



# The Hospital Tax in SB1046 for Medicaid Expansion May Be Illegal Going Forward

**The Bottom Line: Taxing hospitals to generate “non-federal match” for Medicaid expansion is a scheme amounting to “kickbacks” that has come under intense federal scrutiny.**

**The Trump Administration has moved forward with a rule to crack down on these types of money laundering schemes.**

*Myth: Oklahoma can use a provider tax scheme to pay for Medicaid expansion long-term*

*Reality: The Trump administration is taking action to stop provider tax schemes that states are using to draw down additional federal money*

The practice of taxing hospitals and using that revenue to draw down more Medicaid match from the federal government is highly questionable and has come under intense legal and regulatory scrutiny by watchdog groups, Congress, and past and current administrations alike. A panel commissioned by the Obama administration recommended eliminating the provider tax altogether.<sup>1</sup>

The Trump administration’s Centers for Medicare and Medicaid Services (CMS) has recently published a rule that will likely prevent states from abusing these schemes going forward.<sup>2</sup> Brian Blase, former White House health care official, recently wrote a public comment outlining the pernicious nature of these schemes (attached).<sup>3</sup>

Instead of banking on an expansion of this practice to further tax hospitals, Oklahoma should be considering ways to unwind this questionable practice and find ways to replace those funds for the Medicaid state match. Further, expansion enrollment and cost are being underestimated across the country, and this tax would almost surely fall short when the expansion grows out of control.<sup>4</sup>

Any Medicaid expansion that relies on this funding scheme will be on unstable, and perhaps illegal, footing going forward. It is unwise, unethical, and unsustainable.

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<sup>1</sup> The National Commission on Fiscal Responsibility and Reform, “The Moment of Truth,” The Obama White House (2010), [https://www.senate.gov/reference/resources/pdf/NationalCommissiononFiscalResponsibilityandReform\\_Dec012010.pdf](https://www.senate.gov/reference/resources/pdf/NationalCommissiononFiscalResponsibilityandReform_Dec012010.pdf).

<sup>2</sup> Susan Morse, “CMS cracks down on regulatory loopholes and state schemes in Medicaid payments,” Healthcare Finance (2019), <https://www.healthcarefinancenews.com/news/cms-cracks-down-regulatory-loopholes-and-state-schemes-medicaid-payments>.

<sup>3</sup> Brian Blasé, “Comment 2019-0169-3840 on CMS Proposed Rule: Medicaid Program: Medicaid Fiscal Accountability Regulation,” Opportunity Solutions Project (2019), <https://www.regulations.gov/document?D=CMS-2019-0169-3840>.

<sup>4</sup> Jonathan Ingram et. al., “Shattered promises: how bad data led to Obamacare enrollment explosions,” Foundation for Government Accountability (2019), <https://thefga.org/research/bad-data-obamacare-enrollment/>.