

Proposed Revisions to Senate Finance Committee Language

This document focuses on options for improving Sections 71120 through 71122 of the One Big Beautiful Bill language released by the Senate Committee on Finance. These provisions, lodged within a Subchapter characterized as “Stopping Abusive Financing Practices,” would (among other things) impose restrictions on provider taxes and state directed payments (SDPs):

- Section 44132 imposes a freeze on provider taxes at currently approved rates and amounts.
- Section 44133 limits new SDPs but freezes existing or proposed SDPs at current levels.
- Section 44134 adds a new condition applicable to provider tax waivers of uniformity.

Notwithstanding the legislative label as “abusive practices,” none of these practices are inherently abusive.

1. Provider taxes.

Solution: Compromise between the desire to reduce the 6 percent indirect hold harmless percentage and the House freeze by instituting a freeze for those above 5 percent, while limiting the percentage to 5 percent for all others. Also add clarifications regarding the meaning of “provided for in legislation or regulations enacted or adopted prior to the date of enactment.”

SEC. 71120. PROVIDER TAXES.

(a) MORATORIUM ON NEW OR INCREASED PROVIDER TAXES.—Section 1903(w)(1)(A)(iii) of the Social Security Act (42 U.S.C. 1396b(w)(1)(A)(iii)) is amended—

...

(3) by adding at the end the following new sub-clauses:

~~“(II) subject to paragraph (8), the amount collected by the tax is above the higher of (i) five (5) percent of net patient revenues for the assessed permissible class of health care items of services or (ii) the percentage of net patient revenues for the assessed permissible class of health care items of services that was the tax is first imposed by the State (or by a unit of local government in the State) on or after the date of the enactment of this subclause (other than such a tax for which the legislation or regulations providing for the imposition of such tax were enacted or adopted prior to such date of enactment); or~~

~~“(III) subject to paragraph (8), on or after the date of the enactment of this subclause, the State (or unit of local government) increases the amount of tax on a per unit basis or the rate of tax imposed with respect to a class of health care items or services (or with respect to a type of provider or activity within such a class), or increases the base of the tax such that the tax is imposed with respect to a class of items or services (or with respect to a type of provider or activity within such a class) to which the tax did not previously apply, but only to the extent that such revenues are attributable to such increase and only if such increase was not provided for in legislation or regulations enacted or adopted prior to the such date of enactment of this subclause. For States (or units of local government) where a rate is set annually or periodically, “provided for in~~

legislation or regulations” means the maximum amount that could be authorized under either legislation or regulation existing as of the date of enactment. For States (or units of local government) with a provider tax authorized as of the date of enactment but for which authorization expires at a future date, the percentage provided for as of the date of enactment shall remain at such percentage so long as the State (or unit of local government) does in fact reauthorize such provider tax.” ~~or~~.

~~(b) CHANGE IN THRESHOLD FOR HOLD HARMLESS PROVISION OF BROAD-BASED HEALTH CARE RELATED TAXES.—Section 1903(w)(4) of the Social Security Act (42 U.S.C. 1396b(w)(4)) is amended—~~

~~(1) in subparagraph (C)(ii), by inserting “, and for fiscal years beginning on or after October 1, 2026, the applicable percent determined under subparagraph (D) shall be substituted for ‘6 percent’ ” after “each place it appears”; and~~

~~(2) by adding at the end the following new sub-paragraph:~~

~~“(D)(i) For purposes of subparagraph (C)(ii), subject to clause (iii), the applicable percent determined under this subparagraph is—~~

~~“(I) with respect to a non-expansion State, 6 percent; and~~

~~“(II) with respect to an expansion State—~~

~~“(aa) for fiscal year 2027, 5.5 percent;~~

~~“(bb) for fiscal year 2028, 5 percent;~~

~~“(cc) for fiscal year 2029, 4.5 percent;~~

~~“(dd) for fiscal year 2030, 4 percent; and~~

~~“(ee) for fiscal year 2031 and each subsequent fiscal year, 3.5 percent~~

~~“(ii) For purposes of clause (i):~~

~~“(I) EXPANSION STATE.—The term ‘expansion State’ means a State that, beginning on January 1, 2014, or on any date thereafter, elects to provide medical assistance to all individuals described in section 1902(a)(10)(A)(i)(VIII) under the State plan under this title or under a waiver of such plan.~~

~~“(II) NON-EXPANSION STATE.—The term ‘non-expansion State’ means a State that is not an expansion State.~~

~~“(iii) In the case of a tax in effect on October 1, 2026, that applies to a class of health care items or services that is described in paragraph (3) or (4) of section 433.56(a) of title 42, Code of Federal Regulations (as in effect on May 1, 2025), and for which, on May 1, 2025, is within the hold harmless threshold (as determined by the Secretary), the applicable percent specified in clause (i) shall not apply but only to the extent that such tax is not modified or~~

~~otherwise changed on or after such date unless such tax is to come into compliance with the requirements of this section.”.~~

(~~eb~~) NON-APPLICATION TO TERRITORIES.—The amendments made by this section shall only apply with respect to a State that is 1 of the 50 States or the District of Columbia.

