WISCONSIN HOSPITAL ASSOCIATION

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September 21, 2026

The Honorable Mehmet Oz, M.D.
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

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

Dear Administrator Oz:

On behalf of our more than 150 member hospitals and integrated health systems, the Wisconsin Hospital Association (WHA) appreciates the opportunity to provide comments on the Centers for Medicare & Medicaid Services' (CMS) proposed CY 2026 rule related to the Medicare Program Hospital Outpatient Prospective Payment Systems.

WHA was established in 1920 and is a voluntary membership association. We are proud to say we represent all of Wisconsin's hospitals, including small Critical Access Hospitals, general medical surgical hospitals and large academic medical centers. We have hospitals in every part of the state—from very rural locations to larger, urban centers like Milwaukee. In addition, we count close to two dozen psychiatric, long-term acute care, rehabilitation and veterans' hospitals among our members.

Wisconsin hospitals work hard to care for Medicaid patients, which comprise 13 to 15 percent of an average Wisconsin hospital's payer mix – and a much higher percentage for some hospitals. While Wisconsin hospitals provide the same level of high-quality care regardless of the coverage a patient has, it can be challenging when considering that Wisconsin hospitals are reimbursed roughly 63% of what it costs them to care for Medicaid patients. This underfunding resulted in a loss of $1.3 billion for Wisconsin hospitals in 2024. For this reason, provider taxes and the directed Medicaid payments they help fund are critically important for hospitals to help offset some of the significant losses hospitals bear just for serving Medicaid patients.

WHA supports the proposal by the Centers for Medicare and Medicaid Services (CMS) to amend the indirect hold harmless threshold of health care-related taxes in CMS-2452-P. Specifically, we support CMS clarifying its interpretation of the definitions of "Enacted" and "Imposes" in this proposed rule to be consistent with the plain text of Public Law (PL) 119-21 as well as our understanding of how state and federal lawmakers envisioned the new law functioning.

In Wisconsin, our state legislature and governor worked diligently with members of Wisconsin's Congressional Delegation to understand the impacts of HR 1, which became PL 119-21. Prior to Congress commencing work on the legislation, Wisconsin lawmakers had already been working on

proposals to bring Wisconsin's provider tax in line with that of other states. Our lawmakers worked closely with members of our congressional delegation to ensure they understood how Wisconsin's State Budget would interact with the provisions related to provider tax changes in HR1.

Of key importance, PL 119-21 effectively grandfathered the provider tax threshold for a non-expansion state like Wisconsin at up to 6% of net patient revenue if *"on the date of enactment. . . such State has enacted a tax and imposes such tax."* In conversations with our state officials, it is clear Wisconsin intentionally enacted and imposed its current provider tax level consistent with the requirements of PL 119-21.

We therefore support CMS's efforts in this proposed rule to clarify the definition of "Enacted" and "Imposes" to be consistent with PL 119-21.

We appreciate CMS's prior work to give states advance notice of how it intended to implement the updated sections in PL 119-21 via sub-regulatory guidance in the form of *Dear Colleague Letters*. Furthermore, we applaud CMS for listening to feedback from states in regard to how some of the proposed implementation policies in these *Dear Colleague Letters* would have been inconsistent with the federal statute and Congressional intent. In particular, we applaud CMS for acknowledging that this proposed rule's definitions of enacted and imposed more appropriately reflect CMS and State practices regarding waiver requests and effective dates than did the preliminary guidance issued in the November 14, 2025, *Dear Colleague Letter*.

CMS should finalize its proposal recognizing a tax is imposed when it is effective, rather than collected.

We commend CMS for clarifying in this proposed rule that it will not require a tax to have already been collected as of July 4, 2025, to be considered "imposed." Rather, CMS proposes clarifying that *"the operative issue is whether or not the tax was in effect, such that taxpayers were subject to a legally enforceable obligation to pay the tax as of July 4, 2025."* We believe CMS' updated interpretation of "imposes" is consistent with the statute as well as the general understanding and past practices regarding the effective date of when a state or other governmental unit imposes a tax.

In the new definition, CMS proposes that *"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."* Wisconsin's actions meet this definition, and we are grateful that CMS agrees.

CMS should also finalize its proposal maintaining the current statutory effective date of a waiver, rather than the date CMS acts on it.

We are also grateful that CMS recognized its longstanding application of § 433.72(c), which provides that a waiver will be effective beginning on the first day of the calendar quarter in which the waiver request is received by CMS, in determining that states with waiver requests that met such a timeline for approval should meet the definition of "enacted" in this proposed rule. In other words, so long as CMS received the waiver request by September 30, 2025, it could have an effective date of July 1, 2025. This updated interpretation is important because states acted with the knowledge of how current statutes were applied in determining how to meet the new criteria of PL 119-21.

In this rule, CMS proposes, *"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."* We again commend CMS for taking this favorable interpretation which is consistent with Wisconsin's actions and CMS's longstanding application of § 433.72(c).

In summary, we reiterate our appreciation for CMS listening to concerns from states and from lawmakers and support CMS's updated definition of these two terms. CMS's actions in this proposed rule will help us better serve Medicaid patients and support our mission to provide life-saving care to the communities we serve.

WHA appreciates the opportunity to provide comments on this proposed rule.

Sincerely,

Kyle O'Brien
President & CEO