

Arkansas Insurance Department

Asa Hutchinson
Governor



Allen Kerr
Commissioner

Memorandum

To: John Stephen, Health Reform Legislative Task Force **Date:** 12/11/2015
From: Allen Kerr, State Insurance Commissioner
Subject: MCO Premium Tax Question

On December 3, 2015, the Arkansas Insurance Department (AID) received an email inquiry from John Stephen regarding premium tax in Arkansas as it relates to Medicaid and the requirements reiterated in the Centers for Medicare & Medicaid Services (CMS) letter of July 25th. Additionally, the inquiry referenced a recent article concerning the legality of California requiring managed care plans serving Medi-Cal recipients to pay a special health care tax. As there were no specifics provided regarding any new implementation of Medicaid managed care organizations (MCOs) in Arkansas, the following information may only be a starting point.

The CMS letter addressed the health care-related taxes (provider taxes) and their effect on federal matching funding under Medicaid and the Children's Health Insurance Program (CHIP). The letter stressed compliance and provided the history and details regarding changes to definitions and applications.

Section 1903(w)(7)(A) of the Social Security Act and implementing regulations identify a number of classes of health care items and services (to include "services of health maintenance organizations") upon which states can impose taxes without affecting federal matching funds.

The Balanced Budget Act of 1997 changed the statutory terminology for Medicaid managed care. The phrase "Medicaid managed care organizations" was substituted for "health maintenance organizations". This narrowed the permissible class of services to those series provided only to Medicaid beneficiaries and allowed states to impose taxes specific to the Medicaid program.

The Deficit Reduction Act of 2005 changed the permissible class to a broader scope that includes a wide range of "managed care organizations" (MCOs) and eliminated the states' ability to tax only Medicaid MCOs. Now, in order for a health care-related tax on MCOs to be permissible, the tax would have to apply more generally to all MCOs.

The only relevant tax at the Arkansas Insurance Department (AID) is the insurance premium tax structure in §26-57-603, which, as written right now, applies uniformly and without exception equally to all authorized and unauthorized insurers, including HMOs and any potential MCOs.

For proposed Arkansas Medicaid MCOs, formed as HMOs, if it is a risk-bearing entity for that program, the presumption is that these organizations would be subject to the same premium taxes as all of our other HMOs on a uniform basis. It appears CMS is concerned over state taxes or state tax law requirements

being aimed or targeted to a subset of HMO insurers, “Medicaid MCO,” whether it is gross receipt, insurance premium tax or other taxes. The AID premium tax code provision is uniformly broad to apply to all insurers, as the law is written now. The legislature can change this. **Warning:** we have not reviewed, or have not yet reviewed any proposed operations of entities filing for an HMO Certificate of Authority for the purpose of contracting with the Arkansas Medicaid program.

AID is only able to state that the current statutory taxes do not specifically identify “Medicaid” MCOs. AID has reviewed the CMS letters, the Pennsylvania MCO report, and the applicable state and federal statutes. Pennsylvania appears to have taxed gross receipts on the capitation payments from Medicaid to the Medicaid MCO. The legislation at issue in California, with CMS specifically refers to a “special health care tax” that the state mandated for managed care plans serving Medi-Cal recipients. Arkansas does not have a special health care tax in the code and does not single out plans that serve Medicaid recipients or specifically and expressly to Medicaid MCOs.

As the Arkansas Insurance Department is not the true authority regarding implementation and scope of taxes, the experts at Department of Finance and Administration should be able to definitively answer all tax related questions.