(~~ec~~) IMPLEMENTATION FUNDING.—For the purposes of carrying out the provisions of, and the amendments made by, this section, there are appropriated, out of any monies in the Treasury not otherwise appropriated, to the Secretary of Health and Human Services, \$6,000,000 for fiscal year 2026, to remain available until expended.

2. State Directed Payments.

Solution: Consistent with the House language, freeze SDPs at the current level.

SEC. 71121. STATE DIRECTED PAYMENTS

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(b) GRANDFATHERING CERTAIN PAYMENTS.—In the case of a payment described in section 438.6(c)(2)(iii) of title 42, Code of Federal Regulations (or a successor regulation) ~~for a state directed payment for which written prior approval (or a good faith effort to receive such approval, as determined by the Secretary) was made before May 1, 2025,~~ for the rating period occurring on or within 180 days of the date of enactment of this Act, ~~or a payment so described for such rating period for which a completed preprint was submitted to the Secretary prior to such date of enactment, beginning with the rating period on or after January 1, 2027, the total amount of such payment shall be reduced by 10 percentage points each year until the total payment rate for such service is equal to the rate~~ the limitation specified in subsection (a) shall not be applied by the Secretary to the total payment rate for such rating period, and the limitation described in subsection (a) shall also not be applied to any subsequent rating period if the amount of the total payment rate in such subsequent period is calculated using the same methodology utilized to calculate the total payment rate approved for the rating period occurring on or within 180 days of the date of enactment (irrespective of any impact on total payment amount) and the state directed payment program in such subsequent period is substantially similar or identical to the state directed payment program approved for the rating period occurring on or within 180 days of the date of enactment, and such program otherwise adheres to the requirements of section 438.6 of title 42, Code of Federal Regulations as in effect on the date of enactment.

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3. New Provider Tax Waiver Test

Solution: Require that test be objective and not based on the “same effect.”

SEC. 71122. REQUIREMENTS REGARDING WAIVER OF UNIFORM TAX REQUIREMENT FOR MEDICAID PROVIDER TAX.

(a) IN GENERAL.—Section 1903(w) of the Social Security Act (42 U.S.C. 1396b(w)) is amended—

(1) in paragraph (3)(E), by inserting after clause (ii)(II) the following new clause:

“(iii) For purposes of clause (ii)(I), a tax is not considered to be generally redistributive if any of the following conditions apply, **as specified in an objective test promulgated in regulations by the Secretary of Health and Human Services:**

“(I) Within a permissible class, the tax rate imposed on any taxpayer or tax rate group (as defined in paragraph (7)(J)) explicitly defined by its relatively lower volume or percentage of Medicaid taxable units (as defined in paragraph (7)(H)) is lower than the tax rate imposed on any other taxpayer or tax rate group explicitly defined by its relatively higher volume or percentage of Medicaid taxable units.

“(II) Within a permissible class, the tax rate imposed on any taxpayer or tax rate group (as so defined) based upon its Medicaid taxable units (as so defined) is higher than the tax rate imposed on any taxpayer or tax rate group based upon its non-Medicaid taxable unit (as defined in paragraph (7)(I)).

~~“(III) The tax excludes or imposes a lower tax rate on a taxpayer or tax rate group (as so defined) based on or defined by any description that results in the same effect as described in subclause (I) or (II) for a taxpayer or tax rate group. Characteristics that may indicate such type of exclusion include the use of terminology to establish a tax rate group—~~

~~“(aa) based on payments or expenditures made under the program under this title without mentioning the term ‘Medicaid’ (or any similar term) to accomplish the same effect as described in subclause (I) or (II); or~~

~~“(bb) that closely approximates a taxpayer or tax rate group under the program under this title, to the same effect as described in subclause (I) or (II).”; and~~

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4. Authority for HHS Regulations

Solution: Consistent with Loper Bright, specify how Congress wants regulations issued and require consultation with states.

SEC. 71121. STATE DIRECTED PAYMENTS.

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~~(f) AUTHORITY TO ISSUE REGULATIONS.—~~

~~(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Secretary of Health and Human Services shall issue such regulations as may be necessary to implement this Section and the amendments made by this Act.~~

~~(2) RESTRICTIONS.—The Secretary may not issue any regulation that revises section 438.6 of title 42, Code of Federal Regulations, except as specified in this Section, and may not issue any regulation impacting subpart B of part 433 of title 42, Code of Federal Regulations, except as specified in this Act.~~

(3) CONSULTATION WITH STATES.—The Secretary shall consult with states before issuing any regulation under this Act.