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## **Administrative Bulletin 23-14**

### **101 CMR 324.00: Nonpublic Ambulance Service Reimbursement Trust Fund Assessment and Funding and 101 CMR 327:00 Rates of Payment for Ambulance and Wheelchair Van Services**

Effective May 19, 2023

#### **Administrative Pause to Nonpublic Ambulance Assessment**

##### **Introduction**

As described in [EOHHS Administrative Bulletin 23-05](#), the Centers for Medicare and Medicaid Services (CMS) issued an [Informational Bulletin](#) on February 17, 2023, reiterating certain federal requirements that pertain to health care-related taxes such as the nonpublic ambulance assessment, including a prohibition on so-called “hold harmless” arrangements. This Informational Bulletin included specific examples of prohibited hold harmless arrangements, including hold harmless arrangements established entirely by non-state actors.

The Executive Office of Health and Human Services (EOHHS) has received information indicating that some providers may have entered into hold harmless arrangements of the sort described in the Informational Bulletin relating to the nonpublic ambulance assessment. Accordingly, EOHHS is hereby implementing an administrative pause to the nonpublic ambulance assessment and related supplemental payments while it reviews compliance with the Informational Bulletin. Until further notice, providers should not make any further assessment payments.

As a reminder, providers were paid an interim supplemental payment in February 2022, in anticipation of full implementation of the assessment. Providers were subsequently required to make the first quarterly assessment payment in March and April of 2023. EOHHS will maintain

custody of assessment payments previously paid while it reviews compliance with the federal guidance.

### **Recent CMS Guidance Regarding Health Care-Related Taxes and Hold Harmless Arrangements**

CMS's Informational Bulletin noted that it had reviewed provider-only agreements that appear to contain "impermissible hold harmless arrangements as defined in section 1903(w)(4)(C)(i) of the [Social Security] Act and 42 C.F.R. § 433.68(f)(3) that require a reduction in medical assistance expenditures prior to the calculation of federal financial participation as required under section 1903(w)(1)(A) and (w)(1)(A)(iii) of the Act."

CMS further noted that the "word 'indirect' in [42 C.F.R. § 433.68(f)(3)] makes clear that the state or other unit of government imposing the tax itself need not be involved in the actual redistribution of Medicaid payments for the purpose of making taxpayers whole for the arrangement to qualify as a hold harmless." CMS then stated the following (emphasis added):

Accordingly, an arrangement in which providers receive Medicaid payments from the state (or from a state-contracted managed care plan), then redistribute those payments such that taxed providers are held harmless for all or any portion of their cost of the tax, would constitute a prohibited hold harmless provision under section 1903(w)(4)(C)(i) of the Act and 42 C.F.R. § 433.68(f)(3). Section 1903(w)(1)(A)(iii) of the Act and 42 C.F.R. § 433.70(b) require that CMS reduce a state's medical assistance expenditures by the amount of health care-related tax collections that include hold harmless arrangements, prior to calculating federal financial participation.

CMS further noted that as part of the agency's normal oversight activities and review of state payment proposals, it would inquire about potential redistribution arrangements and may conduct detailed financial management. CMS will expect "states to make available all requested documentation regarding arrangements involving possible hold harmless arrangements and the redistribution of Medicaid payments. States should work with their providers to ensure necessary information is available."

Finally, CMS required that states take action to root out hold harmless arrangements, writing that "states should make clear to their providers that these arrangements are not permissible under federal requirements, learn the details of how health care-related taxes are collected, and take steps to curtail these practices if they exist."

EOHHS encourages providers to review the [Informational Bulletin](#) in full.

### **Pause to Nonpublic Ambulance Assessment While Compliance is Reviewed**

Impermissible hold harmless arrangements may expose Massachusetts to drastic federal penalties, including a reduction of state medical assistance expenditures by the entire amount of any health care-related tax collections that include prohibited hold harmless arrangements.

Consistent with CMS guidance, providers may not enter into hold harmless arrangements relating to the Massachusetts nonpublic ambulance assessment. Furthermore, providers must make necessary documentation available to determine whether they have entered into hold harmless arrangements to the extent requested.

EOHHS will take steps to ensure compliance with CMS requirements during the pendency of this administrative pause, likely including the collection of additional documentation and assurances from providers. While EOHHS is taking these steps, it will not be collecting additional nonpublic ambulance assessments or making any related supplemental payments. For the first year of the assessment, covering fiscal year 2022, EOHHS has collected one quarterly assessment and made one supplemental payment.

EOHHS expects to issue additional guidance on this issue in the near future.