section 71115 of the WFTC legislation.

The Trump Administration has published numerous directives calling for, as one Executive Order put it, relief against "further increasing compliance costs and the risk of costs of non-compliance" from the "ever-expanding morass of complicated Federal regulation."[27] Based on the Administration's direction, CMS and the U.S. Department of Health and Human Services (HHS) more broadly have published relevant guidance and requests for information (RFIs).[28] In one such RFI, HHS asks whether its requirements are "confusing or unnecessarily complicated," require "an excessive number of reports or unreasonable record keeping," and could "accomplish the same goal with a lesser burden."[29] Unfortunately, all of those criteria are met by the provisions of this Proposed Rule, and it should be modified consistent with the Administration's directives and the flexibility provided by the statute. If CMS finalizes its retrospective approach with the associated calculations to nine decimal places (the statute uses one decimal place), reporting burden, etc., it should be limited to states where significant compliance concerns merit that level of scrutiny.

In this section of the preamble of the Proposed Rule (Part II.C.3.c), CMS says, "Section 1903(w)(4) of the Act, as amended by section 71115 of the WFTC legislation, requires CMS to collect additional tax data in order to verify that all States are in compliance with the applicable indirect hold harmless threshold." We would like to point out to CMS that there is no such requirement in section 71115 of the WFTC legislation.

CMS Should Include Data Remediation Policies and Protections in Regulatory Language

FAH appreciates CMS's offer in the Proposed Rule for data remediation, which would generally provide states with two years after the end of the year in question to (1) submit more complete tax revenue and NPR data *and* (2) make any refunds to taxpayers in order to ensure compliance with the threshold. As described above, FAH recommends policies such that data remediation policies are either not needed or their need across all states and classes is substantially reduced. To the extent CMS finalizes its policies for retroactively determined compliance with thresholds, data remediation policies should be memorialized in the regulatory text, rather than merely described in the preamble.

In addition, CMS should provide flexibility to extend the data remediation window beyond two years, if necessary. While CMS seems confident that "a 2-year period is sufficient time to finalize tax revenue collections for a given period, obtain final data, and make necessary corrections to data and payment amounts,"[30] this may not always be the case. For example, if it is determined that a state must return collections that exceed the threshold, CMS says such returns must be done "on a consistent basis," which may require "legislative changes and/or SPAs," which could take time. To further emphasize this point, we use CMS's own wording in a different but closely related context, regarding the significant consequences of noncompliance described in Part II.D of the Proposed Rule—that such flexibility "is particularly important now that, by operation of the calculation of the threshold, most taxes would initially be at or near the threshold and therefore at risk of exceeding it."[31] Given that risk, CMS should codify remediation policies as flexibly as possible, including allowing the window to extend beyond two years in case such accommodations prove necessary.

II. Limitation on Level of FFP for Revenues from Health CareRelated Taxes (Part II.D)

In the Proposed Rule, CMS proposes that 42 C.F.R. § 433.70(b) end with ", and any health care-related taxes in excess of the threshold specified in paragraph (a)(1) of this section". However, there is no 42 C.F.R. § 433.70(a)(1), and the quoted material should be struck.

III. Reporting Requirements (Part II.E)

As described above, FAH finds the associated reporting requirements "unnecessarily complicated" and requiring "an excessive number of reports or unreasonable record keeping" when it is possible to "accomplish the same goal with a lesser burden."[32] Consistent with the Administration's deregulatory agenda and other directives, we ask CMS to amend its proposals so that such level of reporting is neither necessary nor sought, consistent with the Secretary's statutory flexibility.

IV. Classes of Health Care Services and Providers Defined (Part II.B)

The Medicaid statute authorizes the Secretary to establish by regulation additional permissible classes of health care items and services.[33] For fiscal years beginning on or after October 1, 2026, the WFTC legislation requires the existing 6 percent indirect hold harmless threshold to be substituted with a lesser number in certain circumstances for "a class of health care items or services described in section 433.56(a) of title 42, Code of Federal Regulations (as in effect on May 1, 2025) … ."

