NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

September 10, 2026

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2452-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Via Regulations.gov

To whom it may concern:

The National Association of Insurance Commissioners (NAIC), representing the chief insurance regulators in the states, the District of Columbia, and U.S. territories, submits the following comments on the proposed rule entitled *Medicaid Program; Amending the Indirect Hold Harmless Threshold of Health Care-Related Taxes*.

State insurance regulators appreciate the opportunity to comment on this proposed rule and its potential effects on state insurance regulation and health insurance markets. We urge the Centers for Medicare & Medicaid Services (CMS) to add more clarifications to its proposal and to not apply any new limits on state taxes and assessments levied on health insurers. While it is difficult to understand its effects without further explanation, we are concerned the proposed rule could limit the valid authority of states to raise revenue for non-Medicaid purposes. It does seem clear that the proposal would place onerous reporting requirements on many states. We also find that the proposal could conflict with current federal law and have damaging effects on federalism, and these effects are not thoroughly considered in the proposed rule.

If CMS intends to apply the proposed rule to all taxes on health insurers, the new regulations would prevent states from instituting new taxes on health insurers or raising existing assessment levels. This would impact state premium taxes, state guarantee association assessments, state-based reinsurance programs, licensing fees used to support the operations of state insurance departments, and potentially other taxes, regardless of whether any of the funds raised go to a state's non-federal share of Medicaid funding. Under this approach, states could face a substantial penalty in federal Medicaid funding if their health insurer taxes and assessments are not broad based and uniform, if they begin a new tax, raise an existing one, or exceed the hold harmless thresholds. The proposed rule's inclusion of "Services of health insurers" as a permissible class may implicate any or all of these state taxes and assessments, but the explanatory text does not provide enough information to fully understand the range of taxes to which the requirements would apply. We urge CMS to provide more explanation of the taxes it intends to limit before finalizing this rulemaking. We also urge CMS to narrowly define the taxes subject to broad based, uniform, and hold harmless requirements and to clarify that the proposed rule is not intended to prevent states from managing state revenue in ways that do not impact Medicaid financing.

Washington, DC 1101 K Street NW, Suite 650, Washington, DC 20005-7032 p | 202 471 3990

Kansas City 1100 Walnut Street, Suite 1000, Kansas City, MO 64106-2197 p | 816 842 3600

New York One New York Plaza, Suite 4210, New York, NY 10004 p | 212 398 9000

www.naic.org

In particular, state insurance regulators seek additional clarity on the extent to which broad based, uniform, and hold harmless requirements would apply to taxes on health insurers, which are commonly levied on premiums. CMS does not propose to amend 42 CFR 433.55(e), which exempts health insurance premiums from the definition of payments for health care items and services.[1] The proposed rule fails to describe how proposed section 433.56(a)(19) adding "Services of health insurers" as a permissible class is to be read together with 433.55(e). If CMS intends to exempt premium taxes, but include all other taxes and assessments on health insurers as health care-related taxes, it should state this intention and add clarifying language to the regulatory text.

Broad limits on health insurer taxes would not be effective in preserving the integrity of Medicaid financing. Instead, they would restrict states from exercising their valid taxing authority. With a broad limit on health insurer taxes, state departments of insurance (DOIs) could be constrained in their ability to take on new responsibilities or even sustain their existing regulatory duties. When funding comes from licensing fees on health insurers, state DOIs could be prevented from adjusting the fees in response to new duties mandated by state legislatures or other changing policies.

State regulators are also greatly concerned about potential impacts on assessments that fund state reinsurance programs and the operations of state-based exchanges. State reinsurance programs collect assessments and make payments to insurers in commercial markets, unrelated to Medicaid. These programs help stabilize markets and reduce premiums for many consumers. Limiting the assessments they charge would limit the effectiveness of reinsurance, raising costs and destabilizing markets. State-based exchanges collect user fees from participating commercial insurers as explicitly authorized by federal law and regulation, including Section 1311(d)(5)(A) of the Affordable Care Act. The funds go toward the operation of the state-based exchanges and not to states' non-federal share of Medicaid funding. Limiting user fees would prevent the operation of new state-based exchanges (including Oklahoma's which was recently approved by CMS) and threaten the ongoing operation of existing state-based exchanges. State regulators ask CMS to confirm that the assessments and fees collected under federally authorized reinsurance programs and state-based exchanges are not considered taxes subject to the proposed rule.