CMS proposes to:

- Add a new class in 42 C.F.R. § 433.56(a)(19) for "Services of health insurers (other than services of managed care organizations (including health maintenance organizations and preferred provider organizations) as specified in paragraph (a)(8) of this section)"; and
- Subject states' taxes on the new class to the WFTC requirements that apply to classes that were in effect on May 1, 2025.

While there may be substantive policy reasons for adding this new class, our primary concern is that CMS proposes to treat this class as if it were in effect on May 1, 2025, which it was not. CMS notes that although "the statute is silent on this issue," it believes "the most appropriate implementation of section 1903(w) of the Act is to apply the same indirect hold harmless framework applicable to preexisting permissible classes."

The preamble raises significant policy questions and potential consequences if this class is added, including for taxes that have little or nothing to do with Medicaid. For example, some states use these tax revenues to support activities associated with the operation of state-based health insurance exchanges. These arrangements may help support a stable and reliable private marketplace through which consumers can obtain health insurance coverage—an important policy objective that should not be inadvertently disrupted by changes intended to address Medicaid financing.

CMS should therefore consider the potential implications beyond the Medicaid program of adding this class, including whether doing so could affect states' ability to support mechanisms that facilitate access to private health insurance coverage. Given these broader ramifications, CMS should delay adding the class until it has more fully considered whether the change is necessary and the potential consequences for state health care financing and insurance markets.

V. General Definitions (Part II.A)

Net Patient Revenue Should Be Defined Consistent with Current Policy and Implementation

FAH believes that CMS's proposed definition of Net Patient Revenue (NPR) should reflect the approaches that have been adopted by states and permitted by CMS over the years.

Each state's indirect hold harmless percentage is calculated by dividing the total tax collections (the numerator) by the total Net Patient Revenue (the denominator). Neither prior law nor section 71115 of the WFTC legislation defined Net Patient Revenue for this purpose. Federal regulations have generally described Net Patient Revenue for this purpose, but without an explicit definition. Nevertheless, the concept has been used by CMS and states for assessing compliance with the hold harmless threshold since 1992.[34]

CMS now proposes to define NPR in regulations as "revenues received by the taxpayer, which are revenues attributable to the assessed permissible class of health care items or services, regardless of payer source."[35] This, combined with other provisions of the Proposed Rule, could upend some states' longstanding, CMS-permitted approaches for calculating compliance with the hold harmless threshold. For example, CMS has permitted some states to calculate NPR not based solely on separate classes of a provider's services but as imposed in hospitals' role, for example, as "providers of those health care items or services," relying on a phrase that appears multiple times in current regulations related to provider taxes.[36] Given states' reliance interests and the Secretary's statutory flexibility, CMS should make clear that established approaches continue to be permissible under the proposal. Consistent with other related regulations, CMS could add to the proposed definition of Net Patient Revenue the following phrase: "(or providers of those health care items or services)".[37] This could avert the establishment of a revised methodology that could affect the NPR and compliance calculations to such an extent that previously approved taxes are determined out of compliance.

CMS says the addition of a regulatory definition is merited in part "[d]ue to the importance of precision and consistency in States' understanding of Net patient revenue resulting from the changes to the indirect hold harmless threshold

created by the WFTC legislation."[38] As discussed further in our comments, including with respect to establishing the applicable percent out to nine decimal places, it appears that CMS is attaching more importance to precision and consistency across states than to maintaining methodologies and shared understanding it has developed with states on this issue over decades. In such a case, it may be more burdensome and disruptive for both states and CMS to redevelop NPR with such "precision and consistency" rather than permitting certain established approaches. Nothing in the WFTC legislation requires otherwise. FAH is concerned that the proposed definition would result in unpredictability and disruption without achieving greater consistency.

Thus, the addition of a definition of NPR in regulation seems unnecessary. If one is added, it should ensure consistency with approaches in each state permitted by CMS as of July 4, 2025, for purposes of the Secretary's calculation of the applicable percent and states' compliance going forward.

VI. Conclusion

FAH appreciates the opportunity to comment on the Proposed Rule and shares CMS's commitment to a fiscally sound and accountable Medicaid program. We urge CMS to adopt the recommendations described above. If you have questions, please contact Alyssa Keefe, Senior Vice President, Head of Policy, at akeefe@fah.org or (202) 624-1500.

Sincerely,
/s/
Charlene MacDonald
President and CEO

ENDNOTES

[1] Social Security Act § 1903(w)(4)(D)(i)(I)(aa) and (II)(aa).
[2] For example, Social Security Act § 1903(w)(4)(D)(i)(I)(aa).
[3] Centers for Medicare & Medicaid Services, *Section 71115 and 71117 of Working Families Tax Cuts Legislation on provider taxes* [Dear Colleague letter] (Nov. 14, 2025) https://www.medicaid.gov/medicaid/downloads/providertax_dcl_11142025.pdf.
[4] 91 Fed. Reg. 46,598 (proposed 42 C.F.R. § 433.68(f)(3)(ii)(A)(*1*)(*i*)).
[5] 91 Fed. Reg. 46,598 (proposed 42 C.F.R. § 433.68(f)(3)(ii)(A)(*1*)(*i*)).
[6] 91 Fed. Reg. 46,574.
[7] 91 Fed. Reg. 46,572.
[8] 91 Fed. Reg. 46,574.
[9] 91 Fed. Reg. 46,572.
[10] WFTC Legislation § 71115(a)(1).
[11] 91 Fed. Reg. 46,569.
[12] Social Security Act § 1903(w)(4)(C)(ii).
[13] 91 Fed. Reg. 46,575.
[14] 91 Fed. Reg. 46,575.
[15] 91 Fed. Reg. 46,576.
[16] 91 Fed. Reg. 46,577.
[17] 42 C.F.R. § 433.68(f)(3)(i)(A).
[18] 91 Fed. Reg. 46,574.
[19] 91 Fed. Reg. 46,598 (proposed 42 C.F.R. § 433.68(f)(3)(ii)(A)(*4*)).
[20] 91 Fed. Reg. 46,575.
[21] 91 Fed. Reg. 46,576.
[22] 91 Fed. Reg. 46,566.
[23] 91 Fed. Reg. 46,595.
[24] 91 Fed. Reg. 46,576.
[25] For example, Social Security Act § 1903(w)(4)(D)(i)(I)(aa).
[26] CMS, State Medicaid Director Letter #26-003, *Budget Neutrality and Certification by the Chief Actuary of CMS for Section 1115 Medicaid Demonstration Projects* (June 11, 2026).

[27] President Donald J. Trump, "Unleashing Prosperity Through Deregulation," executive order 14192, January 31, 2025.
[28] For example, see HHS, "HHS 2025 Deregulatory Agenda," https://www.hhs.gov/regulations/deregulatory-agenda/.
[29] Department of Health and Human Services. (2025, May 14). *Request for information (RFI): Ensuring lawful regulation and unleashing innovation to make American healthy again*. 90 Fed. Reg. 20481.
[30] 91 Fed. Reg. 46,579.
[31] 91 Fed. Reg. 46,582.
[32] Department of Health and Human Services. (2025, May 14). *Request for information (RFI): Ensuring lawful regulation and unleashing innovation to make American healthy again*. 90 Fed. Reg. 20481.
[33] Social Security Act § 1903(w)(7)(A)(ix).
[34] 57 Fed. Reg. 55,118.
[35] 91 Fed. Reg. 46,597.
[36] 42 C.F.R. § 433.68(c)(1), (d), (d)(1)(i), (d)(1)(ii), and (d)(1)(iii).
[37] 42 C.F.R. § 433.68(d)(1)(i), (d)(1)(ii), and (d)(1)(iii).
[38] 91 Fed. Reg. 46,566.