The proposed rule would require all states that impose taxes on health insurers to report quarterly on the "net patient revenue" of health insurers (whether subject to the tax or not), the taxes due from them, and other information. While CMS promises technical assistance to states, the concept of "net patient revenue" is not clearly applicable to health insurers. Further, the quarterly reporting requirement would impose burdens on states with no clear benefit—states would be required to collect and report information about commercial insurers that do not serve Medicaid enrollees and taxes that are not used to fund Medicaid. It is unclear how this would protect the integrity of Medicaid financing. In addition, gathering and reporting information on quarterly revenues for health insurers not subject to state taxes would add a new and burdensome requirement for states and insurers.

CMS's assessment of the federalism implications of the proposed rule is inadequate and fails to consider federal law governing the business of insurance. The proposed rule states "To the extent the provisions are not specifically required by the WFTC legislation, this rule does not impose substantial direct costs on State or local governments, preempt State law, or otherwise have Federalism implications." Adding the services of health insurers as a permissible class is not required by H.R. 1 of 2025, yet it would impose substantial direct costs on state governments if applied broadly. State governments that institute a new health insurance tax, raise an existing tax, or otherwise exceed the broad based, uniform, or hold harmless requirements could face substantial costs from the loss of federal financial participation in Medicaid under the proposal. The rule could effectively preempt state laws that set tax or assessment

[1] "(e) Health care insurance premiums and health maintenance organization premiums paid by an individual or group to ensure coverage or enrollment are not considered to be payments for health care items and services for purposes of determining whether a health care-related tax exists."

rates on health insurers. We believe there are significant federalism implications if Medicaid regulations are used to limit states' inherent authority to raise revenue unrelated to the Medicaid program, particularly when the regulations are not required by federal statute.

In fact, longstanding federal law prevents CMS from claiming authority over state taxation of insurance companies in the absence of explicit Congressional authorization. The McCarran-Ferguson Act protects state insurance taxes from federal interference.[2] Specifically, federal law may not impair state laws that impose a fee or tax on the business of insurance unless the federal law specifically regulates the business of insurance. Congress has not explicitly applied Section 1903(w) of the Social Security Act to state taxes on health insurers, so CMS may not subject state health insurer taxes to Section 1903(w).

Overall, we request that CMS revise the proposal to clarify and remove its application to taxes that fall on state-regulated insurers. Assessments for state reinsurance programs and state-based exchanges, licensing fees that fund state DOIs, and other non-Medicaid related taxes should not be limited by requirements related to Medicaid financing. In addition, we urge CMS not to finalize provisions that would impose costly new reporting requirements on states and health insurers for non-Medicaid taxes.

Consultation with state insurance regulators, facilitated through NAIC, could help achieve the clarity in regulation that CMS expressed as a goal of the proposed rule. State regulators value the opportunity to provide comments and we look forward to continued collaboration on these issues.

Sincerely,

Scott White
NAIC President
Commissioner
Virginia Bureau of Insurance

Elizabeth Kelleher Dwyer
NAIC President-Elect
Director
Rhode Island Department of Business Regulation

Jon Pike
NAIC Vice President
Commissioner
Utah Insurance Department

Michael Wise
NAIC Secretary-Treasurer
Director
South Carolina Department of Insurance

[2] The McCarran-Ferguson Act (59 Stat. 33) explicitly states: "The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." 15 U.S.C. § 1012(a).
Further, the McCarran-Ferguson Act also contains a reverse preemption clause: "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance[.]" 15 U.S.C. § 1012(b).